

# 17-157

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United States Court of Appeals  
FOR THE SECOND CIRCUIT  
Docket No. 17-157

AMERICAN CIVIL LIBERTIES UNION,  
AMERICAN CIVIL LIBERTIES UNION FOUNDATION,  
*Plaintiffs-Appellees,*  
—v.—

DEPARTMENT OF JUSTICE, including its components THE  
OFFICE OF LEGAL COUNSEL AND OFFICE OF INFORMATION  
POLICY, DEPARTMENT OF DEFENSE, DEPARTMENT  
OF STATE, CENTRAL INTELLIGENCE AGENCY,  
*Defendants-Appellants.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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**JOINT APPENDIX  
VOLUME III OF IV  
(Pages A-497 to A-721)**

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February 2013 Brennan Testimony

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S. HRG. 113-31

**NOMINATION OF JOHN O. BRENNAN TO BE  
DIRECTOR OF THE CENTRAL INTELLIGENCE  
AGENCY**

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**HEARING**  
BEFORE THE  
**SELECT COMMITTEE ON INTELLIGENCE**  
OF THE  
**UNITED STATES SENATE**  
ONE HUNDRED THIRTEENTH CONGRESS  
FIRST SESSION

FEBRUARY 7, 2013  
MARCH 5, 2013

Printed for the use of the Select Committee on Intelligence



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SELECT COMMITTEE ON INTELLIGENCE

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

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CARL LEVIN, Michigan, *Ex Officio*  
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DAVID GRANNIS, *Staff Director*  
MARTHA SCOTT POINDEXTER, *Minority Staff Director*  
KATHLEEN P. MCGHEE, *Chief Clerk*



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### NOMINATION OF JOHN O. BRENNAN TO BE DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY

THURSDAY, FEBRUARY 7, 2013

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

The Committee met, pursuant to notice, at 2:30 p.m., in Room SH-216, Hart Senate Office Building, the Honorable Dianne Feinstein (Chairman of the Committee) presiding.

Committee Members Present: Senators Feinstein, Chambliss, Rockefeller, Burr, Wyden, Risch, Mikulski, Coats, Udall, Rubio, Warner, Collins, Heinrich, King, and Levin.

#### OPENING STATEMENT OF HON. DIANNE FEINSTEIN, CHAIRMAN, A U.S. SENATOR FROM CALIFORNIA

Chairman FEINSTEIN. We will begin this hearing. And let me say right up front that the process is that people are respectful; that they don't cheer, they don't hiss, they don't show signs; that this is to listen. If that's a problem for anybody, I ask you to leave the room now because what we will do is remove you from the room—let there be no doubt.

So, if I may, I would like to begin. The Committee meets today in open session to consider the nomination of John Brennan to be the 21st director of the Central Intelligence Agency and the first director to have risen through the Agency's ranks since Bob Gates.

Mr. Brennan, congratulations on your nomination. I see Senator Warner has come in. Senator, I will make opening comments, the Vice Chairman will make opening comments, and then we will turn to you for your introduction, if that's agreeable.

Mr. Brennan, congratulations on your nomination. As you can see, it's going to be lively. I'd like to welcome your family, as well, and hope you'll introduce them so the Committee can give them its thanks.

This is the first opportunity, also, to welcome our new Members—Senator Heinrich, who is on my right; Senator King, who is due any moment; Senator Collins, who is on my left; and Senator Coburn, who is not here at the moment, but will be, who is returning to the Committee. And we have a new Ex-Officio Member, Senator Inhofe. So, welcome to all of you.

The director of the CIA is among the most critical national security positions in the United States Government, both because of the role the CIA plays in collecting and analyzing intelligence relevant

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to every national security challenge we face, and because of the added importance of having steady leadership at an organization that conducts most of its business outside of the public arena.

Intelligence is critical to the successful drawdown in Afghanistan; to the brutal war going on within Syria's borders, across North Africa, where the attacks in Benghazi and the hostage situation in Algeria threaten to spread into the next front against al-Qa'ida and its affiliated groups; for counterterrorism operations around the world; in the efforts by the United States and others to prevent the gain and spread of weapons of mass destruction in Iran, North Korea, and other states; and in addressing emerging threats in space, cyberspace, and elsewhere around the globe.

To confront these challenges, and to lead the CIA through a difficult budgetary period after a decade of major budget increases, President Obama nominated John Brennan, his closest advisor on intelligence and counterterrorism matters for the past four years.

Mr. Brennan is, without a doubt, qualified for this position. He served at the CIA for 25 years in analytic, operational, and managerial capacities. He has seen the Agency from just about every angle—as a line analyst, as chief of station, as chief of staff to the director, and as the deputy executive director—among many others.

People who have worked closely with him regularly cite his work ethic, his integrity, and his determination. In nominating John Brennan, President Obama spoke of his “commitment to the values that define us as Americans.” DNI Clapper, in a letter of support, noted his “impeccable integrity” and that “his dedication to country is second to none.”

So, with that, with unanimous consent, I would like to insert into the record the letters the Committee has received in regard to Mr. Brennan's nomination.

[Letters received by the Committee regarding the nomination of Mr. Brennan follow:]

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DIRECTOR OF NATIONAL INTELLIGENCE  
WASHINGTON, DC 20511

The Honorable Dianne Feinstein  
Chairman  
Select Committee on Intelligence  
United States Senate  
Washington, DC 20510

JAN 25 2013

The Honorable Saxby Chambliss  
Vice Chairman  
Select Committee on Intelligence  
United States Senate  
Washington, DC 20510

Dear Madam Chairman and Vice Chairman Chambliss:

I would like to take this opportunity to wholeheartedly endorse the nomination of John Brennan to be Director of the Central Intelligence Agency.

I have known John for the better part of two decades, in several capacities, and can personally vouch for his impeccable integrity. His dedication to country is second to none. John has had a remarkable career in government, spanning nearly 30 years, during which he rose through the ranks at CIA. The President, in announcing his intent to nominate John, stated that John is the hardest working public servant he has ever known. I couldn't agree more. He is extraordinarily qualified for this position.

John and I share a common vision for the role of intelligence in protecting our national security interests and keeping America safe, and I look forward to working with him, once he is confirmed.

I am confident that he will take one of the nation's premier intelligence agencies to new heights.

Sincerely,

[SIGNATURE]

James R. Clapper

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David S. Kris  
9825 SE 42<sup>nd</sup> Place  
Mercer Island, WA 98040

January 8, 2013

United States Senate  
Senate Select Committee on Intelligence  
221 Hart Senate Office Building  
Washington, DC 20510

Dear Chairman Feinstein, Vice Chairman Chambliss, and Members of the Senate Select Committee on Intelligence:

I write in enthusiastic support of the nomination of John Brennan to be Director of the Central Intelligence Agency. I met John in early 2009, when I was Assistant Attorney General for National Security at the Department of Justice, and he was in his current position. Over the next two years, we worked closely together on many challenging and important issues, often under stress, and frequently in an inter-agency environment. Since I left government in 2011, John and I have stayed in touch.

John is a consummate intelligence professional, having spent almost his entire career in government service. His many years at CIA, both in the field and at headquarters, obviously afford him a deep understanding of the agency's mission, capabilities and limitations, as well as its culture. His years in the private sector, and most recently in the White House, have tempered that insider's focus with a broader perspective. This experience of more than a quarter-century, combined with John's rare combination of superlative personal qualities – including his keen native intelligence, unrelenting work ethic, and sterling integrity – make it difficult to imagine anyone more qualified and better suited to lead today's CIA.

As a former Justice Department official, I feel compelled specially to emphasize John's deep commitment to the rule of law. In public and in private, whether making broad policy or supervising the most acute operations, at times of relative calm and in moments of immense pressure, I have never seen him waver. I have never met anyone, inside or outside the legal profession, with a more thorough and abiding reverence for the American ideal of intelligence under law.

I commend John Brennan to you in the strongest possible terms. Thank you for considering my views.

Sincerely,

[SIGNATURE]

David S. Kris

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January 22, 2013

The Honorable Dianne Feinstein  
Chairman, U.S. Senate Select Committee on Intelligence  
211 Hart Senate Office Building  
Washington, D.C. 20510

*Re: Nomination of John O. Brennan as Director of Central Intelligence Agency*

Dear Chairman Feinstein:

As attorneys committed to the rule of law who worked on a range of national security issues while serving in the Obama Administration, we write to express our enthusiastic support for the President's nomination of John O. Brennan to serve as Director of the Central Intelligence Agency.

Throughout his tenure as Assistant to the President for Homeland Security and Counterterrorism in the Obama Administration, John Brennan has been a persistent and determined leader in support of adherence to the rule of law, a principled commitment to civil liberties and humanitarian protection, and transparency. On a broad range of issues, he has endeavored to ensure that the national security practices of the United States Government are based on sound long-term policy goals and are consistent with our domestic and international legal obligations, as well as with broader principles of democratic accountability. John Brennan has been a steadfast champion of the President's commitment to closing the detention facility at Guantánamo, and has urged that our Article III courts remain a vital tool in our counterterrorism toolbox. He has stood firmly with the President's efforts to ensure that interrogations are conducted in accord with the law and our values. And he has worked to ensure that the responsible and effective pursuit of our counterterrorism objectives will not depend simply on the good instincts of officials, but will instead be institutionalized in durable frameworks with a sound legal basis and broad interagency oversight.

As a former CIA official and currently the President's chief counterterrorism adviser, John Brennan well understands the significant security threats that the United States faces, as well as the institutional needs of the CIA and its dedicated personnel. He is also exceptionally qualified to provide leadership and direction to the Agency, consistent with President Obama's national security objectives. John Brennan understands that adherence to the Constitution and the rule of law serve, rather than undermine, our national security interests. Time and again, he has demonstrated seasoned wisdom and judgment in responding to our nation's greatest national security threats, and he has consistently reaffirmed his core commitment to conducting our



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national security and counterterrorism policy in a fashion that comports with our deepest values. He is superbly qualified to serve as Director of the CIA, and we urge his swift confirmation.

Sincerely yours,

Sarah H. Cleveland  
Louis Henkin Professor of Human and Constitutional Rights<sup>\*</sup>  
Columbia Law School  
Former Counselor on International Law to the Legal Adviser, U.S. Dept. of State

Gregory B. Craig  
Skadden, Arps, Slate, Meagher & Flom LLP  
Former Counsel to the President

William S. Dodge  
Professor of Law and Associate Dean for Research  
University of California, Hastings College of the Law  
Former Counselor on International Law to the Legal Adviser, U.S. Dept. of State

Jeh C. Johnson  
Former General Counsel  
U.S. Dept. of Defense

David S. Kris  
General Counsel, Intellectual Ventures  
Former Assistant Attorney General for National Security

David A. Martin  
Warner-Booker Distinguished Professor of International Law  
University of Virginia  
Former Principal Deputy General Counsel, U.S. Dept. of Homeland Security

Daniel J. Meltzer  
Story Professor of Law  
Harvard Law School  
Former Principal Deputy Counsel to the President

Trevor W. Morrison  
Liviu Librescu Professor of Law  
Columbia Law School  
Former Associate Counsel to the President

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<sup>\*</sup> Institutional affiliations are provided for identification purposes only.



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January 8, 2013

On behalf of the Board of Directors and membership of the Victims of Pan Am Flight 103, Inc., we strongly support the nomination and confirmation of John O. Brennan as Director of the Central Intelligence Agency (CIA).

Mr. Brennan's professional experience and background are well known to the Congressional Committees, and the many who have worked with him and for him in his decades of public service. What may not be known is the personal relationship that John had with the victims of this unspeakable tragedy. He was involved from the very beginning, December 21st, 1988, and had friends and colleagues killed on that plane. He has worked with us and been a source of support as well as comfort, for years.

On behalf of President Obama, he called the Scottish official who was considering a release of the only convicted bomber to register his strong objection, and immediately called our organization to report the conversation. He later released diplomatic letters to us, showing the objections of the US government to the bomber's release, at a time when there were false media claims to the contrary. John met with us at the White House to show the extraordinary efforts being made at the UN in September 2009, when Muammar Gadhafi was feted and allowed to address the Security Council. The victims families were painfully aware of a previous session where Gadhafi had rushed up to be photographed shaking President Obama's hand, and John made sure that was not going to happen again.

He had a number of conference calls with us, always answered any and all of our questions, and gave two very moving speeches at our annual memorial services at Arlington National Cemetery.

Our relationship is personal. We consider him "family". There was a wonderful story tale event a few years ago involving the children of two men who were murdered on that plane. They had met each other at some of our many family meetings, and as love would have it, wound up getting married. John made sure that there was a letter of congratulations from the President, which was read at the wedding ceremony.

John Brennan has spent an honorable career in a cold and heartless profession at the center of horrible and unforgettable actions, and never lost the empathy and indeed, love,

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that can keep a man's humanity in such a job. He had colleagues who were killed on Pan Am 103. He grew up in New Jersey and went to school in New York, where the majority of the victims lived. For all we know, he is as connected to other groups of Americans as much as he is ours, but it is hard to imagine.

The Irish have a gift for language, indeed many view themselves as poets, but they don't have a word for "mentch" and they should. John Brennan is a mentch who has devoted his life to public service in a personal way that many of us have been privileged to experience. We love the big lug.

#### Officers and Board Members of Victims of Pan Am 103, Inc.

Mary Kay Stratis, New Jersey

Brian Flynn, New Jersey

Kathy Tedeschi, South Carolina

Glenn Johnson, Pennsylvania

Robert Monetti, New Jersey

Sue Kosmowski, Michigan

Brice Daniels, New York

Judy O'Rourke, Syracuse Univ.

Kristie Smith, California

Frank Duggan, Virginia

Mary Lou Ciulla, New Jersey

Eileen Walsh, New Jersey

Joan Dater, New Jersey

Jane Davis, New York

Melanie Daniels, New York

Stephanie Bernstein, Maryland

Edward Galvin, Syracuse Univ.

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January 31, 2013

Dear Senator,

We write to you to regarding the confirmation hearing of John Brennan to be CIA Director.

We are retired professional intelligence experts and interrogators with combined experience totaling hundreds of years serving in the United States armed forces, law enforcement and intelligence agencies. We have spent our careers interrogating high value suspects.

We know from experience that torture is unreliable, unlawful and un-American. But, does Mr. Brennan?

In 2007, Mr. Brennan said on *The Early Show* that approximately one-third of the 100 terrorism suspects held by the CIA were subject by CIA officers to "enhanced interrogation tactics," which is a euphemism for torture. In the same interview, he claimed that information gotten through enhanced interrogation "has saved lives."

Mr. Brennan was Deputy Executive Director of the CIA from 2001-2003 when the Bush administration adopted torture as an interrogation tactic. What role did Mr. Brennan play in the development, review or approval of what he has called "enhanced interrogation?"

We appreciate that in his 2008 letter withdrawing his name for nomination for the CIA Director, Mr. Brennan wrote, "I have been a strong opponent of many of the policies of the Bush Administration such as...coercive interrogation tactics, [including] waterboarding." What evidence does Mr. Brennan have to support his assertion?

Does Mr. Brennan agree today with the following principles to which we as professional interrogators subscribe?

1. Non-coercive, traditional, rapport-based interviewing approaches provide the best possibility for obtaining accurate and complete intelligence.
2. Torture and other inhumane and abusive interview techniques are unlawful, ineffective and counterproductive.
3. The use of torture and other inhumane and abusive treatment results in false and misleading information, loss of critical intelligence, and has caused serious damage to the reputation and standing of the United States. The use of such techniques also facilitates enemy recruitment, misdirects or wastes scarce resources, and deprives the United States of the standing to demand humane treatment of captured Americans.
4. There must be a single well-defined standard of conduct, as in the *Army Field Manual*, to govern the detention and interrogation of people anywhere in U.S. custody across all U.S. agencies.

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5. There is no conflict between adhering to our nation's essential values, including respect for inherent human dignity, and our ability to obtain the information we need to protect the nation.

Assuming Mr. Brennan has nothing to conceal and believes that he has a responsibility to be clear and frank with the American people, will he support public release of, with as few redactions as possible, the Senate Select Committee on Intelligence study on CIA detention and interrogation after 9/11, adopted by the committee in December?

We acknowledge Mr. Brennan's significant contributions to our nation's defense, but given that Mr. Brennan faced significant opposition to his nomination to become CIA Director in 2008 and that the questions raised then have not been answered fully, we respectfully recommend that the Senate Select Committee on Intelligence ask Mr. Brennan questions about his views on torture to give the American public full confidence in the nominee.

Sincerely,

Tony Camerino  
Don Canestraro  
Jack Cloonan  
Barry Eisler  
Col. Stuart Herrington  
Marcus Lewis  
Mike Marks  
Robert McFadden  
Malcolm Nance  
Joe Navarro  
Torin Nelson  
Ken Robinson

Biographical information:

**Tony Camerino**

Tony Camerino has spent over eighteen years in the U.S. Air Force and Air Force Reserves. He personally conducted more than 300 interrogations in Iraq and supervised more than 1,000. Camerino was awarded the Bronze Star Medal for his achievements in Iraq, including leading the team of interrogators that located Abu Musab al Zarqawi, who was subsequently killed in an airstrike. Camerino has conducted missions in over thirty countries, has two advanced degrees, and speaks three languages. He is the author (under the pseudonym Matthew Alexander) of *How to Break a Terrorist: The U.S. Interrogators Who Used Brains, Not Brutality, to Take Down the Deadliest Man in Iraq* (Free Press, 2008) and *Kill or Capture: How a Special Operations Task Force Took Down a Notorious al Qaeda Terrorist* (St. Martin's Press, 2011).



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### **Donald Canestraro**

Mr. Donald Canestraro was a Special Agent with the Drug Enforcement Administration (DEA) from 1991 until 2012. He has participated in numerous international investigations involving money laundering, traditional organized crime, drug trafficking and terrorism. He has provided training and expertise to U.S. and foreign law enforcement agencies on surveillance, counter surveillance, and interviewing. Prior to his appointment to Special Agent, Mr. Canestraro served as an Intelligence Analyst with DEA where he provided advice to U.S. and foreign law enforcement agencies on Colombian drug smuggling cartels. Mr. Canestraro is currently a law enforcement trainer and private investigator in Minneapolis, Minnesota.

### **Jack Cloonan**

Jack Cloonan served as a special agent with the FBI from 1977 to 2002. He began investigating Al Qaeda in the early 1990's and served as a special agent for the Bureau's Osama bin Laden unit from 1996 to 2002.

### **Barry Eisler**

Barry Eisler spent three years in a covert position with the CIA's Directorate of Operations, then worked as a technology lawyer and startup executive in Silicon Valley and Japan, earning his black belt at the Kodokan International Judo Center along the way. Eisler's bestselling thrillers have won the Barry Award and the Gumshoe Award for Best Thriller of the Year, have been included in numerous "Best Of" lists, and have been translated into nearly twenty languages. Eisler lives in the San Francisco Bay Area and, when he's not writing novels, blogs about torture, civil liberties, and the rule of law.

### **Colonel (Ret.) Stuart A. Herrington, US Army**

Stu Herrington served thirty years as an Army intelligence officer, specializing in human intelligence/counterintelligence. He has extensive interrogation experience from service in Vietnam, Panama, and Operation Desert Storm. He has traveled to Guantanamo and Iraq at the behest of the Army to evaluate detainee exploitation operations, and he taught a seminar on humane interrogation practices to the Army's 201st MI Battalion, Interrogation, during its activation at Ft. Sam Houston, Texas.

### **Marcus Lewis**

Marcus Lewis is a former army interrogator, interrogation instructor, Arabic linguist, and reserve officer. Marcus has served in national defense for over 10 years. He enlisted in the Army after 9/11, worked as an interrogation team sergeant in Iraq, and recently returned from a position as an intelligence analyst in Afghanistan.

### **Mike Marks**

Mike Marks is a retired NCIS agent with 23 years of experience. He has served in more than 20 countries, including Bahrain, Afghanistan, and Yemen. He assisted in the investigation of the USS Cole bombing, was assigned to the FBI's Joint Terrorism Task Force, and conducted numerous interrogations as part of the Criminal Investigations Task Force in Afghanistan.

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**Robert McFadden, NCIS Special Agent in Charge (Retired)**

Robert McFadden is a 20-year Special of the Naval Criminal Investigative Service (NCIS), where he held a number of high-impact positions to include Senior Representative to the Deputy Under Secretary of the Navy (clandestine, sensitive, and low visibility operations oversight and policy), Deputy Assistant Director CI and National Security Operations, and Special Agent in Charge, Global Support Field Office. He was the co-case agent for the NCIS-FBI investigation of the USS Cole attack and al-Qa'ida maritime operations cell. He conducted scores of interviews and interrogations of terrorism subjects, witnesses, and sources.

**Malcolm Nance**

Malcolm Nance is a counterterrorism intelligence consultant for the U.S. government's special operations, homeland security, and intelligence agencies. He is a renowned expert of al-Qaeda strategy and tactic and a combat veteran with twenty-eight years' operational experience in the Middle East, sub-Saharan Africa, and South Asia. An author of several books on counterterrorism and counterinsurgency and a blogger at smallwarsjournal.com, he is director of the International Anti-terrorism Center for Excellence. His latest book is An End to al-Qaeda: Destroying Bin Laden's Jihad and Restoring America's Honor.

**Joe Navarro**

For 25 years, Joe Navarro worked as an FBI special agent in the area of counterintelligence and behavioral assessment. A founding member of the National Security Division's Behavioral Analysis Program, he is on the adjunct faculty at Saint Leo University and the University of Tampa and remains a consultant to the intelligence community. Mr. Navarro is the author of a number of books about interviewing techniques and practice including Advanced Interviewing which he co-wrote with Jack Shafer and Hunting Terrorists: A Look at the Psychopathology of Terror. He currently teaches the Advanced Terrorism Interview course at the FBI.

**Torin Nelson**

Torin Nelson is the President of the Society for Professional Human Intelligence. He is an eighteen-year veteran interrogator and Human Intelligence specialist. Among other locations he has served at Guantanamo Bay, Abu Ghraib and the Bagram Air Base in Afghanistan.

**Ken Robinson**

Ken Robinson served a twenty-year career in a variety of tactical, operational, and strategic assignments including Ranger, Special Forces, and clandestine special operations units. His experience includes service with the National Security Agency, Defense Intelligence Agency and the Central Intelligence Agency. Ken has extensive experience in CIA and Israeli interrogation methods and is a member of the U.S. Military Intelligence Hall of Fame.

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### **A Call from the Faith-Based Community to Reject Nomination of John Brennan as Director of the CIA.**

As representatives of various faith-based communities, we are deeply concerned about the nomination of John Brennan to be at the helm of the CIA. As President Obama's current counterterrorism advisor, Brennan is the mastermind behind the administration's lethal drone program, which is killing innocent civilians abroad and sowing strong anti-American sentiment throughout the world.

Every week on "Terror Tuesdays" John Brennan and President Obama go over a "Kill List" and assume the roles of prosecutor, judge, jury and executioner by deciding who lives and dies at the receiving end of American drone missiles. People on this secret Kill List have never been charged, tried or convicted in a court of law, and are given no opportunity to surrender. Drone strikes kill not only their intended targets, but innocent people, including hundreds of children, something that John Brennan has previously denied.

Drones in the hands of the CIA keep the program veiled in secrecy. The lack of transparency and accountability violate the basic tenets of a democratic society. The drone program has expanded dramatically at the behest of Brennan, and if appointed director of the CIA he will have even more power.

Our drone policies reflect a shameful lack of regard for human rights and international law. The example being set by the United States that a nation can go anywhere it wants and kill anyone it wants on the basis of secret information is leading to a world of chaos and lawlessness. The CIA should be an institution designated for intelligence gathering, not covert killing programs. We urge the Senate to reject the nomination of John Brennan, redirect the CIA to its role of intelligence gathering, and implement strict regulations for the use of lethal drones.

Signed,

**Rev. Dr. Eileen Altman**, Associate Pastor, First Congregational Church, UCC, Palo Alto, CA

**Jean Barker**, Interfaith Community Organizer, Kennett Square, PA

**Zahra Billoo**, Executive Director, Council on American-Islamic Relations (CAIR), San Francisco, CA

**Rev. Tsukina Blessing**, Occupy Chaplains, Seattle

**Rev. Paul Burks**, United Methodist Minister (retired), San Rafael, CA

**Patricia Chappell**, SNDdeN, Executive Director, Pax Christi USA, Washington, DC

**Rabbi Aryeh Cohen**, Ph.D., Professor of Rabbinic Literature, American Jewish University

**J. Gray Cox**, Acadia Friends Meeting in Bar Harbor, College of the Atlantic, Quaker Institute for the Future, ME

**Sheila Croke**, Administrator, Pax Christi Long Island, Hicksville, NY

**Rev. Rebecca Crosby**, First Congregational Church of Old Lyme, Old Lyme, CT

**Rev. John Chamberlin**, pastor, First United Methodist Church of Hayward, Hayward, CA;



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National Coordinator, East Timor Religious Outreach  
**Rev. Rebecca Crosby**, First Congregational Church of Old Lyme  
**Marie Dennis**, co-President, Pax Christi International  
**Barbara DiTommaso**, Director, Commission on Peace and Justice, Roman Catholic Diocese of Albany, NY  
**Rebecca Fadil**, Episcopal Church in NYC, New York, NY  
**Dr. John M. Fife**, Moderator of the 204th General Assembly, Presbyterian Church  
**Ed Fisher**, Interfaith Communities United for Justice and Peace, Los Angeles, CA  
**Mr. Ronald S. Fujjyoshi**, ex-missionary, United Church of Christ  
**Sister Bernie Galvin**, cdp, Congregation of Divine Providence  
**Rev. Dr. Diana C. Gibson**, Presbyterian Pastor  
**The Rev. David W. Good**, Minister Emeritus for First Congregational Church of Old Lyme, CT  
**Rabbi Lynn Gottlieb**, Shomer Shalom Network for Jewish Nonviolence, Berkeley, California  
**Andy Griggs**, Program Director, Interfaith Communities United for Justice and Peace, Los Angeles, CA  
**Bishop Thomas J. Gumbleton**, Archdiocese of Detroit, MI  
**Rev. Peter Hinde**, Order of Carmelites, Doctor of Divinity  
**Rev. M. Lara Hoke**, Minister of the Unitarian Universalist Congregation in Andover, Massachusetts  
**Mark C. Johnson**, Executive Director, Fellowship of Reconciliation  
**Rev. Dr. Alan Jones**, St. Mark's, Sacramento, CA  
**Jon Krampner**, Interfaith Communities United for Justice and Peace, Los Angeles, CA  
**Rev. Deborah Lee**, United Church of Christ, Director of Interfaith Coalition for Immigrant Rights, CA  
**Rev. John Long**, Pastoral Associate, First Presbyterian Church, Eccumenical Officer, Presbytery of Western New York  
**Robert More**, Chairperson, Pax Christi Metro DC-Baltimore, Washington, DC  
**Imam Abdul Malik Mujahid**, Muslim Peace Coalition USA; Chair of Parliament of World Religions  
**Dr. Karen Oliveto**, Pastor, Glide Memorial UMC, San Francisco, CA  
**Pax Christi Long Island**, Hicksville, NY  
**Sister Ardeth Platte**, Order of Preachers, Grand Rapids MI Dominican Sister, Jonah House, Baltimore, MD  
**Sister Megan Rice**, Sisters of the Holy Child Jesus  
**Stephen Rohde**, Chair, Interfaith Communities United for Justice and Peace  
**Phoebe Sorgen**, chair emerita Berkeley Fellowship of UU's Social Justice Committee Berkeley, CA  
**Jean Stokan**, Director, Institute Justice Team, Sisters of Mercy of the Americas  
**Andra Sufi**, Unity Temple of Brotherhood, Washington, DC  
**Samina Sundas**, Founding Executive Director, American Muslim Voice, Palo Alto, CA  
**Melinda Thompson**, Certified Candidate, Presbyterian Church  
**Don and Roberta Timmerman**, Casa Maria Catholic Worker, Milwaukee WI  
**Rabbi Arthur Waskow**, Director, Shalom Center



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January 8, 2013

The Honorable Diane Feinstein, Chair  
The Honorable Saxby Chambliss, Ranking Member  
Senate Select Intelligence Committee  
211 Hart Senate Office Building  
Washington, DC 20510

Dear Senators Feinstein and Chambliss,

Our organization, *ACT! for America* is the nation's largest and fastest-growing national security grassroots advocacy organization with a current national membership of 250,000 including 730 local chapters in communities across the country.

We write to you today to express our strong opposition to the President's nomination of John Brennan as our nation's next Director of the Central Intelligence Agency (CIA).

Over the years, and in his capacity as the President's chief counterterrorism advisor, we feel Mr. Brennan has taken a multitude of questionable and dangerous positions on a variety of national security issues, particularly those concerning the threat radical Islam poses to the United States. These positions are what cause us to formally oppose Mr. Brennan for this important post, and why our national grassroots membership will vigorously work to oppose his nomination.

A few of those examples include the following:

- April 2008: Brennan tells the *New York Times* that US government official must stop "Iran-bashing"
- May 2010: Brennan defends 'Jihad' as a 'legitimate tenet of Islam'
- May 2010: Brennan says he wants to build up "Hezbollah moderates"
- June 2010: A *Washington Times* editorial slams Brennan, saying, "President Obama's top counterterrorism adviser knows very little about terrorism, and that's scary for America."
- Sept 2012: House Intelligence Committee Chairman Mike Rogers says changes in CIA's Benghazi attack talking points blaming Mohammed video happened under deputies committee chaired by Brennan.

ACT! for America  
P.O. Box 12765  
Pensacola, FL 32591

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Our nation simply cannot afford a CIA Director who has these approaches to our counterterrorism efforts and to our relationship with an increasingly volatile and unstable Middle East region.

We urge you to consider these important issues when you hold your nomination hearing for Mr. Brennan and, further, we urge you and the entire committee to vote "no" on approving his nomination.

Sincerely,

[SIGNATURE]

Brigitte Gabriel  
President & Founder

[SIGNATURE]

Guy Rodgers  
Executive Director

[SIGNATURE]

Lisa Piraneo  
Director of Gov't Relations

ACT! for America  
P.O. Box 12765  
Pensacola, FL 32591

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February 4, 2013

The Honorable Dianne Feinstein  
Chairman, Senate Select Committee  
on Intelligence  
211 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Saxby Chambliss  
Ranking Member, Senate Select Committee  
on Intelligence  
211 Hart Senate Office Building  
Washington, D.C. 20510

RE: Upcoming Confirmation Hearing for John Brennan to Be Director of the Central Intelligence Agency

Dear Chairman Feinstein and Senator Chambliss:

As you prepare for the upcoming confirmation hearing for John Brennan to be Director of the Central Intelligence Agency, the undersigned organizations strongly urge you to question John Brennan on any role he may have had in the CIA's interrogation, detention, and extraordinary rendition practices, during the period from 2001 to 2005, when he served as Deputy Executive Director of the CIA and then as head of the Terrorist Threat Integration Center and the National Counterterrorism Center.

Several of our organizations are writing to you separately with additional questions or concerns related to Mr. Brennan's background during the past four years as Deputy National Security Advisor for Homeland Security and Counterterrorism, as well as questions related to policies and practices of the CIA over the upcoming four years. However, we are writing to you jointly because of our longstanding--and still unanswered--questions about Mr. Brennan's role at the CIA during a critical period when the CIA was engaged in torture, abuse, the use of secret prisons, and extraordinary rendition.

As you know, many human rights and civil liberties organizations raised questions about Mr. Brennan's background when he reportedly was being considered as a candidate for nomination to be the Director of the CIA in November 2008. In withdrawing his name from consideration, Mr. Brennan wrote to then-President-Elect Obama, stating that:

It has been immaterial to the critics that I have been a strong opponent of many of the policies of the Bush Administration such as the preemptive war in Iraq and coercive interrogation tactics, to include waterboarding. The fact that I was not involved in the decisionmaking process for any of these controversial policies and actions has been ignored. Indeed, my criticism of these policies within government circles was the reason why I was twice considered for more senior-level positions in the current Administration only to be rebuffed by the White House.

Several recent news articles have restated the position Mr. Brennan took in his 2008 letter.

However, at least two news organizations have reported that the Committee's recently adopted report on the former CIA interrogation program references Mr. Brennan as someone who was

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informed of details of the program, even though both news organizations state their sources have told them that the report does not indicate whether Mr. Brennan took action based on that information. The level of Mr. Brennan's knowledge appears to have been extraordinarily high, at what was the most critical period in the development and implementation of the torture and abuse practices. On January 30, 2013, Reuters reported that Mr. Brennan "had detailed, contemporaneous knowledge of the use of 'enhanced interrogation techniques' on captured terrorism suspects during an earlier stint as a top spy agency official," and official records reportedly "show that Brennan was a regular recipient of CIA message traffic about controversial aspects of the agency's counterterrorism program after September 2001, including the use of 'waterboarding.'"

**The Committee should ask the following fundamental questions of Mr. Brennan: even if Mr. Brennan "was not involved in the decision-making process" for the use of torture and abuse, what role did he have in the interrogation, detention, and extraordinary rendition programs during the 2001-05 period? In other words, if it is true that he received important information about these programs during their development and implementation, did he have any role or say whatsoever in either developing the policies or implementing them? And did he express support for, object, or remain silent in relation to these programs?**

During the last administration, several Senate committees, including your committee with a nominee for the position of General Counsel of the CIA, asked very specific questions of nominees on what roles they had in the interrogation, detention, and extraordinary rendition programs. Several of those nominees had no role in any "decision-making process," but still had roles that were significant enough that their nominations were rejected or the candidates withdrew their nominations. We urge that you hold Mr. Brennan to the same standard that the Senate applied to nominees during the last administration. These questions are too fundamental to who we are as a nation to be left unasked or unanswered.

Thank you for your attention to this matter.

Sincerely,

American Civil Liberties Union  
American Friends Service Committee  
Appeal for Justice  
Bill of Rights Defense Committee  
Center for Constitutional Rights  
Center for Victims of Torture  
Council on American Islamic Relations  
CREDO Action  
Defending Dissent  
Friends Committee on National Legislation  
Human Rights Watch  
National Religious Campaign Against Torture  
Physicians for Human Rights  
Win Without War

cc: All members of the Senate Select Committee on Intelligence

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Chairman FEINSTEIN. John Brennan, by all accounts, will be a strong leader, guided firmly by the law and his strong ethical code. He has assured the Committee, in his response to pre-hearing questions, that he will be independent from political influence; he will seek only to provide the President, the Congress, and other leaders with his best analysis and advice.

His responses to the Committee's questions are available on the Committee's website, at [www.intelligence.senate.gov](http://www.intelligence.senate.gov). Of course, the Committee must conduct its due diligence on such an important nominee, so Members are going to have questions in a range of topics, including his plans for directing the Agency, major national security challenges we face, and positions and actions he has taken in his current and past jobs.

Also of interest will be Mr. Brennan's views on the use of targeted lethal force in counterterrorism operations. Mr. Brennan has been one of the few administration officials able to speak publicly about such issues; Members will certainly want to understand his views on this, to include the importance of Congress receiving all of the relevant legal analyses from the Office of Legal Counsel at the Department of Justice.

While the disclosure earlier this week of a 16-page unclassified White Paper on the government's legal analysis of the use of targeted force against a United States citizen, who was a senior operational leader of al-Qa'ida—there is finally more information available to the public.

I have been calling, and others have been calling—the Vice Chairman and I—for increased transparency on the use of targeted force for over a year, including the circumstances in which such force is directed against U.S. citizens and noncitizens alike. I have also been attempting to speak publicly about the very low number of civilian casualties that result from such strikes; I have been limited in my ability to do so.

But for the past several years, this Committee has done significant oversight of the government's conduct of targeted strikes and the figures we have obtained from the Executive Branch—which we have done our utmost to verify—confirm that the number of civilian casualties that have resulted from such strikes each year has typically been in the single digits.

When I ask to give out the actual numbers, I'm told, "You can't." And I say, "Why not?" "Because it's classified," "It's a covert program," "For the public, it doesn't exist." Well, I think that rationale, Mr. Brennan, is long gone, and I'm going to talk to you in my questions a little bit about that, because I think it's very important that we share this data with people.

This Committee will continue to perform significant oversight of targeted strikes. We received, this morning, an Office of Legal Counsel opinion on the topic. Actually, we received a short one and a long one. And while I was there, I was delighted to see Senator Wyden reading, Senator King in the room, and Senator Udall came in the room. And I'm hopeful that every Member will avail of themselves of this opportunity to review those OLC opinions.

I also intend to review proposals for legislation to ensure that drone strikes are carried out in a manner consistent with our val-



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ues, and the proposal to create an analogue of the Foreign Intelligence Surveillance Court to review the conduct of such strikes.

Finally, I will want to know how the nominee intends to lead an agency that's had four directors since DCI Tenet resigned in July of '04, now in a budget downturn, and what he sees as the major challenges before the CIA.

For the information of Members, we will have rounds of questions of eight minutes each, and Members will be recognized by seniority, alternating between the sides.

Members have requested the opportunity to ask Mr. Brennan questions that will require classified answers, as well, so we have the ability to move to a classified session following this hearing, if it is timely and we're able to do so. So my suggestion is that we play that ear by ear, Mr. Vice Chairman, and see if it's possible to do so. If it isn't, we will have our closed session on Tuesday at our next hearing.

Finally, before turning to the Vice Chairman, I'd like to conclude my remarks the same way I did at the confirmation for General Petraeus. Again this time, the transition between CIA directors has been managed by acting director Michael Morell. I'd like to thank Mr. Morell for keeping the Agency on firm footing and for his agreement to remain as deputy director after the confirmation process. He continues to be a top notch CIA officer, a friend of the Committee, and I'm sure he will be an excellent deputy, Mr. Brennan.

Mr. Vice Chairman, please proceed.

### **OPENING STATEMENT OF SAXBY CHAMBLISS, VICE CHAIRMAN, A U.S. SENATOR FROM GEORGIA**

Vice Chairman CHAMBLISS. Thank you very much, Madam Chair.

And Mr. Brennan, I join the Chair in congratulating you on your nomination and welcoming you to the Committee today. And I don't have to remind you—because you are a career individual—of the importance of your nomination to head the Central Intelligence Agency. I also want to welcome your family and thank them for their support of you during your years of commitment to our government.

Also, I want to just say, as the Chairman did, how much we appreciate Mike Morell. And I'm very pleased to see in your prepared statement that you mention Mike and his contribution to the Central Intelligence Agency, and that you intend to keep Mike in place. He is a very valued public servant, and a guy who has stepped into a very difficult situation now twice and has led with great commitment and has provided the kind of leadership the Agency has needed.

Mr. Brennan, if confirmed as the next director, it will be your responsibility to lead the CIA as our nation continues to face significant national security challenges. While we've heard a lot in recent months about al-Qa'ida being decimated and on the run, it is by no means destroyed, and the threat of terrorism from its affiliates, especially in Yemen and North Africa, remains very real.

Just in the past few months, terrorist attacks in Algeria and Benghazi have claimed American lives, so it is clear that our vigilance must not waver. At the same time, our attention focused be-

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yond these threats posed by al-Qa'ida and other terrorist organizations, from Iran to North Korea to Venezuela. From nuclear proliferation, to cyber intrusions, to counterintelligence, the challenges are constant and immense, and the CIA is at the point of the spear.

As your predecessors faced similar challenges, they recognized the importance of working hand in hand with Congress, especially the Congressional intelligence committees. I appreciated your commitment to me to be open and transparent with this Committee, if you are in fact confirmed as the next director.

I expect this commitment to actually be born out and practiced, regardless of political pressures, and not just become words spoken during the confirmation process. Far too often, the Committee is facing unnecessary and, frankly, legally-questionable obstacles, in receiving needed oversight information from the Intelligence Community.

As we hear from you this afternoon, I also believe it is important for you to set the record straight on a few matters relating to detention policy and the CIA's detention and interrogation program. We know that the 2009 Executive Order removed the CIA from the detention business. But the current framework is simply not working to get real-time access to intelligence from terrorist detainees.

I reviewed elements of the 9/11 Commission report in preparation for this hearing, and I am concerned that the administration is making the same mistakes that were made before 9/11, when the CIA missed vital information on KSM, the mastermind of the attacks, and decided to forego a capture operation of Osama bin Laden. The Commission cited the administration's focus on using the Article 3 court process as factors in both instances.

You and I also discussed the Committee's report on the CIA's detention and interrogation program, which was approved in December by a slim majority. You told me that you had completed your review of the report's Executive Summary, and the Findings and Conclusions, and you'll have an opportunity to express your observations and the concerns that you expressed to me with the rest of the Committee today.

Mr. Brennan, I thank you once again for your dedication and your service to our country, and we look forward to your testimony and to your response to questions submitted by the Committee.

Thanks, Madam Chair.

Chairman FEINSTEIN. Thank you very much, Mr. Vice Chairman. And now we will turn to the distinguished senator from Virginia, Senator Mark Warner.

### **OPENING STATEMENT OF MARK WARNER, A U.S. SENATOR FROM VIRGINIA**

Senator WARNER. Thank you, Chairman Feinstein, Vice Chairman Chambliss, and colleagues. It's my honor to introduce John Brennan as the President's nominee to be the next director of the Central Intelligence Agency.

Like so many thousands of other professionals in the United States Intelligence Community, John now calls Virginia home. It has been my privilege, as a Member of this Committee for the last two years, to represent many of the thousands of men and women in our intelligence agencies who also call Virginia home.

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I would also make mention of the fact, very briefly, since we don't get this many opportunities in front of this kind of public audience, to recognize an action that Senator Mikulski and I took last Congress that many of you joined with us on that we will reintroduce this year—a joint resolution to mark U.S. Intelligence Professionals Day—to bring respectful attention to these quiet professionals who keep our nation safe every day. And I, again, look forward to working with all of you to make sure that we do this resolution again.

These same qualities—dedication, selflessness, intelligence, and patriotism—are well represented in John Brennan, whom the men and women of the CIA will find a dedicated leader in public service, should he be confirmed. While I have not had the opportunity to work with Mr. Brennan as much as some of the other Members, I've enjoyed our meeting together. And as the Chairman has already indicated, John Brennan's long career of public service and his record have prepared him to be director of the CIA.

He served for 25 years at the Agency in the field and at Headquarters, including as deputy executive director in Saudi Arabia, and as briefer to two presidents since 9/11. He's been on the front lines in the fight against al-Qa'ida, including standing up the National Counterterrorism Center. He has enormous appreciation for the men and women of the CIA and the work they do—often in the shadows—to keep our nation safe.

One thing that I was also impressed in our meeting was that Mr. Brennan has been an advocate for greater transparency in our counterterrorism policy and for adherence to the rule of law. As a Member and a new Member of this oversight committee, I appreciate that.

As the President said, the imperative to secure the nation must not come at the sacrifice of our laws or ideals. This needs never be an either/or choice. We can protect the nation and stay true to our principles. As has been raised by the Chair and the Vice Chair, I think it is also important—and these are questions that I'll be asking, as well—to ensure that while we look at the programs of the CIA, that these programs' effectiveness be measured objectively and not simply by those who are charged with implementing them.

So, the Chairman has already gone through other parts of your background; I again want to congratulate you on this nomination, the service you've provided to our nation so far, and, in the aftermath of this hearing, hopefully the service that you'll provide on a going-forward basis.

With that, Madam Chairman, I'll come back to the dais and look forward to my chance to ask the nominee questions, as well.

Chairman FEINSTEIN. Thank you very much, Senator Warner. Mr. Brennan, please stand, raise your right hand, and I'll administer the oath.

"I, John Brennan, do solemnly swear—"

Mr. BRENNAN. I, John Brennan, do solemnly swear—

Chairman FEINSTEIN [continuing]. "That I will give this Committee the truth, the full truth, and nothing but the truth, so help me God."

Mr. BRENNAN [continuing]. That I will give this Committee the truth, the full truth, and nothing but the truth, so help me God.



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Chairman FEINSTEIN. Thank you very much. And we look forward to hearing your testimony.

**STATEMENT OF JOHN O. BRENNAN, NOMINEE FOR DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY**

Mr. BRENNAN. Chairman Feinstein, Vice Chairman Chambliss, Members of the Committee, I am honored to appear before you today as the President's nominee—

[Disruption by a protestor in the audience.]

Chairman FEINSTEIN. Would you hold, please?

I will ask the Capitol Police officers to please remove this woman.

[Protest continues.]

Chairman FEINSTEIN. Please remove—

[Protestor is removed from the Hearing Room.]

Chairman FEINSTEIN. I'm going to say, once again, that we welcome everyone here; that we expect no clapping, we expect no hissing, we expect no demonstration in this room. This is a very serious hearing. I will stop the hearing and I will ask the room to be cleared, so know that.

Please continue, Mr. Brennan.

Mr. BRENNAN. Thank you, Chairman. I am honored to appear before you today as the President's nominee to lead the Central Intelligence Agency. I am deeply grateful to President Obama for the confidence he has placed in me by sending my name forward to the Senate for consideration.

Senator Warner, thank you for your generous introduction, for your service to our nation, and for your strong support for those who defend it. This includes the extraordinary men and women of the CIA and the Intelligence Community, so many of whom, like me, call Virginia home, and call you our Senator.

I would not be here today without the love and support of my wife, Kathy, who has been my life partner for 34 years, and who, like the spouses of many other public servants and intelligence professionals—

[Disruption by another protestor in the audience.]

Mr. BRENNAN [continuing]. Has made numerous sacrifices over the years.

Chairman FEINSTEIN. Would you—would you pause, Mr. Brennan?

If you would remove that individual, please, as quickly as you can. Thank you.

[Protestor is removed from the Hearing Room.]

Chairman FEINSTEIN. Mr. Brennan, please proceed.

Mr. BRENNAN [continuing]. My wife, Kathy, who, like the spouses of many other public servants and intelligence professionals, has made numerous sacrifices over the years, bearing the brunt of family responsibilities because of my chosen profession.

Similarly, I would like to pay tribute to my three children, who, like the children of many CIA officers and other national security professionals, have had to deal with the disappointments associated with an absentee parent far more often than they should.

And I'm very pleased to be joined today by my wife, Kathy, and my brother, Tom.

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[Disruption by another protestor in the audience.]

Chairman FEINSTEIN. All right, we will stop again.

Please remove that woman.

[Protest continues.]

Chairman FEINSTEIN. If you could please expedite the removal—

[Protest continues.]

[Protestor is removed from the Hearing Room.]

Chairman FEINSTEIN [continuing]. Please proceed, Mr. Brennan. The next time, we're going to clear the chamber and bring people back in one by one. This witness is entitled to be heard, ladies and gentlemen. So please give him that opportunity.

Mr. BRENNAN. Thank you. A heartfelt "thank you" also goes to my family in New Jersey, especially my 91-year-old mother, Dorothy, and my 92-year-old father, Owen, who emigrated from Ireland nearly 65 years ago—

[Disruption by another protestor in the audience.]

Chairman FEINSTEIN. All right, I'm going to ask—we're going to halt the hearing. I'm going to ask that the room be cleared and that the CODEPINK associates not be permitted to come back in. We've done this five times now, and five times are enough. So, we will recess for a few minutes.

[Protest continues.]

Chairman FEINSTEIN. Ladies and gentlemen, if you would mind leaving, we will then have you come back in, but it's the only way I think we're going to stop this. We will recess for a few minutes.

[Whereupon, the Committee recessed briefly.]

Chairman FEINSTEIN. Okay, we will reconvene the hearing. If the press would please take their places—

Mr. Brennan, please proceed.

Mr. BRENNAN. Thank you, Chairman Feinstein.

I was talking about my parents, my 91-year-old mother, Dorothy, and my 92-year-old father, Owen, who emigrated to this country 65 years ago and who, together, raised my sister, my brother, and I to cherish the opportunity known as America.

As I appear before you today, I would additionally like to extend a special salute to David Petraeus, a patriot who remains—as do all former directors—one of the staunchest advocates of the Agency's mission and workforce.

I want to express my admiration for my close friend and colleague, Michael Morell, who has twice guided the CIA as acting director, with a steady hand, integrity, and exceptional skill. If confirmed, it would be a distinct privilege for me to work side by side with Michael—my friend, and the epitome of an intelligence professional—in the months and years ahead.

It also would be a tremendous privilege to serve with the Director of National Intelligence, Jim Clapper, who has mentored literally legions of intelligence professionals ever since his service in Vietnam.

As the President's principal intelligence advisor and the head of the Intelligence Community, Jim is a person of longstanding and deep experience and integrity. He and I share identical views on the role of intelligence and the importance of giving current and fu-

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ture generations of intelligence professionals the support they need and that they so richly deserve.

It would be the greatest honor of my professional life to lead the women and men of the Central Intelligence Agency—the Agency where I started my career nearly 33 years ago and where I served for a quarter-century. A 24-year-old fresh out of graduate school, I arrived at Langley in August 1980 as a GS-9 career trainee, determined to do my part for national security as one of this nation's intelligence officers.

When I joined the CIA in August 1980, world events were unsettled. Our Embassy in Tehran had been overrun the year before, and 52 Americans were still being held hostage by a radical new government in Iran. The Soviet invasion of Afghanistan was less than a year old, and the next decade would witness the slow but steady crumbling of the Soviet Union. Nuclear proliferation and the spread of weapons of mass destruction were a constant concern. And U.S. officials were hard at work around the globe, trying to prevent regional tensions and animosities from turning into full-scale wars.

And, ominously, the United States was about to face an upsurge in terrorist attacks that would claim hundreds of American lives in Lebanon, including a 49-year-old CIA officer named Bob Ames, who was killed during a brief visit to our Embassy in Beirut, and who, at the time, was my boss at CIA.

During my 25-year career at CIA, I watched up close, and even participated, in history being made in far off corners of the world, as CIA fulfilled its critical intelligence roles—collecting intelligence, uncovering secrets, identifying threats, partnering with foreign intelligence and security services, analyzing opaque and complicated developments abroad, carrying out covert action, and attempting to forecast events yet to happen—all in an effort to protect our people and to strengthen America's national security.

And throughout my career, I had the great fortune to experience first-hand, as well as witness, what it means to be a CIA officer: such as an analyst, who has the daunting task and tremendous responsibility to take incomplete and frequently contradictory information and advise the senior-most policy-makers of our government about foreign political, military, and economic developments.

Or an operations officer, whose job it is to find and obtain those elusive secrets that provide advanced warning of strategic surprise, political turbulence, terrorist plots, impending violence, cyber attacks, and persistent threats such as nuclear, chemical, and biological weapons proliferation.

Or a technical expert, who seeks new and creative ways to find nuggets of intelligence in tremendous volumes of data, provides secure, and even stealthy, intelligence collection and communication systems, and counters the latest technological threats to our nation.

Or a support officer or manager with the responsibility to ensure that the core missions of the Agency—collecting intelligence, providing all source analysis, and, when directed by the President, conducting covert action—are carried out with the requisite skill, speed, agility, and proficiency.

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From the Middle East to the Central Caucasus; from Sub-Saharan Africa to Central and South America; from the vast expanses of Asia to the great cities of Europe, and all countries and regions in between, CIA officers were there—sometimes in force, and sometimes virtually standing alone. And for those 25 years, it was a great honor for me to be a CIA officer, as I knew that the Agency's contributions to this country's security were as invaluable as they were innumerable.

Following my retirement from the CIA in 2005, I had the good fortune to experience other professional opportunities. For three years, I served as President and Chief Executive Officer of a private-sector company, where I learned, first-hand, some very important lessons about fiduciary responsibility and sound business practices. And for the past four years I've had the privilege to serve as the President's principal policy advisor on Homeland Security and Counterterrorism.

In that role, I have had the opportunity to work daily with some of the finest Americans I have ever met from the intelligence, military, homeland security, law enforcement, and diplomatic communities, who have dedicated their lives to the safety and security of their fellow Americans. It is because of the work of those Americans—serving domestically, and especially, those serving in dangerous places abroad—that we are able to experience the freedom and security that are the hallmarks of our nation.

I believe my CIA background and my other professional experiences have prepared me well for the challenge of leading the world's premier intelligence agency at this moment in history, which is as dynamic and consequential as any in recent decades, and will continue to be in the years ahead. Simply stated, the need for accurate intelligence and prescient analysis from CIA has never been greater than it is in 2013 or than it will be in the coming years.

Historic political, economic, and social transformations continue to sweep through the Middle East and North Africa, with major implications for our interests, Israel's security, our Arab partners, and the prospects for peace and stability throughout the region. We remain at war with al-Qa'ida and its associated forces, which, despite the substantial progress we have made against them, still seek to carry out deadly strikes against our homeland and our citizens, and against our friends and allies.

U.S. computer networks and databases are under daily cyber attack by nation states, international criminal organizations, sub-national groups, and individual hackers. And the regimes in Tehran and Pyongyang remain bent on pursuing nuclear weapons and intercontinental ballistic missile delivery systems, rather than fulfilling their international obligations or even meeting the basic needs of their people.

Yes, the CIA's mission is as important to our nation's security today as at any time in our nation's history. In carrying out their mission, the men and women of the CIA are frequently asked to undertake challenging, perilous, and, yes, controversial actions, on behalf of the American people. The CIA is not immune from scrutiny of these efforts, and I welcome a discussion of CIA's past and present activities.

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If I am confirmed, one of my highest priorities would be the Committee's lengthy report on the CIA's former rendition, detention, and interrogation program that involved now-banned interrogation techniques. I have read the Findings and Executive Summary of the 6,000-page report, which raises a number of very serious issues. Given the gravity and importance of this subject, I would look forward to further dialogue with Members of the Committee on the report and its Findings, if I am confirmed.

In addition, some of our government's current counterterrorism policies and operations have sparked widespread debate—domestically, internationally, and in this room. I have publicly acknowledged that our fight against al-Qa'ida and associated forces have sometimes involved the use of lethal force outside the hot battlefield of Afghanistan.

Accordingly, it is understandable that there is great interest in the legal basis, as well as the thresholds, criteria, processes, procedures, approvals, and reviews of such actions. I have strongly promoted such public discussions with the Congress and with the American people, as I believe that our system of government and our commitment to transparency demands nothing less.

As the elected representatives of the American people and as Members of this Committee, you have the obligation to oversee the activities of the CIA and the other elements of the Intelligence Community to ensure that they are being carried out effectively, lawfully, successfully, and without regard to partisanship. If confirmed, I would endeavor to keep this Committee fully and currently informed, not only because it is required by law, but because you can neither perform your oversight function nor support the mission of the CIA if you are kept in the dark.

And I know that irrespective of the fullness of that dialogue, there will be occasions when we disagree, just as you disagree among yourselves at times, on aspects of past, current, and future activities of the CIA. Such disagreement is healthy, and is a necessary part of our democratic process. But such disagreements should never prevent us from carrying out our national security and intelligence responsibilities, as a failure to do so could have devastating consequences for the safety and security of all Americans.

During my courtesy calls with many of you, I also heard repeated references to a "trust deficit" that has, at times, existed between this Committee and the CIA. If I am confirmed, a trust deficit between the Committee and the CIA would be wholly unacceptable to me, and I would make it my goal on Day One of my tenure, and every day thereafter, to strengthen the trust between us.

I have a reputation for speaking my mind, and, at times, doing so in a rather direct manner, which some attribute to my New Jersey roots. I like to think that my candor and bluntness will reassure you that you will get straight answers from me—maybe not always the ones you like, but you will get answers, and they will reflect my honest views. That's the commitment I made to you.

I would like to finish by saying a few words about the importance of taking care of the women and men who serve in the CIA. Because of the secrecy that intelligence work requires, few Americans will ever know the extraordinary sacrifices that these professionals

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and their families make every day. Many of them risk their lives and, at times, have given their lives to keep us safe.

If confirmed, I would make it my mission, in partnership with the Congress, to ensure that the men and women have the training, tradecraft, linguistic skills, technical tools, guidance, supervision, and leadership they need to do their jobs. They also need assurance that we will do all we can to protect our nation's secrets and prevent leaks of classified information. These leaks damage our national security—sometimes gravely—putting these CIA employees at risk and making their missions much more difficult.

The men and women of the CIA are a national treasure, and I will consider it one of my most important responsibilities to take care of them, just as others took care of me when I first arrived at Langley as a young trainee in 1980.

Chairman, Vice Chairman, and Members of the Committee, as you well know, when you arrive at CIA Headquarters in Langley and enter the main lobby, you immediately see the marble Memorial Wall. On it are stars—each one representing a Member of the CIA family who gave his or her life in the service of this nation. Today, there are 103 stars on that wall.

To me, and to everyone in the CIA, they are not simply stars, nor are they only visible remembrances of dearly departed colleagues and friends. The stars represent heroic and unsung patriots; Americans who lived their lives loving this country and who died protecting it.

That Memorial Wall means something very special to me and to every other American who has proudly served at the Agency. I want all CIA employees always to be proud of the organization to which they belong, and to be proud of its activities.

And if given the honor to serve as the 21st director of the CIA, I would take it as a sacred obligation to do everything in my ability to make sure the Central Intelligence Agency is the absolute best intelligence service it can be, and one that makes all Americans proud.

Thank you very much, and I look forward to taking your questions.

[The prepared statement of Mr. Brennan follows:]

STATEMENT OF JOHN O. BRENNAN, NOMINATION HEARING TO BE DIRECTOR OF THE  
CENTRAL INTELLIGENCE AGENCY

Chairman Feinstein, Vice Chairman Chambliss, Members of the Committee—I am honored to appear before you today as the President's nominee to lead the Central Intelligence Agency. I am deeply grateful to President Obama for the confidence he has placed in me by sending my name forward to the Senate for consideration.

Senator Warner, thank you for your generous introduction, for your service to our Nation, and for your strong support of those who defend it. This includes the extraordinary men and women of the CIA and our Intelligence Community, so many of whom, like me, call Virginia home and call you our Senator.

I would not be here today without the love and support of my wife Kathy, who has been my life partner for more than 34 years and who, like the spouses of many other public servants and intelligence professionals, has made numerous sacrifices over the years, bearing the brunt of family responsibilities because of my chosen profession. Similarly, I would like to pay tribute to my three children, who, like the children of many CIA officers and other national security professionals, have had to deal with the disappointments associated with an absentee parent far more often than they should.

A heartfelt "thank you" also goes to my family in New Jersey, especially my 91-year-old mother Dorothy and my 92-year-old father Owen—who emigrated from Ire-



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land nearly 65 years ago—and who, together, raised my sister, brother, and me to cherish the opportunity that is America.

As I appear before you today, I would additionally like to extend a special salute to David Petraeus, a patriot who remains as do all former Directors—one of the staunchest advocates of the Agency's mission and workforce.

I want to express my admiration for my close friend and colleague, Michael Morell, who has twice guided the CIA as Acting Director with a steady hand, integrity, and exceptional skill. If confirmed, it would be a distinct privilege for me to work side-by-side with Michael in the months and years ahead.

It also would be a tremendous privilege to serve with Director of National Intelligence Jim Clapper, who has mentored literally legions of intelligence professionals ever since his service in Vietnam. As the President's principal intelligence advisor and head of the Intelligence Community, Jim is a person of longstanding and deep experience and integrity. He and I share identical views on the role of intelligence and on the importance of giving current and future generations of intelligence professionals the support they need and so richly deserve.

It would be the greatest honor of my professional life to lead the women and men of the Central Intelligence Agency—the Agency where I started my career nearly 33 years ago and where I served for a quarter century. A 24-year-old fresh out of graduate school, I arrived at Langley in August 1980 as a GS-9 “career trainee,” determined to do my part for national security as one of this Nation's intelligence officers.

When I joined the CIA in August 1980, world events were unsettled. Our Embassy in Tehran had been overrun the year before, and 52 Americans were still being held hostage by a radical new government in Iran. The Soviet invasion of Afghanistan was less than a year old, and the next decade would witness the slow but steady crumbling of the Soviet Union. Nuclear proliferation and the spread of weapons of mass destruction were a constant concern, and U.S. officials were hard at work around the globe trying to prevent regional tensions and animosities from turning into full-scale wars. And, ominously, the United States was about to face an upsurge in terrorist attacks that would claim hundreds of American lives in Lebanon, including a 49-year-old CIA officer named Bob Ames, who was killed during a brief visit to our Embassy in Beirut and who, at the time, was my boss at CIA.

During my 25-year career at CIA, I watched up close and even participated in history being made in far-off corners of the world, as CIA fulfilled its critical intelligence roles—collecting intelligence, uncovering secrets, identifying threats, partnering with foreign intelligence and security services, analyzing opaque and complicated developments abroad, carrying out covert action, and attempting to forecast events yet to happen—all in an effort to protect our people and strengthen America's national security.

And throughout my career, I had the great fortune to experience firsthand as well as to witness what it means to be a CIA officer.

- Such as an analyst, who has the daunting task and tremendous responsibility to take incomplete and frequently contradictory information and advise the senior most policymakers of our government about foreign political, military, and economic developments.
- Or an operations officer, whose job it is to find and obtain those elusive secrets that provide advance warning of strategic surprise; political turbulence; terrorist plots; impending violence; cyber attacks; and persistent threats such as nuclear, chemical, and biological weapons proliferation.
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And for those 25 years, it was a great honor for me to be an officer of the CIA, as I knew that the Agency's contributions to this country's security were as invaluable as they were innumerable.

Following my retirement from CIA in 2005, I had the good fortune to experience other professional opportunities. For three years, I served as President and Chief

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Executive Officer of a private sector company, where I learned firsthand some very important lessons about fiduciary responsibility and sound business practices. And for the past four years, I have had the privilege to serve as the President's principal policy advisor on homeland security and counterterrorism. In that role, I have had the opportunity to work daily with some of the finest Americans I have ever met—from the intelligence, military, homeland security, law enforcement, and diplomatic communities—who have dedicated their lives to the safety and security of their fellow Americans. It is because of the work of those Americans—serving domestically and especially in dangerous places abroad—that we are able to experience the freedom and security that are the hallmarks of our Nation.

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In carrying out their mission, the men and women of the CIA are frequently asked to undertake challenging, perilous, and controversial actions on behalf of the American people. The CIA is not immune from scrutiny of these efforts, and I welcome a discussion of CIA's past and current activities. If I am confirmed, one of my highest priorities would be the Committee's lengthy report on the CIA's former rendition, detention, and interrogation program that involved now-banned interrogation techniques. I have read the findings and executive summary of the 6,000 page report, which raise a number of very serious issues. Given the gravity and importance of the subject, I would look forward to further dialogue with Members of the Committee on the report and its findings, if I am confirmed.

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During my courtesy calls with many of you, I also heard repeated reference to a "trust deficit" that has, at times, existed between this Committee and the CIA. If I am confirmed, a trust deficit between the Committee and the CIA would be wholly



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unacceptable to me, and I would make it my goal on Day One of my tenure—and every day thereafter—to strengthen the trust between us. I have a reputation for speaking my mind and, at times, doing so in a rather direct manner, which some attribute to my New Jersey roots. I like to think that my candor and bluntness will reassure you that you will get straight answers from me—maybe not always the ones you like, but you will get answers, and they will reflect my honest views. That's the commitment I make to you.

I would like to finish by saying a few words about the importance of taking care of the women and men who serve in the CIA. Because of the secrecy that intelligence work requires, few Americans will ever know the extraordinary sacrifices that these professionals—and their families—make every day. Many of them risk their lives and, at times, have given their lives, to keep us safe.

If confirmed, I would make it my mission—in partnership with the Congress—to ensure that the men and women of the CIA have the training, tradecraft, linguistic skills, technical tools, guidance, supervision, and leadership they need to do their jobs. They also need assurance that we will do all we can to protect our Nation's secrets and prevent leaks of classified information. These leaks damage our national security, sometimes gravely, putting these CIA employees at risk and making their missions more difficult. The men and women of the CIA are a national treasure, and I will consider it one of my most important responsibilities to take care of them, just as others took care of me when I first arrived at Langley as a young trainee in 1980.

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That Memorial Wall means something very special to me and to every other American who has proudly served at the Agency. I want all CIA employees always to be proud of the organization to which they belong and to be proud of all of its activities. And if given the honor to serve as the 21st Director of the CIA, I would take it as a sacred obligation to do everything in my ability to make sure the Central Intelligence Agency is the absolute best intelligence service it can be and one that makes all Americans proud.

Thank you very much, and I look forward to taking your questions.

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

I have five short questions that we traditionally ask; if you would just answer them yes or no.

Do you agree to appear before the Committee here or in other venues when invited?

Mr. BRENNAN. Yes.

Chairman FEINSTEIN. Do you agree to send officials from the CIA and designated staff when invited?

Mr. BRENNAN. Yes.

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

Mr. BRENNAN. Yes; all documents that come under my authority as director of CIA, I absolutely would.

Chairman FEINSTEIN. We'll talk to you more about that in a minute.

Mr. BRENNAN. Yes, Senator.

Chairman FEINSTEIN. Will you ensure that the CIA and its officials provide such material to the Committee when requested?

Mr. BRENNAN. Yes.

Chairman FEINSTEIN. Do you agree to inform and fully brief, to the fullest extent possible, all Members of this Committee, of intel-

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ligence activities and covert actions, rather than only the Chairman and Vice Chairman?

Mr. BRENNAN. Yes, I will endeavor to do that.

Chairman FEINSTEIN. Thank you. Now, let me—we are now going to go into eight-minute rounds. And we'll do it by seniority, and alternate from side to side.

I wanted to talk about, just for a moment, the provision of documents; Senator Wyden and others have had much to do about this. But our job is to provide oversight to try to see that the CIA and Intelligence communities operate legally. In order to do that, it is really necessary to understand what the official legal interpretation is, so the Office of Legal Counsel opinions become very important.

We began during the Bush administration, with Mr. Bradbury, to ask for OLC opinions. Up until last night, when the President called the Vice Chairman, Senator Wyden, and myself, and said that they were providing the OLC opinions, we had not been able to get them. It makes our job—to interpret what is legal or not legal—much more difficult if we do not have those opinions.

The staff has asked for eight additional opinions. What I want to know is will you become our advocate with the administration, so that we can obtain those opinions?

Mr. BRENNAN. The National Security Act, as amended, requires that the heads of intelligence agencies provide the Committee with the appropriate legal documentation to support covert actions. I would certainly be an advocate of making sure that this Committee has the documentation it needs in order to perform its oversight functions. I have been an advocate of that position; I will continue to be.

Chairman FEINSTEIN. I take that as a yes, and I'm counting on you to provide eight OLC opinions.

Second question on this: when the opinion came over, our staff were banned from seeing it—this morning. We have lawyers. We have very good staff. This is upsetting to a number of Members. We depend on our staff, because you can't take material home, you can't take notes with you. So the staff becomes very important.

Do you happen to know the reason why our staff are not permitted, when we are permitted, to see an OLC?

Mr. BRENNAN. Senator—Chairman, I understand fully your interest in having your staff have access to this documentation; fully understandable. The reason for providing information just to Committee Members at times is to ensure that it is kept in a limited basis.

It is rather exceptional, as I think you know, that the Office of Legal Counsel opinions, or advice, would be shared directly with you. And this, I think, was determined because of the rather exceptional nature of the issue and in a genuine effort to try to meet the Committee's requirements. I understand your interest in having the staff access to it—

Chairman FEINSTEIN. If you would relay the request, officially—

Mr. BRENNAN. Absolutely.

Chairman FEINSTEIN [continuing]. We'd appreciate it very much.

Mr. BRENNAN. Absolutely; I will.

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Chairman FEINSTEIN. Second thing, when I spoke with you in my office, we talked about our report on detention and interrogation—the 6,000-page report you mentioned. I asked you if you would please read it; you said you would—you said you would, for sure, read the 300-page summary. Have you done so?

Mr. BRENNAN. Yes, Chairman, I have read the first volume, which is 300 pages.

Chairman FEINSTEIN. Then, let me ask you this question: Were the EITs key to the takedown of Osama bin Laden?

Mr. BRENNAN. Chairman, the report right now still remains classified. And the report has been provided to the Agency and Executive Branch for comments.

There clearly were a number of things, many things, that I read in that report that were very concerning and disturbing to me, and ones that I would want to look into immediately, if I were to be confirmed as CIA director.

It talked about mismanagement of the program, misrepresentations of the information, providing inaccurate information. And it was rather damning in a lot of its language, as far as the nature of these activities that were carried out.

I am eager to see the Agency's response to that report. I read those 300 pages; I look forward, if confirmed, to reading the entire 6,000-page volume, because it is of such gravity and importance.

But, Chairman, I do not yet—and nor has the CIA finished its review of this information. The Committee's report was done, obviously, over an extended period of time; a tremendous amount of work that's gone into it. Based on the review of the documentary information that was available—the documents, there were not interviews conducted with CIA officers.

I very much look forward to hearing from the CIA on that and then coming back to this Committee and giving you my full and honest views.

Chairman FEINSTEIN. Well, thank you. You will have that opportunity, I assure you.

I'd like to ask you about the status of the administration's efforts to institutionalize rules and procedures for the conduct of drone strikes; in particular, how you see your role as CIA director in that approval process.

Mr. BRENNAN. Chairman, as this Committee knows—and I'm sure wants to continue to protect certain covert action activities—but let me talk, generally, about the counterterrorism program and the role of CIA, and this effort to try to institutionalize and to ensure we have as rigorous a process as possible, that we feel that we're taking the appropriate actions at the appropriate time.

The President has insisted that any actions we take will be legally grounded, will be thoroughly anchored in intelligence, will have the appropriate review process, approval process, before any action is contemplated, including those actions that might involve the use of lethal force.

The different parts of the government that are involved in this process are involved in the interagency, and my role as the President's counterterrorism advisor was to help to orchestrate this effort over the past four years to ensure, again, that any actions we take fully comport with our law and meet the standards that I

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think this Committee and the American people expect of us, as far as taking actions we need to protect the American people, but at the same time ensuring that we do everything possible before we need to resort to lethal force.

Chairman FEINSTEIN. Thank you.

Mr. Vice Chairman.

Vice Chairman CHAMBLISS. Thanks very much, Madam Chair.

Mr. Brennan, the 9/11 Commission report describes a canceled 1998 CIA operation to capture Osama bin Laden using tribal groups in Afghanistan.

The former head of CIA's bin Laden Unit told staff that you convinced Director Tenet to cancel that operation. He says that following a meeting you had in Riyadh with Director Tenet, the bin Laden Unit chief, and others, that you cabled National Security Advisor Sandy Berger, saying the operation should be canceled in favor of a different approach, described by the 9/11 Commission as "an all-out secret effort to persuade the Taliban to expel bin Laden."

Now, as we know, bin Laden was not expelled. Three months later, the bin Laden wrath was unleashed with the attack on our embassies. Did you advise Director Tenet and National Security Advisor Berger against this operation; and if so, why?

Mr. BRENNAN. I had conversation with George Tenet at the time. But I must point out, Senator, that every single CIA manager—George Tenet, his deputy, the head of the Directorate of Operations at the time, and other individuals—the Chief of the Counterterrorism Center—argued against that operation, as well, because it was not well grounded in intelligence and its chances of success were minimal. And it was likely that other individuals were going to be killed.

And so, when I was involved in those discussions, I provided the director and others my professional advice about whether or not I thought that that operation should go forward. I also was engaged in discussions with the Saudi government at the time and encouraged certain actions to be taken so that we could put pressure on the Taliban, as well as on bin Laden.

Vice Chairman CHAMBLISS. So, I'm taking it that your answer to my question is you did advise against—in favor of the cancellation of that operation?

Mr. BRENNAN. Based on what I had known at the time, I didn't think that it was a worthwhile operation and it didn't have a chance of success.

Vice Chairman CHAMBLISS. The 9/11 Commission reported that no capture plan before 9/11 ever again attained the same level of detail and preparation; do you have any second thoughts about your recommendation to the director to cancel that operation?

Mr. BRENNAN. Senator, I have no second thoughts whatsoever about my advice, which was to look carefully at this operation because the chances of success were minimal. I was not in the chain of command at that time. I was serving abroad as chief of station.

Vice Chairman CHAMBLISS. As deputy executive director, you received the daily updates from the time of Abu Zubaydah's capture throughout his interrogation, including the analysis of the lawfulness of the techniques, putting you in a position to express any con-

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cerns you had about the program before any of the most controversial techniques, including waterboarding, were ever used.

Now, we found a minimum of 50 memos in the documents within the 6,000 pages, on which you were copied. What steps did you take to stop the CIA from moving to these techniques you now say you found objectionable at the time?

Mr. BRENNAN. I did not take steps to stop the CIA's use of those techniques. I was not in the chain of command of that program. I served as deputy executive director at the time. I had responsibility for overseeing the management of the Agency and all of its various functions. And I was aware of the program; I was cc'd on some of those documents, but I had no oversight of it. I wasn't involved in its creation.

I had expressed my personal objections and views to some Agency colleagues about certain of those IETs, such as waterboarding, nudity, and others, where I professed my personal objections to it, but I did not try to stop it, because it was, you know, something that was being done in a different part of the Agency under the authority of others, and it was something that was directed by the administration at the time.

Vice Chairman CHAMBLISS. Now, you say you expressed your objection to other colleagues; did you ever express any concern to Director Tenet, to John McLaughlin, Executive Director Krongard, or any other of the CIA leaders?

Mr. BRENNAN. I had a number of conversations with my Agency colleagues on a broad range of issues during that period of time—not just on this program, but other ones. We would have personal conversations on that.

Vice Chairman CHAMBLISS. Well, my reason, particularly, for naming those individuals, Mr. Brennan, is that they were the ones directly above you. Mr. McLaughlin has been quoted in the press as saying he never heard from you; he doesn't doubt that you did this, but he says he never heard from you. And we just have not seen anybody who has come forward and said they ever heard any objections from you with respect to these programs.

Moving on—Mr. Krongard, your boss at the CIA, told the Wall Street Journal that you had a role in setting the parameters of the program, and I quote, "Helping to seek Justice Department approval for the techniques." He went on to say that "John would have been part and parcel of that process." How does that comport with your response to the Committee that you played no role in the program's—and I quote again, your answer—its "creation, execution, or oversight"?

Mr. BRENNAN. I respectfully disagree with my former colleague, Buzzy Krongard. I was not involved in establishing the parameters of that program. I think in that same Wall Street Journal article, he goes on to say, in fact, that I was not involved in a lot of elements of that program.

But I was not involved in the establishment of that program. Again, I had awareness that the Agency was being asked to do this; I had awareness that the Agency was going forward on it. I had some visibility into some of the activities there, but I was not part of any type of management structure or aware of most of the details.

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Vice Chairman CHAMBLISS. That being the case, why would you be the recipient of a minimum of 50 e-mails, Mr. Brennan, on the progress of the interrogation of Abu Zubaydah, including the techniques used in that interrogation?

Mr. BRENNAN. Senator, that was probably a standard e-mail distribution. I was on thousands upon thousands of e-mail distributions, as deputy executive director. I think I was just cc'd on them; I wasn't an action officer on it. I know of no action I took at the Agency that in any way authorized or reprogrammed funds, or anything along those lines.

Vice Chairman CHAMBLISS. Executive Director Krongard is said to have been an advocate of using SERE techniques. Did he discuss with you a proposal to move to SERE techniques with Abu Zubaydah; and if so, did you raise any objection?

Mr. BRENNAN. I don't recall a conversation with Mr. Krongard about that particular issue.

Vice Chairman CHAMBLISS. When you reviewed the intelligence that the CIA was getting on Abu Zubaydah after the use of EITs, did you think the information was valuable?

Mr. BRENNAN. The reports that I was getting subsequent to that, and in the years after that, it was clearly my impression that there was valuable information that was coming out.

Vice Chairman CHAMBLISS. In a November 2007 interview, you said that information from the interrogation techniques, quote, "saved lives." But you also say that CIA should be out of the detention business.

The main benefit that I saw in CIA's program was the ability to hold and question individuals about whom there was significant intelligence that they were terrorists, but not necessarily evidence that could be used in a court of law.

Your view seems to be that even if we could save American lives by detaining more terrorists, using only traditional techniques, it would be better to kill them with a drone or let them go free rather than detain them. Can you explain the logic in that argument?

Mr. BRENNAN. I respectfully disagree, Senator. I never believe it's better to kill a terrorist than to detain him. We want to detain as many terrorists as possible so we can elicit the intelligence from them in the inappropriate manner so that we can disrupt follow-on terrorist attacks. So, I'm a strong proponent of doing everything possible short of killing terrorists, bringing them to justice, and getting that intelligence from them.

I clearly had the impression, as you said, when I was quoted in 2007, that there was valuable intelligence that came out from those interrogation sessions. That's why I did say that they save lives. I must tell you, Senator, that reading this report from the Committee raises serious questions about the information that I was given at the time, and the impression I had at the time.

Now I have to determine, based on that information, as well as what CIA says, what the truth is. And at this point, Senator, I do not know what the truth is.

Vice Chairman CHAMBLISS. How many high value targets have been captured during your service with the administration?

Mr. BRENNAN. There have been a number of individuals who have been captured, arrested, detained, interrogated, debriefed,



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and put away by our partners overseas, which is—we have given them the capacity now, we have provided them the intelligence. And, unlike in the immediate aftermath of 9/11 when a lot of these countries were both unwilling and unable to do it, we have given them that opportunity. And so, that's where we're working with our partners.

Vice Chairman CHAMBLISS. How many high-value targets have been arrested and detained, and interrogated by the United States, during your four years with the administration?

Mr. BRENNAN. I'll be happy to get that information to you, in terms of those high-value targets that have been captured with U.S. intelligence support.

Vice Chairman CHAMBLISS. I submit to you the answer to that is one. And it's Warsame, who was put on a ship for 60 days and interrogated.

Thank you.

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

I want to point out that I'm going to try and enforce the eight minutes. If you hear a tapping, it is not personal.

Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Madam Chair.

Welcome, Mr. Brennan. And if confirmed, you're going to lead an extraordinary agency with extraordinary people who perform extraordinary services, most of them totally unknown by the American people. Most people don't think about that—what it is to do a life of public service and never have anything known. Those of us who sit up here do a life of public service and want everything that we do to be known. It's how we get elected. It's a very different ethic in the Central Intelligence Agency and all intelligence agencies, and I respect it very much.

I want to go to the EITC—sorry; that's Earned Income Tax Credit—to the enhanced interrogation techniques. Well, I'm for both. Well, I'm not for the second, but for the first.

You talk about the 6,000 pages. What I want to say, and when the second round comes, I will, I'm going to pour out my frustration on dealing with the Central Intelligence Agency, and dealing with various administrations, about trying to get information.

Why was it that they felt that we were so unworthy of being trusted? Why was it they were willing to talk to Pat Roberts and me, or Saxby Chambliss and Dianne Feinstein, but not anybody else, until we literally bludgeoned them—Kit Bond and I—into agreeing to include everybody? Like, Carl Levin's not trustworthy? You know? I mean, it's amazing.

And I pursue Dianne Feinstein's point about staff. When you go and you have, under the previous administration, a briefing with the President or the Vice President, or the head of the CIA, or others, you're not allowed to—I can remember driving with Pat Roberts, when he was Chairman and I was Vice Chairman, and we weren't allowed to talk to each other driving up or driving back. You weren't allowed to do that.

Staff were a part of nothing. You have to understand that you're surrounded by people who work with you and fill you in—people who are experts. We are, too. But they've got to be part of this.

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They've got to be part of—when the OLC comes, it should come to them, also. I strongly support the Chairwoman's view on that.

Now, in the enhanced interrogation techniques matter, a handful of former senior CIA officials who were personally invested—and are personally invested—in defending the CIA's detention and interrogation program, largely because their professional reputations depend on it, depend on it.

[Inaudible] to speak for the CIA and its workforce on this issue, and I think it does all a great disservice. In my office, you and I discussed the Committee's landmark report on this program. You do understand that this took six years to write—not just 6,000 pages, but six years to write, perhaps longer—23,000, 30,000 footnotes. Why did we do this? We did this because we heard nothing from the Intelligence Agency. We had no way of being briefed. They would not tell us what was going on. So we had to do our own investigation, and we're pretty good at it.

And when you read those first 350 pages, you told me that you were shocked at some of what you read. You did not know that. And that, to me, is shocking—but not to condemn anybody; simply says that has to be fixed, and changed forever. There never can be that kind of situation again, where we have to tell you what's going wrong in your Agency, and thus demoralizing some of the people in your Agency who want to be relieved of the burden and the taint of bad techniques in interrogation. They suffer from that.

And yet, nobody would talk with us about that. We had to get that information on our own. It's a magnificent piece of work, and I think it's a piece of history; it'll go down in history because it will define the separation of powers as between the intelligence committees of the House and Senate, and the Agency and others that relate to it.

I'm also very aware that this is all crucial to the President's authority. Not just on the more modern question of the day about drones. But, you know, that determination is made by one person and one person alone. And if there is a breakdown in protocol, if there is a breakdown in line of command in reacting, therefore, into something which is not good, where there's too much collateral damage, I think, for the most part, I would agree with the Chairwoman—I believe she said this—that the work of the drone had been fairly safe. However, any collateral damage is unacceptable. And that has to be the purpose of the Agency.

And therefore, this detention and interrogation program, I've got to say, it was—the people who ran it were ignorant of the topic; executed by personnel without relevant experience, managed incompetently by senior officials who did not pay attention to crucial details, and corrupted by personnel with pecuniary conflicts of interest. It was sold to the policymakers and lawyers of the White House, the Department of Justice, and Congress with grossly-inflated claims of professionalism and effectiveness; so-called “lives saved.”

It was a low point in our history. And this document, this book, should change that forever. I would hope very much that you would, if you are confirmed, which I hope you will be, that you will make parts of this at your discretion, required reading for your

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senior personnel so they can go through the same experience that you went through. Are you willing to do that?

Mr. BRENNAN. Yes, Senator. I am looking forward to taking advantage of whatever lessons come out of this chapter in our history and this Committee's report.

Senator ROCKEFELLER. How do you cross-reference—and tell me when I'm out of time.

Chairman FEINSTEIN. Eight seconds. No, a minute and eight seconds.

Senator ROCKEFELLER. A minute and eight seconds, yes.

Chairman FEINSTEIN. Right; a long time.

Senator ROCKEFELLER. The cross-referencing of the EIT disaster and the future of the drone, and the decisions that—only the President, of course, can authorize that—but the decision sometimes is passed down, and it has to be passed down in a very accurate manner. And there have to be a protocol, which is exact—more exact, even, than the interrogation techniques, because I think that's probably been put to bed just a bit; it's beginning to get straightened out.

But the drones are going to grow. There's going to be more and more of that warfare—not just by us, but by other countries, including, perhaps, by people from within our own country. So the protocol of that, insofar as it would refer to a particular agency, is going to have to be exact, and directed, and of particular excellence and exactitude. How will that happen?

Mr. BRENNAN. Senator, you make an excellent point, and that's what I'm most interested in—is finding out what went wrong. If this report is, as stated, accurate, what went wrong in the system where there were systemic failures; where there was mismanagement or inaccurate information that was put forward?

Because there are covert activities that are taking place, you know, today, under the direction and management of the CIA. And I would have the obligation to make sure I could say to this Committee that all of those covert action programs are being run effectively, they're being well managed, they're being overseen, and that the measures of effectiveness, the results of those programs, are an accurate and fair representation of what actually is happening.

This report raises serious questions about whether or not there are serious systemic issues that are at play here. I would need to get my arms around that, and that would be one of my highest priorities, if I were to go to the Agency.

Senator ROCKEFELLER. I thank you. Thank you, Chair.

Chairman FEINSTEIN. Thank you, Senator Rockefeller.

Senator Burr.

Senator BURR. Thank you, Chair.

Mr. Brennan, welcome. Thank you for your long history of public service; and more importantly, to your family—thank you for your willingness to put up with his hobby.

Most, if not all, of the intelligence that our Committee receives is the finished analysis that's derived from source reports and other raw intelligence materials that we don't see—and I might say, we don't need to see—all of.

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In order to ensure that we can perform our oversight duties of the Intelligence Committee, would you agree that the Committee should be able to review all analytical product, if requested?

Mr. BRENNAN. On the face of that question, yes. My answer would be yes. However, I would have to take a look at the issues it involved in terms of, you know, what are we talking about, in terms of access to that analytic product—whether it's all staff, all Committee Members, whatever.

I just can't make a commitment to that. But your intention, and what I think your objective is, I fully support, in terms of making sure this Committee has the breadth of analytic expertise available from the Agency.

Senator BURR. As we go forward, there may be times that the Committee will need the raw intelligence to judge the accuracy of analytical product that we're provided. If confirmed, will you provide the raw intelligence on those occasions when the Committee requests it?

Mr. BRENNAN. Senator, I would give every request from this Committee for access to that information full consideration. That's my commitment to you.

Senator BURR. Do you agree that it's a function of this Committee's oversight that occasionally we would need to look at it?

Mr. BRENNAN. I would agree that it is probably a function of your oversight that you would have interest in doing that, and it would be my obligation, I think, as director of CIA, to try to be as accommodating as possible to that interest, while at the same time trying to respect whatever considerations need to be taken into account as we do that.

Senator BURR. Mr. Brennan, as you know, the Committee is conducting a thorough inquiry into the attacks in Benghazi, Libya. In the course of this investigation, the CIA has repeatedly delayed, and in some cases, flatly refused, to provide documents to this Committee. If confirmed, will you assure this Committee that this refusal will never happen again?

Mr. BRENNAN. I can commit to you, Senator, that I would do everything in my ability and my authority to be able to reach an accommodation with this Committee that requests documents, because an impasse between the Executive Branch and the Legislative Branch on issues of such importance is not in the interest of the United States Government. And so, it would be my objective to see if we could meet those interests.

At the same time, our founding fathers did, sort of, separate the branches of government—Judicial, Legislative, and Executive. And so, I want to be mindful of that separation, but at the same time, meet your legitimate interests.

Senator BURR. They also gave us the "power of the purse."

Mr. BRENNAN. They certainly did, Senator; I'm fully aware of that.

Senator BURR. I would suggest that that's the only tool, and it's one we hate to use.

Mr. BRENNAN. Yes.

Senator BURR. Do you think that there's any situation where it's legal to disclose to the media, or to the public, details of covert action programs?

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Mr. BRENNAN. I do not think it is ever appropriate to improperly disclose classified information to anybody who does not have legitimate access to it and has the clearances for it.

Senator BURR. Let me clarify. I didn't ask for classified information. I specifically said "covert action programs."

Mr. BRENNAN. By definition, covert action programs are classified, Senator.

Senator BURR. I realize that.

Mr. BRENNAN. Right. So, I do not believe it is appropriate to improperly disclose any of those details related to covert action programs.

Senator BURR. Let me point out that in the Committee pre-hearing questions, you didn't really answer a question that dealt with specific instances where you were authorized to disclose classified information to a reporter. So, could you provide for the Committee any times that you were given the authority to release classified information?

Mr. BRENNAN. I have never provided classified information to reporters. I engaged in discussions with reporters about classified issues that they might have had access to because of unfortunate leaks of classified information, and I frequently work with reporters, if not editors, of newspapers, to keep out of the public domain some of this country's most important secrets.

And so I engage with them on those issues. But after working in the intelligence profession for 30 years and being at the CIA for 25 years, I know the importance of keeping those secrets secret.

Senator BURR. Have any of your conversations with those reporters or media consultants about intelligence matters been recorded, or were there transcriptions of it?

Mr. BRENNAN. I believe there have been. I've been on news network shows, and I have been, you know, engaged in conversations on the telephone and other things that I presume—and I know—that they have been recorded on occasion.

Senator BURR. Have you specifically asked for them not to be recorded?

Mr. BRENNAN. Whenever I talk to reporters, I do so at the request of the White House Press Office, and there are ground rules that are established there. And I'm not the one to establish those ground rules about whether or not they would be recorded or not.

Senator BURR. You said in your responses to pre-hearing questions that in exceptional circumstances, it may be necessary to acknowledge classified information to a member of the media.

Did you tell media commentators that the United States had, and I quote, "inside control" or "inside information" on the AQAP bomb plot in May of last year?

Mr. BRENNAN. I think what you're referring to, Senator, is when I had a teleconference with some individuals, former government officials from previous administrations, who were going to be out on talk shows on the night that an IED was intercepted.

And so, I discussed with them that some of the aspects of that—because I was going on the news network shows the following day—I wanted to make sure they understood the nature of the threat, and what it was, and what it wasn't.

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And so, what I said at the time—because I said I couldn't talk about any operational details, and this was shortly after the anniversary of the bin Laden takedown—I said there was never a threat to the American public as we had said so publicly, because we had inside control of the plot, and the device was never a threat to the American public.

Senator BURR. Did you think that that comment actually exposed sources or methods?

Mr. BRENNAN. No, Senator, I did not. And there is an ongoing investigation, I must say, right now about the unfortunate leak of information that was very, very damaging. And I voluntarily cooperated with the Department of Justice on that and have been interviewed on it.

Senator BURR. Well, let me just say, as one that was overseas shortly after that, I certainly had, on numerous occasions, U.S. officials who expressed to me the challenges they've gone through to try to make apologies to our partners. And I personally sat down in London to have that apology conversation, and it was very disruptive.

Very quickly—did you provide any classified or otherwise sensitive information to reporters or media consultants regarding the details of the Abbottabad raid?

Mr. BRENNAN. No, I did not, Senator.

Senator BURR. Then, do you know who disclosed information that prompted the Secretary of Defense, Robert Gates, to advise the White House to tell people to shut up?

Mr. BRENNAN. You would have to ask Secretary Gates what he was referring to at that time, because I don't know.

Senator BURR. In conclusion, let me just go back to the initial questions that the Chair referred to. And in that, I think you might have taken her request on documents to be the documents that we've got outstanding right now; I think she was referring to the future.

But let me just say I hope that you take the opportunity, if you haven't already, to take back to the administration that it is absolutely essential that the documents this Committee has requested on Benghazi be supplied before the confirmation moves forward. I realize—I'm not saying that you were part of it, but it is absolutely essential that we get those documents before we begin a new administration at the CIA. And I hope you will deliver that message. I thank you.

Mr. BRENNAN. Thank you, Senator.

Chairman FEINSTEIN. Thank you very much, Senator.

Senator Wyden.

Senator WYDEN. Thank you, Madam Chair. And Mr. Brennan, thank you for our discussions and for the joint meeting that you had with several of us on the Committee last week.

As we discussed then, I believe the issues before us really have nothing to do with political party, and have everything to do with the checks and balances that make our system of government so special.

Taking the fight to al-Qa'ida is something every Member of this Committee feels strongly about. It's the idea of giving any president unfettered power to kill an American without checks and bal-



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ances that's so troubling. Every American has the right to know when their government believes it's allowed to kill them.

And ensuring that the Congress has the documents and information it needs to conduct robust oversight is central to our democracy. In fact, the Committee was actually created, in large part, in response to lax oversight of programs that involved targeted killings.

So it was encouraging last night when the President called and indicated that, effective immediately, he would release the documents necessary for Senators to understand the full legal analysis of the President's authority to conduct the targeted killing of an American. What the President said is a good first step towards ensuring the openness and accountability that's important, and you heard that reaffirmed in the Chair's strong words right now.

Since last night, however, I have become concerned that the Department of Justice is not following through with the President's commitment just yet. Eleven United States Senators asked to see any and all legal opinions, but when I went to read the opinions this morning, it is not clear that that is what was provided.

And moreover on this point, with respect to lawyers, I think the concern is that there's a double standard. As the National Security Advisor—you volunteered, to your credit, you weren't a lawyer—you ask your lawyers and your experts to help you. And we're trying to figure out how to wade through all these documents, and one of the reasons why I'm concerned that it's not yet clear that what the President committed to has actually been provided.

And finally on this point, the Committee has been just stonewalled on several other requests, particularly with respect to secret law. And I'm going to leave this point simply by saying I hope you'll go back to the White House and convey to them the message that the Justice Department is not yet following through on the President's commitment. Will you convey that message?

Mr. BRENNAN. Yes, I will, Senator.

Senator WYDEN. Very good.

Let me now move to the public side of oversight—making sure that the public's right to know is respected. One part of oversight is Congressional oversight, and our doing our work here. The other is making sure that the American people are brought into these debates; just like James Madison said—this is what you need to preserve a republic.

And I want to start with the drone issue. In a speech last year, the President instructed you to be more open with the public about the use of drones to conduct targeted killings of al-Qa'ida members.

So, my question is what should be done next, to ensure public conversation about drones, so that the American people are brought into this debate and have a full understanding of what rules the government is going to observe when it conducts targeted killings?

Mr. BRENNAN. Well, I think this hearing is one of the things that can be done, because I think this type of discourse between the Executive and the Legislative Branch is critically important.

I believe that there needs to be continued speeches that are going to be given by the Executive Branch to explain our counterterrorism programs. I think there is a misimpression on the part of

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some of the American people who believe that we take strikes to punish terrorists for past transgressions—nothing could be further from the truth. We only take such actions as a last resort to save lives when there's no other alternative to taking an action that's going to mitigate that threat.

So we will need to make sure that there is an understanding. And the people that were standing up here today, I think they really have a misunderstanding of what we do as a government, and the care that we take, and the agony that we go through to make sure that we do not have any collateral injuries or deaths.

And as the Chairman said earlier, the need to be able to go out and say that publicly and openly, I think, is critically important, because people are reacting to a lot of falsehoods that are out there. And I do see it as part of my obligation, and I think it's the obligation of this Committee, to make sure the truth is known to the American public and to the world.

Senator WYDEN. Mr. Brennan, I'm also convinced there are parts of drone policy that can be declassified consistent with national security. And I hope that you will work with me on that if you are confirmed.

Let me ask you several other questions with respect to the President's authority to kill Americans. I've asked you how much evidence the President needs to decide that a particular American can be lawfully killed, and whether the administration believes that the President can use this authority inside the United States. In my judgment, both the Congress and the public needs to understand the answers to these kinds of fundamental questions.

What do you think needs to be done to ensure that members of the public understand more about when the government thinks it's allowed to kill them, particularly with respect to those two issues—the question of evidence, and the authority to use this power within the United States?

Mr. BRENNAN. I have been a strong proponent of trying to be as open as possible with these programs as far as our explaining what we're doing. What we need to do is optimize transparency on these issues, but at the same time, optimize secrecy and the protection of our national security. I don't think that it's one or the other; it's trying to optimize both of them.

And so, what we need to do is make sure we explain to the American people: what are the thresholds for action; what are the procedures, the practices, the processes, the approvals, the reviews.

The Office of Legal Counsel advice establishes the legal boundaries within which we can operate. It doesn't mean that we operate at those outer boundaries. And, in fact, I think the American people would be quite pleased to know that we've been very disciplined and very judicious, and we only use these authorities and these capabilities as a last resort.

Senator WYDEN. One other point with respect to public oversight: if the Executive Branch makes a mistake and kills the wrong person or a group of the wrong people, how should the government acknowledge that?

Mr. BRENNAN. I believe we need to acknowledge it. I believe we need to it knowledge it to our foreign partners. We need to acknowledge it publicly.

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There are certain circumstances where there are considerations to be taken into account, but as far as I'm concerned, if there is this type of action that takes place, in the interest of transparency, I believe the United States Government should acknowledge it.

Senator WYDEN. And acknowledge it publicly?

Mr. BRENNAN. That would be ideal, and that would be the objective of the program.

Senator WYDEN. One last question if I might: in my letter to you three weeks ago, I noted that I've been asking for over a year to receive the names of any and all countries where the Intelligence Community has used its lethal authorities.

If confirmed, would you provide the full list of countries to the Members of this Committee and our staff?

Mr. BRENNAN. I know that this is an outstanding request on your part. During our courtesy call, we discussed it. If I were to be confirmed as director of CIA, I would get back to you, and it would be my intention to do everything possible to meet this Committee's legitimate interests and requests.

Senator WYDEN. Well, I'm going to wrap up just with one sentence on this point, Chair Feinstein.

It's a matter of public record, Mr. Brennan, that the raid that killed Osama bin Laden was carried out under the authority of CIA Director Leon Panetta. So that tells you right there that the Intelligence Community's lethal authorities have been used in at least one country.

I want to hear you say that if these authorities have been used in any other countries, that you'll provide this Committee with the full list. Now, will you give us that assurance?

Mr. BRENNAN. You're talking about a historical list; are you not, Senator Wyden—as far as anytime, anywhere, that the CIA was involved in such a lethal provision?

Senator WYDEN. Yes.

Mr. BRENNAN. I would have to go back and take a look at that request. Certainly, anything that—if I were to go to CIA, and the CIA was involved in any type of lethal activity, I would damn well make sure that this Committee had that information; absolutely.

Senator WYDEN. That's a good start.

Chairman FEINSTEIN. Thank you very much, Senator Wyden.

Senator Risch.

Senator RISCH. Thank you, Madam Chairman.

Mr. Brennan, thank you for your service over the years.

I want to follow up on a conversation you and I had in my office, and it touches on what Senator Burr asked you about a little bit, and that is the question of leaks.

I was glad to hear you acknowledge in your opening statement how important it is that we avoid leaks of any kind, because they are dangerous, they endanger the lives of Americans, and they can't be tolerated in the business that we're in. And you agree with that, I gather?

Mr. BRENNAN. Absolutely, Senator.

Senator RISCH. Okay. Well, I want to talk to you about a person who I believe, and I think you acknowledge, is one of the most dangerous people on the planet, and that's Ibrahim al-Asiri. And the conversation that you had with Senator Burr was referring to the

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interview that you gave that talked about the plot that was uncovered that involved him. Do you recall that conversation with Senator Burr?

Mr. BRENNAN. Yes, I do, Senator.

Senator RISCH. Okay. And I have in front of me the Reuters article that's dated May 18, 2012, describing your engagement with the media regarding Mr. Asiri and the plot; you're familiar with that article, I would assume?

Mr. BRENNAN. I have read many articles, so I presume I read that one.

Senator RISCH. Well, this particular one is one that's similar, I think, as far as the leak itself and how we got to where we are on this.

I want to quote from the article. It says, "At about 5:45 p.m., Eastern Daylight Time, on Monday, May 7, just before the evening newscasts, John Brennan, President Barack Obama's top White House advisor on counterterrorism, held a small, private teleconference to brief former counterterrorism advisors who have become frequent commentators on TV news shows."

Is that an accurate statement?

Mr. BRENNAN. That is an accurate statement, Senator. Yes.

Senator RISCH. And can you tell me—who was involved in that conversation; who was involved in that interview?

Mr. BRENNAN. I believe that the people who were on that phone included one of my predecessors, Fran Townsend; Roger Cressey; Juan Zarate; Richard Clarke. I think these are individuals who have served in the government and are counterterrorism professionals.

Senator RISCH. Any others you can think of?

Mr. BRENNAN. I do not remember the others.

Senator RISCH. Do you have notes from that conversation?

Mr. BRENNAN. There are notes, yes—that people took at that, yes.

Senator RISCH. Have those been turned over to the Justice Department?

Mr. BRENNAN. The Justice Department—as I said, I voluntarily and eagerly engaged in that investigation, and they have—

Senator RISCH. That wasn't the question. Were those notes turned over?

Mr. BRENNAN. Everything that was available on that has been turned over to the Department of Justice; absolutely, Senator.

Senator RISCH. Did you turn those notes over?

Mr. BRENNAN. My office turned over everything that was available about that, yes.

Senator RISCH. Who took those notes?

Mr. BRENNAN. Senator, I was not taking notes at the time. There were people, also, from the White House, who were on that conversation, as we do with all of these types of engagements.

Senator RISCH. And who were the people that were involved in that conversation?

Mr. BRENNAN. Aside from the reporters? There was somebody from the White House Press Office and someone from the Counterterrorism directorate.

Senator RISCH. You don't know the peoples' names?

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Mr. BRENNAN. I do. They were Nick Rasmussen and Caitlin Hayden.

Senator RISCH. Those are the two people from the White House that were involved; is that—

Mr. BRENNAN. That's my recollection of who was involved in that conference call, yes.

Senator RISCH. May 7th was the date that the incident occurred; is that correct?

Mr. BRENNAN. The date of the conversation with those reports?

Senator RISCH. Excuse me—the date of the underlying event that you were talking about involving Mr. Asiri.

Mr. BRENNAN. Now you're talking about Mr. Asiri—in terms of being the person who was responsible for putting together the IED?

Senator RISCH. Correct.

Mr. BRENNAN. I believe May 7th was about the right date, yes.

Senator RISCH. And can you tell me why you felt compelled to release that information to these people on May 7, 2012?

Mr. BRENNAN. Well, as I explained on the network news the following morning, and as we said publicly, that device was not a threat to the American public at the time of the bin Laden anniversary—

Senator RISCH. I don't want to cut you off, but that's not the question.

Mr. BRENNAN. I thought it was, Senator. But go ahead.

Senator RISCH. No. The question was why did you feel compelled to hold this press conference and divulge that information at that time on that day?

Mr. BRENNAN. It wasn't a press conference; it was a teleconference with these individuals. And I know they were going out on TV that evening and I wanted to make sure that these individuals with that background on counterterrorism were able to explain appropriately to the American people as we've been talking about—the importance of making sure the American people were aware of the threat environment and what we're doing on the counterterrorism front.

Senator RISCH. And they were going to go on TV that evening to discuss this event?

Mr. BRENNAN. Yes, because it had already broken. The news reports had broken that afternoon, Senator, and so there was a flurry of activity and press reporting that was going on. These individuals reached out to us, as they normally do. So this was just a routine engagement with the press, as we normally do when these things are made public.

Senator RISCH. The next paragraph says, "According to five people familiar with the call, Brennan stressed that the plot was never a threat to the U.S. public or air safety because Washington had inside control over it."

Is that an accurate statement?

Mr. BRENNAN. Inside control of the plot, yes, that's exactly right.

Senator RISCH. Okay. So, based on that, one would know that we had something inside; is that a fair statement?

Mr. BRENNAN. From that statement, it is known that that IED, at the time, was not a threat to the traveling public, because we

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had said publicly that there was no active plot at the time of the bin Laden anniversary. That's correct.

Senator RISCH. Would you agree with me that that disclosure resulted in the outing of an asset that shouldn't have been outed?

Mr. BRENNAN. Absolutely not, Senator. I do not agree with you, whatsoever.

Senator RISCH. Well, how can you say that?

Mr. BRENNAN. What I'm saying is that we were explaining to the American public why that IED was not, in fact, a threat at the time that it was in the control of individuals. When we say "positive control," "inside control," that means that we have, in fact, that operation, either environmentally or any number of ways. It did not in any way reveal any type of classified information.

And I told those individuals—and there are transcripts that are available of that conversation—"I cannot talk to you about the operational details of this, whatsoever."

Senator RISCH. Having used the words that you used of "inside control," it isn't much of a leap to determine that somehow you had a handle on it.

Mr. BRENNAN. It's not much of a leap to know that if in fact we said this IED was, in fact, obtained, and it was not a threat at the time, that there was some type of inside control. It is almost a truism.

Senator RISCH. Well, having said that, it seems to me that the leak that the Justice Department is looking for is right here in front of us. And you disagree with that?

Mr. BRENNAN. I disagree with you vehemently, Senator. And I've talked to the Department of Justice. As I said, I conducted interviews with them. And, you know, I am a witness in that, as many other people are. And as you know, there's witness and subject and target. I'm not a subject. I'm not a target. I am a witness. Because I want to make sure whoever leaked this information that got out to the press and that seriously did disrupt some very sensitive operational equities on the part of some of our international partners—that never should have happened.

Senator RISCH. And you're in agreement with that—that this was a serious flaw in what should have happened; is that correct?

Mr. BRENNAN. It's a serious flaw that it got out to the press before that operation was, in fact, concluded; absolutely. And my discussion with those individuals that night, it already was out in the press.

Senator RISCH. You would agree with me that on the day that we get Mr. Asiri, it's going to be either a very, very good day, or, if he gets us first, it's going to be a very, very bad day for the American people, and particularly for anyone who was involved in a leak concerning him.

Mr. BRENNAN. Senator, I live this every day and night.

Senator RISCH. I understand.

Mr. BRENNAN. I go to bed at night worrying that I didn't do enough that day to make sure I could protect the American people. So, when Mr. Asiri is brought to justice, one way or another, it will be because of the work that's been done over the past number of years by some very brave Americans in CIA and other places.



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So, believe me, I am focused as a laser on the issue of the IED threat, AQAP, and Mr. al-Asiri.

Senator RISCH. I have more, but my time is up.

Thank you, Madam Chairman.

Chairman FEINSTEIN. Thank you, Senator Risch.

Senator Mikulski.

Before you start, Senator, a vote is due to start at four. It's now five after four. Senator Chambliss went to vote; as soon as he returns, I will go. And we will just keep this going. So, Members, be guided by that.

The vote just started. Please go ahead.

Senator MIKULSKI. Mr. Brennan, first of all, welcome to the Committee. And in the short time I have—you mentioned your wife, Kathy; could you introduce us to her?

Mr. BRENNAN. Yes, this is my wonderful, beautiful wife, Kathy, who's been my spouse for 34 years and my partner in my work. And my brother, Thomas, also is here, from New Jersey.

Senator MIKULSKI. Well, we'd like to welcome you. And we know that not only will you serve, but your entire family has served, and will continue to serve. And I'm going to echo the remarks of my colleague, Senator Warner, thanking the people of the Central Intelligence Agency for what they do every day in every way, working often in a way that is not known, not recognized, and quite frankly, not always appreciated.

So, let me get to my questions. I have been concerned for some time that there is a changing nature of the CIA, and that instead of it being America's top human spy agency to make sure that we have no strategic surprises, that it has become, more and more, executing paramilitary operations.

And I've discussed this with you in our conversation. How do you see this? I see this as mission-creep. I see this as overriding the original mission of the CIA, for which you're so well versed, and more a function of the Special Operations Command.

Could you share with me how you see the CIA and what you think about this militarization of the CIA that's going on?

Mr. BRENNAN. Thank you, Senator, and thank you—

Senator MIKULSKI. You might disagree with me, and I welcome your disagreement is you so do so.

Mr. BRENNAN. Senator, the principal missions of the Agency is to collect intelligence, uncover those secrets, as you say, to prevent those strategic surprises, and to be the best analytic component within the U.S. Government, to do the all-source analysis that CIA has done so well for many, many years.

At times, the President asks and directs the CIA to do covert action. That covert action can take any number of forms, to include paramilitary. And, as we've discussed here today on the counterterrorism front, there are things that the Agency has been involved in since 9/11 that, in fact, have been a bit of an aberration from its traditional role.

One of the things that I would do if I would go back to the Agency is to take a look at that allocation of mission within CIA—the resources that are dedicated to this, and, as we had the discussion when I paid my courtesy call, I am concerned that looking at the world, which is a very big place, we need to make sure we have

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the best intelligence collection capabilities possible and the best analytic capabilities possible. And the CIA should not be doing traditional military activities and operations.

Senator MIKULSKI. Well, I appreciate that and look forward to working with you on this to really identify what's up with the CIA, and to DoD, which then takes me to the issue of cyber threat.

Both Secretary Panetta, General Dempsey, and so on—and we, in your current role at the White House—have talked about the cyber threat. You were a big help in trying to help us get the cyber legislation passed.

Now, tell us what you think is the role of the CIA in dealing with the cyber threat in the area of human intelligence with the CIA? You have a unique insight into it. We know what NSA does; we know what Homeland Security is supposed to do; tell us where you see the CIA in this.

Mr. BRENNAN. Well, first of all, the cyber threat that this country faces is one of the most insidious and one of the most consequential to our national security, and one that I think that our government as a whole and this body, the Congress, really needs to be focused on and do everything possible to prevent a devastating attack against this country because of our vulnerabilities on the cyber front.

CIA's traditional mission on the collection front is to try to determine the plans and intentions of foreign governments, foreign groups, sub-national groups, and others.

Learning about those plans and intentions, and the development of capabilities in the cyber world, is something that CIA, I think, is best placed to do, so that we have an understanding of what foreign countries are doing, what organized criminal organizations are doing, what sub-national groups are doing, and the nature of the threat to us.

Then, in addition, the analysts at CIA can take that information, working with the rest of the Community, to make sure that policy-makers have a good sense of the nature of the threat and some potential mitigation strategies. And then, working with NSA, Department of Homeland Security, and others, put together that structure that's going to make this country resistant and resilient to those attacks.

Senator MIKULSKI. Well, Mr. Brennan, I really look forward to working with you on this, because this cuts across all the agencies—those that have responsibility for work outside of this country, inside this country, and yet, we all have to be doing—what we're—to use the Marine Corp saying—the best that we're best at and best that we're most needed for.

I consider this one of the greatest threats and one of the greatest vulnerabilities, because we failed to pass the legislation ourselves. We can't stop what foreign predators want to do. I mean, we can divert; identify an attack. But we are making ourselves vulnerable.

Now, I want to get to the job of the CIA director. I'm going to be blunt—and this will be no surprise to you, sir—but I've been on this Committee for more than 10 years, and with the exception of Mr. Panetta, I feel I've been jerked around by every CIA director. I've either been misled, misrepresented, had to pull information out—often at the most minimal kind of way; from Tenet, with his

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little aluminum rods, to tell us that we had weapons of mass destruction in Iraq, to Porter Goss—not forthcoming.

You know the problems we've had with torture. The Chair has spoken eloquently about it, all the way. And quite frankly, during those questions, they were evaded; they were distorted, et cetera.

So, my question to you is: knowing your background, knowing your Jesuit education, knowing what I think your values are, can I have your word that you're going to be very forthcoming with this Committee, to speak truth to power, to speak truth about power, even when it's uncomfortable, or where we're going to have to probe in a way that is not an easy way to go?

Mr. BRENNAN. Honesty, truthfulness, was a value that was inculcated in me in my home in New Jersey, from my parents, Owen and Dorothy. It still is to this day.

Honesty is the best policy. None of us are perfect beings. I'm far from perfect. But, Senator, I would commit that I would be honest with this Committee and do everything possible to meet your legitimate needs and requirements. As I think I've told you before, I know that you are a very proud senator of one of the jewels in the Intelligence Community, NSA, which resides in Maryland, but it would be my objective to make CIA your favorite intelligence agency and push Keith Alexander aside.

[Laughter.]

Senator MIKULSKI. Well, I think you're pushing your luck now.

Thank you very much.

Vice Chairman CHAMBLISS. Senator Levin.

Senator LEVIN. Thank you.

Thank you for your willingness to serve here, Mr. Brennan.

You've said publicly that you believe waterboarding is inconsistent with American values; it's something that should be prohibited, and it goes beyond the bounds of what a civilized society should employ.

My question is this: in your opinion, does waterboarding constitute torture?

Mr. BRENNAN. The attorney general has referred to waterboarding as torture. Many people have referred to it as torture. The attorney general, premiere of law enforcement officer and lawyer of this country. And as you well know, and as we've had the discussion, Senator, the term "torture" has a lot of legal and political implications. It is something that should have been banned long ago. It never should have taken place in my view. And, therefore, if I were to go to CIA, it would never, in fact, be brought back.

Senator LEVIN. Do you have a personal opinion as to whether waterboarding is torture?

Mr. BRENNAN. I have a personal opinion that waterboarding is reprehensible, and it's something that should not be done. And, again, I am not a lawyer, Senator, and I can't address that question.

Senator LEVIN. Well, you've read opinions as to whether or not waterboarding is torture. And I'm just—do you accept those opinions of the attorney general? That's my question.

Mr. BRENNAN. Senator, you know, I've read a lot of legal opinions. I've read an Office of Legal Counsel opinion in the previous administration that said in fact waterboarding could be used. So,

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from the standpoint of that, you know, I cannot point to a single legal document on this issue.

But, as far as I'm concerned, waterboarding is something that never should have been employed, and, as far as I'm concerned, never will be, if I have anything to do with it.

Senator LEVIN. Is waterboarding banned by the Geneva Conventions?

Mr. BRENNAN. I believe the attorney general also has said that it's contrary, in contravention, of the Geneva Convention.

Again, I am not a lawyer, or a legal scholar, to make a determination about what is in violation of an international convention.

Senator LEVIN. Mr. Rodriguez, the former CIA deputy director for operations, was asked about his personal moral or ethical perspective on these enhanced interrogation techniques, including waterboarding.

He said that he knew of—and these are his words—“I know that many of these procedures were applied to our own servicemen. Tens of thousands of U.S. soldiers had gone through this.”

Now, as we investigated, at Senate Armed Services Committee, in our 2008 report, these so-called “Survival, Evasion, Resistance, and Escape”—or “SERE”—techniques referred to by Mr. Rodriguez were used to train members of our military. They were never intended to be used by U.S. interrogators.

These techniques were based on Chinese Communist interrogation techniques used during the Korean War to elicit confessions, were developed to expose U.S.—and the use of or the training of U.S. personnel and exposing of them for a few moments to these techniques which helped to—was meant to help them survive in the event they were captured and the event they were subjected to these techniques.

My question to you is this: is there any comparability between a friendly trainer in the United States exposing our troops to abuses—these SERE techniques, including waterboarding—for a few moments under close supervision; is there any possible comparability to that to using these techniques on an enemy in an effort to extract intelligence?

Mr. BRENNAN. They are for completely different purposes and intentions. I do not see any comparability there.

Senator LEVIN. Now, the Chairman and I issued a report, or made a statement, on April 27, 2012. This also began with a statement of Mr. Rodriguez.

And here's what he said: “Information provided by CIA detainees Khalid Sheikh Mohammed and Abu Faraj al-Libbi about bin Laden's courier being the lead information that eventually led to the location of bin Laden's compound and the operation that led to his death.”

That's what Rodriguez said. We said that statement is wrong. The original lead information had no connection to CIA detainees. The CIA had significant intelligence on the courier that was collected from a variety of classified sources. While the CIA's enhanced interrogation techniques were used against KSM and al-Libbi, the pair provided false and misleading information during their time in CIA custody.

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Now, my question to you is: are you aware of any intelligence information that supports Mr. Rodriguez's claim that the lead information on the courier came from KSM and al-Libbi?

Mr. BRENNAN. I have not reviewed the intelligence thoroughly, but I am unaware of any.

Senator LEVIN. Next, Michael Hayden, former CIA director, on May 3, 2011, said that "What we got, the original lead information, began with information from CIA detainees at black sites."

The Chairman and I issued, in the same statement, the following—that the statement of the former attorney general, Michael Mukasey, was wrong. Do you have any information to disagree with our statement?

Mr. BRENNAN. I do not.

Senator LEVIN. The third statement that we quoted in our report—out of Michael Hayden, former CIA director: "What we got, the original lead information, began with"—excuse me; that was Mr. Hayden that I was asking you about, not Mr. Mukasey. Your answer is the same, I assume?

Mr. BRENNAN. Yeah, I do not know. I'm unaware.

Senator LEVIN. You don't have any information to the contrary?

Mr. BRENNAN. Right.

Senator LEVIN. Now Michael Mukasey, former attorney general, Wall Street Journal: "Consider how the intelligence that led to bin Laden came to hand: it began with a disclosure from Khalid Sheikh Mohammed, who broke like a dam under pressure of harsh interrogation techniques that included waterboarding. He released a torrent of information, including eventually the name"—the name — "of a trusted courier of bin Laden."

Our statement—that of the Chairman and myself—is that that statement is wrong. Do you have any information to the contrary?

Mr. BRENNAN. Senator, my impression earlier on was that there was information that was provided that was useful and valuable, but, as I said, I've read now the first volume of your report, which raises questions about whether any of that information was accurate.

Senator LEVIN. But I'm now referring not to the report, but to the statement that Chairman Feinstein and I issued on April 27, 2012. We flat-out say that those statements are wrong.

Mr. BRENNAN. Right.

Senator LEVIN. Do you have any basis to disagree with us?

Mr. BRENNAN. I do not.

Senator LEVIN. Will you, when you become the CIA director, assuming you are confirmed, take the statement that we have issued and tell us whether or not you disagree with any of these statements that we have made about those statements of those three men; will you do that if you are confirmed?

Mr. BRENNAN. I will look and consider that request, Senator. As I said, the report that this Committee has put together, I need to take a look at what CIA's response is to it. And that report raises serious questions about whether any worthwhile intelligence came from these individuals.

Senator LEVIN. Will you include, in your review, a review of our joint statement and tell us whether, after your review, you disagree with anything that we've said; will you do that?

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Mr. BRENNAN. I would be happy to.

Senator LEVIN. Now, there's one final point, and that has to do with a very famous document. And that has to do with a cable that came in that relates to the so-called "Atta" matter. Are you familiar with that issue?

Mr. BRENNAN. Yes, I am, Senator.

Senator LEVIN. The issue here is whether or not there ever was a meeting in Prague between Mohammed Atta, who is one of the people who attacked the Trade Center, and the Iraqi Intelligence.

The cable that came in has been classified by the CIA, even though the report of—this is what the CIA did to the cable. (Holds up a piece of paper containing text that has mostly been redacted.)

Now, will you check with the Czechs for the source of this cable and see if they have any objection to the release of this cable relative to the report of that meeting?

Mr. BRENNAN. Yes, Senator. And since our courtesy call, I have looked into this issue, and I know that you and Director Petraeus were involved in a discussion on this. And I would be happy to follow up on it. But there does seem to be some concerns about release of the cable.

Senator LEVIN. The unclassified report of the Intelligence Committee—which was not classified; was not redacted by the CIA—made at least four references to the Czech Intelligence Service providing the CIA with reporting, based on a single source, about this alleged meeting, which never took place. We knew it never took place. And yet, repeatedly—particularly the Vice President—made reference that there was a report of a meeting between these two.

Now, it's very significant for the historical record here. We went to war based on allegations that there was a relationship between Iraq and the attackers—the 9/11 attackers. It's very important that this cable be declassified. The only reason to keep it redacted and classified, frankly, is to protect an administration, not to protect sources and methods, because the sources and methods—if you will check with the Czechs, I'm sure they will tell you they have no objection to the release of that cable.

My question to you is will you check with the Czechs, if you are confirmed, and determine whether they have any objection to the release of the cable, which makes reference to them?

Mr. BRENNAN. Absolutely, Senator; I will.

Senator LEVIN. Thank you. My time is up.

Vice Chairman CHAMBLISS. Thank you, Senator.

Senator Coats.

Senator COATS. Thank you, Mr. Chairman.

Mr. Brennan, we acknowledge your experience, and I think that experience is important to have for the position that, if confirmed, you will occupy. I acknowledge your service to the country and your experience in this field. I think the President used that as one of the criteria, of course.

You and I, when we talked earlier in a private talk, talked about the relationship that you want to have with this Committee—not just with the Chairman and the Vice Chairman, but with all the Committee Members. And I appreciate your answers on that, and you addressed it again today, in terms of a potential trust deficit



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or—you said that that’s “wholly unacceptable” and that you would give straight answers and be blunt and candid.

And you’ve been that today. It’s not a prerequisite to be Mr. Congeniality to occupy the position of director of CIA, so I don’t hold that as—in fact, it would be probably a red flag for me if somebody did have that award and wanted your position.

The kind of issues that you have to deal with require straight talk, straight answers, and getting to the chase real quick. You said it’s the “New Jersey” way. I’ll accept that; it’s bipartisan. Governor Christie exhibits the same kind of responses and has a pretty high approval rating.

So, we will go forward with taking you at your word that we’ll have the kind of relationship that we can have a blunt, straight-forward, fully disclosed, working relationship. I think it’s critical to our ability to provide oversight, our ability to have the right kind of relationship with the Agency so we know where each other is and can move forward together in terms of what needs to be done to provide the intelligence necessary to protect the American people.

So, I wanted to say that. I’d like to follow up a little bit more on the leaks question because I have a few more questions. I was going to delve into that in more detail, but it’s already been discussed by Senator Risch and others. But let me just ask a couple of other questions to clear some things up in my mind.

My understanding is that the Associated Press had information relative to the intercept of a planned operation that perhaps had something to do with airlines and explosive devices; that apparently they had that for a few days and then either were about to or had gone ahead and released it. I’m assuming that your then calling the conference call was in response to what they had just released; is that correct?

Mr. BRENNAN. Yes. A number of news networks have put out information about this. Yes.

Senator COATS. And you expressly arranged this teleconference for what exact purpose?

Mr. BRENNAN. There were a number of people who were going to be going out on the news shows that night who were asking about the reports about this intercepted IED and wanted to get some context, as far as the nature of the threat, and also were asking questions about—“Well, you said, and the U.S. Government said, that there was no threat during the anniversary of the bin Laden take-down, so how could there not have been a threat if, in fact, this IED was out there?”

Senator COATS. The question I have is this—because based on what you said and what we have learned, you then, in that teleconference, talked about the fact that, in answering the question, “How do we know this?”—I think the quote that came across from Richard Clarke was, “never came close, because they had insider information, insider control.” And you had referenced that you had said that to the group.

Mr. BRENNAN. No, what I said was inside control of the plot, and that the device was never a threat.

Senator COATS. Okay, “insider control.”

Mr. BRENNAN. No, I said “inside control”—not “insider.”

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Senator COATS. Okay, “inside control.” The Associated Press never made any mention about inside control. Why was it necessary, then, to add that? Why couldn’t you have just simply said, “We’ve intercepted a plot—it’s been a successful interception”? Because once the word “inside control” got out, then all the speculation—and correct—was that that “inside control” was interpreted as meaning “we’ve got somebody inside.”

And the result of that was the covert action operation had to be dissolved because the control agent, the inside person, was—well, essentially, the plot was exposed, and therefore, the whole operation had to be dissolved.

Mr. BRENNAN. Well, Senator, I must caution that there are still elements of this event that remain classified and that we cannot talk about in public. There was a lot of information that came out immediately after AP broke that story. Unfortunately, there was a hemorrhaging of information and leaks.

Again, what I said was that there was inside control, because what I needed to do, and what I said to the American public in open networks the following morning, is that during the anniversary period of the bin Laden take-down, when we said to the American public that there were no active plots, no threat to the American public, that we were aware of, that was specific and credible.

Well, why was not this IED that we had intercepted—why wasn’t that a threat? Well, because we had inside control of the plot, which means any number of things—in terms of environmentally, working with partners, whatever else. It did not reveal any classified information. And as I said, we have to be careful here because there are still operational elements of this that remain classified.

Senator COATS. And that’s appropriate, but, you know, it was just a couple weeks later when Reuters reported publicly, and I quote, “As a result of the news leaks, U.S. and allied officials told Reuters that they were forced to end an operation which they had hoped could have continued for weeks or longer.”

Mr. BRENNAN. There were a lot of things that were reported by the press—accurate, inaccurate—a whole bunch of stuff, Senator. So I would not put stock in the types of things that you might be reading there. I know that I engaged for an extended period of time both before that leak and afterward to make sure we were able to mitigate any damage from that initial leak, and the subsequent leaks, of classified information.

Senator COATS. So, you’re essentially saying that this Reuters report may or may not be accurate, but had no link to what was disclosed to Mr. Clarke and then what he said shortly thereafter on ABC News?

Mr. BRENNAN. What I’m saying, Senator, is that I’m very comfortable with what I did and what I said at that time to make sure that we were able to deal with the unfortunate leak of classified information.

Senator COATS. How frequently did you have to pull groups like this together in order to, in a sense, put out authorized, or at least what you think is appropriate, news for the correct purposes?

Mr. BRENNAN. Senator, frequently, if there is some type of event, or if there’s a disrupted terrorist attack, whether it’s some “underwear bomber” or a disrupted IED, or a printer bomb, or whatever

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else, we will engage with the American public. We'll engage with the press. We'll engage with individuals who are experienced professional counterterrorism experts who will go out and talk to the American public.

We want to make sure that there are not misrepresentations, in fact, of the facts, but at the same time, do it in a way that we're able to maintain control over classified material.

Senator COATS. Now, it does occur, I assume, or it is possible, to put out an authorized leak; is that correct?

Mr. BRENNAN. No. Those are oxymorons: "authorized leak." It is something that would have to be declassified, disclosed, and done in a proper manner.

Senator COATS. And this, in no way, fell into that category?

Mr. BRENNAN. Absolutely not. I was asked to engage with these individuals by the White House Press Office. I talked with them about the interception. No, it was not.

Senator COATS. There is a provision in last year's Intelligence Authorization Bill that requires a report to this Committee of any authorized leak; so, you are aware of that?

Mr. BRENNAN. I'm aware of the provision, yes, that's been put forward.

Senator COATS. And no report has come forward, so I assume there haven't been any authorized leaks in the past year?

Mr. BRENNAN. I think, you know, what we want to do is to make sure if there's going to be any disclosures of classified information, that this Committee is going to be informed about that. So we will adhere to the provision that was in that Intel Authorization Bill.

Senator COATS. Thank you.

Mr. Chairman, my time is expired.

Vice Chairman CHAMBLISS. Senator Udall.

Senator UDALL. Thank you, Mr. Vice Chairman.

Good afternoon, Mr. Brennan. I can't help but—observing that Senator Coats talked about being governor of New Jersey, I think being governor of Jersey is a piece of cake compared to being the director of the CIA.

I hope Governor Christie won't take that in the wrong way, by the way, because I have great respect for him.

Mr. BRENNAN. I have no plans to run against Governor Christie. [Laughter]

Senator UDALL. Thank you for your service. Thank you for your willingness to continue serving as the head of the CIA. I have some comments I'd like to share with you, and then of course I'll direct some questions your way.

You've said that President Obama believes that, done carefully, deliberately, and responsibly, we can be more transparent and still ensure our nation's security. I absolutely agree. The American people have the right to know what their government does on their behalf.

Consistent with our national security, the presumption of transparency should be the rule, not the exception, and the government should make as much information available to the American public as possible.

So when we, on the Committee, and we, as Members of Congress, push hard for access to the legal analysis justifying the authority

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of the Executive Branch to lethally target Americans using drones, for instance, it erodes the government's credibility of the American people.

I want to tell you I'm grateful to the President for allowing Members of this Committee to briefly use some of the legal opinions on targeting American citizens. This is an important first step. But I want to tell you, I think there's much more to be done in that regard. And you've heard that from my colleagues here today.

I've long believed that our government also has an obligation to the American people to face its mistakes transparently, help the public understand the nature of those mistakes, and correct them. The next director of the CIA has an important task ahead in this regard.

Mr. Brennan, I know you're familiar with the mistakes that I'm referring to. We've already discussed those here today to some extent. They're outlined in the Committee's 6,000-page report on the CIA's detention and interrogation program, based on a documentary view of over 6 million pages of CIA and other records, and including 35,000 footnotes.

I believe that this program was severely flawed. It was mismanaged. The enhanced interrogation techniques were brutal, and, perhaps most importantly, it did not work. Nonetheless, it was portrayed to the White House, the Department of Justice, the Congress, and the media as a program that resulted in unique information that saved lives.

And I appreciate the comments you made earlier about the misinformation that may have flowed from those who were in charge of this program to people like yourself. Acknowledging the flaws of this program is essential for the CIA's long-term institutional integrity, as well as for the legitimacy of ongoing sensitive programs. The findings of this report directly relate to how other CIA programs are managed today.

As you said in your opening remarks, and you so powerfully referenced the Memorial Wall, all CIA employees should be proud of where they work, and of all the CIA's activities. I think the best way to ensure that they're proud is for you to lead in correcting the false record, and instituting the necessary reforms that will restore the CIA's reputation for integrity and analytical rigor. The CIA cannot be its best until the leadership faces the serious and grievous mistakes of this program.

So, if I might, let me turn to my first question. Inaccurate information on the management operation effectiveness of the CIA's detention and interrogation program was provided by the CIA to the White House, the DoJ, Congress, and the public. Some of this information is regularly and publicly repeated today by former CIA officials, either knowingly or unknowingly.

And although we now know this information is incorrect, the accurate information remains classified, while inaccurate information has been declassified and regularly repeated.

And the Committee will take up the matter of this report's declassification separately. But there's an important role I think the CIA can play in the interim: CIA has a responsibility to correct any inaccurate information that was provided to the previous White

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House, Department of Justice, Congress, and the public, regarding the detention and interrogation program.

So, here's my question: do you agree that the CIA has this responsibility? And I'd appreciate a yes or no answer.

Mr. BRENNAN. Yes, Senator.

Senator UDALL. Thank you for that. Again, yes or no—will you commit to working with the Committee to correct the public and internal record regarding the detention and interrogation program within the next 90 days?

Mr. BRENNAN. Senator, I think it's only fair of me to say that I am looking forward to CIA's response to that report so that we're assured that we have both the Committee's report, as well as CIA's comments on it. And I will be getting back to you, yes.

Senator UDALL. I can understand you want to make sure you have accurate time. I understand, as well, that the CIA will finish their analysis by the middle of February. And so, I hope we can work within that time frame.

And I know that in your answers to the Committee in preparing for this hearing, you wrote that "the CIA, in all instances, should convey accurate information to Congress. When an inaccurate statement is made and the CIA is aware of the inaccuracy, it must immediately correct the record. And certainly, I would do so, if I were director."

So, I take your answer in the spirit of the written testimony you provided to the Committee. Let me turn to the report and its eventual declassification, if I might.

I don't think it has to be difficult—that is, the declassification—for these reasons: the identities of the most important detainees have already been declassified; the interrogation techniques themselves have been declassified; the application of techniques to detainees has been declassified to some extent, with a partial declassification of the inspector general report; and the intelligence was declassified to a significant extent when the Bush administration described plots it claimed were thwarted as a result of the program.

So long as the report does not identify any undercover officers, or perhaps the names of certain countries, can you think of any reason why the report could not be declassified with the appropriate number of redactions? Can you answer yes or no to that question?

Mr. BRENNAN. I would have to take that declassification request under serious consideration, obviously. That's a very weighty decision, in terms of declassifying that report, and I would give it due consideration. But there are a lot of considerations that go into such decisions.

Senator UDALL. I want to, again, underline that I think this would strengthen the CIA. It would strengthen our standing in the world. America is at its best, as we discussed earlier today, when it acknowledges its mistakes, and learns from those mistakes.

And I want to quote Howard Baker, who I think we all admire in this room. He spoke about the Church Committee, which he, you know, was an important effort on the part of this Congress. And there was much broader criticism of the CIA in that Church Com-

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mittee process. And the CIA came out of that stronger and more poised to do what it's supposed to do.

So I want to quote Howard Baker. He wrote: "In all candor, however, one must recognize that an investigation such as this one"—he's referencing the Church Committee, but I think it could apply to what this Committee has done, as well—"of necessity, will cause some short-term damage to our intelligence apparatus. A responsible inquiry, as this has been, will, in the long run, result in a stronger and more efficient Intelligence Community.

"Such short-term inquiry will be outweighed by the long-term benefits gained from the restructuring of the Intelligence Community with more efficient utilization of our intelligence resources."

So, again, Mr. Brennan, I look forward to working with you to complete these tasks that we've outlined here today. In the long run, I have faith in the CIA like you have faith in the CIA that it will come out of this study stronger and poised to meet the 21st Century intelligence challenges that are in front of us. Thank you again for your willingness to serve.

Mr. BRENNAN. Thank you, Senator.

Chairman FEINSTEIN. Thank you, Senator Udall.

Senator Rubio.

Senator RUBIO. Thank you. Thank you, Mr. Brennan, for being here with us today, and congratulations on your nomination.

I wanted to ask, in the 2007 CBS interview, you said that information obtained in interrogations have saved lives. In September of 2011, you said in a speech at Harvard, that whenever possible, the preference of the administration is to take custody of individuals so that we could obtain information which is, quote, "vital to the safety and security of the American people."

So, obviously, you believe that interrogations of terrorists can give us information that could prevent attacks in the future?

Mr. BRENNAN. Absolutely agree.

Senator RUBIO. But you don't believe the CIA should be in the business of detention, correct?

Mr. BRENNAN. I agree.

Senator RUBIO. So, who should be?

Mr. BRENNAN. Well, there are a number of options—U.S. military, which maintains an active interrogation program, detention program; the FBI, as part of its efforts on counterterrorism; and our international partners, and working with them. And that's where, in fact, most of the interrogations are taking place of terrorists who have been taken off of the battlefields in many different countries.

Senator RUBIO. So there are active interrogations occurring?

Mr. BRENNAN. Absolutely, every day.

Senator RUBIO. Okay. About the foreign partners that you talk about, have you talked to folks in the CIA about their impressions of the quality of information we're getting from our foreign partners?

Mr. BRENNAN. Yes, on a regular basis.

Senator RUBIO. Would it surprise you to know that some of them have indicated to us repeatedly, over the last couple of years that I've been here, that the information we get directly is much better



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than anything we get from our foreign partners on some of these issues?

Mr. BRENNAN. Right. And that's why we work with our foreign partners so that we can have direct access to these individuals that have been detained.

Senator RUBIO. Well, I'll tell you why I'm concerned. Ali Ani al-Harzi—I think is how I pronounce his name—he's a suspect in the Benghazi attack, and the Tunisians detained him, correct?

Mr. BRENNAN. Yes, he was taken into custody by the Tunisians.

Senator RUBIO. Did we not ask for access to him, to be able to interrogate him and find out information?

Mr. BRENNAN. Yes. And the Tunisians did not have a basis in their law to hold him.

Senator RUBIO. So they released him?

Mr. BRENNAN. They did.

Senator RUBIO. Where is he? We don't know?

Mr. BRENNAN. He's still in Tunisia.

Senator RUBIO. That doesn't sound like a good system of working with our foreign partners.

Mr. BRENNAN. No, it shows that the Tunisians are working with their rule of law, as well—just the way we do.

Senator RUBIO. Well, we have someone who was a suspect in the potential in the attack on Benghazi. They didn't give us access to him and we don't have any information from him.

Mr. BRENNAN. We work with our partners across the board, and when they are able to detain individuals, according to their laws, we work to see if we can have the ability to ask them questions—sometimes indirectly and sometimes directly.

Senator RUBIO. So your point is that Tunisian law did not allow them to hold him, and therefore they let him go before we could get there to talk to him?

Mr. BRENNAN. And we didn't have anything on him, either, because if we did, then we would've made a point to the Tunisians to turn him over to us. We didn't have that.

Senator RUBIO. What role should the CIA play in interrogations?

Mr. BRENNAN. The CIA should be able to lend its full expertise, as it does right now, in terms of—in support of military interrogations, FBI debriefings and interrogations, and our foreign partner debriefings. And they do that on a regular basis.

Senator RUBIO. And so, what's the best setting to do that in? For example, if a suspected terrorist is captured, and we think we can obtain information from them, where would they go? Where do you suggest that they be taken, for example; what's the right setting for it?

Mr. BRENNAN. There are many different options, as far as where they go. Sometimes it is with—foreign partners, they put the individuals in their jails and in their detention facilities according to their laws, and people can access that.

We take people, as we've done in the past, and put them on naval vessels and interrogate them for an extended period of time.

Senator RUBIO. Okay. So you think that's the best setting—the naval vessel?

Mr. BRENNAN. No, I think—

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Senator RUBIO [continuing]. From our perspective, leaving aside the foreign partners for a second—for us.

Mr. BRENNAN [continuing]. I think each case requires a very unique and tailored response. And that's what we've done.

Whether somebody is picked up by a foreign partner, whether somebody is picked up on the high seas, or anywhere else, what we need to do is see what the conditions are, what we have as far as the basis for that interrogation, what type of legal basis we have for that. So it's very much tailored to the circumstances.

Senator RUBIO. When we detain a suspected terrorist, the purpose of the interrogation—and I think you'd agree with this statement—the purpose of an interrogation is to develop information that could be used to disrupt terrorist activities and prevent attacks, correct?

Mr. BRENNAN. Without a doubt.

Senator RUBIO. It's not to lay the case for a criminal conviction.

Mr. BRENNAN. Well, I think, you know, you want to take the person off the battlefield. You also want to get as much intelligence as possible. You don't just want to get the information from somebody and then send them off. You need to be able to do something with them. And we've put people away for 99 years—for life—so that, in fact, they're not able to hurt Americans ever again.

So, what you want to do is get that intelligence, but also, at the same time, put them away so that justice can be done.

Senator RUBIO. I understand. But the number one priority, initially, is not necessarily to protect the record for a criminal prosecution; it's to obtain timely information—

Mr. BRENNAN. Absolutely right.

Senator RUBIO [continuing]. So we can act correctly—

Mr. BRENNAN. Absolutely right.

Senator RUBIO. Priority number two is to take them off the battlefield to ensure they can't attack us in the future.

Mr. BRENNAN. Right. It's not an either-or, but I agree with you.

Senator RUBIO. Why shouldn't we have places where we interrogate people; for example, Guantanamo? Why shouldn't we have a place to take people that we obtain? Because is it not an incentive to kill them rather than to capture them, if we don't have a—

Mr. BRENNAN. No, it's never an incentive to kill them. And any time that we have encountered somebody, we have come up with, in fact, the route for them to take in order to be interrogated, debriefed, as well as prosecuted.

Senator RUBIO. So, where would we—but why is it a bad idea to have a place that we can take them to?

Mr. BRENNAN. It's not a bad idea. We need to have those places.

And again, sometimes it might be overseas, sometimes it might be a naval vessel, a lot of times it's back here in the States, where we bring someone back because we, in fact, have a complaint on them or an indictment on them, and then we bring them into an Article 3 process. And so we can elicit information from them and put them away behind bars.

Senator RUBIO. Is the Article 3 process, in your mind, an ideal way to develop this kind of information, or aren't there limitations in the Article 3 process?

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Mr. BRENNAN. I'm very proud of our system of laws here and the Article 3 process. Our track record is exceptionally strong over the past dozen years, couple dozen years; that so many terrorists have been, in fact, successfully prosecuted and will not—

Senator RUBIO. No, I understand, but in terms of—our first priority is to develop information—

Mr. BRENNAN. Absolutely; the FBI does a great job.

Senator RUBIO. But an Article 3 setting is not the most conducive to that.

Mr. BRENNAN. I would disagree with that.

Senator RUBIO. Well, they're immediately advised about not cooperating and turning over information that would incriminate them.

Mr. BRENNAN. No. Again, it's tailored to the circumstances. Sometimes an individual will be Mirandized. Sometimes they will not be Mirandized right away. Mirandizing an individual means only that the information that they give before then cannot be used in Article 3 court.

But, in fact, the FBI do a great job, as far as listing information after they're Mirandizing them, and so they can get information as part of that type of negotiation with them, let them know they can in fact languish forever, or we can in fact have a dialogue about it intelligently.

Senator RUBIO. Just one last point, and I'm not going to use all my—I only have a minute left.

This Harzi case that I talked about—you're fully comfortable with this notion that because the Tunisians concluded that they didn't have a legal basis to hold him, we now lost the opportunity to interrogate someone that could've provided us some significant information on the attack in Benghazi?

Mr. BRENNAN. Senator, you know, this country of America really needs to make sure that we are setting a standard and an example for the world, as far as the basis that we're going to, in fact, interrogate somebody, debrief somebody. We want to make sure we're doing it in conjunction with our international partners.

We also want to make sure that we have the basis to do it, so that we don't have to face, in the future, challenges about how we, in fact, obtained the—

Senator RUBIO. What is that law? You keep on talking about the basis of our law; what law exactly are you talking about in terms of the basis of detaining someone? When you say that we want to make sure that we have a basis to—because you said that—

Mr. BRENNAN. Well, that's right.

Senator RUBIO. Based on what? Which law are we talking about?

Mr. BRENNAN. Well, it all depends on the circumstance. Are we talking about law of war detention authority, which the U.S. military has? Are you talking about Article 3 authority that the FBI has?

Senator RUBIO. Right.

Mr. BRENNAN. The CIA does not have, by statute, any type of detention authority.

Senator RUBIO. The point I'm trying to get at is we don't—the truth of the matter is we don't know Harzi knew anything about the Benghazi attack.

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We don't know if he knew about future attacks that were being planned by the same people, because we never got to talk to him because Tunisia said their laws wouldn't let them hold him, which is an excuse we've heard in other parts of the world, as well.

And that doesn't concern you, that we don't—that we weren't able to obtain this information?

Mr. BRENNAN. We press our partners and foreign governments to hold individuals and to allow us access to it. Sometimes their laws do not allow that to happen. I think the United States government has to respect these governments' right to, in fact, enforce their laws appropriately.

What we don't want to do is to have these individuals being held in some type of custody that's extrajudicial.

Senator RUBIO. Okay, thank you.

Chairman FEINSTEIN. Thank you, Senator Rubio.

Senator WARNER.

Senator WARNER. Thank you, Madam Chairman. Thank you, again, Mr. Brennan, for your testimony today.

One of the things that I think we've heard from a number of my colleagues, and we had this discussion when we discussed the Committee's study on detention and interrogation, is, should you be confirmed, how do we ensure that the CIA director is always going to be well-informed?

And particularly, to a—we've questioned you today about a number of key sensitive programs. The nature of the Agency's work is that a lot of these programs are disparate, varied. And there needs to be some ability to measure objectively the success of these programs; not simply by those individuals that are implementing the programs.

And while this is not the setting to talk about any individual of these programs, I guess what I'm interested in is pursuing the conversation we started about how you might set up systems so that, to the best extent possible, as the CIA director, you're going to make sure what's going on, get an accurate, objective review, and not simply have the information that simply bucks up through the system?

Mr. BRENNAN. Yes, that's an excellent point, Senator—one that I'm very concerned about. In order to have objective measures of effectiveness, the metrics that you want to be able to evaluate the worth of a program, you cannot have the individuals who are responsible for carrying it out. As hard as they might try, they cannot help, I think, view the program and the results in a certain way. They become witting or unwitting advocates for it.

So what we need to do is to set up some type of system where you can have confidence that those measures of effectiveness are being done in the most independent and objective way. And that's one of the things that I want to make sure I take a look at, if I were to go to the Agency.

Senator WARNER. Again, the nature of so many programs—all very sensitive in nature; you have to have almost, as we discussed, probably not an IG type vehicle, something that is more run out of the director's office, but you've got to have some kind of red team that's going to be able to check this information out to make sure you've—so that you hear colleagues here press on what you have

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done, or could have done, or should have done, or if you had that oversight, you've got to have that objective information to start with.

Mr. BRENNAN. Absolutely. I tend to have a reputation for being a detailed person. And having been an analyst in an intelligence office for many years, I need to see the data. I cannot rely just on some interpretation of it. So, I do very much look forward to finding a way that the director's office can have this ability to independently evaluate these programs so that I can fairly and accurately represent them to you. I need to be able to have confidence, myself.

Senator WARNER. As you know—and we all know—our country is grappling with enormous fiscal challenges. And that means, well, national security remains our most essential requirement for our national government. Everything's going to have to be able to be done in a fiscally constrained period.

You know, how are you going to think about thinking through those challenges on where cuts, changes need to be made? And if you can specifically outline—one of the concerns that I have is, kind of, division of labor and appropriate roles between the CIA and the DoD SOCOM operations, fields where that kind of potential build-up in that capacity is—how do we get that done in these tight budget times?

If you could address both of those, I'd appreciate it.

Mr. BRENNAN. In a fiscally constrained environment, we have to make sure, more than ever, that every single dollar that's dedicated to intelligence is going to be optimized. And in fact, if sequestration kicks in, what I wouldn't want to do as CIA director is do the salami-slicing, which is, you know, five percent off the top of gross, all programs, because all the programs are not—

Senator WARNER. One of the reasons why we need to make sure sequestration—

Mr. BRENNAN. That's absolutely right, because it's going to have a devastating impact on the national security of this country.

And so, I would want to make sure, even if it doesn't happen in a fiscally constrained environment, that I look at the programs and prioritize. And we really have to take a look at what are those programs that we really need to resource appropriately.

As we're going to have—and we've had—some benefits from pulling folks out of Iraq, and with the continued draw down of forces in Afghanistan, there's going to be some resource and assets that we're going to have to reallocate there. So I'll look carefully at that.

So what I want to do is to make sure that if I go to CIA, I have an understanding about exactly how these monies are being spent. Then, as you point out, there is quite a bit of intelligence capability within the Defense Department, and I know there's been recent press reports about the Clandestine HUMINT Service—Defense Clandestine Service—and its work with, in fact, CIA.

I want to make sure these efforts are not redundant whatsoever. And I've had these conversations with Mike Morell, as well as with General Flynn over at DIA, to make sure that these efforts are going to truly be integrated and complementary, because we cannot have unnecessarily redundant capabilities in this government, par-

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ticularly in an environment that we have right now on the fiscal front.

Senator WARNER. I think this is an area that's going to need a lot of attention and a lot of oversight. I get concerned at times that the IC, on one hand, and the DoD on the other hand, think they're coming from separate originators of funding, and ultimately, they still have to be within the greater budget constraints.

Let me—I know my time is running down. Your background, and most of your expertise, has been on the CT side. Clearly, the challenge we've got is we see emerging threats in parts of the world that we're not on the front line, as we see disruptions particularly through the Middle East, where, perhaps in retrospect, we didn't have the right kind of coverage on social media and on to the streets.

How do we make sure we're going to get within the kind of fiscal constraints, that we don't go complete CT; that we make sure we've got the coverage we need, the capabilities we need, and the worldwide coverage we need, with your approach, particularly with your background; if you could address that.

Mr. BRENNAN. Well, clearly, counterterrorism is going to be a priority area for the Intelligence Community and for CIA for many years to come. Just like weapons proliferation is, as well. Those are enduring challenges. And since 9/11, the CIA has dedicated a lot of effort, and very successfully; they've done a tremendous job to mitigate that terrorist threat.

At the same time, though, they do have this responsibility on global coverage. And so, what I need to take a look at is whether or not there has been too much of an emphasis of the CT front. As good as it is, we have to make sure we're not going to be surprised on the strategic front and some of these other areas; to make sure we're dedicating the collection capabilities, the operations officers, the all-source analysts, social media, as you said, the so-called "Arab Spring" that swept through the Middle East. It didn't lend itself to traditional types of intelligence collection.

There were things that were happening in a populist way, that, you know, having somebody, you know, well positioned somewhere, who can provide us information, is not going to give us that insight, social media, other types of things.

So I want to see if we can expand beyond the soda straw collection capabilities, which have served us very well, and see what else we need to do in order to take into account the changing nature of the global environment right now, the changing nature of the communication systems that exist worldwide.

Senator WARNER. Thank you for that. I just would, again—back to my first point, and my time's about out—I think, should you be confirmed, that trying to make sure you've got that objective oversight, the ability to make sure that you have the best knowledge and best metrics possible so that when future challenges arise, you can come to this Committee and others and make sure that the President and this Committee is informed with the best information possible.

Thank you, Madam Chair.

Chairman FEINSTEIN. Thank you very much, Senator.



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Mr. Brennan, so you can be advised, we are not going to do the classified hearing following this. We will do it Tuesday at 2:30. We will, however, do another round just with five minutes per senator, so people can wrap up whatever it is they want to ask. I hope that is okay with you.

Mr. BRENNAN. Absolutely.

Chairman FEINSTEIN. Thank you. Thank you.

Senator Collins.

Senator COLLINS. Thank you.

Mr. Brennan, I want to follow up on an issue that several of my colleagues have raised on the issue of capturing a terrorist versus targeted killing of a terrorist.

In a recent speech that you gave at the Wilson Center, you said: "Our unqualified preference is to only undertake lethal force when we believe that capturing the individual is not feasible."

Yet, a study by The New American Foundation, as well as numerous press reports, indicates that in the first two years of President Obama's administration, there were four times the number of targeted killings, than in eight years of President Bush's administration. Is your testimony today that the huge increase in number of lethal strikes has no connection to the change in the Obama administration's detention policy?

Because obviously, if we're capturing a terrorist, we have the opportunity to interrogate that individual and perhaps learn about ongoing plots; but if the strike is done, that opportunity is lost. Are you saying today that it is totally unconnected to the Obama administration's shift in its detainee policy?

Mr. BRENNAN. I can say unequivocally, Senator, that there's never been occasion, that I'm aware of, where we had the opportunity to capture a terrorist and we didn't, and we decided to take a lethal strike. So, certainly, there is no correlation there as far as any type of termination of the CIA's detention and interrogation program and that increase in strikes.

Now, I will say that if you look out over the last four years, what happened in a number of places, such as Yemen, and other areas, was that there was, in fact, a growth of al-Qa'ida, quite unfortunately.

And so, what we were trying to do, in this administration, is to take every measure possible to protect the lives of American citizens, whether it be abroad or in the United States, as well as a maturation of capabilities and insight into those intelligence plots as a result of the investment that was made in the previous administration that allowed us, in this administration, to take appropriate actions.

Senator COLLINS. Well, let's talk further about the targeted killings. When the targeted killings began several years ago, the first-order effect of these operations was the elimination of the senior operational leadership of al-Qa'ida, many of the core leaders. Obviously, that is a critical priority.

We have heard both former CIA Director Michael Hayden, in an interview on CNN, and General McChrystal say that it is now changed, and that the impact of those strikes is creating a backlash.

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For example, General McChrystal said, "The resentment created by American use of unmanned strikes is much greater than the average American appreciates. They are hated on a visceral level, even by people who have never seen one or seen the effects of one."

He added that the targeted killings by remotely piloted aircraft add to the perception of American arrogance that says, "Well, we can fly where we want; we can shoot where we want, because we can."

And General Hayden has also expressed concerns, that now that the strikes are being used at the lower levels, arguably, that they are creating a backlash that is undermining the credibility of governments and creating new terrorists when a neighbor or family member is killed in the course of the operations.

Do you agree with General McChrystal and Director Hayden about the potential backlash from the strikes, from the targeted killings, at this point? I'm not talking about the initial strikes.

Mr. BRENNAN. I think that is something that we have to be very mindful of, in terms of what the reaction is to any type of U.S. counterterrorism activities that involve the dropping of ordnance anywhere in the world; absolutely. Whether it's a remotely piloted aircraft or whether it's a manned aircraft, I think we have to take that into account.

But I would not agree with some of the statements that you had quoted there, because what we, in fact, have found in many areas is that the people are being held hostage to al-Qa'ida in these areas and have welcomed the work that the U.S. Government has done with their governments to rid them of the al-Qa'ida cancer that exists.

Senator COLLINS. Finally, today, this Committee received the OLC memos describing the legal justifications that many of us, particularly those who have been on the Committee far longer than I, have been seeking for some time. And I, too, spent a large part of this morning reading them.

Yet the Obama administration within months of taking office released several OLC memos describing the legal justification for the treatment of terrorist detainees that were held in U.S. custody.

Do you think it was appropriate that a different standard was applied to the release of the memos from the Bush administration than those produced by the Obama administration?

Mr. BRENNAN. Well, respectfully, Senator, I don't think it was a different standard. Not being a—

Senator COLLINS. Well—

Mr. BRENNAN [continuing]. A lawyer—

Senator COLLINS. Well, one was released within four months—

Mr. BRENNAN. Right.

Senator COLLINS [continuing]. Of the Obama administration taking office.

Mr. BRENNAN. Right.

Senator COLLINS. The other had been requested for a very long—much longer time.

Mr. BRENNAN. Right.

Senator COLLINS. And released only today.

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Mr. BRENNAN. I'm not a lawyer. I've come to learn the term *sui generis*, which means that, you know, it has obviously unique circumstances surrounding it.

The OLC memos that were released shortly after the President came into office—they were released because the program was terminated. It was no longer in existence. OLC—Office of Legal Counsel—opinions that deal with ongoing activities, ongoing programs—it's a different animal.

And, therefore, I think those decisions were looked at in a much, sort of, different way because of those *sui generis* circumstances.

Senator COLLINS. Well, I would say to you that both are absolutely essential to the ability of Congress to carry out its oversight responsibilities.

Finally, the Intelligence Reform Act and Terrorism Prevention Act of 2004, with which you're very familiar, and of which I was a co-author, requires the Director of National Intelligence to recommend who the CIA director should be to the President of the United States.

I'm aware of General Clapper—the DNI's letter endorsing your nomination, but that's different from his actually recommending to the President that you be chosen. To your knowledge, did General Clapper recommend to the President that you be nominated for this position?

Mr. BRENNAN. I know for certain that he made a recommendation to the President, but I would defer to General Clapper to tell you what that recommendation is.

Senator COLLINS. Thank you.

Chairman FEINSTEIN. Senator Heinrich.

Senator HEINRICH. Thank you, Madam Chair.

Mr. Brennan, let me join my colleagues in thanking you for your service to your country and welcoming you to the Committee. And should you be confirmed, I'd like to start by just inviting you to visit New Mexico at some point, and in particular, Sandia and Los Alamos National Labs. Because, while you often don't hear about the contributions that they make to our Intelligence Community, I can assure you that that support is vital to keeping our nation safe.

I've got a few questions, and please forgive me if some of these return to some of the things you've heard from other senators. I want to start with your November 2007 interview with CBS News, where you said: "There has been a lot of information that has come out of these interrogation procedures that the Agency has, in fact, used, against the real hard-core terrorists. It has saved lives."

Other intelligence officials went a lot further than that in defending the use of so-called "enhanced interrogation techniques" at the time, and some still do.

If your review of the Committee study convinces you that these techniques did not, in fact, save lives, I'd like to ask—will you be as public in condemning the program as you were in its defense; in other words, will you set the record straight?

Mr. BRENNAN. I will do whatever possible to make sure that the record is straight and that I speak fully and honestly on it.

Senator HEINRICH. I want to return to a question that Mr. Udall asked you. Would you object—and if so, why—to a public release of a truly declassified version of the Committee's report?

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Mr. BRENNAN. Senator, I would give such a request for declassification every due consideration. There is a lot of information and material in those volumes with a lot of potential consequences, as far as its public release. And at the same time that we have a commitment to transparency, we also, though, have a tremendous commitment to making sure that we keep this country safe by protecting its secrets.

There are a lot of equities as far as liaison partners, other types of things, operational activities, maybe source and method, so it has to be looked at very, very carefully.

Senator HEINRICH. Well, I would just say I agree with you that sources and methods, and many of the operational details, absolutely should never be declassified, but there's some basic principles, I think, in that report that I think it's going to be very important for history to be able to judge. And I would urge you to look closely at that.

Senator Levin asked about waterboarding. Let me follow up a little bit. In November 2007 interview with CBS News, you were asked if waterboarding was torture, and you said, "I think it is certainly subjecting an individual to severe pain and suffering, which is the classic definition of torture. And I believe, quite frankly, it's inconsistent with American values and it's something that should be prohibited." Is that still your view?

Mr. BRENNAN. Yes, Senator, it is.

Senator HEINRICH. Thank you. Do you believe that all agencies of the United States Government should be held to the interrogation standards that are laid out in the Army Field Manual, as currently required by Executive Order 13491? And do you support efforts to codify those requirements into law?

Mr. BRENNAN. The Army Field Manual certainly should govern the U.S. military's detention and interrogation of individuals.

The FBI has its own processes and procedures and laws that govern its activities. So, what I wanted to do is to make sure that, you know, appropriate sort of attention is paid to FBI as opposed to the military.

Senator HEINRICH. I understand. Back in 2006, you were part of an online discussion with The Washington Post, and you suggested at that time that the director of the CIA should have a set five-year term, like the FBI director, to guarantee "the absolute need for independence, integrity, and objectivity in the senior ranks of our Intelligence Community."

Given that you will instead serve at the pleasure of the President, how do you maintain your independence?

Mr. BRENNAN. Having grown up in the intelligence business for 25 years, I truly understand the importance and value of maintaining independence, subjectivity, and integrity of the intelligence process.

I know when I've sat in the White House Situation Room and when I've looked to the intelligence briefer, that if they were to advocate in any way a policy preference, it really calls into question the independence, subjectivity, and basis of that intelligence. I want them to give me the facts as it is, irrespective of what their policy leanings or preferences might be, because policymakers need to do that.

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So, in order for me to maintain my integrity as an intelligence professional, as I would go to the President or the Secretaries of State or Defense, or into the National Security Council meetings, I would need to make sure I can say it straight, give it straight, and let the policymakers determine exactly the best course of action.

Senator HEINRICH. Thank you.

One last question: I believe it was during that same online discussion with Washington Post, you said, quote, "I think that there is an effort underway to get the CIA to adapt to the new realities of the Intelligence Community. The CIA has resisted many of these changes, which has been a problem. It's time to move forward."

What exactly did you mean, and has the CIA made progress in that direction?

Mr. BRENNAN. Well, Senator, a credit to you and your staff for pulling up that Washington Post online interview because I had not, you know, read that or thought about that in a while. And I must say that having grown up in the Agency for 25 years, as I said in my testimony, I have tremendous respect for that organization. It is exceptionally capable; competent.

But almost by dint of the nature of its work, it also at times is insular. And it has not interacted and interoperated the way it needs to with the rest of the Intelligence Community, the rest of the U.S. Government. At times, that is to protect source and methods and to protect the secrets that it has.

But given the changes in the environment, given the changes in the nature of our government, the CIA needs to play a part in this larger role. And so, now, the head of the CIA does not sit on top of the Intelligence Community; it is part of a larger Intelligence Community that is led by the Director of National Intelligence.

So, my objective would be to make sure CIA's capabilities are truly going to be leveraged and empower the—the responsibilities, the missions of the rest of the government. The Department of Homeland Security is a new creation. They need intelligence just like others do as well.

So, what I think I was conveying there is that, you know there was resistance at the time of the IRTPA, as we well know, that they didn't want to sort of break some of the past practices. Well, I think a lot of that resistance is overcome and now I think CIA sees the benefits of having somebody that can sit on top of the Community, and not have to sit on top of the Agency, as well.

Senator HEINRICH. That's very helpful. Thank you very much.

I yield back, Madam Chair.

Chairman FEINSTEIN. Thank you very much, Senator.

Senator King.

Senator KING. Thank you for your testimony and your stamina today.

First, I should tell you that in an earlier hearing today, Secretary Panetta was testifying before the Armed Services Committee. And, in answer to a question, he strongly endorsed your nomination. And I think the record should show that—that Secretary Panetta was very complimentary of your capabilities and experience.

Secondly—and this isn't really a question—it's incredibly important for the CIA to be totally open with this Committee. The reason

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is that there's no one else watching. Typically in our country, the public is involved. The press is involved. There are a lot of people that have access to information of what the Department of Commerce is doing, or the Department of State.

This is a unique situation, where this Committee and a comparable committee in the House are the only places that are really paying attention, in terms of our separation of powers. So it's not just nice to have that kind of openness; I think it's critically important. And I hope you subscribe to that view.

Mr. BRENNAN. Absolutely; I do, Senator.

Senator KING. Just briefly, and I think Senator Warner touched on this—going forward, there needs to be some serious discussion with the Department of Defense about where the CIA ends and the Department of Defense starts, in terms of counterterrorism activities and operations.

And I don't need to pursue that, but I think Senator Warner raised an important point, because in this day and age, we just can't be duplicating a whole set of capabilities and priorities and officers and procedures and everything else.

I take it you subscribe to that?

Mr. BRENNAN. I do agree, Senator, and I look forward, in a closed session, to talking to you about some specific areas where I really do believe that Defense-CIA relationship and integration of effort is critically important to the safety and security of this nation.

So again, redundant—mindful of not having any type of redundant capabilities or waste resources, we need to make sure that we can leverage the capabilities that exist in both organizations for the good of this country.

Senator KING. And the area I want to spend a little bit of time on is the drone policy, and particularly as it relates to American citizens. There's a lot of law and history involved in our system of checks and balances. James Madison famously, in the 51st Federalist, said: "If people were angels, we wouldn't need a government, and if the government was run by angels, we wouldn't need checks and balances."

He concluded that angels were in as short supply then as they are today. And therefore, we need these kinds of checks and balances.

The Fifth Amendment is pretty clear: no deprivation of life, liberty or property without due process of law. And we're depriving American citizens of their life when we target them with a drone attack. Now, I understand that it's under military circumstances; these are enemy combatants and all of those kinds of things. But I would like to suggest to you that you consider—and Madam Chairman, I'd like to suggest to the Committee that we consider—a FISA court-type process where an American citizen is going to be targeted for a lethal strike.

And I understand you can't have co-commanders in chief, but having the Executive being the prosecutor, the judge, the jury, and the executioner, all in one, is very contrary to the traditions and the laws of this country, and particularly in a situation where there's time. If—a soldier on a battlefield doesn't have time to go to court, but if you're planning a strike over a matter of days, weeks or months, there is an opportunity to at least go to some-



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thing outside of the Executive Branch body, like the FISA court, in a confidential and top-secret way, make the case that this American citizen is an enemy combatant, and at least that would be—that would be some check on the activities of the Executive.

I have great confidence in you. I have great confidence in President Obama. But all the lessons of history is it shouldn't matter who's in charge, because we should have procedures and processes in place that will protect us no matter who the people are that are in the particular positions.

How do you react to this suggestion?

Mr. BRENNAN. Senator, I think it's certainly worthy of discussion. Our tradition—our judicial tradition is that a court of law is used to determine one's guilt or innocence for past actions, which is very different from the decisions that are made on the battlefield, as well as actions that are taken against terrorists, because none of those actions are to determine past guilt for those actions that they took.

The decisions that are made are to take action so that we prevent a future action, so we protect American lives. That is an inherently Executive Branch function to determine, and the Commander-in-Chief and the Chief Executive has the responsibility to protect the welfare, well-being of American citizens.

So the concept I understand and we have wrestled with this in terms of whether there can be a FISA-like court, whatever—a FISA-like court is to determine exactly whether or not there should be a warrant for, you know, certain types of activities. You know—

Senator KING. It's analogous to going to a court for a warrant—probable cause—

Mr. BRENNAN. Right, exactly. But the actions that we take on the counterterrorism front, again, are to take actions against individuals where we believe that the intelligence base is so strong and the nature of the threat is so grave and serious, as well as imminent, that we have no recourse except to take this action that may involve a lethal strike.

Senator KING. I completely agree with you, and I understand the dilemma. And I'm not trying to suggest anything that would limit our ability to take action on behalf of American citizens. I would just feel more comfortable if somebody other than a Member of the Executive said, "Yes, we agree that the evidence is so strong," et cetera, as you stated it.

In the Hamdi decision, Sandra Day O'Connor had a wonderful statement: "A state of war is not a blank check for the President when it comes to the rights of the nation's citizens."

Mr. BRENNAN. Right. And that's why I do think it's worthy of discussion. And the point particularly about due process really needs to be taken into account because there's not a different standard as far as if a U.S. citizen joins al-Qa'ida, you know, in terms of the intelligence base or whatever. But American citizens by definition are due much greater due process than anybody else by dint of their citizenship.

So I think this is a very worthwhile discussion. I look forward to talking to the Committee and others about it. What's that appro-

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appropriate balance between Executive, Legislative, and Judicial Branch responsibilities in this area?

Senator KING. I appreciate your consideration and, again, appreciate your testimony today. And thank you for your service to the country.

Madam Chairman, I yield back my time.

Chairman FEINSTEIN. Thank you very much, Senator.

We'll do another quick round. I think one of the problems is now that the drone program is so public, and one American citizen is killed, people don't know much about this one American citizen—so-called. They don't know what he's been doing. They don't know what he's connected to. They don't know the incitement that he has stirred up.

And I wonder if you could tell us a little bit about Mr. al-Awlaki and what he had been doing?

Mr. BRENNAN. Well, Senator, I'm not going to talk about any particular operation or responsibility on the part of the U.S. Government for anything—

Chairman FEINSTEIN. See, that's the problem. That's the problem. I think when people hear "American citizen," they think somebody who's upstanding; this man was not upstanding, by a long shot. And now, maybe you cannot discuss it here, but I've read enough to know that he was a real problem.

Mr. BRENNAN. Well, I can talk about Mr. al-Awlaki.

Chairman FEINSTEIN. And if you were in jeopardy; that's right.

Mr. BRENNAN. Yes, and before he died he was intimately involved in activities that were designed to kill innocent men, women, and children, and mostly Americans. He was determined to do that. He was not just a propagandist. He was, in fact, part of the operational effort that is known as al-Qa'ida in the Arabian Peninsula and had key responsibilities in that regard.

Chairman FEINSTEIN. Can I ask you some questions about him?

Mr. BRENNAN. You're the Chairman.

Chairman FEINSTEIN. You don't have to answer. Did he have a connection to Umar Farouk Abdulmutallab, who attempted to explode a device on one of our planes over Detroit?

Mr. BRENNAN. Yes, he did.

Chairman FEINSTEIN. Could you tell us what condition it was?

Mr. BRENNAN. I would prefer not to at this time, Senator. I'm not prepared to.

Chairman FEINSTEIN. Okay. Did he have a connection to the Fort Hood attack?

Mr. BRENNAN. That is al-Qa'ida in the Arabian Peninsula has—a variety of means of communicating and inciting individuals, whether that be websites, or e-mails, or other types of things. And so there are a number of occasions where individuals, including Mr. al-Awlaki, have been in touch with individuals. And so, Senator, again, I'm not prepared to address the specifics of these, but suffice it to say—

Chairman FEINSTEIN. I'll just ask you a couple questions. Did Faisal Shahzad, who pled guilty to the 2010 Times Square car bombing attempt, tell interrogators in 2010 that he was inspired by al-Awlaki?

Mr. BRENNAN. I believe that's correct, yes.

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Chairman FEINSTEIN. Last October, al-Awlaki—did he have a direct role in supervising and directing AQAP's failed attempt, well, to bring down two United States cargo aircraft by detonating explosives concealed inside two packages, as a matter of fact, inside a computer printer cartridge?

Mr. BRENNAN. Mr. al-Awlaki was involved in overseeing a number of these activities. Yes, there was a relationship there.

Chairman FEINSTEIN. And was it true that they were so concealed that the first attempt to find and did not reveal them? It took an asset coming back with—to say, "Go again, look at this," to find it?

Mr. BRENNAN. Yes the concealment method that was used in that was one of the best we had ever encountered.

Chairman FEINSTEIN. So, Mr. al-Awlaki is not, by far, an American citizen of whom anyone in America would be proud?

Mr. BRENNAN. Mr. al-Awlaki was part of al-Qa'ida, and we're at war with al-Qa'ida, and it was his strong determination to kill Americans on behalf of al-Qa'ida.

Chairman FEINSTEIN. Thank you.

Is it true that in the last four years, the FBI has arrested 100 people, either planning, conspiring, or trying to commit a terrorist attack on this nation?

Mr. BRENNAN. I don't know the exact number, Chairman, but yes—they have arrested a lot of people.

Chairman FEINSTEIN. It's over 100, but they have arrested a lot of people, and that's because of good, sound intelligence.

I think—and this is just me—what people forget is that they will kill us if they can, and it's extraordinarily difficult if you can't get in to where they were hiding. Would it have been possible to have arrested Mr. al-Awlaki where he was, in Yemen?

Mr. BRENNAN. It is—there are parts of Yemen that are ungoverned and beyond the reach of the Yemeni government security and intelligence services. And we work very closely with the Yemenis to see if we can arrest, detain, individuals. Whenever we can, we want to do that, because it's very valuable for us.

Any actions that are taken in concert with the Yemeni government are done—in terms of any type of strikes that we might engage there with them—are done only because we do not have the ability to bring those individuals into custody.

Chairman FEINSTEIN. Thank you. My time is up.

Senator Chambliss.

Vice Chairman CHAMBLISS. Thanks, Madam Chair.

In 2002, what was your knowledge of interrogation videotapes about Abu Zubaydah, and did you seek any information about an Office of General Counsel review of them in 2002?

Mr. BRENNAN. I don't have a recollection of that, Senator.

Vice Chairman CHAMBLISS. Of the tapes, or that request?

Mr. BRENNAN. At the time, in 2002, I do not know what my involvement or knowledge was at the time of the tapes. I believe that they—I was aware of the Abu Zubaydah debriefings and interrogation sessions being taped.

Vice Chairman CHAMBLISS. Okay, it should be no surprise that many Members have been dissatisfied with the administration's cooperation on the Benghazi inquiries.

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For example, Senator Graham asked Director Clapper, in a hearing, if he was aware of the series of attacks in Benghazi, in the summer of 2012, and asked if he had informed the President about those attacks. Now, that seemed like a perfectly reasonable question, and the DNI said he would get us an answer.

When we got answers back from the DNI's office, there was a notation next to this particular question that Senator Graham asked, and here's what it said, and I quote, "Per NSS"—that's the National Security Staff—"No response required."

Mr. Brennan, that's your shop; do you have any knowledge about why Senator Graham's question was not to be answered?

Mr. BRENNAN. Senator, I think there's a longstanding tradition, understanding, of respecting the executive privilege that exists in the Office of the Presidency, and in terms of what information is provided to the President, or advice, counsel, to him.

So it's—I would suspect, then, that that question gets into this issue of the executive privilege, which I think, again, has been a longstanding tradition.

Vice Chairman CHAMBLISS. Now, are you sure that's the answer, or you think that's probably what it was?

Mr. BRENNAN. I don't know, firsthand, because that would not been a request coming to me.

Vice Chairman CHAMBLISS. And I understand that, so my direction to you—what I'll ask of you—is that you go back and review that; we'll get you notation if necessary, and if you could just give us a written response to that, if possible.

Mr. BRENNAN. You deserve a response, certainly.

Vice Chairman CHAMBLISS. This weekend, Secretary Panetta confirmed that information that led to bin Laden came from detainees and the CIA's EIT program. His account comports with information we were provided immediately after the raid, and in months to follow, from the CIA analyst who actually tracked down bin Laden. These analysts told us it was detainee information that was key to them finding the courier and, ultimately, bin Laden.

Now, were you briefed by any of the analysts who tracked down bin Laden?

Mr. BRENNAN. Before the operation?

Vice Chairman CHAMBLISS. Yes.

Mr. BRENNAN. Oh, absolutely; I was engaged with them.

Vice Chairman CHAMBLISS. Okay. And is that the information that was given to you—that it came from interrogation of detainees on whom EITs had been used?

Mr. BRENNAN. I don't recall if I was given that information specifically. They talked about the chain of, sort of, collection that took place that was related to some of the information coming from the detainees. Yes, so, there was some there.

Vice Chairman CHAMBLISS. Do you agree with Secretary Panetta's comments?

Mr. BRENNAN. That there was some information that came out from there?

Vice Chairman CHAMBLISS. Yes, that led to the courier.

Mr. BRENNAN. Senator, I now, again, looking at this document from SSCI, this report, I don't know what the facts are, or the truth is. So I really need to look at that carefully and see what

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CIA's response is because the SSCI report calls into question whether or not any of the information was unique and led to it.

Vice Chairman CHAMBLISS. Fair enough. Suffice it to say, Secretary Panetta's comments are in direct conflict with the report that came out of this Committee recently. And you know I have serious concerns about that interrogation study that was voted out by Committee.

Now, you told me a couple of days ago when we met that the study "was not objective," and it was "a prosecutor's brief, written with an eye toward finding problems." And you went on to say that you're withholding judgment on the merits and action until you read the response.

And it's my understanding, from what you've said, that that's what you're going to do. Suppose the CIA takes the position that the study's findings and conclusions are wrong? I think I know John Brennan well enough to know that you're going to stand up and say whatever's on your mind, and whatever you conclude. And I'm not going to ask you for a response to that, but I know you'll review it with an open mind and give us your thoughts and your opinions about the CIA's response to it and how we move forward with this.

Mr. BRENNAN. I assure you, Senator, I will do that.

Vice Chairman CHAMBLISS. Thank you very much.

Chairman FEINSTEIN. Thank you very much, Senator.

Senator Wyden.

Senator WYDEN. Thank you.

Chairman FEINSTEIN. Oh, excuse me—Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Madam Chair.

I was just making a comment to the Chair, Mr. Brennan, that I've been through a whole lot of confirmation hearings in 28 years here—and including quite a few CIA directors—and I quite honestly do not recall anybody who was more forthright, more direct, more accommodating, without violating who you are, more open to the possibility of working with this Committee in a way that will do two things: one, that will give the folks at CIA, who probably constantly worry about what is the next awful thing that we're going to say about them—but that's not our intention, because we're into the business of problem-solving, and if we have to write a 6,000-page thing, it isn't fun for us; we're trying to solve a problem.

I have a feeling you understand that. I have a feeling that you feel that the CIA, if they felt that they were working in—you know, with some contention with the oversight committee in the Senate, but, nevertheless, that the Senate was involved, was informed, was interested; that this would be something that they would welcome; that there are a lot of people who've been at the CIA for quite a while who may be sort of stuck in that mid-rank crisis, et cetera, who are looking for an open, fresh, strong leader.

I happen to think you are that leader. I've felt that since our conversation. I felt that from before our conversation. And we haven't had our secret meeting yet, so I always—but I'm not going to—I'm sure I'm not going to change my mind.

I just think you've done an extraordinary job of patience, of courtesy, of wisdom, of being able to—the only question that you

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couldn't answer that I'm aware of was who was it that took notes at some meeting that you had, teleconference that you had 20 years ago. But I find it in my heart to forgive you for that.

So, to me, I think you're a terrific leader, and I'll look forward to Tuesday. But I think you're the guy for the job—and the only guy for the job.

Mr. BRENNAN. Thank you, Senator, for those very kind words. And I haven't lived up to them yet. And if I were to go to CIA, as I think some people have said—some Senators have said, you want to hear not just words, but you want to actually see the actions.

It's a daunting task to go over to CIA. I want every Member of this Committee to be an ardent advocate, proponent, and defender of the men and women of the Central Intelligence Agency. And I see it as my obligation to represent them to you on their behalf, so that when times get tough, and when people are going to be criticizing and complaining about the CIA, I have all of you to say you knew about what the CIA was doing, you supported it, and you will defend it.

Chairman FEINSTEIN. Senator Burr.

Senator BURR. Thank you, Chairman.

I'm going to try to be brief because I've noticed you're on your fourth glass of water, and I don't want to be accused of waterboarding you.

[Laughter]

Senator BURR. Mr. Brennan, with the exception of our request for the Presidential Daily Briefs around the time of Benghazi, for which there was executive privilege claimed, do you know of any other claim of executive privilege on any of the documents that this Committee's waiting on right now?

Mr. BRENNAN. Senator, I know that there are requests for some e-mails that might have taken place between the Intelligence Community and the White House, whatever, and so there are a number of, sort of, elements that I think people are looking at. So—

Senator BURR. But none that executive privilege have been claimed on. Correct?

Mr. BRENNAN. Well, I am not in a position to say that, Senator, and I would defer to those individuals—the White House counsel and others—to make those determinations about what they want to—

Senator BURR. Well, let me say it from this end. They have not justified not producing those documents based upon executive privilege. So I assume if they're going to claim it, then they need to claim it quick.

On January 13th of this year, the President signed into law the 2013 Intelligence Authorization Act, which requires congressional notification of any authorized disclosure of national intelligence.

Now, we've not received any notifications of authorized disclosures. Have there been any authorized disclosures, to your knowledge?

Mr. BRENNAN. I would like to say that since you haven't received any notifications, there haven't been.

Senator BURR. Would you consider the information reported in the press about the counterterrorism playbook an authorized disclosure?



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Mr. BRENNAN. I don't know which piece you're talking about. There's been a lot of discussion out there in the media and in the newspapers about this.

And so I don't know specifically about any classified information. The fact that the administration may be going through a process to try to institutionalize, codify, make as rigorous as possible our processes and procedures in and of itself is not a classified issue.

So those details that are classified, I don't know of any that came out in some of those reports.

Senator BURR. Well, if there is classified information that's out there, and it was not authorized, was there a crime report filed relative to the playbook?

Mr. BRENNAN. Presumably there was, Senator. Those decisions, as far as initiating criminal investigations, are done by those departments and agencies that have stewardship of that classified information and in discussions with the Department of Justice to make a determination whether or not in light of the fact that maybe so many people have access to it, how they can proceed with some type of criminal investigations.

Senator BURR. As we prepare for the closed hearing on Tuesday—this is not a question—I'll ask you today that you be prepared to provide for the Committee any specific discussions that you had where you were authorized to reveal classified information or to talk about information on covert action.

Again, not something I'd like to do today. The answer may be zero. If there are things, Tuesday would be an opportunity for you to provide. That was a pre-hearing question from the Committee that was unanswered.

My last question is this: I'm still not clear on whether you think the information from CIA interrogations saved lives. Have you ever made a representation to a court, including the FISA court, about the type and importance of information learned from detainees, including detainees in the CIA detention and interrogation program?

Mr. BRENNAN. First of all, on the first part of your question, that you're not sure whether or not I believe that there has been misinformation, I don't know—

Senator BURR. I said I wasn't clear whether I understood, whether I was clear.

Mr. BRENNAN. And I'm not clear at this time, either, because I've read a report that calls into question a lot of the information that I was provided earlier on my impressions.

When I was in the government as the head of National Counterterrorism Center, I know that I had signed out a number of affirmations related to the continuation of certain programs based on the analysis and intelligence that was available to analysts. And I don't know exactly what it was at the time, but we can look at that.

Senator BURR. But the Committee can assume that you had faith—if you make that claim to a court, including the FISA court—you had faith in the documents and in the information that was supplied you to make that declaration?

Mr. BRENNAN. Absolutely. At the time when, if I made any such affirmation, I would have had faith that the information I was provided was an accurate representation.

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Senator BURR. Thank you very much, Madam Chairman.

Chairman FEINSTEIN. Senator Wyden.

Senator WYDEN. Thank you, Madam Chair.

We have talked for several hours now about the question of targeted killings of Americans, and you've heard it from a number of Senators. And I'd like to get your reaction on one point in particular. And that is this question, particularly in the context that you've given, that you've tried to focus in areas where the evidence is substantial, the threat is imminent, where there is a particularly persuasive case that the targeted killing of an American is warranted.

In that kind of case, do you believe that the President should provide an individual American with the opportunity to surrender before killing them?

Mr. BRENNAN. Senator, I haven't spoken about any specific operations—

Senator WYDEN. I'm talking about the concept—

Mr. BRENNAN. Right.

Senator WYDEN [continuing]. Because you talk about the concept.

Mr. BRENNAN. Right. Absolutely.

Senator WYDEN. You said imminent threats, serious evidence, grave concern; certainly words that strike a chord with me. And that's why I'd be interested in your thoughts on whether, in those kind of instances, the President ought to give—should give—an individual American the opportunity to surrender.

Mr. BRENNAN. Right. I think in those instances, and right now, let's use the example of al-Qa'ida, because if an American were to join al-Qa'ida, we have routinely said—openly, publicly, and repeatedly—that we're at war with al-Qa'ida. We have repeatedly said that al-Qa'ida is in fact trying to kill Americans, and that we are going to do everything possible to protect the lives of American citizens from these murderous attacks from al-Qa'ida.

We have signaled this worldwide. We have repeatedly said it openly and publicly. Any American who joins al-Qa'ida will know full well that they have joined an organization that is at war with the United States and that has killed thousands upon thousands of individuals, many, many of them who are Americans.

So I think any American who did that should know well that they, in fact, are part of an enemy against us, and that the United States will do everything possible to destroy that enemy to save American lives.

Senator WYDEN. And I certainly—and I said this at the very beginning—I certainly want to be part of that effort to fight al-Qa'ida on all of these key fronts. I just want to have some answers—and I'll give you another chance—whether you think the President should give an individual American the opportunity to surrender.

I think that Senator King, for example, talked about the idea of a new court, and there are going to be colleagues that are going to talk about a whole host of ideas. And I commend you for saying that you're open to hearing about that.

This is something that can be set in motion, I think, in a straightforward way, as a general principle. We're not talking about any one individual. And I think you've answered the ques-

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tion, and I won't go any further, unless you want to add anything to it.

The only other point I'd say is we've covered a lot of ground today. And as far as I'm concerned, we've got a lot of ground still to cover. I've made it clear that we've got to see any and all of those legal opinions, the ones that the bipartisan group of senators asked for, before the vote. And to your credit, you said you'd take the message back to the White House.

Because what it really goes to, Mr. Brennan, is this question of checks and balances—and we probably didn't use that word enough this afternoon—because I think that's really what this is all about. Our Constitution fortunately gives the President significant power to protect our country in dangerous times.

But it is not unfettered power; it's power that is balanced through this special system that ensures congressional oversight and public oversight. And so that's why these questions that I and others have been trying to get at, in terms of congressional oversight, being able to get all of the opinions that are relevant to the legal analysis for targeting Americans, and then to learn more about how you're going to bring the public into the discussion.

And certainly you've been patient this afternoon, and I want you to know I think we've covered a lot of ground, but I think we've got a lot to go. And I'd be happy to give you the last word. I've got a little more time if you want it.

Mr. BRENNAN. Thank you, Senator. First of all, any member of al-Qa'ida, whether a U.S. citizen or non-U.S. citizen, needs to know that they have the ability to surrender, the right to surrender, anytime, anywhere throughout the world. And they can do so before the organization is destroyed. We will destroy that organization. And again, out there in al-Qa'ida, U.S. citizens and others, they can surrender anytime, turn themselves in.

Senator WYDEN. Just on that point, I don't take a backseat to anybody, in terms of fighting al-Qa'ida. That was why I came out with it right at the outset. But I asked you a different question, and on the question of what kind of evidence ought to be applied, whether there ought to be geographic limits, the question of whether an individual should be allowed to surrender. For—for example, there is I think also a question whether the obligation changes if, you know, a valid target has not been publicly reported.

So there are issues, you know, here. And I think we're going to have to continue those—those discussions.

And Madam Chair, I thank you for this extra round.

Chairman FEINSTEIN. Thank you.

Senator Coats.

Senator COATS. Thank you, Madam Chairman.

John, I want to just say, and I'm not going to go into it here—I think it may be better held for further discussion next week in a classified room—but this whole idea of leaks—nothing upsets me more on this Committee, and we've had a raft of these in the last couple of years, than to see something that was discussed in classified area written up the next day in the newspapers or on the part of the media. It drives some of us crazy. It does me, anyway.

And so, maybe I'm a little paranoid about all this, and so forth. I just can't totally get my hands around this AQAP situation that

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we discussed earlier. But I'm going to defer that until Tuesday so we can discuss it in more detail.

Let me just ask you one question here. You said—I don't have the date—"The al-Qa'ida core has been decimated in the FATA." And we're aware of the significant efforts we've made and the progress we've made in that regard. But we see this thing metastasizing now across northern Africa and other parts.

What's your, you know, latest assessment of al-Qa'ida, in terms of its control and operation of these smaller efforts that are popping up like a whack-a-mole machine in different parts of the Middle East and North Africa?

Mr. BRENNAN. Well, Senator, you used the exact right term when you said al-Qa'ida has been metastasizing in different parts of the world. We have the al-Qa'ida core that, in the past, I think exerted quite a bit of orchestration or order over a number of these franchises that have developed.

Now, as a result of the decimation of the core, and our ability to interrupt a lot of the interaction and communication between them, a lot of these different elements, like al-Qa'ida in the Arabian Peninsula, al-Qa'ida in the Islamic Maghreb, and other elements, have grown up and developed as a result of the domestic and local sort of environment.

And so they're all sort of, you know, unique unto themselves. They have different features and characteristics. We need to make sure that we're able to work with the governments and the intelligence and security services in the area so that we can put as much pressure on them as possible.

A number of them have, you know, local agendas. Some of them have local agendas as well as international agendas. Al-Qa'ida in the Arabian Peninsula in Yemen has a very determined insurgency effort underway in side of Yemen to try to, you know, bring that government down. And the government has done a great job, you know, fighting back.

There are other elements—al-Qa'ida in Islamic Maghreb. You know, they're counter-narcotics—they're narcotics smugglers. They're human traffickers. They involve quite a bit in kidnapping and ransoms, and also involve in tourist attacks.

So, what we need to do is to take into account what the environment is, who we can work with, and how we're going to put pressure on them. But any element that is associated with al-Qa'ida has, as part of its agenda, death, and destruction. And so, I fully agree what we need to do is be mindful of the metastasization of the al-Qa'ida cancer.

Senator COATS. But in relationship to some kind of centralized control over all these things, having said that, the core is decimated.

Mr. BRENNAN. It really varies, you know. We do see al-Qa'ida core trying to exert some control over some of these elements. There's a lot of independence of effort, you know, autonomous efforts that are underway. And I'd be happy to be able to talk in, you know, closed session about the particular relationships that exist between al-Qa'ida and some of these other elements.

Senator COATS. Very good. Thank you.

Thank you, Madam Chairman.

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Chairman FEINSTEIN. Thank you very much, Senator.

Senator COLLINS. Last, but far from least.

Senator COLLINS. Thank you. Thank you, Madam Chairman.

Mr. Brennan, I want to follow up on the point that Senator Coats just raised with you, because if you looked at a map back in 2001, you would see that al-Qa'ida was mainly in Afghanistan and Pakistan. And if you look at a map today, you would see al-Qa'ida in all sorts of countries.

That's not to say that there weren't cells in other countries back in 2001, but it raises the question in my mind of whether, even though we've been successful in taking out some of the core of al-Qa'ida and some high-level leaders, whether our strategy is working. If the cancer of al-Qa'ida is metastasizing, do we need a new treatment?

Mr. BRENNAN. What we've tried to do, Senator, over the past decade and longer, is to be able to treat this real cancer in a number of ways: sometimes it takes lethal force, sometimes it takes military might, sometimes it takes working with our partners in a variety of ways, sometimes it takes addressing some of the infrastructural, institutional, and other deficiencies that exist in these countries that al-Qa'ida takes advantage of.

If you look at the geographic map, you know, in the area from South Asia over to the Middle East and North Africa, there has been tremendous political turbulence in that area over the past decade, and particularly in the last couple years. There are a lot of spaces—ungoverned spaces—that al-Qa'ida has taken advantage of. We've been able to make some significant progress in certain areas.

Somalia is, in fact, a good example of a place where we have worked with neighboring countries, we've worked with the local government, and we've worked with AMISOM, a multilateral element within Africa, to try to suppress the efforts of Al Shabaab and al-Qa'ida in East Africa; good progress we made there. Because it has to be comprehensive; it's not just a kinetic solution to this by any means.

Now, as we look at the Sahel, and the area in Mali, and other areas, these are tremendous expanses of territory where al-Qa'ida can put down roots beyond the reach of local governments. And so they've been able to put down roots, and they've been—it's been unattended because of the difficulties that these countries have even feeding their people, much less putting in place a system of laws and the intelligence and security capability.

So, is it a different strategy; it has to be a comprehensive one. But al-Qa'ida and this—you know, the forces of Islamic extremists, that have really corrupted and perverted Islam, are making some progress in areas that give me real concern. That's why I look at a place like Syria right now, and what is going on in that country; we cannot allow vast areas to be exploited by al-Qa'ida and these extremist forces, because it will be to our peril.

Senator COLLINS. I certainly agree with you on that, and in our classified or closed hearing next week I'm going to be asking you about Syria, and also the Iranian threat. But I don't think those are appropriate in open session.

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Just two final questions: one has to do with priorities that you would set as director if you are confirmed. In recent years, paramilitary operations obviously had consumed a lot of resources, expertise, time, energy, and effort at the CIA; do you believe this has been at the expense of traditional CIA responsibilities—collection, analysis, all source?

Mr. BRENNAN. Well, certainly, there have been opportunity costs because of the dedication of those resources. What I would need to do, if I were to go to CIA, is to inventory exactly how our resources are being dedicated against the wide variety of strategic priorities to protect our country.

In terms of operational collection activities worldwide, in terms of the all source analysis being done, what are we doing in these other areas? Cyber, you know, weapons proliferation, political turbulence—there are so many different areas. Counterterrorism is an important one. There is also an intersection between counterterrorism and a lot of these other areas, counter-proliferation, international organized crime, other things.

So we really want to optimize those resources so that we can, in fact, leverage the capabilities we have, in order to deal with these very challenging issues across a very large globe.

Senator COLLINS. Mr. Brennan, you have devoted a great deal of your life to public service, for which I thank you. And you obviously understand the world of intelligence in a way that few people do. You've been an intelligence professional for much of your professional life.

In the last four years, you have held a political position at the White House. And I have been talking to people at the CIA, whom I respect, and one intelligence official told me that a key question for the men and women of the CIA is which John Brennan are they going to get? Are they going to get John Brennan who's been the right-hand advisor of President Obama in a political White House—and by the nature of the position—I don't say that critically; that's the position—or are they going to get John Brennan who was a career CIA officer, who worked his way up in the ranks?

And the concern is that they want to hear that you are going to be the CIA's representative to the White House, not the White House's representative to the CIA. And I just want to give you the opportunity today to respond to that concern.

I would note that I also heard very good comments from people with whom I talked, but I think it's important, when someone's coming from a political role, to make clear that you're going to be the leader of the Agency and not the White House's agent within the Agency.

Mr. BRENNAN. Thank you, Senator. I think if I were to be fortunate, privileged, and honored to go out to CIA, the CIA would get the John Brennan who is neither a Democrat nor Republican, nor has ever been; a John Brennan who has a deep appreciation and respect for the intelligence profession, one who has been fortunate to have lived it for 25 years; a John Brennan who has had the great fortune to be in the White House the past four years, watching and understanding how intelligence is used in support of our national security. CIA would get a John Brennan who has been working national security issues for my life.



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They would get a John Brennan who really understands that the value of intelligence, the importance of intelligence, is not to tell the President what he wants to hear, not to tell this Committee what it wants to hear, but to tell the policymakers, the Congressional overseers, what they need to hear—what the Intelligence Community, with all its great capability and expertise, has been able to uncover and understand about world events that fundamentally affect the lives of not just this generation of Americans, but of future generations of Americans.

And so, if I had the great privilege to lead the men and women of the CIA, it would be the biggest honor of my life, and I would understand just how important and weighty that would be. And if I ever dishonored that responsibility, I couldn't look myself in the mirror. I couldn't look my parents, my family in the mirror. I couldn't look you in the face, and that is something that is very important to me.

So, I guess the proof will be in the pudding, the tasting of the pudding, and if I do have that opportunity, it would be my intention to make sure I did everything possible to live up to the trust and confidence that this Congress, this Senate, and this President might place in me.

Senator COLLINS. Thank you very much.

Thank you, Madam Chairman.

Chairman FEINSTEIN. Thank you very much.

If there are no further questions, John, I would like to associate myself with what Senator Rockefeller said. I've sat through a number of these hearings; I don't think I've ever heard anyone more forthright or more honest or more direct. You really didn't hedge. You said what you thought. And I want you to know that that's very much appreciated.

And I actually think you are going to be a fine and strong leader for the CIA, and, you know, I can't help but say I am really fully supportive of this and will do everything I possibly can to see that our Committee works with you closely and honestly.

We will have a classified hearing. I am specifically going to just warn you that I would like to have you respond in detail to what I perceive as a difficult, evolving situation in North Africa now, with Tunisia, with Libya, with all these countries, and certainly with Mali, and how you plan to direct the Agency to deal with this evolving momentum that's taking place in Northern Africa.

So that will be for Tuesday. And at the request of Senator Levin, I ask unanimous consent to enter into the record a Joint Statement that he and I made on April 27, 2012.

[The Joint Statement of Senators Feinstein and Levin, dated April 27, 2012, follows:]

JOINT STATEMENT FROM SENATOR DIANNE FEINSTEIN (D-CALIF.), CHAIRMAN, SENATE INTELLIGENCE COMMITTEE, AND SENATOR CARL LEVIN (D-MICH.), CHAIRMAN, SENATE ARMED SERVICES COMMITTEE

We are deeply troubled by the claims of the CIA's former Deputy Director of Operations Jose Rodriguez regarding the effectiveness of the CIA's coercive interrogation techniques.

The Senate Select Committee on Intelligence will soon complete a comprehensive review of the CIA's former Detention and Interrogation Program. Committee staff has reviewed more than 6 million pages of records and the Committee's final report, which we expect to exceed 5000 pages, will provide a detailed, factual description

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of how interrogation techniques were used, the conditions under which detainees were held, and the intelligence that was—or wasn't—gained from the program.

Statements made by Mr. Rodriguez and other former senior government officials about the role of the CIA interrogation program in locating Usama bin Laden (UBL) are inconsistent with CIA records. We are disappointed that Mr. Rodriguez and others, who left government positions prior to the UBL operation and are not privy to all of the intelligence that led to the raid, continue to insist that the CIA's so-called "enhanced interrogation techniques" used many years ago were a central component of our success. This view is misguided and misinformed.

The roots of the UBL operation stretch back nearly a decade and involve hundreds, perhaps thousands, of intelligence professionals who worked non-stop to connect and analyze many fragments of information, eventually leading the United States to Usama bin Laden's location in Abbottabad, Pakistan. The suggestion that the operation was carried out based on information gained through the harsh treatment of CIA detainees is not only inaccurate, it trivializes the work of individuals across multiple U.S. agencies that led to UBL and the eventual operation.

We are also troubled by Mr. Rodriguez's statements justifying the destruction of video tapes documenting the use of coercive interrogation techniques as "just getting rid of some ugly visuals." His decision to order the destruction of the tapes was in violation of instructions from CIA and White House lawyers, illustrates a blatant disregard for the law, and unnecessarily caused damage to the CIA's reputation.

Further, it's worth repeating, as discussed in the Senate Armed Services Committee's 2008 report, the SERE techniques used in the CIA's interrogation program were never intended to be used by U.S. interrogators. Rather, the techniques—which are based on Communist Chinese interrogation techniques used during the Korean War to elicit false confessions—were developed to expose U.S. soldiers to the abusive treatment they might be subjected to if captured by our enemies. An overwhelming number of experts agree, the SERE techniques are not an effective means to illicit accurate information.

*Misinformation Relating to the UBL Operation*

Statement of Jose Rodriguez, former CIA Deputy Director for Operations, Time Magazine, May 4, 2011:

"Information provided by [CIA detainees] KSM and Abu Faraj al-Libbi about bin Laden's courier was the lead information that eventually led to the location of [bin Laden's] compound and the operation that led to his death."

This statement is wrong. The original lead information had no connection to CIA detainees. The CIA had significant intelligence on the courier that was collected from a variety of classified sources. While the CIA's enhanced interrogation techniques were used against KSM and al-Libbi, the pair provided false and misleading information during their time in CIA custody. This information will be detailed in the Intelligence Committee's report.

Statement of Michael Hayden, former CIA Director, Scott Hennen Show, May 3, 2011:

"[W]hat we got, the original lead information—and frankly it was incomplete identity information on the couriers—began with information from CIA detainees at the black sites."

This statement is wrong. The original information had no connection to CIA detainees. The CIA had significant intelligence on the courier that was collected from a variety of classified sources. This information will be detailed in the Intelligence Committee's report.

Statement of Michael Mukasey, former Attorney General, Wall Street Journal, May 6, 2011:

"Consider how the intelligence that led to bin Laden came to hand. It began with a disclosure from Khalid Shiekh Mohammed (KSM) who broke like a dam under the pressure of harsh interrogation techniques—that included waterboarding. He loosed a torrent of information—including eventually the name of a trusted courier of bin Laden. Another of those gathered up later in this harvest, Abu Faraj al-Libi, also was subjected to certain of these harsh techniques and disclosed further details about bin Laden's couriers that helped last weekend's achievement."

This statement is wrong. There is nothing in CIA intelligence records to corroborate this statement.

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Other press reports have suggested that a third CIA detainee subjected to the CIA's enhanced interrogation techniques provided significant information on the courier and his relationship with al-Qa'ida. While this third detainee did provide relevant information, he did so the day before he was interrogated by the CIA using their coercive interrogation techniques. This information will be detailed in the Intelligence Committee's report.

The Facts:

- CIA did not first learn about the existence of the UBL courier from detainees subjected to coercive interrogation techniques. Nor did the agency discover the courier's identity from detainees subjected to coercive techniques. No detainee reported on the courier's full name or specific whereabouts, and no detainee identified the compound in which UBL was hidden. Instead, the CIA learned of the existence of the courier, his true name and location through means unrelated to the CIA detention and interrogation program.
- Information to support this operation was obtained from a wide variety of intelligence sources and methods. CIA officers and their colleagues throughout the Intelligence Community sifted through massive amounts of information, identified possible leads, tracked them down, and made considered judgments based on all of the available intelligence.
- The CIA detainee who provided the most significant information about the courier provided the information prior to being subjected to coercive interrogation techniques.
- The three detainees subjected to waterboarding provided no new information about the courier. In fact, the CIA detainees who were subjected to coercive techniques downplayed the courier's significance, with some of those detainees denying they knew him at all, in the face of significant evidence to the contrary.
- Detainees whom the CIA believed to have information on UBL's location provided no locational information, even after significant use of the CIA's coercive interrogation techniques.

Chairman FEINSTEIN. And secondly, in order to have Mr. Brennan's answers to questions for the record by the time he returns before us in closed session, I ask Members to the right questions for the record by 5 o'clock p.m. tomorrow—that's Friday, February the 8th—so we have them for you as soon as possible so that you can respond to them Tuesday.

I want to thank you and your family for being here, and I wish you well.

Thank you, and the hearing is adjourned.

Mr. BRENNAN. Thank you, Chairman.

[Whereupon, at 6:00 p.m., the Committee adjourned.]

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# Exhibit 24

February 2013 Rogers Interview

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# A-592

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# Face the Nation transcripts February 10, 2013: Graham, Reed and Rogers

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ROGERS: Well, I know one thing. We have first-rate problems. When you look at the disintegration of security in northern Africa, the growing and metastasizing of Al Qaida in the northern Maghreb area...

SCHIEFFER: But, I mean, do you think these people are up to the job? Do you think Mr. Cheney is right or is that maybe a little beyond where you would -- how you would...

ROGERS: It may be a little beyond where I'm going. I do believe that the policy formation that we're walking into here, when it comes to Syria, which is -- by the way, there is now no good solution in Syria today. It is -- the best thing we can hope for is the best worst option moving forward. We need very quickly to turn the tide in Syria. And I don't mean to win it. I mean just to get us in a position where we can mitigate what bad things are going to happen in Syria in the months ahead. Same with northern Africa. We have got huge, dangerous challenges approaching the United States, and I don't believe we've configured ourselves, our resources or our policy to confront them in a way that will make an impact.

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SCHIEFFER: I want to ask you this whole situation about drones, when we should use them, how we should use them. First off, has the administration been straight with Congress in sharing information on what the rules are about using these weapons?

ROGERS: I think they have. Listen, for months -- there's a change in 2008 in July under the previous administration, George Bush, that changed the way we could use air strikes to target belligerents or al Qaeda, who are planning to kill Americans. That changed in July of '08. And it ramped up. And that was taken over when Barack Obama became president. And as the chairman of the House Intelligence Committee, even as a member, was aware and part of those discussions. And now as chairman, even before they conducted that first air strike that took Awlaki -- and remember, this is the guy that was trying to kill some -- a whole bunch of U.S. citizens over Detroit on Christmas Day. This guy was a bad guy. So our options were limited. This was a tool that we could use to stop further terrorist attacks against Americans. I supported it then. Monthly, I have my committee go to the CIA to review them. I as chairman review every single air strike that we use in the war on terror, both from the civilian and the military side when it comes to terrorist strikes. There is plenty of oversight here. There's not an American list somewhere overseas for targeting. That does not exist. And I think there has been some sensationalism, Bob. This is a serious matter, but I do think that the oversight rules have been, I think, consistent...

SCHIEFFER: It is an extremely complicated matter. But what about the argument that civil liberties groups make that if a person is a U.S. citizen, even if he's a bad guy, he has certain rights under the Constitution. And you can't just say, OK, we're going to kill him.

ROGERS: In the United States, that's true. If you join forces with the enemy, we have a long-standing tradition in this country that, that in and of itself, you lose your constitutional protections. You are engaged in belligerent activities against the United States. And this happened in World War I, in World War II, where Americans would join forces with people who were in -- at war with the United States, and when you do that, you sacrifice your rights. So this is someone who had sworn off his citizenship, had been actively planning terrorist attacks against the United States, the most notable was the one over Detroit on Christmas Day. And but for a quarter of an inch of an injector, that would have gone off and killed hundreds on the plane, and if not thousands on the ground. This was a -- he was a serious al Qaeda player. He picked his team. This is not an American citizen of the United States. Does not apply, none of this. This is only enemy belligerence, joined forces with the enemy overseas. SCHIEFFER: We're going to ask you to stick around for "Page Two," because we're going to talk about this whole idea of, is the United States vulnerable to a cyber attacks and how much of a problem that is. I know you have some thoughts about that. So we'll be interested to hear what you have to say. You'll be with us with a panel of experts on "Page Two." Mr. Chairman, until then, thanks. I'll be back in a moment now with some personal thoughts.

(COMMERCIAL BREAK)

SCHIEFFER: Those of us in journalism spend a lot of times worrying about the wrong things, such as whether newspapers and books of the future will be printed on paper. It's an important question, but one over which we have little control. The truth is, technology will decide how we get the news. What we need to be thinking about is not the delivery systems but the information being delivered, all

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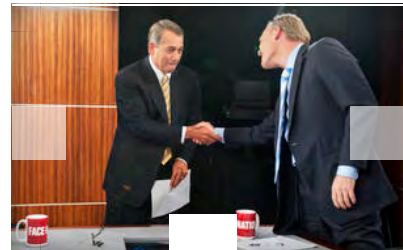
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of which was underlined this week by the inexcusable hacking of the Bush family's personal email accounts. In the past, when journalists got personal information about public figures, we normally didn't publish it, unless we determined it was, first, true, and, second, was in the public's interest to know. Did it show the person was dishonest? Did his private life impact on his public responsibility? Publishing the Pentagon Papers revealed a government making public statements about the Vietnam War that it knew to be false. The Watergate revelations revealed a cancer of government corruption. Making public personal phone numbers and family conversations about the health of an ill father are no one's business but the family. For the most part, the mainstream media handled the Bush email hacking with restraint. We reported the hacking. That is news, but little else. Still, the episode is a less-than-gentle reminder of how technology is redefining our culture, the whole idea of privacy, and, yes, the respect or lack of it that honest citizens should have for each other. These are the things that all of us, not just journalists, may want to think about. How the news is delivered will take care of itself. Back in minute.

(COMMERCIAL BREAK)

SCHIEFFER: Some of our stations are leaving us now but for most of you we'll be right back with a lot more of FACE THE NATION.

(COMMERCIAL BREAK)

SCHIEFFER: Well, welcome back to FACE THE NATION "Page Two." The House Intelligence Committee chairman, Mike Rogers, has stuck around for some more. He is joined by his former colleague on that committee, California Democrat Jane Harman, now the head of the Woodrow Wilson Center here in Washington. Also with us, James Lewis, senior fellow at the Center for Strategic and International Studies. And our own CBS News justice and homeland security correspondent Bob Orr. Jim Lewis, I want to start with you, because when I was trying to get myself read in and studied up about what the questions I ought to ask before the presidential debate, I went to see you, and we talked for a while. And I asked you how serious was threat of a cyber attack on the United States? And I asked you what kind of what kind of defense we have. And I will never forget what you said.

JIM LEWIS, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES: That we had a faith-based defense. And a lot of it is like asking people...

SCHIEFFER: Basically we pray that it will never happen.

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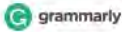
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# Exhibit 25

February 2013 McCain Interview

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Rep. Nancy Pelosi, Sen. John McCain on avoiding automatic spending cuts

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# Rep. Nancy Pelosi, Sen. John McCain on avoiding automatic spending cuts

Written by [Chris Wallace](#) [1] / Published February 10, 2013 / Fox News Sunday

**Special Guests:** Rep. Nancy Pelosi, Sen. John McCain

*The following is a rush transcript of the February 10, 2013, edition of "Fox News Sunday With Chris Wallace." This copy may not be in its final form and may be updated.*

**CHRIS WALLACE, HOST:** I'm Chris Wallace.

What is the state of our union, foreign and domestic?

(BEGIN VIDEOTAPE)

**WALLACE:** As President Obama prepares to address the nation Tuesday, he faces a buzz saw of issues -- automatic spending cuts, gun control, immigration reform, and the resurgent Al Qaeda. We'll talk about all of this, with two of Washington's heavy hitters: House Democratic Leader Nancy Pelosi and Senator John McCain.

Pelosi and McCain, only on "Fox News Sunday."

Then, senators grill the president's nominee for CIA director over the targeted killing of terror suspects. We'll ask our Sunday panel about new demands to lift the veil on drone strikes.

And, our Power Player of the Week can tell you almost everything the president does, and how often he does it.

All, right now, on "Fox News Sunday."

(END VIDEOTAPE)

**WALLACE:** And, hello again, from Fox News in Washington.

When President Obama delivers his State of the Union speech Tuesday, one big issue will be sequestration -- \$85 billion in automatic spending cuts due to kick in March 1st.

The White House now warns this will mean damaging layoffs of teachers, law enforcement and food safety inspectors. And, the Pentagon will be hit, too. They propose a mix of spending cuts and, yes, more taxes, through limiting deductions, for the wealthy.

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I sat down late Friday with House Democratic Leader Nancy Pelosi and asked her about the fast-approaching deadline.

(BEGIN VIDEOTAPE)

**WALLACE:** Congressman Pelosi, welcome back to "Fox News Sunday."

**HOUSE DEMOCRATIC LEADER NANCY PELOSI, D-CALIF.:** Welcome to the Capitol.

**WALLACE:** The White House says, sequestration will have a severe effect on many Americans. House Republicans agree. But they say the answer is to find other spending cuts, not tax hikes.

**PELOSI:** Well, I think that the sequestration is a bad idea, all around. It is something that is out of the question. The fact is, we have had plenty of spending cuts, \$1.6 trillion in the Budget Control Act.

What we need is growth. We need growth with jobs. And if you have spending cuts, education of our children, other investments, on the National Institutes of Health, where you are hindering growth, you're no going to reduce the deficit.

So, what we do need is more revenue, and more cuts, but I would like to see that a big, balanced, bold proposal. Short of that, we should -- we must do something to avoid the sequester.

**WALLACE:** But here's what House Speaker Boehner said this week.

(BEGIN VIDEO CLIP)

**SPEAKER OF THE HOUSE JOHN BOEHNER, R-OHIO:** At some point, Washington has to deal with its spending problem. I watched them kick the can down though road for 22 years I have been here and I have had enough of it. It's time to act.

(END VIDEO CLIP)

**WALLACE:** Congresswoman, let's look at this numbers. Are you really saying that in a government that spends \$3.5 trillion a year, that increased federal discretionary spending by 14 percent, over the last four years, you can't find \$85 billion to cut, to avoid the sequester?

**PELOSI:** Well, we have cut in terms of agriculture subsidies, there are tense of billions of dollars in cuts there and that should be balanced with eliminating subsidy for big oil. Why should we do -- why should we lower Pell Grants instead of eliminating the subsidies for big oil?

**WALLACE:** Why not just cut spending? Eighty-five billion dollars in a \$3.5 trillion government.

**PELOSI:** Let's back up from -- with all due respect to the speaker, what he said is not the gospel truth. The fact is that a lot of the spending increases came during the Bush administration. Two unpaid for wars we got ourselves engaged in. A prescription drug plan that added enormous amounts to our spending, and the tax cuts at the high end that did not create jobs and create revenue coming. So that's --

(CROSSTALK)

**WALLACE:** But the total debt has increased \$5 trillion since this president came in.

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**PELOSI:** Well, part of that is from the -- what we had to do to avoid going over the cliff of the recession -- depression. Yes, we had the Recovery Act which saves or created 3.5 million jobs. You know the record of job growth in the private sector has been consistent from many record number of months.

So, again, we have to make a judgment about what -- how do we get growth with jobs? That's where the revenue comes from. You don't get it by cutting down your (INAUDIBLE) or cutting in education, cutting back on investments in science, and National Institutes of Health, food safety, you name it.

So, it isn't as much you a spending problem as a priorities, and that is what the budget is, setting priorities.

**WALLACE:** But you talk about growth. Even Christina Romer, the former head of the Council of Economic Advisers for the president, says you increase taxes, that also hurts growth.

**PELOSI:** Well, it's about timing. It's about timing. And it's about timing as to when make cuts, as well. We --

**WALLACE:** But you -- the fiscal cliff, you raised taxes \$650 billion, right away.

**PELOSI:** Yes, and that was a very good thing to do on people making over -- the high end in our population.

So, here's the thing, though -- we are here to have a budget that has revenue coming in, that has investments made, into the future. We also want to make decisions in those two areas where growth with jobs are created, because more jobs, more revenue coming in. Nothing brings more money to the Treasury of the United States, than investment in education of the American people.

So, we need to recognize that, which cuts really help us and which cuts really hurt our future. And, cuts in education, scientific research and the rest are harmful, and they are what are affected by the sequestration.

So, it is almost a false wrong to say we have a spending problem. We have a deficit problem that we have to address. Right now, we have low interest on the national debt and it's a good time for us to act to lower the deficit.

We think the deficit and the national debt are at immoral levels. We think they must be reduced. We're sick and tired of paying interest on the national debt. And that 15 percent, that's a large percentage of the budget, the interest on the national debt. It's lower now because of the lower interest rates.

**WALLACE:** But again, all I would say is: we've got a \$3.5 trillion budget and they are talking about \$85 billion in cuts.

Let me -- let's go to the taxes, though --

**PELOSI:** OK. But we agreed in spending -- we agreed to \$1.6 trillion in spending, in discretionary, domestic spending.

**WALLACE:** But the sequestration is just spending cuts.

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**PELOSI:** Right. Secondly, we have gone to Medicare and had savings of over a trillion dollars in Medicare already. And when I say we, I mean the Democrats. And what the Republicans are proposing is to make a voucher of Medicare, no longer making it a guarantee. There are other things in this discussion that I think American people make fully aware --

**WALLACE:** We're going to touch on them --

**PELOSI:** -- understand what it means in their daily lives.

**WALLACE:** Let's talk about taxes. You keep talking about raising taxes and you talk about making the wealthy -- let me ask the question first.

**PELOSI:** Yes.

**WALLACE:** Let me ask the question -- you keep talking about making the wealthy pay their fair share of taxes.

**PELOSI:** Right.

**WALLACE:** The top 1 percent --

**PELOSI:** Right, right.

**WALLACE:** -- the top 1 percent pay 37 percent of all federal income taxes. The top 5 percent pay 59 percent of all federal taxes. If you took the total income of everyone making more than \$1 million a year, if you taxed it all, at 100 percent, that's only \$726 billion, which is less than the projected deficit for the year.

I mean, the bottom line, Congresswoman, is you can't raise taxes enough to solve the deficit problem.

**PELOSI:** Nobody is saying that. We are saying it has to be balanced. Now, on the subject of the high end, we're not talking about raising rates. We did that. We eliminated the high end tax cuts of the Bush years which only increased the deficit, and didn't create jobs.

We kept the middle income tax cuts. The -- what we have in our proposal that Congressman Van Hollen has put forth, our top Democrat on the Budget Committee, is to say we'll eliminate subsidy to big oil. And it gives us a lot of money, eliminating the subsidy for big oil.

We also have the Buffett Rule which says all of the high income people would pay a minimum of -- they would have to pay --

**WALLACE:** So, you're raising tax on the wealthy.

**PELOSI:** No, you are saying they should pay their fair share, which is 30 percent, which is even lower than 39.6, which is the rate -- the bracket they are in.

**WALLACE:** But you are saying that if they have a deduction from a home mortgage --

**PELOSI:** They take advantage of so many loopholes.

**WALLACE:** Well, deductions that are on the books. But the point is --

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**PELOSI:** Thirty percent.

**WALLACE:** The point is, that you can't raise enough money. I mean, the main driver of the debt is entitlements. Sixty percent of our budget, our spending, is on entitlements.

When Medicare started life expectancy was 70. It's now 79. Don't you have to raise the eligibility age and slow the growth of benefits? Isn't that the way to deal with the deficit?

**PELOSI:** OK. I'm glad you brought up Medicare because don't you think you should -- to use your question -- don't you think you ought to see if raising the age really does save money?

Those people are not going to evaporate from the face of the Earth for two years. They're going to have medical need and they're going to have to be attended to. And the earlier intervention for it, the less the cost will be and the better the quality of life.

I do think we should subject every federal dollar that is spent to the harshest scrutiny. And I do think the challenge with Medicare is not Medicare, the challenge is rising medical health care costs in general and prescription drugs and the rest of that, that driver those costs. So, that's what we have to address, which we did in the Affordable Care Act and we are about to see some reports from the Institute of Medicine, about how we reduce the cost of health care, in Medicare, because we are paying for quality, not quantity of procedures, but quality of performance.

And I think that there is money to be saved there. And I don't think it has to come out of benefits, or beneficiaries, and I don't think you have to raise the age.

**WALLACE:** Gun control will be a big part of the president's agenda in the State of the Union address Tuesday night. But I want to ask you about another part of the effort to stop these horrible, repeated acts of mass violence. As part of your plan, you call for more scientific research on the connection between popular culture and violence.

We don't need another study, respectfully. I mean, we know that these video games, where people have their heads splattered, these movies, these TV shows, why don't you go to your friends in Hollywood and challenge them, shame them, and say, "Knock it off"?

**PELOSI:** Well, I do think, whatever we do, because when you talk about evidence-based, we have that throughout our proposal. In other words, we don't want to just anecdotally writing bills. We want to have the evidence to say --

**WALLACE:** Well, I'm not sure you want to write bills anyway. But don't you -- I mean, what would -- you have a lot of friends in Hollywood. Why don't you go to them and publicly say I think challenge you to stop the video games?

**PELOSI:** I do think -- see, I understand what you're saying. I'm a mother, I'm a grandmother. But, they tell -- not they, not Hollywood, but the evidence says that, in Japan, for example, they have the most violent games and the rest, and the lowest -- death, mortality from guns. I don't know what the explanation is for that except they may have good gun laws.

But I think you took one piece of it. We are talking about -- we are talking about stop -- no further sales of assault weapons. What is the justification for an assault weapon? You know, no further sales of those.

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No further sales of the increased capacity, 30 rounds in a gun. We are talking about background checks which is very popular, even among gun owners, and, hunters. We avow the First Amendment, we stand with that, and say that people have a right to have a gun to protect themselves in their homes and their jobs, whatever. And that they -- and their workplace -- and that they, for recreation and hunting and the rest.

But we are in the questioning their right to do that --

**WALLACE:** I guess the question is -- I think a lot of people say, here it is, liberals like Nancy Pelosi want to go after gun owners. But, when it comes to mental health laws, when it comes to their liberal friends in Hollywood, they don't want to make them ante up.

**PELOSI:** Well, mental health laws, I have to tell you, when I was speaker and we couldn't get a hearing on this before that we passed the mental health parity act and, in the Affordable Care Act we took it to the next step and in another year you -- we'll have many more services available, because of mental health parity.

We certainly have to do more. And, I salute the -- applaud all of those who are saying we have to do more in mental health. But we have to do it, I think, we have to do it all and that is why we said -- we included in there we have to look at what these games are.

I don't think we should do anything anecdotally. We have a saying here -- the plural of anecdote is not data. And so, we want to know what is the evidence, what would really make a difference here. And I think it has to be comprehensive.

**WALLACE:** Finally, President Obama predicted this week that you will once again be speaker -- his words -- pretty soon.

What do you think of the chances of you regaining the majority in the House and you, once again being Speaker Pelosi after the 2014 midterms?

**PELOSI:** Well -- that's nice he said that. But the fact is, what is important, the Democrats regain the majority in the House. Between now and then, we have a lot of work to do.

We want to pass comprehensive immigration reform. We want to pass, keep our kid safe and pass some initiatives that relate to gun violence, prevention. We want to create jobs and have initiatives for growth with jobs.

We want to make our country more democratic in terms of how elections are conducted, reducing the role of money, increasing the level of civility so that more women and young people participate. It's about confidence -- confidence in our democracy, confidence in our children's safety, confidence in our economy, confidence as to who we are as a people.

So, we have plenty to do before then. But what the president said was complimentary, but as far as I'm concerned, it's about the issues and the issues are better served by a Democratic majority in my view, and that's what I'm hoping that we will achieve in 2014.

But as I say, that -- we have a lot of work to do, hopefully in a bipartisan way, between now and then. And I think that in the issues that I named, we could get bipartisan collaboration.

**WALLACE:** Congresswoman Pelosi, thank you.



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**PELOSI:** Lovely to see you.

**WALLACE:** Always a pleasure to talk to you.

**PELOSI:** My pleasure. Thank you.

(END VIDEOTAPE)

**WALLACE:** Up next, Senator John McCain gives us his take on spending cuts, drone strikes and more.

(COMMERCIAL BREAK)

**WALLACE:** And we're back now with Senator John McCain.

Senator, welcome.

**SEN. JOHN MCCAIN, R-ARIZ.:** Thank you, Chris.

**WALLACE:** You just heard Nancy Pelosi talk about these automatic spending cuts, that kick in on March 1st. She wants a mix of cuts and, yes, more taxes, which I know you don't like. On the other hand, if you go to the automatic cuts, sequestration, you get a 13 percent cut over the rest of the year in the Pentagon, which I know you also don't like.

If it comes down to that, higher taxes, or sequestration, the Pentagon cuts, where do you go? Where do you come down?

**MCCAIN:** Well, obviously, I don't want to see tax increased. But what I would like to see is the president call the leaders over to the White House and say, look, we've got to solve this problem. The sequestration -- Secretary Panetta, outgoing secretary of defense, is one of the most widely respected men or person in Washington, D.C., and he has been saying it will devastate our national security. We are -- Republicans and Democrats are responsible for this new cliff and I'll take responsibility for it for the Republicans.

But we've got to avoid it. We've got to stop it. Our nation's security is --

**WALLACE:** The president says -- OK, the price of that is more taxes.

**MCCAIN:** The president is the same person who during the campaign said, "It's not going to happen." Remember that? He just dismissed it.

And a lot of us, Lindsey Graham and Kelly Ayotte and I were traveling around the country warning about what was going to happen as a result of sequestration. And it is devastating.

And the world is very dangerous -- I'm sorry I'm a little emotional about this, but the men and women serving in the military deserve better than what they're giving -- what we're giving them. They don't know what they're going to be doing tomorrow. We just delayed the deployment of an aircraft carrier. The cuts are coming across the board.

The consequences are severe. It requires bipartisanship. Will I look at revenue closers? Maybe so. But we've already just raised taxes. Why do we have to raise taxes again?

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**WALLACE:** In his State of the Union speech, aides say that the president is going to call for new investment/spending on education, and energy and infrastructure and manufacturing to try to boost the economy and to boost the middle class.

Will you go along with that?

**MCCAIN:** As long as we pay for it. We've seen this movie before. We saw it with the so-called stimulus package, back in the beginning of the administration. And, we saw the longest, most stagnant economy in history and now a debt and deficit, that's \$51,000 for every man, woman and child in America.

The size of the government has grown exponentially. We are -- for example, on sequestration, we have a proposal, for every three federal retiree, we hire only one. That would take care of the sequestration problem and there are simple answers to many of these problems that we can address the problem without raising people's taxes.

But, first, we ought to sit down across the table. The president should with us and work it out. All he does is go out and make speeches.

**WALLACE:** The president's nominee for CIA director, John Brennan, testified in his confirmation hearing this week, faced tough questioning, especially about the administration's targeted killing program for terror suspects, even American citizens.

What do you think of this idea which is gaining some currency on Capitol Hill of what's been called a drone court? Where before the president puts a targeted terrorist and, especially an American citizen, on a "kill list", they have to get approval from a judge?

**MCCAIN:** I don't agree with it, because I think it is an encroachment on the powers of the president of the United States. But what we need to do is take the whole program out of the hand of the Central Intelligence Agency and put it into the Department of Defense, where you have adequate oversight, you have committee oversights, you have all the things that are built in, as our oversight of the Department of Defense.

Since when is the intelligence agency supposed to be an air force of drones that goes around killing people? I believe that it's a job for the Department of Defense.

**WALLACE:** But no drone court?

**MCCAIN:** No. I don't -- there has to be a legitimate oversight by the Congress, and as open a process as possible. And we are in a strange conundrum. You can kill an American citizen overseas. But according to this administration, if you capture him in the United States, they've got to be read their Miranda rights. What's wrong with that picture?

**WALLACE:** In another hearing this week, you -- I must say you have been making more news as a questioner than I have -- got a surprising admission from both CIA -- rather, Defense Secretary Panetta and the chairman of the Joint Chiefs, General Martin Dempsey. They revealed that along with Secretary Clinton and then-CIA Director Petraeus --

**MCCAIN:** And now, Director of National Intelligence Clapper.

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**WALLACE:** Right, added to it. That they all, last summer, last fall, supported the idea of arming the rebels in Syria, but, that the president overruled his entire national security team. What do you make of that, and from what we hear from his aide, his continued refusal to intervene in the civil war in Syria?

**MCCAIN:** I think, they are writing one of the more shameful chapters in American history, 60,000 people have been massacred. I've been to the refugee camps and met these people who -- the atrocious treatment that's going on. It's disgraceful and, by the way, there is a national security component, it would be the greatest blow to Iran, in the last 25 years, if Bashar al-Assad fell, not to mention Hezbollah.

So, it's incomprehensible. And the president of the United States, to say that -- because people are dying in the Congo is a reason not to act in Syria -- it shows to me a lack of experience and knowledge, which is very dangerous to America's national security interests.

And, again, it's shameful that we have let over 60,000 people be massacred and we won't even give them arms, while the Iranians, the Iranian Revolutionary Guard on the ground and Russian continue to supply weapons.

**WALLACE:** Then there is the president's nominee to be the new defense secretary, former Senator Chuck Hagel. At his confirmation hearing, I think it's fair to say you gave him a real going-over about his opposition to the Iraq troop surge in 2007. Let's take a look at that.

(BEGIN VIDEO CLIP)

**MCCAIN:** Were you correct or incorrect?

**CHUCK HAGEL, DEFENSE SECRETARY NOMINEE:** My re --

**MCCAIN:** Yes or no?

**HAGEL:** My reference to the surge being dangerous --

**MCCAIN:** Answer the question, Senator Hagel. The question is -- were you right or wrong?

(END VIDEO CLIP)

**WALLACE:** I've got a question for you -- how are you going to vote on the Hagel nomination?

**MCCAIN:** We've still got some more information.

But, again, that wasn't an academic discussion I was having with Senator Hagel. We were losing the war in 2006. And, when the president came around, Bush, who I had been very critical of, came around and sent David Petraeus and the surge, we succeeded in Iraq.

Now, because of the Obama administration's action afterwards we were losing, and it was very badly unraveling. But the fact is, that if we hadn't done that, more American lives would have been lost unnecessarily.

So, for then-Senator Hagel to say, well, he'll let history be the judge, he was there and involved. And I'm sure he is wrong and he knows he's wrong on the basis of the facts of what happened.

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**WALLACE:** So I've got to press it again, because you saw the hearing, you know his record. Are you going to support him for defense secretary?

**MCCAIN:** I will see the rest of the answers to his question, but, certainly, I have very grave concerns.

**WALLACE:** Grave concerns?

**MCCAIN:** Yes.

**WALLACE:** So, is it fair to say you are leaning against voting for him.

**MCCAIN:** I think that would be fair.

**WALLACE:** How do you feel about other Republican senators who are suggesting some procedural move to block the nomination?

**MCCAIN:** I think we need all the information from Senator Hagel. But the fact is we have never filibustered a cabinet appointee, and that -- I do not believe we should filibuster his nomination.

**WALLACE:** Or a hold or one of those other --

**MCCAIN:** I think we need some more information on questions that he hasn't answered. But -- and I hope those question get answered but I don't -- we've never filibustered a presidential cabinet appointee and I don't think we should start here.

**WALLACE:** Finally --

**MCCAIN:** Elections have consequences, unfortunately.

(LAUGHTER)

**WALLACE:** You know.

**MCCAIN:** There you go.

**WALLACE:** Finally, immigration. You are part of a bipartisan group of senators, eight -- four Republicans, four Democrats -- who have come up not with legislation but the outlines of a plan for immigration reform. The president wants to put the 11 million illegals who are here now on the path to citizenship, and Secretary of Homeland Security Napolitano said this week that she believes the border is -- her word -- the border is secure.

You, on the other hand, your group are talking about linking the path to citizenship to a number of measures to further enforce the border.

**Question:** will you insist in any immigration package on border enforcement first?

**MCCAIN:** Yes, I will. And that is basically the agreement. There are 11 million people living in the shadows. I believe they deserve to come out of the shadows. The children who are brought here when they were children, they deserve that kind of consideration as well.

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But we do need to have a secure border. We can do it with surveillance capabilities and other capabilities. And I believe we can achieve that. But that's our commitment and I owe it to people who live in the southern part of my state where drug smugglers are coming across their property every single night.

**WALLACE:** Let me ask you about the flipside of that, though.

**MCCAIN:** Yes.

**WALLACE:** Because under your plan, although they wouldn't get the path to citizenship until you got those border enforcement certification, they would almost immediately get what's called probationary legal status, which basically means they could continue to live in this country legally.

Some of your critics on the right are saying that's amnesty.

**MCCAIN:** Well, I don't think it is amnesty to start with. Second of all, what do you want to do with them? That is the question in response.

And third of all, it's a tough path to citizenship. You've got to pay back taxes. You've got to learn English. You've got to have a clear record. You've got to get to the back of the line behind other people who have come here legally or even waiting legally.

So, I just reject that. But I understand how emotional this issue is, with many of my friends on both left and right. But I think we are making progress, and, we have not come to final agreement on many of the details, some of which you just asked me about.

**WALLACE:** Senator McCain, thank you. Thanks for coming in today. Somehow, you always find yourself at the center of the action.

**MCCAIN:** Thank you, my friend.

**WALLACE:** Up next, the president's big State of the Union speech. We'll ask our panel about Mr. Obama's ambitious second term agenda, and whether Congress will pass it.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

**PRESIDENT BARACK OBAMA:** The current Republican plan puts the burden of avoiding those cuts mainly on seniors and middle-class families. They would rather ask more from the vast majority of Americans and put our recovery at risk than close even a single tax loophole that benefits the wealthy.

(END VIDEO CLIP)

**WALLACE:** President Obama, previewing his State of the Union address Tuesday as he criticized the Republican alternative to the automatic spending cuts that kick in March 1st. And, it is time now for our Sunday group. Bill Kristol of the Weekly Standard. Liz Marlantes from the Christian Science Monitor. Republican Congressman Tom Cotton of Arkansas, and Fox News political analyst Juan Williams.

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We have heard from Senator McCain and Congresswoman Pelosi, in the first half, about how they think that the sequestration should be resolved.

Bill, a number of congressional Republicans say if there is no compromise, and one of the big issues is going to be the Democratic demand for more taxes, that we should just live with the \$85 million in automatic spending cuts that kick in March 1st. You disagree with that?

**BILL KRISTOL, THE WEEKLY STANDARD:** Yes, I think the sequester is terrible public policy, and, as Charles Krauthammer said in his column Friday -- Charles then has a complicated argument for why, but on the other hand, Republicans should tactically and politically embrace the sequester, because it gives them leverage over President Obama, but I think it is too dangerous. It would do too much damage to our national defense. Republicans -- the president should put responsible and put forward a serious plan to deal with it. Republicans also should put forward a serious plan to deal with it. They passed good legislation in the House last year. They should pass it again this year, and put the burden on the president and the Democrats to say, well, what would you do about the sequester? But you really can't just sit back and say, well, the president's proposal from two years ago, we wash our hand of it and we're just going to let our national defenses be gutted.

**WALLACE:** Liz, it is interesting, because with the fiscal cliff, at the start of the year, the president had all the leverage, because if Congress did nothing, then everybody got a tax increase, the rich as well as the middle class. Do Republicans have the leverage now, because if they do nothing, if Congress does nothing, then this \$85 billion in automatic spending cuts kick in?

**LIZ MARLANTES, THE CHRISTIAN SCIENCE MONITOR:** That is what they are saying. I'm not entirely sure that that is true, in the sense that I think that Republicans still risk being blamed more, if it goes through and things go badly, you know, if the economy takes a big hit because of it. Based on all of the polling and the way this argument has been shaped, and frankly because there is just such a disadvantage with messaging. Obama has been out there really driving this argument. I think the Republican Party would probably take the bigger hit. You know, Boehner is trying hard, he's calling it the Obamaquester, he is trying really hard to pin this on the president, but right now, the way the politics of this stand, they may have leverage in the sense that they have an opportunity to get spending cuts, but they may take a serious political hit because of it if they go through with it.

**WALLACE:** Congressman Cotton, I want you to react to that, and as you saw in the clip we played from the president's weekend address, once again the president is trying to make Republicans pay the price politically. He's basically saying, these cuts are going to affect the middle class in education and law enforcement, food inspectors. And once again, you guys want to protect your wealthy friends from any tax increase.

**REP. TOM COTTON, R-ARK.:** Chris, the bigger risk, I think, is the way they are going to impact the Department of Defense. It's cutting almost \$10 billion or 10 percent of the Department of Defense's budget this year, and that is after four years where the Department of Defense has been the one agency of the federal government that has not had hundreds of billions of dollars stuffed into its budget. You go back and you look at domestic spending over the last four years that exploded under the stimulus and just annual resolutions funding the government, there is a lot more fat to cut there. So as Bill said, Republicans have proposed a responsible alternative to the sequester, which is what President Obama proposed in 2011, which are shift those cuts away from the Department of Defense and to domestic spending so we can ensure, for example, that we have two aircraft carriers in the Persian Gulf, which we just stopped because of the sequester spending.



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**WALLACE:** Let me ask you the question I asked Senator McCain -- if it comes down to a choice, because you heard Nancy Pelosi, you heard the president there saying if we are going to kill the sequester, then you are going to have to have some tax increases, not through raise in rates, but through closing some of the loopholes and ending some of the deductions. Are you willing to go along with that?

**COTTON:** Well, I obviously disagree with Nancy Pelosi's call for more tax increases, as well as Barack Obama's. We just increased taxes by over \$600 billion last month. We can't keep increasing taxes every three months just because Barack Obama wants more welfare spending.

**WALLACE:** Juan?

**JUAN WILLIAMS, FOX NEWS POLITICAL ANALYST:** I'm a little befuddled, because I think you say there is too many cuts in defense right now, and you want to protect defense from additional cuts, and in fact defense I think is going to suffer like 8 percent of the cuts, versus 4 percent --

**WALLACE:** Actually, it is 13 percent, because it kicks in, in March rather than last fall.

**WILLIAMS:** Right, but, overall, I'm saying it's 7.9 percent for defense versus 4 percent for nondefense or domestic spending. So if that is the case, Congressman, then I think Republicans have to take a responsible posture, which is, OK, even -- you think back to Mitt Romney, who said, we can close loopholes, we can do away with some of these deductions. Nancy Pelosi talking to Chris Wallace this morning, pointed to benefits and subsidies for the oil and gas industry in this country, unnecessary farm subsidies. I think there is an overwhelming consensus on Capitol Hill that a lot of those can be done away. So why not work with the president to avoid sequestration that you say would be draconian?

**KRISTOL:** Why not just cancel the defense cuts? You can't pass a big tax reform -- what is so funny?

(CROSSTALK)

**KRISTOL:** No, it is not a matter of politics. This is going to gut our defenses. If you are a responsible president -- you don't have to save \$45 billion this year. That is 4 percent, 4 percent of the deficit. We're going to endanger our national defenses and short- change our servicemen and women, overseas, for the sake of cutting 4 percent from this year's deficit? It is totally irresponsible.

**COTTON:** And Bill is right that you can't have massive tax reform in just 60 days. I mean, it took Ronald Reagan and Tip O'Neill and Bill Bradley, the bipartisan bill of 1986, 20 months to do it. But, there is more than the tax (ph) pork in the fiscal cliff bill for things like NASCAR track owners and wind energy producers and Puerto Rican rum manufacturers.

**KRISTOL:** Here we go.

**COTTON:** That would more than offset the defense cuts that would be so devastating.

**WILLIAMS:** So make a deal, and Bill wants the president to bail out Republicans, who--

**KRISTOL:** I want to bail out our military.

(CROSSTALK)

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**KRISTOL:** I want the president to bail out military. He is commander in chief. Maybe you're not aware of that.

**WILLIAMS:** But he wants to -- he wants a deal here. He is saying, let's have a temporary deal to avoid sequestration, and Republicans are saying, no, we have got to protect the very rich, the oil companies and gas companies, and we can't do it.

**WALLACE:** I'm going to call a little bit of a change here, because we are running out of time in this segment. And Congressman Cotton, I want to ask you about an interesting decision that the congressional Republican leaders made. They decide who is going to give the official Republican response. They decided it is going to Florida Senator Marco Rubio. He will be giving the official response to the president's speech on Tuesday. Does that make him the new face of the Republican Party on Capitol Hill?

**COTTON:** I wouldn't say that decision makes him. I think he has been an emerging leader on Capitol Hill for Republicans, and across the country for two years now. He's a generation of new leaders, not just Marco, but Paul Ryan and Scott Walker and so forth, who are emerging and who I think are going to be the leaders of our party going forward. And I think Marco in particular is a great and passionate advocate for conservative ideas of limited government, strong national defense, and individual liberty.

**WALLACE:** Let me just ask you, Bill, and then we've got to wrap this segment up. As somebody who wanted Marco Rubio to run last year, how big a deal is this in terms of his emergence at the top of the Republican pack?

**KRISTOL:** I don't know if he is right at the top, but he's certainly a leader, as Tom says, and he'll do a very good job, I'm sure, on Tuesday night, and Tom can give the response next year, and then we'll have the Rubio-Cotton ticket in 2016, you know?

**WALLACE:** You know, he gave me a Rubio-Ryan button in 2007--

(CROSSTALK)

**WALLACE:** And he also picked Sarah Palin in 2004. When this guy talks, we listen.

All right, panel, we have to take a break here, but when we come back, some members of Congress demand new checks on the president's power to launch drone strikes.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

**SEN. DIANNE FEINSTEIN, D-CALIF.:** It was a limited, covert program. Now everybody knows about it, and I think we need to see that this program is really run according to the American Constitution.

(END VIDEO CLIP)

**WALLACE:** Senator Dianne Feinstein suggesting creation of a secret drone court, where the president would have to go to get approval before putting terror suspects on his kill list. And we're back now with the panel.

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Congressman Cotton, for people who don't know you, you are kind of an interesting figure. You went to Harvard, you went to Harvard Law School, and then you spent five years on active duty, on the front lines, in Iraq and Afghanistan, so you have got a lot of credibility on this issue on both sides of the equation.

How do you feel about this idea? Before the president could target someone for assassination, especially an American citizen, he'd have to go get approval from a judge?

**COTTON:** We don't need federal judges involved in sensitive and urgent national security matters, and it would be an unconstitutional infringement on the president's rights to keep America safe. So, if you take up arms against America and you fight in a terrorist training camp or on the front lines in Pakistan or Afghanistan or Yemen, you shouldn't be surprised if America reaches out and exacts justice against you.

**WALLACE:** Liz, part of this debate has to do with what some people are calling alleged hypocrisy on the part of the White House. They say Senator Obama blasted George W. Bush for waterboarding and for a lack of transparency about the legal documents that authorized him to do that, and yet the fact is that President Obama had to be dragged into releasing the legal authorization for his decision to kill people.

**MARLANTES:** Yes, no, I think there are two kind of schools of thought in terms of the hypocrisy argument. One is that Obama himself, when he became president, you know, you see -- you get different briefings, you see a different side of the story than you did when you were a candidate. Sometimes that changes your mind or makes you realize that, OK, some of these policies might be necessary. But the larger point, I think you know, Republicans have been claiming hypocrisy against Democrats all week on this, and I think to some extent, that is true. That if this were, you know, the Bush administration still, there would be a louder hue and cry about it, but polling shows that still, the majority of Democrats are OK with this program. I mean, really, there is the left and then there is where, you know, the majority of Democratic voters are, and I think most voters, most Obama voters out there are thinking, well, if this is the kind of program that can avoid another Iraq, great. You know? I think that is fine. And, that, also, I think, gives cover to the administration's positioning on this.

**WALLACE:** Bill, we also got some fascinating revelations from that Senate hearing with Defense Secretary Panetta this week. We talked about what he revealed about Syria, but he said that on the night of the Benghazi attacks, September 11 of this last year, that he and General Dempsey spoke to the president once early on, and then never again. Let's take a look.

(BEGIN VIDEO CLIP)

**SEN. LINDSEY GRAHAM, R-S.C.:** Did the president show any curiosity about how is this going, what kind of assets do you have helping these people? Did he ever make that phone call?

**DEFENSE SECRETARY LEON PANETTA:** There is no question in my mind that the president of the United States was concerned about American lives.

**GRAHAM:** With all due respect, I don't see how that is a credible statement if he never called and asked you, are we helping these people?

(END VIDEO CLIP)

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**WALLACE:** Given that -- and it was a series of attacks, but the overall action went on over course of seven hours in Benghazi the night of September 11, what do you make of that?

**KRISTOL:** I think it is genuinely shocking. The president -- Leon Panetta walked out of the Oval Office at 5:30 that night, after a previously scheduled meeting. The president never called -- he knew -- he briefed the president on what was happening in Benghazi and that the American ambassador was missing, and it was clear there could well be sustained and ongoing attacks, and the president never spoke to the secretary of defense or the chairman of the Joint Chiefs of Staff the rest of that night, and, interestingly, Secretary Panetta said he never spoke to the White House later this night. So it's not as if he spoke to the national security adviser, Tom Donilon, or the chief of staff, Jack Lew, and said, and conveyed a message to or from the president.

So basically, the president seems to have checked out. He spent an hour that evening on the phone with the Israeli prime minister, Bibi Netanyahu, because there has been that flap about Israel at the Democratic Convention the week before, and I think he wanted for political reasons to show that he was in touch with the Israelis. They did a readout of that call, the National Security Council spokesman did. So they're busy talking to the Israeli prime minister, doing the readout of the call for the press, and he is not talking to Panetta and, insofar as we -- and Donilon, apparently, is not talking to Panetta. And it is really, I think, a dereliction of duty on the part of the president and his senior staff, and I think they should be asked about it. I think Tom Donilon, the national security adviser, and Jack Lew, the White House chief of staff, should -- the president did not talk to anyone. Did they even talk to the secretary of defense, or did they just say, do what you can and then totally checked out for that evening, and then the next morning the president goes off to Las Vegas for a fund-raiser?

**COTTON:** It is not just shocking, I would say it is outrageous as well, and it shows he has lack of preparation to be the commander in chief and lead troops when they are in combat. You know, you mentioned I was in the Army. At Fort Benning, where I spent a year, you learn the eight-step troop leading procedures. Step eight, the final step, is not issue an order. Step seven is issue the order. Step eight, which is the most important step, is supervise. He said in September that I issued a directive to take whatever steps are necessary to protect our troops and our assets. And then as Bill said, he never again followed up, he never asked, is my directive being executed? That is the essence of leadership, and this is a complete failure of leadership.

**WALLACE:** What about the argument, Congressman, and I don't know, and Bill raises a legitimate question, maybe he was doing this through his national security adviser.

**COTTON:** What General Dempsey and Secretary Panetta said, indicates there was no further contact from the White House, and the president showed no curiosity at all. He had a conversation with Prime Minister Netanyahu that was in the middle of political season when he was receiving criticism for not being engaged with the prime minister, and then probably preparing to fly off to Las Vegas the next day for a fundraiser.

When you have troops in contact -- when I was in Afghanistan, we had troops in contact. I was right next to the radio, monitoring that at all times. When the president has troops in contact in an embassy that he knows is insecure, that has to be the very first priority.

**WALLACE:** Juan?

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**WILLIAMS:** Well, I mean, I'm just listening to -- it's one side of the conversation. It's not wrong, but it's not complete. What's complete is that Secretary Panetta said this week these were two attacks that took place at the start and end of a seven-hour period. It was not one continuous attack.

Secondly, the military was not positioned to respond and to help because they had no information. They did not have sufficient intelligence about a forthcoming attack. This is exactly what the secretary said.

So in that circumstance, you have an attack; the president has said, "I want my people protected; take all necessary steps to protect Americans at risk" and put his people in place to do that job. His people were doing that job. I don't know why the president would suddenly have to not only circumvent but then supersede the authority of everybody in the line of order here.

I mean, that -- so I guess you're picking on the president. But I -- it just doesn't seem real to me.

**COTTON:** Well, I mean, Winston Churchill said the essence of civilian leadership of the military is always right to probe. And the president has shown his willingness to do this. When the generals in 2009 proposed 40,000 troops to go to Afghanistan, the president pressed and pressed and pressed and reduced it to 32,000, I think without good reason. If they had said that night, "Well, we have this six-hour rule and we can't get assets there," the president could have probed and said, "We can't get any assets there? We don't have ships off the shore? We don't have helicopters?"

**WILLIAMS:** I guess that indicates you don't have much trust in Secretary Panetta, Secretary Clinton and the like. I would guess that the president, having appointed them, doesn't share that point of view. He thinks these are good people who care about American assets, care about American life and especially the life of an ambassador.

I mean, it's just like the Syria situation we're discussing here. In the Syria situation, the president did follow up, did do the due diligence you spoke of, Congressman, and he said, you know what, there is a question about do the arms fall into the possession of the wrong group, maybe some, you know, terrorists.

**WALLACE:** I'm going to have to stop for a very good reason, which we'll see in a second. And I want to thank you all, and we'll see you all next week.

I have to make a bittersweet announcement that I have been dreading. Marty Ryan, our executive producer and leader, is retiring today.

(BEGIN VIDEOTAPE)

**WALLACE (voice over):** He is one of the originals here. He put Tony Snow and "Fox News Sunday" on the air almost 17 years ago, even before there was a Fox News Channel. Over the years, he was in charge as we interviewed four presidents. He was in charge during our political coverage and big special events. And we couldn't keep him away when we interviewed his favorite quarterback.

(END VIDEOTAPE)

**WALLACE (on camera):** Boy, isn't that the truth. In case you're wondering, when we go to break late in the show -- go ahead, show the picture. That's Marty on the back row. Wave, Marty. Good, there he is.

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He's the guy with the silver hair. I think I gave him some of those.

(LAUGHTER)

And, yes, he's in charge. I will miss him dearly and so will this program. But, Marty, no one ever deserved to put his feet up and relax more than you do.

Up next, our Power Player of the Week.

(COMMERCIAL BREAK)

**WALLACE:** Whenever a president does something like hold a press conference or head to Camp David or even go for a round of golf, there is someone in the White House keeping count of exactly how many times he's done it. But it isn't some White House official. No, it's our Power Player of the Week.

(BEGIN VIDEOTAPE)

**KNOLLER:** The numbers really help tell the story, in an important way.

**OBAMA:** I'm going to call on Mark Knoller. Where's Mark? There you are.

**KNOLLER:** Mr. President...

**WALLACE (voice over):** The numbers CBS White House correspondent Mark Knoller is talking about are meticulous records he keeps on almost everything the president does.

Think we're exaggerating?

**KNOLLER:** I keep logs on the number of speeches. Did he use a Teleprompter? How long did the speech run? Where did he go? How many times has he been there before; number of flights on Air Force One; number of flights on Marine One?

**WALLACE:** We squeezed into Knoller's cramped booth in the press room where he showed us his file on each of the 114 rounds of golf President Obama has played.

**KNOLLER:** I keep log what date did he play; how long did he play it; who was in the foursome; what time did the golf game begin; what time did it end?

**WALLACE:** You love this stuff, don't you?

**KNOLLER:** At least now I've got an aspect of the presidency that pretty much I own. And I like that.

**WALLACE:** And Knoller does own it. His colleagues in the press corps come to him to find out how many news conferences the president has held. And when National Security Adviser Tom Donilon was briefing reporters on the economic summit last year, he deferred to Knoller.

**NATIONAL SECURITY ADVISER TOM DONILON:** It's always risky to do this with presidential historian Mark Knoller in the room, but I'll do this anyway...

(LAUGHTER)

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... at the risk of being -- at the risk of being corrected immediately.

**WALLACE (on camera):** How do you feel being the unofficial records-keeper of the presidency?

**KNOLLER:** Well, it certainly wasn't what I set out to do, but unofficially, yeah. I guess I'm unofficial.

**WALLACE (voice over):** Knoller started his record-keeping a couple of years into the Clinton administration when he noticed the president kept going to California.

**KNOLLER:** I tried going back to reconstruct how many trips he had made to California and it took all day.

**WALLACE:** So Knoller started keeping his own records. He spends 60 to 90 minutes at the end of each day logging every presidential activity.

The presidents have noticed. When Knoller reported George W. Bush had spent more than a year at his Texas ranch, it came up at a White House Christmas party.

**KNOLLER:** I come up to shake his hand and he says to Laura, "This is the guy who tells everybody how often we go to the ranch, and if we get there at 10 in the evening, he counts it as a full day. And I corrected him. I don't count it as a full day. And he seemed glad to hear that.

**WALLACE (on camera):** Do you think it's a tad obsessive?

**KNOLLER:** OK, I'm obsessed with doing my job well, to doing it thoroughly. You got me.

(LAUGHTER)

**WALLACE (voice over):** Knoller has been covering presidents since Gerald Ford. At age 60, he's never married. But he has no regrets.

**(on camera):** Is this job; is this group; is this your family?

**KNOLLER:** Sure. It's my life. I'm able to cover this place exactly on my terms. And I find that very satisfying.

(END VIDEOTAPE)

**WALLACE:** Knoller isn't sure what he'll do with his files once he leaves the White House beat, but he'd like to find some think tank that wants them. And he's also like to write a book.

**Now this program note:** Stay tuned to this Fox station and Fox News Channel for complete coverage Tuesday night of the president's State of the Union address and the Republican response from Senator Marco Rubio.

And that's it for today. Have a great week. And we'll see you next "Fox News Sunday."

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Rep. Nancy Pelosi, Sen. John McCain on avoiding automatic spending cuts

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# Exhibit 26

February 2013 Feinstein Statement

**A-620**

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# United States Senator Dianne Feinstein

**Feb 13 2013**

## Feinstein Statement on Intelligence Committee Oversight of Targeted Killings

*Washington*—Senator Dianne Feinstein (D-Calif.), chairman of the Senate Intelligence Committee, today issued the following statement on the committee’s robust and ongoing oversight of counterterrorism targeted killings:

**“The administration has publicly described—including now in an unclassified white paper—the legality and boundaries of targeted killing of terrorists, though details remain classified. The secrecy of the program has made it difficult to detail the robust oversight conducted by the Intelligence Committee of counterterrorism targeted killings, but I am pleased to outline some of that oversight now.**

**“The committee has devoted significant time and attention to targeted killings by drones. The committee receives notifications with key details of each strike shortly after it occurs, and the committee holds regular briefings and hearings on these operations—reviewing the strikes, examining their effectiveness as a counterterrorism tool, verifying the care taken to avoid deaths to non-combatants and understanding the intelligence collection and analysis that underpins these operations.**

**“In addition, the committee staff has held 35 monthly, in-depth oversight meetings with government officials to review strike records (including video footage) and question every aspect of the program.**

**“Since 2010 the committee has asked for copies of all the legal opinions written by the Office of Legal Counsel (OLC) at the Department of Justice on targeted killing. I have sent three letters, each joined by Vice Chairman Kit Bond or Vice Chairman Saxby Chambliss, requesting these opinions.**

**“In 2012, the committee included a legislative provision in its annual authorization bill to require the executive branch to provide OLC opinions. Unfortunately that provision was removed prior to final passage of the bill. Until last week, the committee had been provided access to only two of the nine OLC opinions that we believe to exist on targeted killings.**

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Feinstein Statement on Intelligence Committee Oversight of Targeted Killings - Press Rel... Page 2 of 2  
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**“Last week, senators on the committee were finally allowed to review two OLC opinions on the legal authority to strike U.S. citizens. We have reiterated our request for all nine OLC opinions—and any other relevant documents—in order to fully evaluate the executive branch’s legal reasoning, and to broaden access to the opinions to appropriate members of the committee staff.”**

###

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Permalink:

<http://www.feinstein.senate.gov/public/index.cfm/2013/2/feinstein-statement-on-intelligence-committee-oversight-of-targeted-killings>

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# Exhibit 27

February 2013 Brennan QFR

**A-624**



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### QUESTIONS FOR THE RECORD MR. JOHN BRENNAN

#### QUESTIONS FROM THE CHAIRMAN

##### Interagency Review of Drone Strikes

With regard to targeted strikes, you stated during an April 30, 2012, speech at the Woodrow Wilson Center that: “[w]e listen to departments and agencies across our national security team. We don’t just hear out differing views, we ask for them and encourage them. We discuss. We debate. We disagree. We consider the advantages and disadvantages of taking action. We also carefully consider the costs of inaction and whether a decision not to carry out a strike could allow a terrorist attack to proceed and potentially kill scores of innocents.”

- *To what extent should there be a formal inter-agency review process prior to each strike? Which government entities should participate?*

There should be an interagency review process when making policy decisions associated with such strikes, including the criteria that governs the circumstances under which a targeted strike can be carried out. Such a process should include analysts, operators, and policymakers with roles and responsibilities bearing on intelligence, military, diplomatic, law enforcement, and homeland security, as well as lawyers from appropriate departments and agencies.

As I stated in my speech at the Wilson Center, the individuals who participate in this process consider, in a deliberate and responsible manner, the information available, including the most up-to-date intelligence. These reviews oftentimes generate requests to clarify existing information or spur requests for new information to provide the best available intelligence and analysis to inform their decision. I believe this process should continue, and should be refined and strengthened over time, while maintaining the President’s ability to direct action as necessary to defend the Nation against attack.

##### Following Up on Reports of Civilian Casualties

In your responses to Committee pre-hearing questions, you wrote that, “In the wake of every one of these [lethal] operations, we harness our relevant intelligence capabilities to assess whether, despite our best efforts, any collateral casualties

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occurred. This includes analysis from any relevant military or IC component, media reports, and a myriad of other sources of information.” During your confirmation hearing, you stated that, when civilian deaths occur, “We need to acknowledge it publicly.”

- *How should the U.S. government investigate allegations of collateral deaths with regard to strikes outside of declared war zones?*

The United States Government takes seriously all credible reports of civilian deaths. When civilian deaths are alleged, analysts draw on a large body of information – human intelligence, signals intelligence, media reports, and surveillance footage – to help us make an informed determination about whether civilians were in fact killed or injured. In those rare instances in which civilians have been killed, after-action reviews have been conducted to identify corrective actions and to minimize the risk of innocents being killed or injured in the future. Where possible, we also work with local governments to gather facts and, if appropriate, provide condolence payments to families of those killed.

- *Should the U.S. government make details, to include the overall numbers, of collateral deaths public?*

In public speeches in September 2011 at Harvard Law School and in April 2012 at the Woodrow Wilson International Center for Scholars, I emphasized that this Administration has attempted to share as much information as possible with the American people, and that this degree of openness was an important step in establishing the credibility of our counterterrorism efforts. Consistent with these views, I believe that, to the extent that U.S. national security interests can be protected, the U.S. Government should make public the overall numbers of civilian deaths resulting from U.S. strikes targeting al-Qa’ida.

### **Targeted Killing of Individuals Who Pose “Imminent Threats”**

In the recently released, unclassified white paper, DOJ writes that “the condition that an operational leader presents an ‘imminent’ threat of violent attack against the United States does not require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future.” The unclassified white paper also mentions a “limited window of opportunity” to take a strike.

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- **The Committee has previously discussed the “imminence” standard with the Executive Branch. As it has come under significant public question, can you elaborate on what “imminent” means in this case?**
- **Can you provide, for the public’s benefit, a general description of why, in the Executive Branch’s opinion, you cannot wait for a terrorist to be actually attempting to carry out an attack before exercising lethal force to eliminate that threat?**

The white paper discusses at some length the meaning of “imminence” in the context of the subject matter of the paper, as did the Attorney General in his March 5, 2012 speech at Northwestern Law School. In addition, in May 2011, the Committee was given access to the classified Office of Legal Counsel advice related to the subject of the white paper. I would defer to these works prepared by the Department of Justice for any further elaboration of the meaning of “imminence” in the context of these legal analyses.

With respect to the broader question of when the Executive Branch must take action to eliminate terrorist threats, as I described in a September 16, 2011 speech at Harvard Law School, terrorists, such as al-Qa’ida, do not wear uniforms or carry arms openly or signal that they are about to strike by, for example, massing at the border of the nation they plan to attack. Rather, they take extraordinary measures to hide their plans to strike and cause significant casualties with little warning.

In light of this, and given the Government’s responsibility to protect the nation and its citizens from attack, direct action must be taken when it is necessary to do so to protect against actual ongoing threats – to stop plots, prevent future attacks, and save American lives. Determinations about when targeted strikes are necessary and appropriate are made on a case-by-case basis, drawing upon intelligence, military, diplomatic, homeland security, and law enforcement professionals, as necessary, as well as input from lawyers from appropriate departments and agencies.

### **Limitations on Drone Strikes**

In the recently released, unclassified white paper, DOJ writes that "the United States retains its authority to use force against al-Qa’ida and associated forces outside of the area of active hostilities when it targets a senior operational leader of the enemy forces who is activity engaged in planning operations to kill Americans."

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- **Could the Administration carry out drone strikes inside the United States?**

This Administration has not carried out drone strikes inside the United States and has no intention of doing so.

- **Could you describe the geographical limits on the Administration's conduct drone strikes?**

As I noted in my speech at Harvard Law School in September 2011, and as the Attorney General stated publicly in March, we do not view our authority to use military force against al-Qa'ida and associated forces as being limited to "hot" battlefields like Afghanistan. Al-Qa'ida and its associates have in the recent past directed several attacks against us from countries other than Afghanistan. The Government has a responsibility to protect its citizens from these attacks, and, thus, as the Attorney General has noted, "neither Congress nor our federal courts has limited the geographic scope of our ability to use force to the current conflict in Afghanistan."

This does not mean, however, that we use military force whenever or wherever we want. International legal principles, such as respect for another nation's sovereignty, constrain our ability to act unilaterally. Using force in another country is consistent with these international legal principles if conducted, for example, with the consent of the relevant nation – or if or when other governments are unwilling or unable to deal effectively with a threat to the United States.

- **How do we ensure that our country's use of drone strikes to target al-Qa'ida is not used as justification for other countries to assassinate political opponents by labeling them leaders of "terrorist" organizations?**

Numerous senior U.S. officials – including myself, Attorney General Eric Holder, former State Department Legal Adviser Harold Hongju Koh, and former Department of Defense General Counsel Jeh Johnson – have spoken openly and repeatedly about the legal and policy foundations of our counterterrorism actions, including the use of remotely piloted aircraft. We have made clear the commitment of the United States to conduct these actions in accordance with all applicable law, including the laws of war, and not one of our public statements has even remotely suggested that it would be acceptable to use drone strikes as a

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means of targeting political opponents. In the future, the Administration will continue to be as open and transparent as possible about its use of targeted strikes necessary to prevent terrorist attacks against U.S. persons, and it will make clear that it takes such actions in a lawful, judicious, proportional, just, and ethical manner.

### **Who Makes Targeted Killing Decisions?**

In the recently released, unclassified white paper, DOJ says that drone strikes must be approved by an "informed, high-level official of the U.S. government;" however, the paper says little else about the process the Administration uses to review and approve such strikes.

- **Who within the Administration makes the ultimate determination of whether an American is a "senior operational leader of al Qa'ida" who poses an "imminent threat of violent attack"?**

An operation using lethal force in a foreign country outside an area of active hostilities, targeted against a U.S. citizen who is a senior operational leader of al-Qa'ida or associated forces, and who is actively engaged in planning to kill Americans, would be lawful, as the Attorney General indicated in his speech in March of last year, at least in the following circumstances: First, after the U.S. Government has determined, after a thorough and careful review, that the individual poses an imminent threat of violent attack against U.S. persons; second, capture is not feasible; and third, the operation is conducted in a manner consistent with applicable law of war principles.

Given the stakes involved and the consequence of the decision to conduct a strike, the evaluation of whether an individual presents an "imminent threat" would be made after considering the information available, carefully and responsibly – drawing on the most up-to-date intelligence and the full range of our intelligence capabilities. The process of deciding to take such an extraordinary action would involve legal review by the Department of Justice, as well as a discussion among the departments and agencies across our national security team, including the relevant National Security Council Principals and the President.

### **Reducing Contractors at the CIA**

This Committee has long been very concerned about the IC's heavy dependence on contractors. Past DNIs and agency heads have generally agreed that there is an

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over-reliance on contractors in the IC that risks putting inherently governmental work in the hands of the private sector and increasing costs.

- ***What is your view of the proper role for contractors in the CIA?***

Contractors play a vital role in supporting the CIA's mission. Contractors provide the Agency with flexibility and unique expertise to respond to fast-breaking and dynamic intelligence missions. The significant growth in the contractor workforce came from the CIA's greatly expanded operational tempo after 9/11. For the past several years, the agency has reduced its reliance on contractors. If confirmed, I will carefully monitor the size of the contractor workforce and make adjustments accordingly. I also will ensure that all contractors work under the authority of a U.S. Government employee who oversees and manages the contractors.

- ***How will you ensure that CIA contractors are not in a position to manage government workers, set policy, or otherwise make inherently governmental decisions?***

CIA policies and regulations prohibit contracting for services that are inherently governmental and putting contractors in position to set policy or allowing contractors to manage government employees. All Agency contracts are reviewed to ensure that those policies and regulations are adhered to, and I am committed to aggressively ensuring that they are followed, utilizing the capabilities of the Inspector General as appropriate.

- Contractors tend to be more expensive on an annual basis than government workers. ***How do you plan to manage the cost of contractors versus government employees at the CIA?***

I understand that the Agency has taken concrete steps, especially over the past year or so, to ensure that it is receiving the best value for its contracting dollars through contract consolidation, aggressive contract negotiations, and the implementation of standardized contracting pricing policies. I will assertively continue those efforts.

### **Keeping Chiefs of Mission Informed of All Intelligence Activities**

In your responses to the Committee's pre-hearing questions, you wrote that Chiefs of Mission must be kept fully and currently informed of the activities of U.S. government agencies in their countries, consistent with the provisions of 22 USC 3927. That statute also requires that U.S. Ambassadors "shall have full

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responsibility for the direction, coordination, and supervision of all United States Government officers and employees in that country,” and that “any department or agency having officers or employees in a country shall... comply fully with all applicable directives of the Ambassador.”

- ***Is it your understanding that intelligence activities are subject to the approval of the Chief of Mission?***

Yes. Pursuant to the President’s instruction, codified in a 1977 agreement between the Department of State and the CIA, the Chief of Mission has a responsibility to express a judgment on all CIA activities in his or her country of accreditation in light of U.S. objectives in the host country and in the surrounding areas and to provide assessments on those activities to Washington. Further, if the Chief of Mission believes a CIA activity might impair U.S. relations with the host country, the Chief of Mission may suspend a CIA or other intelligence activity. If disputes arise between the Chief of Mission and the Chief of Station that cannot be resolved locally, they are referred to Washington for adjudication by Principals. In order to enable the Chief of Mission to meet these responsibilities, the Chief of Station must keep the Chief of Mission fully and currently informed of CIA activities in the host country (unless the President or Secretary of State has directed otherwise.)



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### QUESTIONS FROM THE VICE CHAIRMAN

#### *Interrogation Study*

- **If a vote on your nomination does not occur before Friday, February 15, 2013, when the CIA's response on the Interrogation Study is due to the Committee, will you in any way seek to review or change the CIA's response?**

If I am not confirmed as the Director of the Central Intelligence Agency by the time CIA's response on the Interrogation Study is ready to be sent to the Committee, I will not seek to review or change the CIA's response in any way.

#### *Graham's Benghazi Questions*

During yesterday's hearing, you said that you thought Senator Graham's questions on Benghazi were not answered because the responses were "privileged." But Senator Graham's first question was whether Director Clapper was aware of the series of attacks in Benghazi in the summer of 2012. Clearly there is no issue of Presidential privilege in asking what Director Clapper knew.

- **Why did the National Security Staff (NSS) tell the ODNI not to respond to Senator Graham's questions?**
- **Did you play any role in the direction not to answer Senator Graham's questions?**

I am not aware of and played no role in any alleged attempt to direct Director Clapper not to answer Senator Graham's questions.

#### *Zero Dark Thirty*

There has been a lot of controversy about the Administration's cooperation with the movie *Zero Dark Thirty*.

- **Did you meet with the writer or director or have any discussions with them?**

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- **Did you have any role in the Administration’s cooperation with the movie? If so, what was it?**

I, along with several other White House officials, engaged in a one hour, unclassified discussion with Mark Boal on June 30, 2011 on how White House officials viewed the opportunities and risks associated with a film about the raid that killed Bin Laden.

### *Bogus Intelligence*

Media reports indicate that when you led the Terrorist Threat Integration Center (TTIC), you championed a program involving IT contractors in Nevada who claimed to intercept al-Qaida targeting information encrypted in the broadcasts of TV news network Al Jazeera. The media says, and documents we have reviewed show, that CIA officials derided the contractor’s information, but nonetheless, you passed it the White House and alert levels ended up being raised unnecessarily.

- **Did you have confidence in the information you provided? If not, why did you provide it?**

I never “championed” such a program. The Terrorism Threat Integration Center (TTIC) was the recipient of such information and data provided by the CIA and included it in analytic products as appropriate.

- **Why did you keep the program alive?**

I did not keep the program alive. I would refer you to the CIA, as it collected the data from the contractors and passed it along to TTIC, for the answer to your question.

- **What was the eventual outcome of the program?**

I do not know the outcome of the program, other than it was determined not to be a source of accurate information.

### *DSOP*

I read your responses to the prehearing questions and with regard to NCTC’s Directorate of Strategic Operational Planning, you stated that NCTC “supports the NSS in helping to draft and coordinate some—not all” of the strategies. But the

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National Security Act, as modified by IRTPA, requires NCTC to “provide strategic operational plans for counterterrorism operations conducted by the United States Government.” In other words, the law requires that NCTC prepare the plans, but you are saying in practice the White House prepares the plans.

- **Why isn’t the Administration complying with the National Security Act?**
- **If NCTC is only helping the White House with the plans and not writing them as the law requires, why should Congress fund NCTC for this purpose?**

The National Security Staff (NSS), on behalf of the President, leads the interagency policy processes to develop and oversee implementation of key CT policies, strategies, and plans. Consistent with the IRTPA, DSOP plays an important role in the NSS-led process for CT issues, the bounds of which the NSS determines depending on the specific policy, strategy, or plan. It is important to keep in mind, for instance, that all CT efforts are inherently integrated into broader national security and foreign policy strategies and plans, which stretch beyond NCTC’s CT mandate, requiring the NSS to play an important directive and integrative function from a more comprehensive perspective. Departments and agencies report to the President in executing their roles in these plans, and DSOP’s role is to support the NSS by ensuring that departments and agencies are coordinating the effective execution of those plans. NSS provides the strategic oversight and interagency integration on behalf of the President. However, not all CT-related activities in the USG include the NSS or occur at its explicit direction. For example, DSOP runs CT exercises that test USG capabilities to prevent or mitigate a terrorism threat to law enforcement and state and local governments. For that reason, DSOP support to the NSS-led process does not represent the entirety of its production function outlined in the IRPTA, and therefore I encourage you to engage DSOP directly on those efforts it undertakes that are not NSS-led.

### ***High Value Targets***

In Thursday’s hearing you stated that you would be glad to get the information about those high-value targets that had been captured with US intelligence support. But that was not my question.

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- **Again, my question is: How many high-value targets have been arrested, detained, and interrogated by the United States government (not with US intelligence support) during your four years with the Administration?**

Over the last four years, the American criminal justice system has been used to arrest, detain, interrogate, and prosecute numerous suspected terrorists. Since January 2009, dozens of individuals have been arrested, detained, interrogated, and convicted of terrorism-related offenses in federal court. Individuals arrested here in the United States include David Headley, Mansoor Arbabsiar, Najibullah Zazi, Faisal Shahzad, and Umar Farouk Abdulmutallab. Individuals initially taken into U.S. custody overseas include Ahmed Ghailani, Jesse Curtis Morton, Mohamed Ibrahim Ahmed, and Betim Kaziu, and subsequently brought to the United States for interrogation and prosecution.

Please see the classified section for additional information from the Department of Defense.

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### QUESTIONS FROM SENATOR BURR

1. Describe each specific instance in which you were authorized to disclose classified information to a reporter or media consultant, including the identity of the individual authorizing each disclosure and the reason for each such disclosure.

In exceptional circumstances, when classified information appears to have already been leaked to the media, it may be necessary to acknowledge classified information to a member of the media or to declassify information for the very purpose of limiting damage to national security by protecting sources and methods or stemming the flow of additional classified information. Such conversations involve only the most senior Agency officials or their designees and must be handled according to any applicable regulations. I have on occasion spoken to members of the media who appeared to already have classified information, in an effort to limit damage to national security; however, even in those circumstances I did not disclose classified information.

2. If any communications with reporters or media consultants were recorded, provide the transcripts of any recordings and any official written records.

During my hearing, I answered questions about a conference call on May 7, 2012 with former national security officials who were likely to comment on an Associated Press story that had run earlier in the day regarding a foiled bomb plot. In advance of my voluntary interview with the Department of Justice, my counsel received a transcript of this conference call from DOJ. Enclosed is a copy of what my counsel was provided.

3. Identify those specific individuals to whom you expressed concerns (regardless of medium – email, text, conversations, phone calls) about the effectiveness, or legality of the CIA's Enhanced Interrogation Techniques (EITs) program.

I had significant concerns and personal objections to many elements of the EIT program while it was underway. I voiced those objections privately with colleagues at the Agency. I expressed my personal objections to it, but I did not try to stop it because it was something being done in a different part of the Agency under the authority of others. When I left the Agency, I spoke publicly about those concerns. When I was named the President's CT advisor, I was put in a position to influence decisions related to EITs, such as how we handle interrogations, and I strongly support the President's ban on such techniques.

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4. Have there been any authorized disclosures of national intelligence since January 13, 2013 (the date the FY13 Intelligence Authorization Act was signed into law)?

No, not to my knowledge, but I do not have visibility into the entire Executive Branch to which Section 504 of the Intelligence Authorization Act for Fiscal Year 2013 would apply. So, as it relates to my current office, I am not aware of any authorized disclosures of national intelligence since January 13, 2013, that would trigger the notification requirements of Section 504.

5. Have there been any crimes reports filed with DOJ for unauthorized disclosures of national intelligence (or are there any reports in process) since January 13, 2013 (the date the FY13 Intelligence Authorization Act was signed into law)?

I must defer to the Department of Justice on this question, as my answer could have implications for open or pending law enforcement investigations about which I would not necessarily have knowledge.

6. As the Director of the CIA, you will be responsible for ensuring the successful collection and analysis of national intelligence, including intelligence about the Global Jihadist Network. One of the best sources of such intelligence comes from the interrogation of captured terrorists. But the Administration's past policies have undercut the gathering of this intelligence by either killing jihadists overseas or mirandizing them when they attack here at home, such as underwear bomber Umar Farouk Abdulmatallab. Both tactics undercut the gathering of intelligence, which will be your job as CIA director. How will you fix this problem?

The United States has acknowledged that it uses lethal force, when appropriate and consistent with applicable law, to prevent terrorist attacks on the United States and to save American lives, but I reject any suggestion that the Administration somehow prefers killing terrorists to capturing them. As I and other senior officials have stated on numerous occasions, our unqualified preference is to capture an individual rather than use lethal force, in part because we recognize that one of the best sources of intelligence comes from the interrogation of captured terrorists. We only undertake lethal force when we determine that capture is not feasible.

Moreover, I also reject the suggestion that Miranda warnings undermine intelligence collection. As an initial matter, our overriding responsibility is to protect the nation and the American people against terrorist attacks, and Miranda

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does not restrict our ability to ask an arrestee any and all questions that are prompted by an immediate concern for the public safety without administering Miranda warnings. Beyond this, while some terrorism suspects have refused to provide information in the criminal justice system, so have many held in military custody. What is undeniable is that many individuals in the criminal justice system have provided a great deal of information and intelligence even after receiving Miranda warnings. Indeed, as I have stated publicly in the past, in some circumstances Miranda warnings have been essential to our ability to keep terrorists off the streets, as post-Miranda admissions have led to successful prosecutions and long-term prison sentences.

7. In 2008 you wrote, “A critical step toward improved U.S.-Iranian relations would be for U.S. officials to cease public Iran-bashing, a tactic that may have served short-term domestic political interests but that has heretofore been wholly counterproductive to U.S. strategic interests.” Please identify the U.S. officials who engaged such “Iran-bashing” and explain how their comments were counterproductive. How is criticism of Iran, whose policy is the destruction of Israel and the United States, “wholly counterproductive” to U.S. strategic interests? Can you define that level of criticism of Iran you would permit U.S. officials in interagency meetings, internal CIA analysis, or the conduct of this body?

In this 2008 article, I discouraged the use of terms such as “axis of evil,” which emboldened and energized Iranian radicals and were counterproductive to past efforts to achieve a diplomatic resolution to our concerns about Iran’s nuclear program. I also acknowledged the importance of not implying tolerance for Iran’s egregious policies and actions, about which this Administration has consistently expressed its deep concern – specifically Iran’s continuing failure to comply with its international nuclear obligations, its support for terrorism and other destabilizing activities throughout the region, and its persistent abuse of the rights of its people. It is important to recognize both the opportunities and risks in engaging with this regime. If confirmed, I will do everything I can to provide thorough, timely, unbiased, and accurate intelligence and analysis to support policy-makers as they deal with this national security priority.

8. In 2008 you wrote: “Not coincidentally, the evolution of Hezbollah into a fully vested player in the Lebanese political system has been accompanied by a marked reduction in terrorist attacks carried out by the organization. The best hope for maintaining this trend and for reducing the influence of violent extremists within the organization--as well as the influence of extremist Iranian officials who view Hezbollah primarily as a pawn of Tehran--is to increase Hezbollah's stake in



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Lebanon's struggling democratic processes." What did you mean by "increase Hezbollah's stake in Lebanon" – more Hezbollah representatives and fewer non-Hezbollah representatives? An alternate assessment was provided in 2009 by Hizballah chief Hasan Nasrallah's deputy, Naim Qassem, told the Los Angeles Times in 2009 that the organization's political arm and terrorist arm were led by the same people: "The same leadership that directs the parliamentary and government work also leads jihad actions." When terrorists are put in charge of governing a state, will this risk creating a terrorist state?

While in 2008 I expressed the hope that involvement in Lebanese politics would constrain Hizballah's use of violence and terrorism, it is clear that the group remains committed to destabilizing pursuits, both in the region and internationally. Bulgaria's recent investigation exposes Hizballah for what it is – a terrorist group that is willing to recklessly attack innocent men, women, and children, and that poses a real and growing threat not only to Europe, but to the rest of the world. Hizballah's dangerous and destabilizing activities – from attacking tourists in foreign countries to leader Hassan Nasrallah's active support of Bashar al-Asad's violent campaign against the Syrian people – threaten the safety and security of nations and citizens around the world and stand as further proof that this organization has no intention of evolving beyond its militant and terrorism roots. During my time as the Assistant to the President for Homeland Security and Counterterrorism, this Administration has been focused on actively countering Hizballah terrorism.

9. Do you believe that more Taliban in the government of Afghanistan will improve the democratic process? Do you believe that more Hamas in the government of the Palestinians will improve the democratic process? Can you cite an Islamic country where this approach of empowering a terrorist organization by giving them governing powers has accomplished anything other than the creation of a terrorist state?

The Taliban is unlikely to participate in the current government because it does not accept the legitimacy of the Karzai regime. We have few indicators to date that the Taliban are sincere about reconciliation. One of the key outcomes for reconciliation would entail credible Taliban commitments to abide by the Afghan constitution, including its protections for the rights of all Afghan men, women, and children.

Although HAMAS's victory in Palestinian Legislative Council elections in 2006 demonstrated the group was capable of participating in elections, its takeover of

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the Gaza Strip in 2007 showed it prioritizes its own interests over democratic principles. The United States has been clear about the principles that must guide a Palestinian government in order for it to play a constructive role in achieving peace and building an independent, democratic state. Any Palestinian government must unambiguously and explicitly commit to nonviolence, recognition of the State of Israel, and acceptance of previous agreements and obligations between the parties, including the Roadmap.

Prior to its decision to renounce violence and recognize Israel in 1988, the PLO was an organization whose members in the 1960s, 1970s, and 1980s carried out terrorist attacks. The PLO's renunciation of violence and recognition of Israel in 1988 opened the door for the Oslo Accords in 1993 and the establishment of the Palestinian Authority in 1994. Many senior PLO members subsequently took leadership positions in the newly-created Palestinian Authority, which so far continues to be committed to a peaceful solution to the Israeli-Palestinian dispute.

10. When the President said, "The future must not belong to those who slander the Prophet of Islam" at the United Nations on September 25, 2012, after the attack on the U.S. facility in Libya, what were the meaning of those words? As his Chief Counterterrorism Adviser, you must have recommended or assented to the use of this phrase. What did you mean for US citizens to understand regarding any criticism of Islam?

It is important to remember that in addition to the attacks on the U.S. facility in Benghazi, there were widespread protests taking place at U.S. diplomatic facilities around the world in the lead-up to the President's speech. These protests were rooted in a variety of factors, including the film, "The Innocence of Muslims." I did not draft any portion of the President's speech, though I strongly support the central ideas in his speech: that the United States stands for freedom of speech, that no speech justifies the use of violence, that violent extremists have sought to fan the flames of hatred to advance their cause, and that speech slandering Islam – or any religion – does not represent the spirit of tolerance and respect for religious freedom that is at the heart of the American story. My belief is that Americans should be proud of both their commitment to freedom of speech, and their remarkable achievement of building a nation in which people of all faiths are welcome.

I would point you to several passages in the President's speech that make these points: "Americans have fought and died around the globe to protect the right of all people to express their views, even views that we profoundly disagree with. We

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do not do so because we support hateful speech, but because our founders understood that without such protections, the capacity of each individual to express their own views and practice their own faith may be threatened. We do so because in a diverse society, efforts to restrict speech can quickly become a tool to silence critics and oppress minorities. We do so because given the power of faith in our lives, and the passion that religious differences can inflame, the strongest weapon against hateful speech is not repression; it is more speech – the voices of tolerance that rally against bigotry and blasphemy, and lift up the values of understanding and mutual respect...There is no speech that justifies mindless violence. There are no words that excuse the killing of innocents. There's no video that justifies an attack on an embassy. There's no slander that provides an excuse for people to burn a restaurant in Lebanon, or destroy a school in Tunis, or cause death and destruction in Pakistan...It is time to marginalize those who – even when not directly resorting to violence – use hatred of America, or the West, or Israel, as the central organizing principle of politics. For that only gives cover, and sometimes makes an excuse, for those who do resort to violence. That brand of politics – one that pits East against West, and South against North, Muslims against Christians and Hindu and Jews – can't deliver on the promise of freedom. To the youth, it offers only false hope. Burning an American flag does nothing to provide a child an education. Smashing apart a restaurant does not fill an empty stomach. Attacking an embassy won't create a single job. That brand of politics only makes it harder to achieve what we must do together: educating our children, and creating the opportunities that they deserve; protecting human rights, and extending democracy's promise.”

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### QUESTIONS FROM SENATOR RISCH

1. Could you please provide a list of all individuals present on the May 7, 2012, conference call we discussed at your hearing and described in the Reuters article entitled "Did White House 'spin' tip a covert op?"

The May 7, 2012 conference call included the following participants in addition to myself:

Nick Rasmussen  
Caitlin Hayden  
Erin Pelton  
Nick Shapiro  
Roger Cressey  
Juan Zarate  
Fran Townsend  
Richard Clarke

2. During your confirmation hearing you mentioned that there were notes and a transcript of the May 7, 2012, conference call. Could you please provide all notes and transcripts of this call to the Committee.

During my hearing, I answered questions about a conference call on May 7, 2012 with former national security officials who were likely to comment on an Associated Press story that had run earlier in the day regarding a foiled bomb plot. In advance of my voluntary interview with the Department of Justice, my counsel received a transcript of this conference call from DOJ. Enclosed is a copy of what my counsel was provided. I am not aware of any notes of the conference call.

3. On the night of May 7, 2012 Richard Clarke made the following statement on ABC's Nightline, "The U.S. government is saying it never came close because they had insider information, insider control, which implies that they had somebody on the inside who wasn't going to let it happen." I have not been able to find any stories indicating "inside control" or "inside information" before your interview on May 7, 2012. Additionally, there are no articles mentioning double agents, undercover operatives, or spies before that interview. How do you account for this?

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The irresponsible and damaging leak of classified information was made several days – and possibly even a week – earlier when someone informed the Associated Press that the U.S. Government had intercepted an IED that was supposed to be used in an attack and that the U.S. Government currently had that IED in its possession and was analyzing it. Various reporters were asking questions of our press people that raised alarm bells. In an effort to minimize the damage to national security from this unauthorized and dangerous disclosure of classified information, and to ensure that the American public appropriately understood the current threat environment, I briefed the national security professionals in the May 7 call, as they were preparing to comment publicly on the situation.

The U.S. Attorney's Office for the District of Columbia is conducting a criminal investigation of these leaks, and I participated in a voluntary interview with those conducting the investigation. My counsel has been advised by representatives of the United States Attorney's Office that I am only a witness in their investigation (that is I am not a subject or target) and that they do not have any plans to speak with me again at this time.

4. In retrospect, if you could go back and change what you said in that interview would you, and If so, how? Why was it insufficient to simply say that the U.S. government successfully interdicted or disrupted an al-Qaeda plot?

No. Once someone leaked information about interdiction of the IED and that the IED was actually in our possession, it was imperative to inform the American people consistent with Government policy that there was never any danger to the American people associated with this al-Qa'ida plot.

5. Who instructed you to conduct the call and how were the participants selected?

The White House press office asked me to conduct the call to ensure the American people appropriately understood the current threat environment. The White House press office selected the participants.

6. Why was it important that the participants on the call have a counterterrorism background?

The participants on the call were all former national security officials who were being interviewed by the press about the Associated Press story, and it was important to make sure they understood the current threat environment. I also believed that given their backgrounds they would have an appropriate

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understanding about the operational sensitivities and thus avoid dangerous questions and speculation.

7. In your testimony, you described the teleconference as a “routine engagement with the press.” How many times during your tenure as the President’s deputy national security advisor did you conduct a teleconference with members of the TV media? And how many of your engagements followed a successful disruption of an al-Qaeda plot?

I have conducted teleconferences with members of the TV media numerous times at the request of the White House press office during my tenure as the President’s counterterrorism advisor. And, I have spoken publicly on a number of occasions about the President’s national security strategy and various terrorist threats, in speeches, television appearances, and press conferences as we have tried to be as transparent as possible about the U.S. Government’s counterterrorism actions.

8. In your testimony, you said “we had said publicly there was no active plot at the time of the bin Laden anniversary.” You also said the purpose of the call was to make sure “the American people were aware of the threat environment and what we’re doing on the counterterrorism front.” Did you conduct the teleconference to explain why the administration previously used the phrase “no active plot?”

No. Once someone leaked information about the IED it was imperative to ensure the American people appropriately understood the current threat environment.

9. Could you please describe the importance of ensuring the safe return of SGT Bowe Bergdahl?

I met SGT Bergdahl’s parents in late May 2012, and as I told them then, the safe return of their son is of paramount importance. SGT Bergdahl’s return is vital both from the perspective of our absolute commitment as a nation to return to safety any service member captured or otherwise isolated during operations overseas and based on our longstanding policy to work diligently to free U.S. citizens held hostage abroad, unharmed.

10. Could you please describe what steps the CIA is taking with its interagency partners such as the Departments of State, Defense and other IC components to bring SGT Bergdahl home to his family?

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The CIA, along with the Departments of State and Defense, other IC components, and U.S. law enforcement are focused and collaborating on this case. Additionally, our allies and international partners are key contributors. For example, the CIA has embedded U.S. military personnel both at CIA headquarters and in the field to ensure we are collaboratively working all leads related to SGT Bergdahl.

11. Has Russia fully implemented all of its Presidential Nuclear Initiative (PNI) commitments?

I would refer you to the Department of State for this question.

12. One of the lessons from the Benghazi terrorist attacks of 9/11/12 is that the U.S. government should not over rely on local security forces and locally employed staff for security in high threat environments. Do you agree with this statement and do you agree that the same lessons should be applied to environments where there is a high CI threat?

The CIA relies on host governments around the world to support its security needs and to provide assistance and enhance its own response to any emergency situation. Local resources are a valuable part of the Agency's security posture. We have to strike the right balance between host nation support, which requires an appropriate investment in local security forces, locally employed staff, and U.S. resources. I know that the lessons from Benghazi are currently being applied to U.S. official presence abroad, especially in high-threat areas, and if confirmed, I would continue to make sure that process continues.



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### QUESTIONS FROM SENATOR COATS

1. As the President's deputy national security advisor for homeland security and counterterrorism, you were an advocate for the administration's cybersecurity legislation. In 2009, when you announced National Cybersecurity Awareness Month, you stated: "[C]yber security is a shared responsibility. This refers to the fact that government, industry, and the individual computer user must all play a role in securing our information networks and data." In April 2012, in a Washington Post op-ed, you wrote: "[B]efore the end of the next business day, companies in every sector of our economy will be subjected to another relentless barrage of cyber intrusion." In the same op-ed, you also wrote: "[T]here is no reason we cannot work together in the same way to protect the cyber systems of our critical infrastructure upon which so much of our economic well-being, our national security and our daily lives depend." And last August, when the U.S. Senate considered the Cybersecurity Act of 2012, you urged its passage because the "risks to our nation are real and immediate." I agree with your statements on the shared responsibility and urgency of improving cyber security. Do you still agree that cyber security is a shared responsibility that includes both the public and private sector? What is the role of the Information Technology (IT) sector in this shared responsibility and why did you support a carve out for the IT sector?

I continue to believe that cybersecurity is a shared responsibility that includes both the public and the private sectors. The private sector owns and operates the majority of the critical infrastructure upon which our nation depends, the communications backbones upon which cyberspace depends, and the businesses that are the target of economic espionage in cyberspace.

The government cannot defend the Nation against threats in cyberspace unless the private sector has the baseline cyber defenses to mitigate the most common threats and to make it difficult even for sophisticated actors to gain illegal access. We depend upon the private sector to secure their networks according to a framework of standards and best practices, share cybersecurity information with others in the private sector and with government, and develop innovative solutions to cyber risks.

However, the private sector alone cannot defend against all cyber threats. The government must incentivize critical infrastructure to secure their networks, ensure that privacy and civil liberties are protected, investigate and prosecute cyber crimes, work in international fora to protect the open and innovative nature of the Internet, share information – particularly information that originates from the

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government's unique capabilities – and shape the behavior of nation states to deter them from malicious cyber activity.

Many of our efforts focus on the priority of protecting critical infrastructure, and IT products and consumer services do not currently fit the definition of critical infrastructure. On the other hand, our critical infrastructure and economy depend upon IT products and services. When those products and services are insecure, we all suffer. So while IT products and consumer services are not critical infrastructure, I believe the public and private sectors must find ways to work together to improve the security of those products and services. Furthermore, we must do so in a way that is consistent with our international trade obligations, that is technology neutral, that nurtures the innovation upon which our economy depends, and that helps ensure that firms can develop a single product or service and sell it internationally.

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### QUESTIONS FROM SENATOR UDALL

1. Mr. Brennan, during the hearing we talked about the importance of working with the Committee to correct the public and internal record regarding the detention-interrogation program within 90 days. I want to repeat that request and clarify it. Will you commit to working with the committee to correct the public and internal record regarding the detention-interrogation program within 90 days of the CIA's completion of its review of the report (or within 90 days of your confirmation, whichever is later) – especially given your comment to the Committee that you believe the CIA must “immediately” correct the record if it becomes aware of inaccurate statements?

As I have previously stated, if confirmed, I will make reviewing further details of the SSCI Report, as well as the CIA response, a priority, and I will work with the Committee to set the record straight if and as necessary and appropriate.

2. Mr. Brennan, will you commit to work with the SSCI to declassify the Executive Summary and to ONLY redact sources and methods--- NOT information that is merely embarrassing to the U.S. and the CIA?

If confirmed, I look forward to engaging in a constructive way forward with the Committee on the substance of both the SSCI Report and the CIA response. Our dialogue on this important and complex issue will include discussion relating to what information can or should potentially be released to the public.

3. Mr. Brennan, will you commit to working with me and this Committee to provide proposed reforms for the Agency within 90 days of the completion of the CIA's review of the Committee's report (or within 90 days of your confirmation, whichever is later) on detention and interrogation that ensure the mistakes documented in the Committee's report are not repeated?

I believe a dialogue with the Committee on the subject matter of the SSCI Report is vitally important. If confirmed, I will move swiftly to more closely examine the issues raised by the Report and the Agency's response. I look forward to working with you on this matter.

4. In 2008, you stated that it was important that there be a public airing, including public congressional hearings, related to the predicate for the surveillance of U.S. persons. Do you believe there is more on this topic that could be declassified?

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I have spoken publicly on multiple occasions on the importance of transparency. Indeed, at a speech in November 2011, I stated that our “democratic values include – and our national security demands – open and transparent government.” To that end, this Administration has attempted to share as much information as possible with the American people, including information related to the predicate for surveillance of U.S. persons. And while I am not aware of any particular information on this topic that could be declassified, I do believe any such information should be disclosed to the extent that such a disclosure could be done consistent with our national security.

5. In 2008, you stated, “I would argue the government needs to have access to only those nuggets of information that have some kind of predicate. That way the government can touch it and pull back only that which is related.” You also stated that the issue needed to be discussed, “not to the point of revealing sources and methods and giving the potential terrorists out there insights into our capability – but to make sure there is a general understanding and consensus that these initiatives, collections, capabilities, and techniques comport with American values and are appropriately adjusted to deal with the threat we face.” Do you believe the U.S. government currently has access to only nuggets of information that have some kind of predicate? Do you believe that the public has adequate information on this topic?

I believe your first question is referencing statements I made about the need to balance security, privacy, and civil liberty interests in connection with the then ongoing public debate over changes to the Foreign Intelligence Surveillance Act. With respect to FISA, this Administration has worked hard to ensure that any electronic surveillance that targets the American people is subject to judicial review through the Foreign Intelligence Surveillance Court to ensure, among other things, that such surveillance complies with the Constitution, and I strongly supported these efforts. I believe it is important that the Judicial Branch act as a check on the Executive Branch to ensure there is an adequate factual predicate to conduct lawful electronic surveillance that targets the American people. I have also supported – and will continue to support – the Administration’s efforts to ensure that Congress is kept informed of our surveillance practices and processes.

Moreover, the Act provides the process and procedures the Government must follow to undertake surveillance, as well as the role the Judicial Branch and the Congress play in that process. As I have stated publicly, I support as much transparency as possible on our counterterrorism efforts, consistent with our obligation to protect sources and methods. Thus, to the extent we could discuss

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with the public some of the factual predicates that have been deemed by courts as sufficient to justify surveillance, I would support doing so. Indeed I do believe, as I said in my September 2011 speech at Harvard Law School that an “open and transparent government” is one of the values our democratic society expects and demands.

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### QUESTIONS FROM SENATOR RUBIO

1. Regarding the capture of Ali Ani Harzi, a suspect in the September 11, 2012 attacks against the U.S. diplomatic and CIA facilities in Benghazi, did the U.S. Government ask the Government of Turkey for access to Harzi while he was in Turkish custody?

Yes. The United States made requests to the Government of Turkey (and later to the Government of Tunisia) that U.S. investigators be permitted to interview Harzi regarding his knowledge of the Benghazi attacks. Turkish authorities initially detained Harzi and, approximately one week later, deported him to Tunisia (his country of origin.)

2. Did the USG ask Turkey to turn Harzi over to U.S. custody?

Please see classified section.

3. Why was Harzi not taken into U.S. custody?

Please see classified section.

4. What intelligence did we have on Harzi at the time of his capture by the Turks, and what more did we know about him by the time of his release by the Tunisian Government?

Please see classified section.

5. Now that Harzi has been released, do we know where he is and are we monitoring his activities?

Please see classified section.

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### QUESTIONS FROM SENATOR KING

1. During the hearing, I asked how the Administration would react to the creation of an independent process – similar to the Foreign Intelligence Surveillance Court – to provide an appropriate check on the executive branch’s procedure for determining whether using lethal force in a foreign country against a U.S. citizen would be lawful. You noted that the Administration has wrestled with the idea of a FISA-like court. Please describe the process you went through in deliberating this concept. Specifically, what options did you consider in terms of establishing a judicial review process for such decisions? What were the advantages and disadvantages of the options you considered?

The concept of a FISA-like court has been discussed by the interagency and while attractive in some respects, it would raise some novel, and potentially difficult, questions and furthermore would grant courts authority over decisions that have traditionally been exercised principally, if not exclusively, by the Executive Branch. Nevertheless, given the stakes involved and the consequence of such determinations, all options are worth considering and the details of any particular proposal will be especially important.

2. In an interview with PBS on March 8, 2006, you said “the Defense Department has tried to increase its role in the Intelligence Community and to chew away at CIA's traditional authorities and responsibilities.” Please provide your views on how the DOD-CIA relationship should function when DOD is conducting irregular or unconventional warfare (for counterterrorism, counterproliferation, and other purposes). What steps will you take, not only to prevent unnecessary overlap in their respective missions, but to ensure thorough coordination by USSOCOM?

I have seen first-hand over the past several years how much coordination has improved. The key to close coordination between CIA and DOD is regular communications between the agencies, starting with the leadership and working through to all levels. The key principles, in my view, that should govern the allocation of responsibilities are: (1) optimizing the accomplishment of U.S. national security objectives through the most effective use of CIA and DOD capabilities; (2) ensuring related DOD and CIA activities are well coordinated and designed to advance both the military and intelligence missions; (3) ensuring compliance with applicable statutes with respect to authorities and prohibitions; and, (4) keeping Congress appropriately notified of these activities, whether undertaken by CIA under Title 50 or by DOD under Title 10. If confirmed, I



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would work closely with DOD to ensure that there is no unnecessary redundancy in CIA and DOD capabilities and missions.

3. In 2011, the National Counterintelligence Executive released an unclassified report finding that the governments of China and Russia “remain aggressive and capable collectors of sensitive U.S. economic information and technologies, particularly in cyberspace.” The Chinese government often requires foreign firms to transfer technology to their Chinese partners, and sometimes to set up research and development facilities in China, in exchange for access to China’s markets. Are you concerned that such requirements put U.S. economic information at risk? What role, if any, should the Intelligence Community play in reviewing such technology transfers?

Yes, I am very concerned about this. This is why the U.S. Government has a strategy in place to meet the challenge of foreign governments’ aggressive programs aimed at the collection of sensitive and emerging U.S. information and technologies. One element of that strategy is to build awareness and understanding of the threat these collection activities pose, both to the national security and economic interests of the United States. The Intelligence Community has a significant role to play in this and is an active partner with other U.S. Government organizations in existing formal processes. For example, concerning the national security review of technology transfers, the USG export control interagency relies heavily on the IC’s analysis and assessments regarding advanced technologies, end-users, and countries of concern. Our ability to deny these technologies to bad actors and their sponsors is a testament to the partnership and cooperation within the USG. This also extends to the IC’s ability to work in partnership with the private sector, which also strengthens the efforts of the U.S. Government to counter foreign intelligence and nontraditional collector threats.

4. The Committee on Foreign Investment in the United States (CFIUS) is empowered to investigate the effect of an investment transaction on national security. In your opinion, is the CFIUS process effective? Should the Intelligence Community play a larger role in informing CFIUS investigations?

I believe the CFIUS review process plays an important and effective role in mitigating risks to national security that could arise if a foreign person were to take control of a U.S. business. By statute, the Intelligence Community, through the Director of National Intelligence, participates in the CFIUS review process by providing its independent assessment of the national security threat posed by every transaction under CFIUS review. My understanding is that CFIUS decision-

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makers carefully consider the Intelligence Community's assessments when deciding what, if any, actions should be taken with respect to a particular transaction. At this time, I do not have any reason to believe that the Intelligence Community should play a "larger" role in the CFIUS process. I would not want to take any action, however, that would compromise the Intelligence Community's ability to provide an objective, independent assessment of the national security threats posed by transactions under CFIUS review.

5. How much confidence do you have that the CIA is capable of achieving auditability by 2016? Will you set CIA auditability as one of your top priorities?

The CIA's unique mission sometimes requires equally unique business, financial, and property processes that don't always fit neatly into the auditability/accounting standards for other federal agencies. Nevertheless, my understanding is that CIA has made significant progress in recent years in trying to resolve challenging audit issues – and is, indeed, on track to achieving an unqualified audit opinion for its Fiscal Year 2016 financial statements. If confirmed, it will be one of my top priorities to see this effort through.

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# Exhibit 28

March 2013 Government Brief

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

NASSER AL-AULAQI, as personal  
representative of the estate of ANWAR  
AL-AULAQI, et al.,

Plaintiffs,

v.

LEON E. PANETTA, et al., in their  
individual capacities,

Defendants.

No. 1:12-cv-01192 (RMC)

**DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS**

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In their motion to dismiss, Defendants demonstrated that Plaintiffs' complaint cannot survive because it presents numerous political questions, binding circuit precedent precludes creating the implied right of action pled in the complaint, and Defendants are entitled to qualified immunity. In response, Plaintiffs have tried to gloss over these fatal defects by recasting their claims at the most general level possible, ignoring nationwide case law, and attempting to disavow the unambiguous context pled: that the country's highest ranking military and intelligence officials allegedly authorized the use of lethal force against terrorist suspects in Yemen. These efforts do nothing to change the inescapable fact that under the terms of their own complaint as pled, Plaintiffs' claims must fail as a matter of law.<sup>1</sup>

**I. The Political Question Doctrine Applies Regardless of How Plaintiffs Cast Their Claims.**

As explained in Defendants' opening motion, Plaintiffs' claims directly implicate the first four factors of *Baker v. Carr*, 369 U.S. 186 (1962), and thus present non-justiciable political questions. *See* Defs.' Mot. to Dismiss (MTD) at 5-17. Plaintiffs attempt to avoid the clear application of the political question doctrine by describing their constitutional claims at the most general level. This fundamentally misconstrues the political question doctrine and ignores the specific nature of the political and operational judgments Plaintiffs seek to challenge, which render judicial review unmanageable in this extraordinary context. The political question doctrine protects the "separation of powers" and the distinct role each branch of government plays in its respective areas of constitutional authority. *Baker*, 369 U.S. at 217. Ignoring the clear textual commitment to the political branches of the matters pled in their complaint, Plaintiffs argue that the Executive's role in this unique area of national security, self-defense, and war-making should be subordinate to oversight by the Judiciary. Plaintiffs also almost entirely ignore

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<sup>1</sup> Plaintiffs also admit they have not yet shown the capacity to sue. *See* Pls.' Opp. (Opp.) at 44.

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Congress’s role in the areas implicated by the claims as pled, relegating the Authorization for the Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (AUMF), to a single footnote, Opp. at 6 n.5, and otherwise failing to address any congressional involvement. *See infra* at 14; MTD at 20-21 & n.14. Plaintiffs’ misconceptions cannot be squared with binding precedent.

Citing *Zivotofsky v. Clinton*, 132 S. Ct. 1421 (2012), Plaintiffs broadly frame the issue presented as whether the alleged “use of lethal force” violated the Fourth and Fifth Amendments, Opp. at 8-10, and argue that to be a justiciable question. *Zivotofsky* demonstrates that this cannot be done. It is the *precise issues* a court must address to resolve a case—not the most generalized *characterization* of those issues—that determine what is justiciable. *See* 132 S. Ct. at 1427 (rejecting characterization of the issue as “ask[ing] the courts to determine whether Jerusalem is the capital of Israel” because the precise issue was whether a particular statute was constitutional); *id.* at 1434 (Sotomayor, J., concurring) (“In order to evaluate whether a case presents a political question, a court must first identify *with precision* the issue it is being asked to decide.” (emphasis added)). In *Zivotofsky*, because the “only real question” presented—whether “§ 214(d) . . . impermissibly intrudes upon Presidential powers”—involved a “familiar judicial exercise,” the case was justiciable. *Id.* at 1427, 1428.

Not so here. Plaintiffs’ general recitation of the constitutional nature of their claims in their opposition is inconsistent with their complaint, which identifies at least three precise issues that are non-justiciable. Even assuming Plaintiffs properly identify the issues relevant to their claims and accepting their allegations as true, this Court would need to determine whether: (1) Anwar Al-Aulaqi and Ibrahim Al-Banna posed a threat sufficient to warrant the use of lethal force abroad; (2) options other than lethal force were reasonably available to counter the threat posed; and (3) U.S. officials took appropriate measures to minimize casualties to bystanders. *See,*

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*e.g.*, Opp. at 15 (noting that the “factors involved in evaluating Plaintiffs’ constitutional claims” include “whether a threat is imminent, whether non-lethal alternatives are available, and whether lethal force is permissible in light of the threat to bystanders”). Plaintiffs attempt to distance themselves from their pleadings, suggesting their claims “may have arisen in a national-security context.” Opp. at 9. But unquestionably their claims as pled not only arise in such a context, but specifically would require this Court to pass judgment on alleged operational decisions military and intelligence officials may have made in carrying out core national self-defense missions.

Indeed, Plaintiffs’ own discussion in their opposition of the underlying *constitutional* questions makes clear that their suit would unavoidably require this Court to resolve issues that “implicate real-time decisionmaking in war,” *id.* at 23, taking it well beyond its traditional role and thrusting it into the realm of operational combat judgments. *See, e.g., id.* at 33 (arguing that it was “unreasonable,” and thus unconstitutional, for military and intelligence officials to allegedly launch a missile at Anwar Al-Aulaqi’s vehicle “at the moment Khan was in the vehicle (as opposed to before or after)”); *id.* at 34 (arguing that it was “unreasonable,” and thus unconstitutional, for military and intelligence officials to allegedly launch a missile at an individual while he was at a restaurant “as opposed to targeting that person before he arrived or after he left”). Contrary to Plaintiffs’ claims, “it is within the role of the executive to acquire and exercise the expertise of protecting national security. It is not within the role of the courts to second-guess executive judgments made in furtherance of that branch’s proper role.” *Schneider v. Kissinger*, 412 F.3d 190, 196 (D.C. Cir. 2005) (citation omitted).

Plaintiffs’ conclusory assertion, Opp. at 12, that a “well-developed body of judicial standards” exists to evaluate their claims ignores the substantial body of case law that holds precisely the opposite. *See, e.g., El-Shifa Pharm. Indus. Co. v. United States*, 607 F.3d 836, 844



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(D.C. Cir. 2010) (en banc) (“In military matters in particular, the courts lack the competence to assess the strategic decision to deploy force or to create standards to determine whether the use of force was justified or well-founded.”); *Al-Aulaqi v. Obama*, 727 F. Supp. 2d 1, 47 (D.D.C. 2010) (“[T]here are no judicially manageable standards by which courts can endeavor to assess the President’s interpretation of military intelligence and his resulting decision—based on that intelligence—whether to use military force against a terrorist target overseas.” (citation omitted)). Again, considering the precise context of their claims—alleged missile strikes abroad against a leader of an armed enemy group at the direction of military and intelligence officials—makes clear the absence of judicially manageable standards. See *El-Shifa Pharm. Indus. Co. v. United States*, 378 F.3d 1346, 1367 n.6 (Fed. Cir. 2004) (“[I]t would be difficult, if not extraordinary, for the federal courts to discover and announce the threshold standard by which the United States government evaluates intelligence in making a decision to commit military force in an effort to thwart an imminent terrorist attack on Americans.”). Despite Plaintiffs’ contentions otherwise, Opp. at 12, the existence of case law applying constitutional standards in the routine law enforcement context, and the fact that Executive Branch officials have discussed generally the circumstances under which remotely piloted aircraft (RPAs) may be deployed, do not mean that courts can appropriately address the myriad military, intelligence, and foreign policy considerations that would arise in adjudicating these specific claims. See MTD at 14-15.<sup>2</sup>

Plaintiffs’ argument that their claims do not involve “policy choices and value determinations,” Opp. at 15, suffers from the same flaws. Plaintiffs fail to acknowledge the sorts of determinations that necessarily lie behind all but the most general description of their claims.

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<sup>2</sup> Plaintiffs’ implicit argument that the second *Baker* factor—an absence of judicially manageable standards—is somehow less important than the first *Baker* factor, Opp. at 9, is contrary to D.C. Circuit precedent. See *Harbury v. Hayden*, 522 F.3d 413, 418 (D.C. Cir. 2008). Regardless, the first *Baker* factor alone warrants dismissal of Plaintiffs’ claims.

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For instance, as Defendants exhaustively explained in their motion, resolving the precise question of “whether non-lethal alternatives are available” involves a host of fact-intensive policy choices. *See, e.g.*, MTD at 16, 18. Plaintiffs offer no substantive rebuttal to Defendants’ explanation in this regard, and wholly fail to grapple with the potential real-world implications of possible non-lethal operations. Similarly, Plaintiffs wholly fail to grapple with Defendants’ showing, MTD at 16-17, that a determination of whether “feasible measures” were available to protect bystanders during the alleged strikes would require non-judicial expertise.

Plaintiffs’ efforts to either distinguish *El-Shifa* or use it as support, *Opp.* at 9, 10 n.10, are to no avail. In that case, the D.C. Circuit noted that the precise questions raised were whether a U.S. missile attack on a Sudanese pharmaceutical plant “was ‘mistaken and not justified,’” and whether the government’s stated reasons for the strike were factually valid, regardless of plaintiff’s characterization of his claims. 607 F.3d at 844 (“The defamation claim similarly *requires us* to determine the factual validity of the government’s stated reasons for the strike.” (emphasis added)). These questions squarely fell within the political question doctrine: “If the political question doctrine means anything in the arena of national security and foreign relations, it means the courts cannot assess the merits of the President’s decision to launch an attack on a foreign target.” *Id.* That holding applies with full force here.

Plaintiffs’ attempt to distinguish *People’s Mojahedin Org. of Iran v. Dep’t of State*, 182 F.3d 17 (D.C. Cir. 1999) (“*PMOI*”), is similarly unavailing. Plaintiffs again characterize their claims at the most general level possible, wholly divorcing the political question inquiry from the particular context they have pled. Viewed through the lens of the issues presented by the allegations in the complaint—including whether Anwar Al-Aulaqi (or Al-Banna), posed a “concrete, specific, and imminent” threat to the lives of Americans, Compl. ¶¶ 24, 34—*PMOI* is

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relevant here. *See Al-Aulaqi*, 727 F. Supp. 2d at 47 (“Nor are there judicially manageable standards by which courts may determine the nature and magnitude of the national security threat posed by a particular individual. In fact, the D.C. Circuit has expressly held that the question whether an organization’s alleged ‘terrorist activity’ threatens ‘the national security of the United States’ is ‘nonjusticiable.’” (quoting *PMOI*)).

*Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), and the other Supreme Court cases Plaintiffs cite allegedly involving “times of conflict” fail to assist them. *Opp.* at 11. *Hamdi* involved the habeas claim of a U.S. citizen challenging his military detention in the United States, 542 U.S. at 510, a context wholly distinct from the alleged use of lethal force abroad to target a leader of an armed enemy group. *See El-Shifa*, 607 F.3d at 843; *Al-Aulaqi*, 727 F. Supp. 2d at 47 (“But there are no judicially manageable standards by which courts can endeavor to assess the President’s interpretation of military intelligence and his resulting decision—based on that intelligence—whether to use military force against a terrorist target overseas.” (citation omitted)).<sup>3</sup>

Indeed, as the plurality in *Hamdi* noted, the process provided in the long-term detention context “meddles little, if at all, in the strategy or conduct of war.” 542 U.S. at 535. The plurality was careful to add that it accords “the greatest respect and consideration to the judgments of the military authorities in matters relating to the actual prosecution of a war,” and recognizes “that the scope of that discretion necessarily is wide.” 542 U.S. at 535. Thus, to the extent *Hamdi*

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<sup>3</sup> The other Supreme Court cases Plaintiffs cite also involved contexts and issues distinct from the alleged real-time combat decisions of military and intelligence officers to launch missiles at targets abroad. *See N.Y. Times Co. v. United States*, 403 U.S. 713, 714 (1971) (government attempt to enjoin major newspapers from publishing Department of Defense research on the development of policy in Vietnam); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 582-83 (1952) (Presidential order to seize steel mills to ensure they continued operating to provide for the manufacture of weaponry). Similarly, *Comm. of U.S. Citizens Living in Nicaragua v. Reagan*, 859 F.2d 929 (D.C. Cir. 1988), involving a legally distinct context, is inapplicable here. *See Al-Aulaqi*, 727 F. Supp. 2d at 50 (distinguishing *Comm. of U.S. Citizens*).

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speaks to the context of Plaintiffs' claims—the “conduct” of alleged missile strikes abroad against terrorist threats—it supports Defendants, not Plaintiffs. *Cf. Munaf v. Geren*, 553 U.S. 674, 700 (2008) (in denying habeas petitions of U.S. citizens awaiting transfer to Iraqi criminal system, citing “concerns about unwarranted judicial intrusion into the Executive’s ability to conduct military operations abroad”).

Finally, and perhaps most fundamentally, Plaintiffs fail to distinguish this case from *Al-Aulaqi v. Obama*. Although Plaintiffs correctly note, *Opp.* at 14, that the relief sought in *Al-Aulaqi v. Obama* was an injunction, here too a ruling could have prospective effect. As the Supreme Court has explained, a constitutional ruling in a *Bivens* action can affect “future action.” *Opp.* at 14. *See Camreta v. Greene*, 131 S. Ct. 2020, 2029 (2011) (holding that the Court has Article III jurisdiction over an appeal from an adverse constitutional ruling, even in the absence of liability, “because the judgment may have prospective effect on the parties”). *Cf. Sanchez-Espinoza v. Reagan*, 770 F.2d 202, 208 n.8 (1985) (“We note in this regard that the discretionary relief of declaratory judgment is, in a context such as this where federal officers are defendants, the practical equivalent of specific relief such as injunction or mandamus, since it must be presumed that federal officers will adhere to the law as declared by the court.”). That Plaintiffs seek damages for past conduct does not diminish the prospective effect a ruling on their claims could have on future operations.

Lastly, *Al-Aulaqi*’s core holding, that the court “lacks the capacity to determine whether a specific individual in hiding overseas, whom the Director of National Intelligence has stated is an ‘operational’ member of AQAP, presents such a threat to national security that the United States may authorize the use of lethal force against him,” is directly on point. *Al-Aulaqi*, 727 F.

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Supp. 2d at 52 (citation omitted).<sup>4</sup> Plaintiffs' claims unquestionably present that precise non-justiciable question and must be dismissed.

## **II. Plaintiffs Misstate the Special Factors Analysis, Which Counsels Hesitation Here.**

Defendants established in their opening motion that both the separation-of-powers concerns that warrant dismissal on political question grounds and binding precedent demonstrate that this Court should not create a novel damages remedy in this context. MTD at 21-28. Plaintiffs fail to rebut that showing in any meaningful way. At the most basic level, Plaintiffs misrepresent Supreme Court special factors jurisprudence when they argue that the separation-of-powers concerns underlying special factors apply only to the "legislative prerogative." Opp. at 15-20. This is not so. To the contrary, "[s]eparation-of-powers principles are intended, in part, to protect each branch of government from incursion by the others." *Bond v. United States*, 131 S. Ct. 2355, 2365 (2011). That principle is evident from the structure of the Constitution itself, which designates the powers of each branch in a separate article. In a *Bivens* analysis, this means not intruding on the province of the political branches when factors counsel hesitation.<sup>5</sup>

Case after case has recognized this bedrock principle. Indeed, the five federal courts of appeals to address whether to infer *Bivens* remedies in novel separation-of-powers contexts—the D.C., Ninth, Fourth, en banc Second, and en banc Seventh Circuits—have uniformly declared: "No." See MTD at 22 n.15 (citing cases). These consistent holdings derive directly from the Supreme Court's discussion of special factors. As the Court in *United States v. Stanley*, 483 U.S. 669 (1987), made clear, "the insistence . . . with which the Constitution confers authority over

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<sup>4</sup> Plaintiffs' selective quotation from *Al-Aulaqi*, Opp. at 14, does not negate its direct application to their claims, Judge Bates's emphasis that his holding was narrow notwithstanding.

<sup>5</sup> Even if Congress's prerogative were the sole concern, Plaintiffs ignore the AUMF, see *supra* p.2, and otherwise misconstrue Congress's activity in this area. See *infra* p.14.

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the Army, Navy, and militia upon the *political branches* . . . counsels hesitation in our creation of damages remedies in this field.” *Id.* at 682 (emphasis added).<sup>6</sup> The *Stanley* Court noted intrusions on both congressional and executive authority in the field, focusing equally, if not more so, on the negative effects *Bivens* suits could have on the military regime. *See id.* at 682-83 (“[C]ompelled depositions and trial testimony by military officers concerning the details of their military commands . . . would disrupt the military regime.”).

Similarly, in *Chappell v. Wallace*, 462 U.S. 296 (1983), contrary to Plaintiffs’ reading, *Opp.* at 18, the Court focused not only on Congress’s authority over military discipline in holding that special factors barred a suit by military personnel against their superiors, but also on the inherent and absolute requirement that an effective military have “strict discipline.” 462 U.S. at 300. After detailing the obvious need for such discipline, the Court stated that “[c]ivilian courts must, at the very least, hesitate long before entertaining a suit which asks the court to tamper with the established relationship between enlisted military personnel and their superior officers, [which is] at the heart of the necessarily unique structure of the Military Establishment.” *Id.* It takes little imagination to see the disruption to military discipline if courts, and not commanders, were to dictate the conduct of RPA operations abroad, thereby placing military personnel in a *Catch-22*: disobey the orders of superiors or face personal liability. Accordingly, the proper understanding of the Supreme Court’s special factors jurisprudence is that where the implications of inferring a damages remedy could undermine certain core legislative or executive functions—including the operation of an effective military, combat abroad, and national self-

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<sup>6</sup> *See also id.* at 683 (“The special factor that counsels hesitation is . . . the fact that congressionally uninvited intrusion into military affairs by the judiciary is inappropriate.” (internal quotations and alterations omitted)). *Accord Lebron v. Rumsfeld*, 670 F.3d 540, 548 (4th Cir. 2012) (“[T]he Constitution delegates authority over military affairs to Congress and to the President as Commander in Chief.”). *Cf. Schneider*, 412 F.3d at 194-95 (detailing the textual commitment of national security matters to the political branches).

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defense—the Judiciary should leave it to the Legislative Branch to determine whether a new damages remedy is appropriate.<sup>7</sup>

In addition to fundamentally misunderstanding Supreme Court case law, Plaintiffs fail adequately to grapple with Defendants’ demonstration that this case presents an extraordinary context into which a *Bivens* remedy has never been extended. Indeed, Plaintiffs’ mistaken premise, Opp. at 16, that a *Bivens* remedy is presumed available, ignores the last three decades of Supreme Court precedent. See *Ashcroft v. Iqbal*, 556 U.S. 662, 675 (2009) (“Because implied causes of action are disfavored, the Court has been reluctant to extend *Bivens* liability ‘to any new context or new category of defendants.’” (quoting *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 68 (2001))). Plaintiffs’ reliance upon *Mitchell v. Forsyth*, 472 U.S. 511 (1985), is misplaced. Opp. at 19. That case, involving domestic wiretapping by the Federal Bureau of Investigation and not the alleged launch of missiles by military and intelligence officials at suspected terrorists abroad, was resolved on immunity, not special factors, grounds. *Mitchell*, 472 U.S. at 513.<sup>8</sup>

Although Plaintiffs cite limited case law discussing the *immunity* of military members out of context, they misstate, or simply ignore, the case law from the D.C. Circuit and other courts of

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<sup>7</sup> Plaintiffs’ offer no support for their argument, Opp. at 17 n.18, that the separation-of-powers concerns demonstrating the presence of political questions cannot be raised in the special factors context. Both are justiciability doctrines, and thus there is every reason to think that they embrace overlapping concerns. And the cases Plaintiffs cite, *id.*, mention no distinction between special factors and the political question doctrine. See *Hui v. Casteneda*, 130 S. Ct. 1845, 1850-55 (2010); *Stanley*, 483 U.S. at 678-86; *Carlson v. Green*, 446 U.S. 14, 18-23 (1980).

<sup>8</sup> Similarly, *Case v. Milewski*, 327 F.3d 564 (7th Cir. 2003), and *Morgan v. United States*, 323 F.3d 776 (9th Cir. 2003), involved members of the military acting in a domestic law-enforcement capacity, a wholly separate context, and in any event made no mention of special factors. Nor does *Parisi v. Davidson*, 405 U.S. 34 (1971), a habeas case, have any bearing on the implied remedy sought here. And the cases cited by the dissent in *Vance v. Rumsfeld*, 701 F.3d 193 (7th Cir. 2012) (en banc), *cert. petition filed*, No. 12-976 (U.S. Feb. 5, 2013), all either involved military officers acting in a law-enforcement capacity, were brought under 42 U.S.C. § 1983, or are two decades old, non-binding, and fail to reflect more recent special factors jurisprudence. See *Vance*, 701 F.3d at 214-15 (Hamilton, J., dissenting) (listing cases).



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appeals that *does* address special factors in the military and national security contexts. *See* MTD at 22 n.15. Plaintiffs' narrow reading of *Doe v. Rumsfeld*, Opp. at 21, cannot be squared with the court's own opinion. 683 F.3d 390 (D.C. Cir. 2012). The *Doe* court identified three areas where special factors apply (military, intelligence, and national security), mentioning *Chappell* and *Stanley* only in its opening paragraph discussing the military area. *Id.* at 394-96. The court then canvassed the other areas and other case law, concluding that "[m]any of the same special factors" found in those other cases applied in *Doe*. *Id.* It therefore strains credulity to suggest, Opp. at 21 n.25, that this extensive, detailed, and specific analysis of special factors in the areas of national security and intelligence is dicta this Court should ignore.<sup>9</sup>

Plaintiffs' argument, Opp. at 24 n.29, that classified intelligence concerns are not an appropriate special factor, is contrary to explicit D.C. Circuit precedent. *See Wilson v. Libby*, 535 F.3d 697, 704, 710 (D.C. Cir. 2008) (holding that the risk of "judicial intrusion" into "sensitive intelligence information" matters is an independent special factor). Plaintiffs' attempts to distinguish *Wilson* are unavailing. Regardless of the supposed "limited aim" of Plaintiffs' suit, Opp. at 24, the inquiries this Court would inevitably need to conduct run a substantial risk of delving into highly sensitive areas that may include military and intelligence matters and clandestine operations. *See, e.g.*, Compl. ¶ 2 (alleging that "unmanned CIA . . . drones fired missiles at Anwar Al-Aulaqi"). That the alleged operations at issue here already occurred does not, as Plaintiffs suggest, Opp. at 24, lessen the risk of exposing classified information. *Wilson*,

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<sup>9</sup> Plaintiffs entirely disregard *Arar v. Ashcroft*, 585 F.3d 559 (2d Cir. 2009) (en banc), which explored the presence of special factors in cases directly implicating national security, classified information, and foreign affairs. *See id.* at 574-77. And they do not attempt to distinguish the reasoning underlying *Lebron*, which exhaustively detailed the military, national security, and intelligence concerns that precluded a *Bivens* suit against military officials on account of their alleged national security operations, even when filed by a U.S. citizen. *See* 670 F.3d at 548-55.

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535 F.3d at 710 (“Pertinent to [whether special factors apply] are the difficulties associated with subjecting allegations involving CIA operations and covert operatives to judicial and public scrutiny.”).<sup>10</sup> See MTD at 27 n.20 (noting that the precise issues raised in this case were the subject of an earlier invocation of the military and state secrets privilege).<sup>11</sup>

Contrary to Plaintiffs’ assertion, Opp. at 22, neither *Ali v. Rumsfeld*, 649 F.3d 762 (D.C. Cir. 2011), nor *Rasul v. Myers*, 563 F.3d 527 (D.C. Cir. 2009), turned on the plaintiffs’ citizenship. Instead, *Ali* emphasized that allowing “enemies” (regardless of citizenship) to sue commanders ordered to subdue them could negatively affect the military. *Ali*, 649 F.3d at 773 (quoting extensively from *Johnson v. Eisentrager*, 339 U.S. 763 (1950)). Plaintiffs fail to demonstrate how citizenship would mitigate that concern. And they provide no reason why decedents’ citizenship would diminish the danger of this suit “obstructing U.S. national security policy.” *Rasul*, 563 F.3d at 532 n.5. Indeed, as explained above, *see supra* p.3, Plaintiffs’ papers remove any doubt that this lawsuit, if allowed to proceed, implicates operational combat decisions. Similarly, Plaintiffs’ dismissal of the foreign affairs implications of this suit as “a diversion,” Opp. at 25, is no counter to Defendants’ showing that inferring a remedy could affect relations with Yemen and others. See MTD at 28. The cases Plaintiffs cite on these points involved the merits of various constitutional questions in criminal prosecutions, not the question of whether to infer a civil damages remedy in the first instance. See *United States v. Abu Ali*, 528 F.3d 210 (4th Cir. 2008) (appeal by convicted terrorist); *United States v. Yousef*, 327 F.3d 56 (2d

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<sup>10</sup> Plaintiffs’ citation, Opp. at 24 n.30, to *United States v. U.S. Dist. Court for the E. Dist. of Mich., S. Div. (Keith)*, 407 U.S. 297, 321-22 (1972), and *Zweibon v. Mitchell*, 516 F.2d 594, 641 (D.C. Cir. 1975), is beside the point. Those cases, which did not turn on special factors, involved whether warrants were required for domestic wiretapping related to national security, not whether the potential disclosure of classified information counsels against inferring a damages remedy. See *Keith*, 407 U.S. at 314-20; *Zweibon*, 516 F.2d at 611-14.

<sup>11</sup> The Classified Information Procedures Act, 18 U.S.C. App. 3, Opp. at n.29, applies to criminal prosecutions only and is irrelevant to whether to infer a civil damages remedy.

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Cir. 2003) (same). In sum, courts have *not* inferred *Bivens* damages remedies against some of the Nation’s highest-ranking officials for the conduct of military, national security, and intelligence functions abroad, and Plaintiffs’ suggestions to the contrary are unfounded.

Despite Plaintiffs’ claims otherwise, the test is not whether Congress has specifically exempted “certain officials from liability” such that judicial hesitation is warranted, *Opp.* at 19, but rather whether “congressional inaction has not been inadvertent.”<sup>12</sup> *Schweiker v. Chilicky*, 487 U.S. 412, 425 (1988). This can be shown either by legislation related to the issue that does not provide the remedy sought, or by the absence of specific legislation despite congressional awareness of the issue. *See, e.g., id.* (noting “frequent and intense” congressional attention to issue without specific legislation providing remedy sought); *Doe*, 683 F.3d at 396-97 (noting legislation regarding detainee treatment that did not provide remedy).

Here, both are present. First, congressional authorization for discretionary relief regarding certain military claims in Iraq and Afghanistan, but not claims such as Plaintiffs’, underscores that Congress can provide for relief for military operations abroad when it so chooses.<sup>13</sup> *See* MTD at 24. Second, the use of RPAs and the alleged targeting of U.S. citizens abroad have been and continue to be extensively discussed in public and debated before

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<sup>12</sup>In this regard, Plaintiffs conflate, *Opp.* at 18-19, the two separate inquiries for determining if a *Bivens* remedy should be inferred: (1) whether Congress has provided an alternative remedial scheme; and (2) whether special factors counsel hesitation. *See Wilkie v. Robbins*, 551 U.S. 537, 550 (2007). Defendants’ argument goes to the latter prong, not the former.

<sup>13</sup> And contrary to Plaintiffs’ argument, *see Opp.* at 19, that the regulations implementing the statutes Defendants cited in their opening motion exclude Plaintiffs’ claims does not negate the fact that both statutes, as passed by Congress, preclude relief for injuries related to combat operations, further demonstrating that congressional inaction has not been inadvertent. *Cf. Schweiker*, 487 U.S. at 426 (noting that Congress had legislated repeatedly regarding Social Security benefits yet had not provided the remedy plaintiffs sought); *Al-Zahrani v. Rodriguez*, 669 F.3d 315, 320 (D.C. Cir. 2012) (recognizing that the special factors analysis is used to “preclude *Bivens* claims even in cases . . . where damages are the sole remedy by which the rights of plaintiffs and their decedents might be vindicated”).

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Congress. *See, e.g.*, Greg Miller, *Lawmakers Propose Giving Federal Judges Role in Drone Strikes, but Hurdles Await*, Wash. Post., Feb. 8, 2013, available at [http://articles.washingtonpost.com/2013-02-08/world/36988536\\_1\\_drone-program-special-court-judicial-review](http://articles.washingtonpost.com/2013-02-08/world/36988536_1_drone-program-special-court-judicial-review) (last visited Feb. 12, 2013). That deliberative political process is best suited to weigh and appraise the “host of considerations” that should accompany any judicial involvement. This Court should not short-circuit that process by injecting itself into this sensitive arena through the blunt instrument of an inferred damages remedy.<sup>14</sup>

Plaintiffs’ final argument, *Opp.* at 26-27, that this Court should infer a remedy despite the presence of special factors because of the nature of their “egregious” allegations, fails as a matter of law. Both the Supreme Court and the D.C. Circuit have refused to infer a remedy on special factors grounds despite allegations of serious and even egregious conduct.<sup>15</sup> The absence of another remedy for Plaintiffs in this extraordinary context does not alter this conclusion. *See Wilkie*, 551 U.S. at 550 (noting that a *Bivens* remedy “is not an automatic entitlement no matter what other means there may be to vindicate a protected interest”); *Stanley*, 483 U.S. at 683 (“[I]t is irrelevant to a ‘special factors’ analysis whether the laws currently on the books afford Stanley . . . an ‘adequate’ federal remedy for his injuries.”). Here, where Defendants were allegedly

<sup>14</sup> *See, e.g., Wilkie*, 551 U.S. at 562 (“Congress can tailor any remedy to the problem perceived, thus lessening the risk of raising a tide of suits threatening legitimate initiative on the part of the Government’s employees.”); *Bush v. Lucas*, 462 U.S. 367, 389 (1983) (“Congress is in a far better position than a court to evaluate the impact of a new species of litigation . . . .”); *Sanchez-Espinoza*, 770 F.2d at 208 (“Where . . . the issue ‘involves a host of considerations that must be weighed and appraised,’ its resolution ‘is more appropriately for those who write the laws, rather than for those who interpret them.’” (citation omitted)).

<sup>15</sup> *See, e.g., Stanley*, 483 U.S. at 671 (refusing to infer remedy despite allegations that military secretly gave plaintiff LSD as part of experiment, which caused personality changes that resulted in the abuse of his family and the dissolution of his marriage); *Ali*, 649 F.3d at 765-66 (refusing to infer remedy despite allegations of egregious abuse at Abu Ghraib prison in Iraq); *Sanchez-Espinoza*, 770 F.2d at 205 (refusing to infer remedy despite allegations that government officials supported foreign groups engaged in “summary execution, murder, abduction, torture, rape, wounding, and the destruction of private property and public facilities”).

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engaged in the core executive function of protecting national security by using armed force to combat a terrorist group abroad, the presence of special factors certainly warrants dismissal.

**III. Plaintiffs Cannot Rebut Defendants' Entitlement to Qualified Immunity.**

As Defendants demonstrated in their motion to dismiss, they are entitled to qualified immunity because Plaintiffs have failed to allege the violation of a clearly established constitutional right in this extraordinary, unique context. Plaintiffs' argument, Opp. at 28 n.35, that this Court should ignore this defect and proceed directly to the constitutional questions they raise ignores both Supreme Court and D.C. Circuit precedent. Although *Camreta v. Greene* noted that where courts bypass the constitutional issue "again, and again, and again," it may be appropriate for a court to "avoid avoidance," that is not the case here. 131 S. Ct. at 2031. This is the first *Bivens* suit ever brought to challenge the alleged use of RPAs against U.S. citizens, and only the second suit of any type to do so—the other nominally on behalf of one of the same decedents. More importantly, *Camreta* itself stated that the Court already "detailed a range of circumstances in which courts *should* address only the immunity question." *Id.* to 2032 (citation omitted, emphasis added). This case presents those very circumstances. *See* MTD at 30-31. Plaintiffs make no effort to counter this showing. And the D.C. Circuit has clearly stated that "[t]he *Saucier* procedure . . . is not appropriate in most cases." *Ali*, 649 F.3d at 773. If this Court reaches the immunity question, then, it should consider whether the alleged actions violated clearly established law without reaching the constitutional issue.

On *that* question, the series of international law sources and the military handbooks Plaintiffs' cite, Opp. at 42-43, do not help their case. Plaintiffs' claims are—and under governing precedent can only be—for purported violations of the Fourth and Fifth Amendments, not other sources. Thus, the only issue to decide is whether Defendants' alleged actions violated those

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constitutional amendments under clearly established law.<sup>16</sup> See *Davis v. Scherer*, 468 U.S. 183, 194 n.12 (1984) (noting that violation of an administrative regulation will not create liability unless the regulation itself gives rise to the cause of action). The extent to which these international law norms would be considered in the analysis of decedents' constitutional rights is far from clearly established, and Plaintiffs' allegations of law of war violations do nothing to demonstrate how they would clearly define the contours of their *constitutional rights*.<sup>17</sup>

**A. Decedents' Fourth Amendment rights were not clearly established.**

Plaintiffs cite to no cases establishing decedents had any clearly established Fourth Amendment rights. Although Plaintiffs correctly note, Opp. at 41 (citing *Hope v. Pelzer*, 536 U.S. 730 (2002)), that a case need not address *factually* identical circumstances for a right to be clearly established, at bare minimum, the earlier cases must involve a similar *context*. See, e.g., *Padilla v. Yoo*, 678 F.3d 748, 761-62 (9th Cir. 2012) (“[T]he constitutional rights of convicted prisoners and persons subject to *ordinary* criminal process were, in many respects, clearly established. But Padilla was not a convicted prisoner or criminal defendant; he was a suspected terrorist designated an enemy combatant and confined to military detention by order of the

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<sup>16</sup> See *United States v. Yunis*, 924 F.2d 1086, 1091 (D.C. Cir. 1991) (“Our duty is to enforce the Constitution, laws, and treaties of the United States, not to conform the law of the land to norms of customary international law.”); *In re Iraq & Afg. Detainees Litig.*, 479 F. Supp. 2d 85, 109 (D.D.C. 2007) (noting that “a *Bivens* remedy is available only for constitutional violations, not for violations of . . . international law”), *aff’d sub nom. Ali v. Rumsfeld*, 649 F.3d 762 (D.C. Cir. 2011); cf. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 727-28 (2004) (“Since many attempts by federal courts to craft remedies for the violation of new norms of international law would raise risks of adverse foreign policy consequences, they should be undertaken, if at all, with great caution.”); *Hamdan v. United States*, 696 F.3d 1238, 1248-50 (D.C. Cir. 2012) (discussing “what body of law is encompassed by the term ‘law of war’”).

<sup>17</sup> The *Charming Betsy* canon Plaintiffs rely upon, Opp. at 40, simply “counsels courts, where fairly possible, to construe ambiguous statutes so as not to conflict with international law,” and simply has no relevance to this case, which involves constitutional, not statutory, claims. *Al-Bihani v. Obama*, 619 F.3d 1, 7 (D.C. Cir. 2010) (en banc) (Brown, J., concurring).

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President.”). Plaintiffs’ Fourth Amendment cases, Opp. at 28-35, do not. Those cases involved domestic law enforcement encounters—not the alleged firing of missiles at a leader of an armed enemy group abroad. *See, e.g., Mattos v. Agarano*, 661 F.3d 433 (9th Cir. 2011) (domestic disturbance); *Cordova v. Aragon*, 569 F.3d 1183 (10th Cir. 2009) (car chase); *Johnson v. District of Columbia*, 528 F.3d 969 (D.C. Cir. 2008) (drug bust).

Indeed, context is critical with regard to Fourth Amendment claims. *See New Jersey v. T.L.O.*, 469 U.S. 325, 337 (1985) (“Although the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the *context* . . . .” (emphasis added)). *Cf. Padilla*, 678 F.3d at 761-62. Some of the very cases Plaintiffs cite support this clear maxim. *See, e.g., In re Terrorist Bombings, U.S. Embassies, E. Afr.*, 552 F.3d 157, 171 (2d Cir. 2008) (holding that “the Fourth Amendment’s Warrant Clause has no extraterritorial application” in the context of law enforcement agents’ search of a U.S. citizen’s residence abroad). Other commonly understood Fourth Amendment principles also vary by context. For example, “not all seizures of the person must be justified by probable cause to arrest for a crime.” *Florida v. Royer*, 460 U.S. 491, 498-99 (1983) (discussing cases). Even domestically, the tests and standards vary both by context—from homes to cars to airports—and by governmental interest.

Given this “constitutional tradition,” Opp. at 41, the extent to which, and under what conditions, the Fourth Amendment’s reasonableness requirement applied in the circumstances here simply was not clearly established. Plaintiffs do not—and cannot—cite a single case applying a Fourth Amendment remedy in this context, where relief depends on the amount of force that would be reasonable in the conduct of alleged military and intelligence operations against suspected enemy fighters abroad. In fact, to the extent the Supreme Court has spoken to



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the application of the Fourth Amendment abroad, it has suggested that some of its protections would be limited, further compounding the absence of clearly established rights in this arena. *See United States v. Verdugo-Urquidez*, 494 U.S. 259, 273-74 (1990).<sup>18</sup> *Cf. Terrorist Bombings*, 552 F.3d at 171 (holding that reasonableness alone governed search of U.S. citizen’s home abroad). Certainly, to wholly adopt and apply domestic law-enforcement standards of reasonableness to this unique context, as Plaintiffs recommend, *Opp.* at 29-30, would be unprecedented.

**B. Decedents’ Fifth Amendment rights were not clearly established.**

Plaintiffs’ argument that decedents’ Fifth Amendment rights were clearly established is similarly flawed. Plaintiffs again ignore the concept of context and Justice Harlan’s instruction that the question of “which specific safeguards” apply “in a particular context overseas” depends on “the particular circumstances of a particular case.” *Reid v. Covert*, 354 U.S. 1, 75 (1952) (Harlan, J., concurring). Plaintiffs do not—and again, cannot—cite any cases involving the “particular context” here. To the extent this Court were to look to “constitutional tradition,” *Opp.* at 41, even assuming that reliance on such generalities was appropriate in a qualified immunity inquiry, that tradition only supports Defendants, given the numerous wars the United States has fought that involved killing U.S. citizens in battle, and the total lack of case law suggesting that such citizens’ constitutional rights were thereby violated.<sup>19</sup> *See N.Y. Times Co. v. U.S. Dep’t of Justice*, -- F. Supp. 2d --, 2013 WL 50209, at \* 8 (S.D.N.Y. Jan. 3, 2013) (“Indeed, during the American Civil War, hundreds of thousands of persons recognized by the United States

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<sup>18</sup> That *Verdugo-Urquidez* involved a “foreign national” defendant (who Plaintiffs erroneously describe as a plaintiff, *Opp.* at 29 n.36), does not change the fact that Plaintiffs have failed to cite any Fourth Amendment precedent involving seizures abroad.

<sup>19</sup> *Vance v. Rumsfeld*, 653 F.3d 591 (7th Cir. 2011), *vacated and rev’d en banc*, 701 F.3d 193 (7th Cir. 2012), and *Doe v. Rumsfeld*, 800 F. Supp. 2d 94 (D.D.C. 2010), *rev’d*, 683 F.3d 390 (D.C. Cir. 2012), are not to the contrary. Both cases involved detention, not the actual conduct of armed conflict. And neither case is good law.

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Government as American citizens, who were engaged in armed rebellion against the country, were killed in battle without any suggestion that their due process rights were being violated.”).

Plaintiffs’ implicit argument, Opp. at 41, that the contours and extent of decedents’ due process rights were “beyond debate,” *Ashcroft v. Al-Kidd*, 131 S. Ct. 2074, 2083 (2011), is untenable given the complete absence of any case law clearly establishing the contours of due process in the unique and extraordinary context alleged. To the extent Plaintiffs suggest notice and opportunity were due, Opp. at 35-36, the only member of the Supreme Court to have discussed this particular context clearly stated to the contrary. *See Hamdi*, 542 U.S. at 597 (Thomas, J., dissenting) (notice and opportunity “clearly would not” be required in the context of alleged RPA missile strikes against terrorist targets, including a U.S. citizen, in Yemen). Indeed, Plaintiffs themselves fail to identify precisely what type of notice or opportunity they contend should have been afforded to decedents, instead leaving it “for this Court to consider,” Opp. at 35 n.45. Curiously, at the same time, they remind the Court that it “need not” decide “[w]hether more process was due.” Opp. at 36 n.46. The absence of case law and Plaintiffs’ inability to articulate the process to which they claim decedents were entitled confirm that the “contours” of decedents’ due process rights were not clearly established. *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). *See Padilla*, 678 F.3d at 761-62.<sup>20</sup>

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<sup>20</sup> Regarding Plaintiffs’ Bill of Attainder Clause claim, they bear the burden to establish it. Plaintiffs, who mention a concurrence, Opp. at 38, cite not a single case holding that executive actions can violate that clause. The opinion in *Joint Anti-Fascist Communist Committee v. McGrath*, 341 U.S. 123 (1951), is not to the contrary. There, the Court focused on plaintiffs’ denial of the Executive’s classification of them as “fascist, communist, or subversive,” noted that the Executive had provided no support for its classification, and thus found that “on the face of” plaintiffs’ complaints, the executive action was entirely arbitrary. *Id.* at 133-37. Notably, the Court indicated that if the allegations suggested the classification were proper, “the case would have bristled with constitutional issues” and “would have raised questions as to the justiciability and merits” of plaintiffs’ claims. *Id.* at 135-36. In any event, given the lack of case law applying the Bill of Attainder Clause to executive action, any alleged violation is not clearly established.

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**C. If the Court reaches the constitutional issue, Plaintiffs' claims must fail.**

Should the Court reach the merits of Plaintiffs' constitutional claims, Plaintiffs make two preliminary arguments, neither of which succeeds.<sup>21</sup> First, they dispute Defendants' characterization of the context of their claims as an "armed conflict." Opp. at 5-6. Second, they contend that this Court should ignore the Defendants' judicially noticeable material. *Id.* at 6-7.

Plaintiffs first argue that the question of whether their claims arise outside the context of armed conflict is a "mixed question of law and fact," and that therefore their assertions regarding that question must be accepted as true, Opp. at 6, but this misses the mark. Mixed questions of law and fact are "questions in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated." *Pullman-Standard v. Swint*, 456 U.S. 273, 290 n.19 (1982). Aside from the obvious difficulty of applying that definition to Plaintiffs' conclusory assertions about the absence of an armed conflict, Plaintiffs fail to cite a single United States court case that sets a particular standard for when an armed conflict arises or ends.<sup>22</sup> As the termination of a "state of war" is a "political act," *Ludecke v. Watkins*, 335 U.S. 160, 168-69 (1948), Plaintiffs' inability to cite authority in support of their position is unsurprising. Defendants, on the other hand, cite the AUMF, a point consistently absent from Plaintiffs' discussion.

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<sup>21</sup> Although Plaintiffs place these arguments at the beginning of their opposition, and at times suggest they control the *other* bases for dismissal, they do not. Whether the United States was technically in an armed conflict with al-Qa'ida in the Arabian Peninsula (AQAP), or whether Anwar Al-Aulaqi was a Specially Designated Global Terrorist, simply does not affect the context in which Plaintiffs' claims were otherwise pled for purposes of the political question doctrine, special factors, or the identification of clearly established law.

<sup>22</sup> *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006), did not set such a standard. *See id.* at 629-31. Nor did *Hamdi*. *See* 542 U.S. at 520-21.

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Moreover, even assuming the question were a mixed one, Plaintiffs' conclusory allegations are wholly inadequate under the most basic pleading standards. To illustrate the fallacy of Plaintiffs' contention, one need look no further than to the existence of probable cause in the malicious prosecution context, a mixed question of law and fact. *See Pitt v. District of Columbia*, 491 F.3d 494, 502 (D.C. Cir. 2007). A plaintiff cannot baldly allege—without any factual enhancement—that a prosecution lacked probable cause and thereby survive a motion to dismiss on qualified immunity grounds simply because the ultimate question is a mixed one. *See, e.g., Iqbal*, 556 U.S. at 678 (“[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions.”). But that is precisely what Plaintiffs' attempt to do. They offer no *factual* allegations suggesting that their claims *did not* arise in the context of armed conflict. To the contrary, the very acts alleged in the complaint—that high-level officials of the U.S. government allegedly directed missile strikes from RPAs against enemy targets abroad—appear on their face to be in the context of an armed conflict.<sup>23</sup>

Plaintiffs' second argument, that this Court cannot take judicial notice of the U.S. Department of the Treasury's notice designating Anwar Al-Aulaqi as a Specially Designated Global Terrorist (SDGT) and of the stated basis for the assertions supporting that designation, *Opp.* at 5-7, is also incorrect. As Defendants explained, *MTD* at 9 n.4, they do not ask this Court to take judicial notice of the underlying facts asserted in the designation, which themselves technically may be subject to reasonable dispute (but tellingly are not disputed by Plaintiffs). Rather, they ask this Court to take judicial notice of the fact that the U.S. government *made* those

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<sup>23</sup> Similarly, Plaintiffs argue that the United States was not engaged in an armed conflict “with or within Yemen,” *Compl.* ¶ 4, but the very facts they allege—that the United States carried out missile strikes within Yemen—are entirely consistent with the U.S. position that it is in an armed conflict with al-Qa’ida. *Cf. Hamdan v. Rumsfeld*, 548 U.S. 557, 630-31 (2006). And Plaintiffs provide no support for their suggestion, *Opp.* at 5 n.2, that the geographic scope of an armed conflict is limited to “hot battlefields.” *Id.* (quoting *Compl.* ¶ 18).

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assertions. *See* MTD at 9 n.4. That limited fact is not “subject to reasonable dispute”—nor do Plaintiffs dispute it—and therefore *Haim v. Islamic Republic of Iran*, 784 F. Supp. 2d 1 (D.D.C. 2011), is inapposite.<sup>24</sup> Qualified immunity, moreover, is adjudicated based on the facts *known to the official*. *See Anderson*, 483 U.S. at 641 (noting that the “relevant question” in a qualified immunity analysis is whether “a reasonable officer” could have believed his or her actions were lawful “in light of clearly established law and the information the . . . officer possessed”). Thus, the information believed to be true by U.S. officials, as demonstrated by the SDGT designation, is relevant and should be considered.<sup>25</sup> In addition to these preliminary arguments, Plaintiffs’ arguments on the merits of their constitutional claims fail as well.

1. *Plaintiffs fail to allege a violation of the Fourth Amendment.* Fundamentally, Plaintiffs point to no case law establishing that Defendants’ alleged actions in this unique and extraordinary context constituted a violation of any of the decedents’ Fourth Amendment rights. As an initial matter, Plaintiffs’ argument that Defendants’ “intent or motivation” is irrelevant, *Opp.* at 31 n.39, is misplaced. *Graham v. Connor*, 490 U.S. 386 (1989), states that officials’ *subjective* malice or good faith does not affect the reasonableness of their actions. *Id.* at 397. Plaintiffs confuse subjective intent with objective facts as Defendants understood them to be. The former is irrelevant. The latter is controlling for qualified immunity purposes. *See, e.g., Jones v. Horne*, 634 F.3d 588, 596 (D.C. Cir. 2011) (qualified immunity “extends ‘regardless of whether the government official’s error is . . . a mistake of fact’” (quotation omitted)).

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<sup>24</sup> Indeed, Judge Bates considered the contents of the SDGT designation in deciding the motion to dismiss in *Al-Aulaqi v. Obama*. *See* 727 F. Supp. 2d at 10-11.

<sup>25</sup> Although Plaintiffs correctly note, *Opp.* at 31, that the judicially noticeable information was released a year or more before the alleged strike on Anwar Al-Aulaqi, that information should not lose its force. Plaintiffs do not suggest that U.S. officials’ perception of Anwar Al-Aulaqi was misconceived or changed, or that between 2010 and 2011, Anwar Al-Aulaqi disavowed or otherwise distanced himself from the terrorist activities those officials detailed.

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Similarly, the alleged absence of formal criminal charges against Anwar Al-Aulaqi, Opp. at 31, does not affect the reasonableness analysis. First, the relevant inquiry is “the severity of the crime at issue,” *Graham*, 490 U.S. at 396, not whether charges were filed. Second, in the cases Plaintiffs cite, law enforcement officers either were *unable* to file charges *because* the plaintiff had done nothing wrong at the time force was used, *see Nelson v. City of Davis*, 685 F.3d 867, 879 (9th Cir. 2012), or employed force *knowing* the plaintiff had not been accused of any wrongdoing. *See Espinosa v. City & Cty. of S.F.*, 598 F.3d 528, 537 (9th Cir. 2010). Not so here. In any event, with respect to Anwar Al-Aulaqi, it cannot reasonably be disputed that he committed severe crimes as understood by U.S. officials, regardless of whether he was ever charged. *See N.Y. Times Co.*, 2013 WL 50209, at \* 8 (“The activities in which Al-Awlaki is alleged to have engaged violate United States law. Specifically, they constitute treason . . .”).

With respect to Samir Khan, Plaintiffs’ argument regarding the reasonableness of his alleged seizure is similarly unavailing. Even assuming the reasonableness of his alleged seizure turns on that of Anwar Al-Aulaqi, as explained, the latter seizure was not constitutionally unreasonable. Moreover, Plaintiffs offer no case law establishing that the reasonableness of the seizure of a vehicle’s passenger depends on the reasonableness of seizing the intended target in the unique context alleged.<sup>26</sup> Indeed, Plaintiffs themselves acknowledge that “bystander deaths” are not *per se* constitutionally unreasonable. Opp. at 33 (alleging that Defendants “had time” to “minimize”—not eliminate—“bystander deaths”).

Plaintiffs’ attempts to demonstrate that Abdulrahman Al-Aulaqi was constitutionally seized also fall short. The cases involving errant bullets—while admittedly not completely analogous given the unique circumstances here—did not turn on whether officers knew who was

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<sup>26</sup> Furthermore, Plaintiffs’ statements that Samir Khan was “in the vehicle” that was allegedly struck by a missile, Opp. at 32, 33, are not found in their complaint. *See* Compl. ¶ 31.

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possibly in the line of fire or were attempting to save them. Even accepting Plaintiffs' theory, however, Plaintiffs make no allegations about Defendants' knowledge as to whether Abdulrahman Al-Aulaqi was present at the "open-air restaurant" where they allege a strike occurred. Compl. ¶ 37. The lack of any alleged knowledge on the part of Defendants also explains away the cases involving the use of force against children. Opp. at 35. Even assuming those domestic cases apply, the officers there *knew* the object of their force was a child. *See Holland v. Harrington*, 268 F.3d 1179, 1184 (10th Cir. 2001) (officer trained laser sight onto back of fleeing four-year-old); *McDonald v. Haskins*, 966 F.2d 292, 294 (7th Cir. 1992) (officer held gun to head of nine-year-old).<sup>27</sup>

2. *Plaintiffs fail to allege a violation of the Fifth Amendment.*<sup>28</sup> Plaintiffs' argument that a "deliberate indifference" standard should control their substantive due process claims, Opp. at 37, fails on two counts. First, the deliberate indifference standard applies in the custodial context; "deliberate indifference will not violate due process where the state has no 'heightened responsibility toward the individual.'" *Smith v. District of Columbia*, 413 F.3d 86, 93-94 (D.C. Cir. 2005) (citation omitted). Second, Plaintiffs cite no support for their contention that the alleged launch of missiles from RPAs at armed enemy groups in Yemen did not involve tense and rapidly evolving variables merely because it involved "advance planning." Opp. at 31, 37. In any event, "[h]urried or unhurried," Defendants would have been "subjected to the 'pull of competing obligations'"—namely, the need to protect this Nation from terrorist threats arising abroad versus other concerns like the need to avoid excessive harm to innocent bystanders.

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<sup>27</sup> Regardless of whether Plaintiffs specifically allege Al-Banna was the target of the alleged strike, Opp. at 33 n.42, they certainly *do not* allege Abdulrahman Al-Aulaqi was the target.

<sup>28</sup> Plaintiffs effectively concede that to the extent their claims are properly analyzed under the Fourth Amendment, their substantive due process claims are precluded. Opp. at 37 n.47. *See Graham*, 490 U.S. at 395.



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*Lombardi v. Whitman*, 485 F.3d 73, 83 (2d Cir. 2007) (affirming dismissal of due process claim where U.S. officials allegedly misled plaintiffs regarding safety of Ground Zero because agency was subjected to pull of competing obligations). *Cf. County of Sacramento v. Lewis*, 523 U.S. 833, 853 (1998) (“Like prison officials facing a riot, the police on an occasion calling for fast action have obligations that tend to tug against each other.”). In such circumstances, only a conscience-shocking “intent to cause harm arbitrarily,” not deliberate indifference, can give rise to a substantive due process claim. *Lombardi*, 485 F.3d at 75. *See Lewis*, 523 U.S. at 854-55. No fact alleged supports such a claim.<sup>29</sup>

And again, other than to assert generally that due process requires “fair notice and an opportunity to be heard,” *Opp.* at 35, and to claim in conclusory fashion that Anwar Al-Aulaqi did not receive that process, Plaintiffs still fail to specify what process he was due under existing case law. As already detailed, *see supra* p.19, one justice has unequivocally stated that such process would not be due in the context of alleged missile strikes against terrorist targets in Yemen. In the context of alleged military and intelligence operations abroad against a leader of AQAP like Anwar Al-Aulaqi, notice and opportunity simply have no place. Indeed, Plaintiffs fail to adequately grapple with the Supreme Court’s observation in *Moyer v. Peabody*, 212 U.S. 78 (1909), that in limited circumstances of national danger, executive process suffices, *id.* at 85, a freestanding observation not bound to the ultimate resolution of that case.

**CONCLUSION**

This Court should dismiss Plaintiffs’ claims in their entirety.

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<sup>29</sup> With regard to Samir Khan and Abdulrahman Al-Aulaqi, Plaintiffs’ conclusory assertion that their claims do not sound in negligence is unsupported. Plaintiffs do not allege that Defendants intentionally used RPAs to *maximize* harm to bystanders—an allegation which might shock the conscience. Rather, they claim Defendants *failed to act to minimize* harm, *Opp.* at 33, a claim squarely sounding in negligence.

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Dated: March 7, 2013

Respectfully submitted,

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# Exhibit 29

March 2013 Feinstein Statement

**A-691**

**A-692****McCain, Feinstein Split Over Shifting Strike UAV Program to Military***Mar. 19, 2013 - 02:59PM | By JOHN T. BENNETT |*

defensenews.com

WASHINGTON — Two influential U.S. senators are split on whether most — or any — of the armed UAV strikes carried out by the CIA should instead be conducted by the military.

Since a filibuster earlier this month by Sen. Rand Paul, R-Kentucky, about the Obama administration's armed drone policy, a debate is taking place on Capitol Hill about whether the CIA should leave the business of kinetic operations.

Lawmakers on both sides of the debate have strong opinions about whether it is the job of the military or intelligence community to kill al-Qaeda leaders and operatives. And behind the issue of whether the CIA should be firing missiles from remotely piloted aircraft is a simmering congressional turf war between the chambers' Armed Services and Intelligence committees.

If the Defense Department is eventually handed control of the CIA's armed drone fleet and strike missions against al-Qaeda targets, it would also gain what intelligence analysts say is the program's sizeable budget, and control over one of the White House's primary tactics for combating the terrorist group.

On one side are pro-military lawmakers like Sen. John McCain, R-Ariz., until January the ranking member of the Senate Armed Services Committee.

On the other are members like Senate Intelligence Committee Chairwoman Sen. Dianne Feinstein, D-Calif., who are skeptical of the military's ability to use what she sees as the CIA's rigorous decision process before carrying out armed strikes.

"I believe the majority of the responsibility for this should rest with the military," McCain told reporters Tuesday.

He wants most of the armed drone program shifted to the Defense Department, a move that would bring it under the oversight of the House and Senate Armed Services committees.

"The majority of it can be conducted by the Department of Defense," McCain said. "It's not the job of the Central Intelligence Agency. ... It's the military's job."

Transferring the program to the Pentagon — and under the auspices of the House and Senate Armed Services committees — would create more "openness" and "oversight" and public hearings about the program, he said.

Minutes later, Feinstein told reporters her "mind, certainly, is not made up." But she quickly added she has reservations about turning over to the military the CIA's armed drone fleet and the missions they conduct.

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McCain, Feinstein Split Over Splitting Drone Program From Military, [The New York Times](#), 08/28/15 Page 4 of 4

6/10/15, 11:41

During the last few years, she said, “We’ve watched the intelligence aspect of the drone program: how they function. The quality of the intelligence. Watching the agency exercise patience and discretion,” Feinstein said.

“The military [armed drone] program has not done that nearly as well,” she said. “That causes me concern.

“This is a discipline that is learned, that is carried out without infractions,” Feinstein told reporters. “It’s not a hasty decision that’s made. And I would really have to be convinced that the military would carry it out that way.”

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# Exhibit 30

May 2013 DOD Statement



**A-695**

**A-696**

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DEPARTMENT OF DEFENSE

JOINT STATEMENT FOR THE RECORD

ON

LAW OF ARMED CONFLICT, THE USE OF MILITARY FORCE AND THE 2001  
AUTHORIZATION FOR USE OF MILITARY FORCE

BEFORE THE  
COMMITTEE ON ARMED SERVICES  
UNITED STATES SENATE

MAY 16, 2013

NOT FOR PUBLICATION UNTIL RELEASED BY  
THE COMMITTEE ON ARMED SERVICES,  
UNITED STATES SENATE

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Thank you, Chairman Levin, Ranking Member Inhofe, and members of the Committee, for this opportunity to testify about the legal framework for U.S. military operations to defend our nation.

First, we will give an overview of the legal framework governing the use of military force. Second, we will discuss the law governing whom the U.S. military may target with military force in the current conflict against al Qaeda and associated forces. Third, we will discuss the robust process of review that informs legal, policy, and military decisions regarding targeting, and the Administration's continued commitment to transparency.

### I. Legal Framework for U.S. Military Operations in the Current Conflict

The Administration has outlined the legal framework for the current conflict in numerous public speeches, including speeches by Attorney General Holder and former Department of Defense General Counsel Jeh Johnson, which should give you some sense of the extraordinary care with which the U.S. military ensures that its efforts to address the threat posed by al Qaeda and its associated forces follow all applicable law in its military operations. That means that U.S. military operations must comply with both U.S. domestic law and international law.

Our legal framework recognizes that the United States remains in a state of armed conflict with al Qaeda, the Taliban, and associated forces. As the September 11, 2001 attacks showed, these organizations are determined to kill U.S. citizens, and we continue to use military force to defend our nation against this enemy.

As a matter of domestic law, all three branches of our Government have recognized that the President may use military force in order to prosecute the conflict against al Qaeda, the Taliban, and its associated forces. The Authorization for the Use of Military Force, enacted one week after the attacks of September 11, 2001, explicitly authorizes the President to direct the use of military force in defending the nation. In "the AUMF," as it is often called, Congress authorized the President "to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed or aided the terrorist attacks that occurred on September 11, 2001." With this authorization, President Obama and President Bush before him, as Commanders-in-Chief, as well as four Secretaries of Defense, have directed military operations against al Qaeda, the Taliban, and associated forces.

The AUMF reflects the recognition that we are in an armed conflict with this enemy. And, the Supreme Court and the Court of Appeals for the District of Columbia Circuit have also repeatedly recognized in a long string of cases that the United States can use military force in its armed conflict with al Qaeda.

Some have questioned whether we may continue to rely on the AUMF nearly 12 years after its enactment. In the National Defense Authorization Act for Fiscal Year

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2012, Congress reaffirmed the AUMF with respect to detention authority. In doing so, it mirrored the Administration's interpretation of the AUMF as applying to al Qaeda, the Taliban, and associated forces and implicitly reaffirmed the continued applicability of the armed conflict paradigm that the AUMF represents.

As a matter of international law, the United States may use force in accordance with the laws of war in order to prosecute its armed conflict with al Qaeda, the Taliban, and associated forces, in response to the September 11, 2001 attacks, and the United States may also use force consistent with our inherent right of national self-defense.

Some have also questioned the geographic scope of this conflict. As John Brennan stated in a September 2011 speech, the "United States does not view our authority to use military force against al Qaeda as being restricted solely to 'hot' battlefields like Afghanistan." Indeed, the enemy in this conflict has not confined itself to the geographic boundaries of any one country. To that end, there is nothing in the AUMF that restricts the use of military force against al Qaeda to Afghanistan. Moreover, because "we are engaged in an armed conflict with al Qaeda, the United States takes the legal position that – in accordance with international law – we have the authority to take action against al Qaeda and its associated forces without doing a separate self-defense analysis each time."

Nonetheless, the fact that we are in an armed conflict does not mean that the United States is using military force everywhere the enemy is found. In many countries, we need not contemplate military operations because an al Qaeda presence, once discovered, would be neutralized effectively by the nation's law enforcement apparatus. In other countries, where al Qaeda's presence is more formidable, the foreign State or the United States might consider military action.

Additionally, U.S. military operations on the territory of another State must comply with international law rules, including respect for another State's sovereignty, which do not prevent us from using force against our enemies outside an active battlefield, at least when the country involved consents or is unable or unwilling to take action against the threat.

We believe that our military operations will ultimately degrade and dismantle the enemy's operational capacity and supporting networks. At that point, law enforcement and intelligence operations will be the primary tools in our counterterrorism efforts – against individuals who are the scattered remnants of al Qaeda, or who are part of groups unaffiliated with al Qaeda. Military direct action will always be an option for the President to defend the nation against imminent terrorist attacks.

But that is a point we have not yet reached. For now, the careful use of both unilateral and partnered military force, alongside other counterterrorism tools, remains necessary and appropriate to disrupt, dismantle, and ensure a lasting defeat of al Qaeda, the Taliban, and associated forces. Existing authorities are adequate for this armed conflict.

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Should a new group threaten us, the United States can, under both U.S. domestic and international law, respond as necessary. At that point, we would consult with Congress to determine whether additional tools are necessary or appropriate.

### II. Targeting: Whom Does the U.S. Military Target and What Legal Rules Apply?

Now, I would like to discuss whom we may target in this war against al Qaeda, the Taliban, and associated forces. We are in an armed conflict and the law of armed conflict applies to our operations. Al Qaeda is an unconventional enemy that, with blatant disregard for the law of armed conflict, targets innocent civilians. We nonetheless refuse to allow this enemy, with its inhumane tactics, to define the legal framework for waging war. Our efforts remain grounded in the law. In this *unconventional* war, we apply *conventional* legal principles – well-established legal principles reflected in treaties and customary international law. We have held fast to our principles, laws, and values, even when facing unconventional threats.

The United States is not at war with an idea, a religion, or a tactic. Instead, we are at war against al Qaeda, the Taliban, and associated forces. The former General Counsel of the Department of Defense, Jeh Johnson, has previously explained publicly the meaning of the phrase “associated force.” A group is an associated force, if, first, it is an organized, armed group that has entered the fight alongside al Qaeda; and, second, it is a co-belligerent with al Qaeda in hostilities against the United States or its coalition partners. Individuals who are part of this recognized enemy may be lawful military targets.

In applying these principles in this armed conflict, we conduct a careful, fact-intensive assessment to distinguish between, on the one hand, a terrorist who effectively becomes part of al Qaeda, the Taliban, or an associated force by training or co-locating with the group, accepting orders from its leaders, and participating in the group’s terrorist plotting, and, on the other hand, the terrorist, who without any direct connection to a member of al Qaeda, embraces extremist ideology found on the internet and self-radicalizes. Both are very dangerous, but the former is part of the congressionally-declared enemy force in a congressionally-authorized armed conflict; the latter, although dangerous, is not part of that enemy force.

Under the law of armed conflict, it is well-established that a State may target the enemy, including known, individual members of the enemy force. For example, during World War II., U.S. Navy forces lawfully shot down the aircraft of Admiral Yamamoto, the commander of the Japanese navy. Today, just as in 1943, the use of lethal force against a particular leader of the enemy force in an ongoing armed conflict is entirely consistent with settled law of armed conflict principles governing who may be the object of attack.

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Unfortunately, however, some among the ranks of al Qaeda, the Taliban, and their associated forces are U.S. citizens planning attacks against their own country from abroad. This, too, has historical precedent. In previous conflicts, U.S. citizens have fought in foreign armies against the United States—such as with the Axis countries during World War II. Long-standing legal principles and court decisions confirm that being a U.S. citizen does not immunize a member of the enemy from attack. Nonetheless, if we know in advance that the object of our attack is a U.S. citizen, we assume that constitutional rights—including the Fifth Amendment’s Due Process Clause—attach to a U.S. citizen even while he is abroad, and we consider those rights in assessing whether that individual may be targeted.

With regard to the targeting with lethal force of a U.S. citizen in a foreign country who is a senior operational al Qaeda leader actively engaged in planning operations to kill Americans, given the realities of our conflict with al Qaeda and the weight of the government’s interest in protecting its citizens from imminent attack, such an operation would be lawful at least when three criteria are met. First, an informed, high-level official of the U.S. Government determines that the individual poses an imminent threat of violent attack against the United States. Whether a threat is “imminent” incorporates consideration of the relevant window of opportunity to act, the possible harm that missing the window would cause to civilians, and the likelihood of heading off future disastrous attacks against the United States. Second, capture is infeasible, and the United States will continue to monitor whether capture becomes feasible prior to any strike. This is a fact-specific inquiry, but considers the relevant window of opportunity, whether the particular country would consent to a capture operation, and other factors, such as the risk to U.S. personnel. Finally, the operation is conducted in a manner consistent with applicable law of armed conflict principles.

With respect to this last criterion, we take extraordinary care to ensure that all military operations—not just the exceptional cases of those against U.S. citizens—are conducted in a manner consistent with well-established law of armed conflict principles, including: (1) *military necessity*, which requires that the use of military force (including all measures needed to defeat the enemy as quickly and efficiently as possible, which are not forbidden by the law of war) be directed at accomplishing a valid military purpose; (2) *humanity*, which forbids the unnecessary infliction of suffering, injury, or destruction; (3) *distinction*, which requires that only lawful targets—such as combatants and other military objectives—may be intentionally targeted; and (4) *proportionality*, which requires that the anticipated collateral damage of an attack not be excessive in relation to the anticipated concrete and direct military advantage from the attack.

These well-established rules that govern the use of force in armed conflict apply regardless of the type of weapon system used. From a legal standpoint, the use of remotely piloted aircraft for lethal operations against identified individuals presents the same issues as similar operations using manned aircraft. However, advanced precision technology gives us a greater ability to observe and wait until the enemy is away from innocent civilians before launching a strike, and thus minimize the risk to innocent civilians.

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### III. Management and Oversight of Military Operations

Before military force is used against members of al Qaeda, the Taliban, and associated forces, there is a robust review process, which includes rigorous safeguards to protect innocent civilians. Throughout the military chain of command, senior commanders, advised by trained and experienced staffs—including intelligence officers, operations officers, and judge advocates—review operations for compliance with applicable U.S. domestic and international law, including the law of armed conflict, and for consistency with the policies and orders of superiors in the military chain of command.

For operations outside Afghanistan, this review continues up the chain of command, through the 4-star combatant commander, to the Secretary of Defense. Before the Secretary makes a decision, the proposal is reviewed by senior military and civilian advisors, including the Chairman of the Joint Chiefs of Staff and the General Counsel of the Department of Defense. Department officials also receive input from senior officials in other departments and agencies from across our national security team. Military orders implementing a final decision are then transmitted down that chain of command to the relevant forces that carry out such operations.

Some have expressed concern that the process for managing military operations, no matter how rigorous, is largely confined to the Executive Branch. This fact reflects related practical and legal considerations. As a practical matter, officials in the military chain of command must often make real-time decisions that balance the need to act, the existence of alternative options, the possibility of collateral damage, and other factors – all of which depend on expertise and immediate access to information that only the Executive Branch may possess in real time.

As a legal matter, Article II of the Constitution makes the President the Commander-in-Chief of the armed forces. The President is therefore responsible for directing military operations in the prosecution of armed conflict. By U.S. law, the military chain of command runs from the President to the Secretary of Defense and then to combatant commanders. The current process appropriately reflects the President's role in the chain of command; alternatives that some have suggested would present significant constitutional issues.

Congress also plays a critical role in ensuring appropriate oversight of this process. The Department and the Joint Staff regularly brief members and staff of this committee and the House Armed Services Committee on military operations against al Qaeda, the Taliban, and associated forces, both on the prosecution of the conflict generally and specifically on each significant counterterrorism operation conducted outside Afghanistan.

We have also made significant efforts to increase transparency regarding whom the U.S. military targets in the current conflict against al Qaeda, the Taliban, and

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associated forces and the procedures by which individual targeting decisions are made. Last year, for example, we declassified information about the U.S. military's counterterrorism activities in Yemen and Somalia in a June 2012 War Powers report to Congress. This type of transparency helps preserve public confidence, dispel misconceptions that the U.S. military targets low-level terrorists who pose no threat to the United States, and address questions raised by our allies and partners abroad. On the other hand, the public release of certain information, such as the intelligence by which current or past targets were identified, could enable the enemy to avoid or manipulate our application of military force. Ultimately, we must maintain a delicate balance between transparency and protecting information from public disclosure for security reasons.

Thank you. We look forward to answering your questions.



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# Exhibit 31

May 2013 Holder Letter

**A-704**

**A-705**

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**Office of the Attorney General  
Washington, D. C. 20530**

May 22, 2013

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20530

Dear Mr. Chairman:

Since entering office, the President has made clear his commitment to providing Congress and the American people with as much information as possible about our sensitive counterterrorism operations, consistent with our national security and the proper functioning of the Executive Branch. Doing so is necessary, the President stated in his May 21, 2009 National Archives speech, because it enables the citizens of our democracy to “make informed judgments and hold [their Government] accountable.”

In furtherance of this commitment, the Administration has provided an unprecedented level of transparency into how sensitive counterterrorism operations are conducted. Several senior Administration officials, including myself, have taken numerous steps to explain publicly the legal basis for the United States’ actions to the American people and the Congress. For example, in March 2012, I delivered an address at Northwestern University Law School discussing certain aspects of the Administration’s counterterrorism legal framework. And the Department of Justice and other departments and agencies have continually worked with the appropriate oversight committees in the Congress to ensure that those committees are fully informed of the legal basis for our actions.

The Administration is determined to continue these extensive outreach efforts to communicate with the American people. Indeed, the President reiterated in his State of the Union address earlier this year that he would continue to engage with the Congress about our counterterrorism efforts to ensure that they remain consistent with our laws and values, and become more transparent to the American people and to the world.

To this end, the President has directed me to disclose certain information that until now has been properly classified. You and other Members of your Committee have on numerous occasions expressed a particular interest in the Administration’s use of lethal force against U.S. citizens. In light of this fact, I am writing to disclose to you certain information about the number of U.S. citizens who have been killed by U.S. counterterrorism operations outside of areas of active hostilities. Since 2009, the United States, in the conduct of U.S. counterterrorism operations against al-Qa’ida and its

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associated forces outside of areas of active hostilities, has specifically targeted and killed one U.S. citizen, Anwar al-Aulaqi. The United States is further aware of three other U.S. citizens who have been killed in such U.S. counterterrorism operations over that same time period: Samir Khan, 'Abd al-Rahman Anwar al-Aulaqi, and Jude Kenan Mohammed. These individuals were not specifically targeted by the United States.

As I noted in my speech at Northwestern, "it is an unfortunate but undeniable fact" that a "small number" of U.S. citizens "have decided to commit violent attacks against their own country from abroad." Based on generations-old legal principles and Supreme Court decisions handed down during World War II, as well as during the current conflict, it is clear and logical that United States citizenship alone does not make such individuals immune from being targeted. Rather, it means that the government must take special care and take into account all relevant constitutional considerations, the laws of war, and other law with respect to U.S. citizens – even those who are leading efforts to kill their fellow, innocent Americans. Such considerations allow for the use of lethal force in a foreign country against a U.S. citizen who is a senior operational leader of al-Qa'ida or its associated forces, and who is actively engaged in planning to kill Americans, in the following circumstances: (1) the U.S. government has determined, after a thorough and careful review, that the individual poses an imminent threat of violent attack against the United States; (2) capture is not feasible; and (3) the operation would be conducted in a manner consistent with applicable law of war principles.

These conditions should not come as a surprise: the Administration's legal views on this weighty issue have been clear and consistent over time. The analysis in my speech at Northwestern University Law School is entirely consistent with not only the analysis found in the unclassified white paper the Department of Justice provided to your Committee soon after my speech, but also with the classified analysis the Department shared with other congressional committees in May 2011 – months before the operation that resulted in the death of Anwar al-Aulaqi. The analysis in my speech is also entirely consistent with the classified legal advice on this issue the Department of Justice has shared with your Committee more recently. In short, the Administration has demonstrated its commitment to discussing with the Congress and the American people the circumstances in which it could lawfully use lethal force in a foreign country against a U.S. citizen who is a senior operational leader of al-Qa'ida or its associated forces, and who is actively engaged in planning to kill Americans.

Anwar al-Aulaqi plainly satisfied all of the conditions I outlined in my speech at Northwestern. Let me be more specific. Al-Aulaqi was a senior operational leader of al-Qa'ida in the Arabian Peninsula (AQAP), the most dangerous regional affiliate of al-Qa'ida and a group that has committed numerous terrorist attacks overseas and attempted multiple times to conduct terrorist attacks against the U.S. homeland. And al-Aulaqi was not just a senior leader of AQAP – he was the group's chief of external operations, intimately involved in detailed planning and putting in place plots against U.S. persons.

In this role, al-Aulaqi repeatedly made clear his intent to attack U.S. persons and his hope that these attacks would take American lives. For example, in a message to



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Muslims living in the United States, he noted that he had come “to the conclusion that *jihād* against America is binding upon myself just as it is binding upon every other able Muslim.” But it was not al-Aulaqi’s words that led the United States to act against him: they only served to demonstrate his intentions and state of mind, that he “pray[ed] that Allah [would] destro[y] America and all its allies.” Rather, it was al-Aulaqi’s actions – and, in particular, his direct personal involvement in the continued planning and execution of terrorist attacks against the U.S. homeland – that made him a lawful target and led the United States to take action.

For example, when Umar Farouk Abdulmutallab – the individual who attempted to blow up an airplane bound for Detroit on Christmas Day 2009 – went to Yemen in 2009, al-Aulaqi arranged an introduction via text message. Abdulmutallab told U.S. officials that he stayed at al-Aulaqi’s house for three days, and then spent two weeks at an AQAP training camp. Al-Aulaqi planned a suicide operation for Abdulmutallab, helped Abdulmutallab draft a statement for a martyrdom video to be shown after the attack, and directed him to take down a U.S. airliner. Al-Aulaqi’s last instructions were to blow up the airplane when it was over American soil. Al-Aulaqi also played a key role in the October 2010 plot to detonate explosive devices on two U.S.-bound cargo planes: he not only helped plan and oversee the plot, but was also directly involved in the details of its execution – to the point that he took part in the development and testing of the explosive devices that were placed on the planes. Moreover, information that remains classified to protect sensitive sources and methods evidences al-Aulaqi’s involvement in the planning of numerous other plots against U.S. and Western interests and makes clear he was continuing to plot attacks when he was killed.

Based on this information, high-level U.S. government officials appropriately concluded that al-Aulaqi posed a continuing and imminent threat of violent attack against the United States. Before carrying out the operation that killed al-Aulaqi, senior officials also determined, based on a careful evaluation of the circumstances at the time, that it was not feasible to capture al-Aulaqi. In addition, senior officials determined that the operation would be conducted consistent with applicable law of war principles, including the cardinal principles of (1) necessity – the requirement that the target have definite military value; (2) distinction – the idea that only military objectives may be intentionally targeted and that civilians are protected from being intentionally targeted; (3) proportionality – the notion that the anticipated collateral damage of an action cannot be excessive in relation to the anticipated concrete and direct military advantage; and (4) humanity – a principle that requires us to use weapons that will not inflict unnecessary suffering. The operation was also undertaken consistent with Yemeni sovereignty.

While a substantial amount of information indicated that Anwar al-Aulaqi was a senior AQAP leader actively plotting to kill Americans, the decision that he was a lawful target was not taken lightly. The decision to use lethal force is one of the gravest that our government, at every level, can face. The operation to target Anwar al-Aulaqi was thus subjected to an exceptionally rigorous interagency legal review: not only did I and other Department of Justice lawyers conclude after a thorough and searching review that the

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operation was lawful, but so too did other departments and agencies within the U.S. government.

The decision to target Anwar al-Aulaqi was additionally subjected to extensive policy review at the highest levels of the U.S. Government, and senior U.S. officials also briefed the appropriate committees of Congress on the possibility of using lethal force against al-Aulaqi. Indeed, the Administration informed the relevant congressional oversight committees that it had approved the use of lethal force against al-Aulaqi in February 2010 – well over a year before the operation in question – and the legal justification was subsequently explained in detail to those committees, well before action was taken against Aulaqi. This extensive outreach is consistent with the Administration’s strong and continuing commitment to congressional oversight of our counterterrorism operations – oversight which ensures, as the President stated during his State of the Union address, that our actions are “consistent with our laws and system of checks and balances.”

The Supreme Court has long “made clear that a state of war is not a blank check for the President when it comes to the rights of the Nation’s citizens.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 536 (2004); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 578, 587 (1952). But the Court’s case law and longstanding practice and principle also make clear that the Constitution does not prohibit the Government it establishes from taking action to protect the American people from the threats posed by terrorists who hide in faraway countries and continually plan and launch plots against the U.S. homeland. The decision to target Anwar al-Aulaqi was lawful, it was considered, and it was just.

\* \* \* \* \*

This letter is only one of a number of steps the Administration will be taking to fulfill the President’s State of the Union commitment to engage with Congress and the American people on our counterterrorism efforts. This week the President approved and relevant congressional committees will be notified and briefed on a document that institutionalizes the Administration’s exacting standards and processes for reviewing and approving operations to capture or use lethal force against terrorist targets outside the United States and areas of active hostilities; these standards and processes are either already in place or are to be transitioned into place. While that document remains classified, it makes clear that a cornerstone of the Administration’s policy is one of the principles I noted in my speech at Northwestern: that lethal force should not be used when it is feasible to capture a terrorist suspect. For circumstances in which capture is feasible, the policy outlines standards and procedures to ensure that operations to take into custody a terrorist suspect are conducted in accordance with all applicable law, including the laws of war. When capture is not feasible, the policy provides that lethal force may be used only when a terrorist target poses a continuing, imminent threat to Americans, and when certain other preconditions, including a requirement that no other reasonable alternatives exist to effectively address the threat, are satisfied. And in all circumstances there must be a legal basis for using force against the target. Significantly,

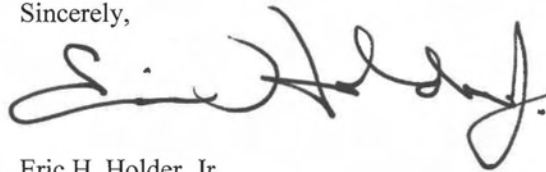
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the President will soon be speaking publicly in greater detail about our counterterrorism operations and the legal and policy framework that governs those actions.

I recognize that even after the Administration makes unprecedented disclosures like those contained in this letter, some unanswered questions will remain. I assure you that the President and his national security team are mindful of this Administration's pledge to public accountability for our counterterrorism efforts, and we will continue to give careful consideration to whether and how additional information may be declassified and disclosed to the American people without harming our national security.

Sincerely,



Eric H. Holder, Jr.  
Attorney General

cc: Ranking Member Charles Grassley  
Chairman Dianne Feinstein  
Vice Chairman Saxby Chambliss  
Chairman Carl Levin  
Ranking Member James Inhofe  
Chairman Bob Goodlatte  
Ranking Member John Conyers, Jr.  
Chairman Mike Rogers  
Ranking Member C.A. Dutch Ruppersberger  
Chairman Howard P. McKeon  
Ranking Member Adam Smith  
Chairman Robert Menendez  
Ranking Member Bob Corker  
Chairman Ed Royce  
Ranking Member Eliot Engel  
Majority Leader Harry Reid  
Minority Leader Mitch McConnell  
Speaker John Boehner  
Majority Leader Eric Cantor  
Minority Leader Nancy Pelosi  
Minority Whip Steny Hoyer

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# Exhibit 32

May 2013 Obama Speech



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the WHITE HOUSE PRESIDENT BARACK OBAMA

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Office of the Press Secretary

For Immediate Release

May 23, 2013

**Remarks by the President at the National Defense University**National Defense University  
Fort McNair  
Washington, D.C.

2:01 P.M. EDT

THE PRESIDENT: Good afternoon, everybody. Please be seated.

It is a great honor to return to the National Defense University. Here, at Fort McNair, Americans have served in uniform since 1791 -- standing guard in the earliest days of the Republic, and contemplating the future of warfare here in the 21st century.

For over two centuries, the United States has been bound together by founding documents that defined who we are as Americans, and served as our compass through every type of change. Matters of war and peace are no different. Americans are deeply ambivalent about war, but having fought for our independence, we know a price must be paid for freedom. From the Civil War to our struggle against fascism, on through the long twilight struggle of the Cold War, battlefields have changed and technology has evolved. But our commitment to constitutional principles has weathered every war, and every war has come to an end.

With the collapse of the Berlin Wall, a new dawn of democracy took hold abroad, and a decade of peace and prosperity arrived here at home. And for a moment, it seemed the 21st century would be a tranquil time. And then, on September 11, 2001, we were shaken out of complacency. Thousands were taken from us, as clouds of fire and metal and ash descended upon a sun-filled morning. This was a different kind of war. No armies came to our shores, and our military was not the principal target. Instead, a group of terrorists came to kill as many civilians as they could.

And so our nation went to war. We have now been at war for well over a decade. I won't review the full history. What is clear is that we quickly drove al Qaeda out of Afghanistan, but then shifted our focus and began a new war in Iraq. And this carried significant consequences for our fight against al Qaeda, our standing in the world, and -- to this day -- our interests in a vital region.

Meanwhile, we strengthened our defenses -- hardening targets, tightening transportation security, giving law enforcement new tools to prevent terror. Most of these changes were sound. Some caused inconvenience. But some, like expanded surveillance, raised difficult questions about the balance that we strike between our interests in security and our values of privacy. And in some cases, I believe we compromised our basic values -- by using torture to interrogate our enemies, and detaining individuals in a way that ran counter to the rule of law.

So after I took office, we stepped up the war against al Qaeda but we also sought to change its course. We relentlessly targeted al Qaeda's leadership. We ended the war in Iraq, and brought nearly 150,000 troops home. We pursued a new strategy in Afghanistan, and increased our training of Afghan forces. We unequivocally banned torture, affirmed our commitment to civilian courts, worked to align our policies with the rule of law, and expanded our consultations with Congress.

Today, Osama bin Laden is dead, and so are most of his top lieutenants. There have been no large-scale attacks on the United States, and our homeland is more secure. Fewer of our troops

**WATCH THE VIDEO**

May 23, 2013 8:26 PM

President Obama Speaks on the U.S. Counterterrorism Strategy

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June 09, 2015 9:00 PM EDT

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June 09, 2015 7:17 PM EDT

**At the G7: President Obama's Trip to Germany**

Read about President Obama's trip to

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are in harm's way, and over the next 19 months they will continue to come home. Our alliances are strong, and so is our standing in the world. In sum, we are safer because of our efforts.

Bavaria, Germany for the 2015 G7 summit.

Now, make no mistake, our nation is still threatened by terrorists. From Benghazi to Boston, we have been tragically reminded of that truth. But we have to recognize that the threat has shifted and evolved from the one that came to our shores on 9/11. With a decade of experience now to draw from, this is the moment to ask ourselves hard questions -- about the nature of today's threats and how we should confront them.

And these questions matter to every American.

For over the last decade, our nation has spent well over a trillion dollars on war, helping to explode our deficits and constraining our ability to nation-build here at home. Our servicemembers and their families have sacrificed far more on our behalf. Nearly 7,000 Americans have made the ultimate sacrifice. Many more have left a part of themselves on the battlefield, or brought the shadows of battle back home. From our use of drones to the detention of terrorist suspects, the decisions that we are making now will define the type of nation -- and world -- that we leave to our children.

So America is at a crossroads. We must define the nature and scope of this struggle, or else it will define us. We have to be mindful of James Madison's warning that "No nation could preserve its freedom in the midst of continual warfare." Neither I, nor any President, can promise the total defeat of terror. We will never erase the evil that lies in the hearts of some human beings, nor stamp out every danger to our open society. But what we can do -- what we must do -- is dismantle networks that pose a direct danger to us, and make it less likely for new groups to gain a foothold, all the while maintaining the freedoms and ideals that we defend. And to define that strategy, we have to make decisions based not on fear, but on hard-earned wisdom. That begins with understanding the current threat that we face.

Today, the core of al Qaeda in Afghanistan and Pakistan is on the path to defeat. Their remaining operatives spend more time thinking about their own safety than plotting against us. They did not direct the attacks in Benghazi or Boston. They've not carried out a successful attack on our homeland since 9/11.

Instead, what we've seen is the emergence of various al Qaeda affiliates. From Yemen to Iraq, from Somalia to North Africa, the threat today is more diffuse, with Al Qaeda's affiliates in the Arabian Peninsula -- AQAP -- the most active in plotting against our homeland. And while none of AQAP's efforts approach the scale of 9/11, they have continued to plot acts of terror, like the attempt to blow up an airplane on Christmas Day in 2009.

Unrest in the Arab world has also allowed extremists to gain a foothold in countries like Libya and Syria. But here, too, there are differences from 9/11. In some cases, we continue to confront state-sponsored networks like Hezbollah that engage in acts of terror to achieve political goals. Other of these groups are simply collections of local militias or extremists interested in seizing territory. And while we are vigilant for signs that these groups may pose a transnational threat, most are focused on operating in the countries and regions where they are based. And that means we'll face more localized threats like what we saw in Benghazi, or the BP oil facility in Algeria, in which local operatives -- perhaps in loose affiliation with regional networks -- launch periodic attacks against Western diplomats, companies, and other soft targets, or resort to kidnapping and other criminal enterprises to fund their operations.

And finally, we face a real threat from radicalized individuals here in the United States. Whether it's a shooter at a Sikh Temple in Wisconsin, a plane flying into a building in Texas, or the extremists who killed 168 people at the Federal Building in Oklahoma City, America has confronted many forms of violent extremism in our history. Deranged or alienated individuals -- often U.S. citizens or legal residents -- can do enormous damage, particularly when inspired by larger notions of violent jihad. And that pull towards extremism appears to have led to the shooting at Fort Hood and the bombing of the Boston Marathon.

So that's the current threat -- lethal yet less capable al Qaeda affiliates; threats to diplomatic facilities and businesses abroad; homegrown extremists. This is the future of terrorism. We have to take these threats seriously, and do all that we can to confront them. But as we shape our response, we have to recognize that the scale of this threat closely resembles the types of attacks we faced before 9/11.

In the 1980s, we lost Americans to terrorism at our Embassy in Beirut; at our Marine Barracks in Lebanon; on a cruise ship at sea; at a disco in Berlin; and on a Pan Am flight -- Flight 103 -- over

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Lockerbie. In the 1990s, we lost Americans to terrorism at the World Trade Center; at our military facilities in Saudi Arabia; and at our Embassy in Kenya. These attacks were all brutal; they were all deadly; and we learned that left unchecked, these threats can grow. But if dealt with smartly and proportionally, these threats need not rise to the level that we saw on the eve of 9/11.

Moreover, we have to recognize that these threats don't arise in a vacuum. Most, though not all, of the terrorism we faced is fueled by a common ideology — a belief by some extremists that Islam is in conflict with the United States and the West, and that violence against Western targets, including civilians, is justified in pursuit of a larger cause. Of course, this ideology is based on a lie, for the United States is not at war with Islam. And this ideology is rejected by the vast majority of Muslims, who are the most frequent victims of terrorist attacks.

Nevertheless, this ideology persists, and in an age when ideas and images can travel the globe in an instant, our response to terrorism can't depend on military or law enforcement alone. We need all elements of national power to win a battle of wills, a battle of ideas. So what I want to discuss here today is the components of such a comprehensive counterterrorism strategy.

First, we must finish the work of defeating al Qaeda and its associated forces.

In Afghanistan, we will complete our transition to Afghan responsibility for that country's security. Our troops will come home. Our combat mission will come to an end. And we will work with the Afghan government to train security forces, and sustain a counterterrorism force, which ensures that al Qaeda can never again establish a safe haven to launch attacks against us or our allies.

Beyond Afghanistan, we must define our effort not as a boundless "global war on terror," but rather as a series of persistent, targeted efforts to dismantle specific networks of violent extremists that threaten America. In many cases, this will involve partnerships with other countries. Already, thousands of Pakistani soldiers have lost their lives fighting extremists. In Yemen, we are supporting security forces that have reclaimed territory from AQAP. In Somalia, we helped a coalition of African nations push al-Shabaab out of its strongholds. In Mali, we're providing military aid to French-led intervention to push back al Qaeda in the Maghreb, and help the people of Mali reclaim their future.

Much of our best counterterrorism cooperation results in the gathering and sharing of intelligence, the arrest and prosecution of terrorists. And that's how a Somali terrorist apprehended off the coast of Yemen is now in a prison in New York. That's how we worked with European allies to disrupt plots from Denmark to Germany to the United Kingdom. That's how intelligence collected with Saudi Arabia helped us stop a cargo plane from being blown up over the Atlantic. These partnerships work.

But despite our strong preference for the detention and prosecution of terrorists, sometimes this approach is foreclosed. Al Qaeda and its affiliates try to gain foothold in some of the most distant and unforgiving places on Earth. They take refuge in remote tribal regions. They hide in caves and walled compounds. They train in empty deserts and rugged mountains.

In some of these places -- such as parts of Somalia and Yemen -- the state only has the most tenuous reach into the territory. In other cases, the state lacks the capacity or will to take action. And it's also not possible for America to simply deploy a team of Special Forces to capture every terrorist. Even when such an approach may be possible, there are places where it would pose profound risks to our troops and local civilians -- where a terrorist compound cannot be breached without triggering a firefight with surrounding tribal communities, for example, that pose no threat to us; times when putting U.S. boots on the ground may trigger a major international crisis.

To put it another way, our operation in Pakistan against Osama bin Laden cannot be the norm. The risks in that case were immense. The likelihood of capture, although that was our preference, was remote given the certainty that our folks would confront resistance. The fact that we did not find ourselves confronted with civilian casualties, or embroiled in an extended firefight, was a testament to the meticulous planning and professionalism of our Special Forces, but it also depended on some luck. And it was supported by massive infrastructure in Afghanistan.

And even then, the cost to our relationship with Pakistan -- and the backlash among the Pakistani public over encroachment on their territory -- was so severe that we are just now beginning to rebuild this important partnership.



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So it is in this context that the United States has taken lethal, targeted action against al Qaeda and its associated forces, including with remotely piloted aircraft commonly referred to as drones.

As was true in previous armed conflicts, this new technology raises profound questions -- about who is targeted, and why; about civilian casualties, and the risk of creating new enemies; about the legality of such strikes under U.S. and international law; about accountability and morality. So let me address these questions.

To begin with, our actions are effective. Don't take my word for it. In the intelligence gathered at bin Laden's compound, we found that he wrote, "We could lose the reserves to enemy's air strikes. We cannot fight air strikes with explosives." Other communications from al Qaeda operatives confirm this as well. Dozens of highly skilled al Qaeda commanders, trainers, bomb makers and operatives have been taken off the battlefield. Plots have been disrupted that would have targeted international aviation, U.S. transit systems, European cities and our troops in Afghanistan. Simply put, these strikes have saved lives.

Moreover, America's actions are legal. We were attacked on 9/11. Within a week, Congress overwhelmingly authorized the use of force. Under domestic law, and international law, the United States is at war with al Qaeda, the Taliban, and their associated forces. We are at war with an organization that right now would kill as many Americans as they could if we did not stop them first. So this is a just war -- a war waged proportionally, in last resort, and in self-defense.

And yet, as our fight enters a new phase, America's legitimate claim of self-defense cannot be the end of the discussion. To say a military tactic is legal, or even effective, is not to say it is wise or moral in every instance. For the same human progress that gives us the technology to strike half a world away also demands the discipline to constrain that power -- or risk abusing it. And that's why, over the last four years, my administration has worked vigorously to establish a framework that governs our use of force against terrorists -- insisting upon clear guidelines, oversight and accountability that is now codified in Presidential Policy Guidance that I signed yesterday.

In the Afghan war theater, we must -- and will -- continue to support our troops until the transition is complete at the end of 2014. And that means we will continue to take strikes against high value al Qaeda targets, but also against forces that are massing to support attacks on coalition forces. But by the end of 2014, we will no longer have the same need for force protection, and the progress we've made against core al Qaeda will reduce the need for unmanned strikes.

Beyond the Afghan theater, we only target al Qaeda and its associated forces. And even then, the use of drones is heavily constrained. America does not take strikes when we have the ability to capture individual terrorists; our preference is always to detain, interrogate, and prosecute. America cannot take strikes wherever we choose; our actions are bound by consultations with partners, and respect for state sovereignty.

America does not take strikes to punish individuals; we act against terrorists who pose a continuing and imminent threat to the American people, and when there are no other governments capable of effectively addressing the threat. And before any strike is taken, there must be near-certainty that no civilians will be killed or injured -- the highest standard we can set.

Now, this last point is critical, because much of the criticism about drone strikes -- both here at home and abroad -- understandably centers on reports of civilian casualties. There's a wide gap between U.S. assessments of such casualties and nongovernmental reports. Nevertheless, it is a hard fact that U.S. strikes have resulted in civilian casualties, a risk that exists in every war. And for the families of those civilians, no words or legal construct can justify their loss. For me, and those in my chain of command, those deaths will haunt us as long as we live, just as we are haunted by the civilian casualties that have occurred throughout conventional fighting in Afghanistan and Iraq.

But as Commander-in-Chief, I must weigh these heartbreaking tragedies against the alternatives. To do nothing in the face of terrorist networks would invite far more civilian casualties -- not just in our cities at home and our facilities abroad, but also in the very places like Sana'a and Kabul and Mogadishu where terrorists seek a foothold. Remember that the terrorists we are after target civilians, and the death toll from their acts of terrorism against Muslims dwarfs any estimate of civilian casualties from drone strikes. So doing nothing is not an option.

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Where foreign governments cannot or will not effectively stop terrorism in their territory, the primary alternative to targeted lethal action would be the use of conventional military options. As I've already said, even small special operations carry enormous risks. Conventional airpower or missiles are far less precise than drones, and are likely to cause more civilian casualties and more local outrage. And invasions of these territories lead us to be viewed as occupying armies, unleash a torrent of unintended consequences, are difficult to contain, result in large numbers of civilian casualties and ultimately empower those who thrive on violent conflict.

So it is false to assert that putting boots on the ground is less likely to result in civilian deaths or less likely to create enemies in the Muslim world. The results would be more U.S. deaths, more Black Hawks down, more confrontations with local populations, and an inevitable mission creep in support of such raids that could easily escalate into new wars.

Yes, the conflict with al Qaeda, like all armed conflict, invites tragedy. But by narrowly targeting our action against those who want to kill us and not the people they hide among, we are choosing the course of action least likely to result in the loss of innocent life.

Our efforts must be measured against the history of putting American troops in distant lands among hostile populations. In Vietnam, hundreds of thousands of civilians died in a war where the boundaries of battle were blurred. In Iraq and Afghanistan, despite the extraordinary courage and discipline of our troops, thousands of civilians have been killed. So neither conventional military action nor waiting for attacks to occur offers moral safe harbor, and neither does a sole reliance on law enforcement in territories that have no functioning police or security services -- and indeed, have no functioning law.

Now, this is not to say that the risks are not real. Any U.S. military action in foreign lands risks creating more enemies and impacts public opinion overseas. Moreover, our laws constrain the power of the President even during wartime, and I have taken an oath to defend the Constitution of the United States. The very precision of drone strikes and the necessary secrecy often involved in such actions can end up shielding our government from the public scrutiny that a troop deployment invites. It can also lead a President and his team to view drone strikes as a cure-all for terrorism.

And for this reason, I've insisted on strong oversight of all lethal action. After I took office, my administration began briefing all strikes outside of Iraq and Afghanistan to the appropriate committees of Congress. Let me repeat that: Not only did Congress authorize the use of force, it is briefed on every strike that America takes. Every strike. That includes the one instance when we targeted an American citizen -- Anwar Awlaki, the chief of external operations for AQAP.

This week, I authorized the declassification of this action, and the deaths of three other Americans in drone strikes, to facilitate transparency and debate on this issue and to dismiss some of the more outlandish claims that have been made. For the record, I do not believe it would be constitutional for the government to target and kill any U.S. citizen -- with a drone, or with a shotgun -- without due process, nor should any President deploy armed drones over U.S. soil.

But when a U.S. citizen goes abroad to wage war against America and is actively plotting to kill U.S. citizens, and when neither the United States, nor our partners are in a position to capture him before he carries out a plot, his citizenship should no more serve as a shield than a sniper shooting down on an innocent crowd should be protected from a SWAT team.

That's who Anwar Awlaki was -- he was continuously trying to kill people. He helped oversee the 2010 plot to detonate explosive devices on two U.S.-bound cargo planes. He was involved in planning to blow up an airliner in 2009. When Farouk Abdulmutalib -- the Christmas Day bomber -- went to Yemen in 2009, Awlaki hosted him, approved his suicide operation, helped him tape a martyrdom video to be shown after the attack, and his last instructions were to blow up the airplane when it was over American soil. I would have detained and prosecuted Awlaki if we captured him before he carried out a plot, but we couldn't. And as President, I would have been derelict in my duty had I not authorized the strike that took him out.

Of course, the targeting of any American raises constitutional issues that are not present in other strikes -- which is why my administration submitted information about Awlaki to the Department of Justice months before Awlaki was killed, and briefed the Congress before this strike as well. But the high threshold that we've set for taking lethal action applies to all potential terrorist targets, regardless of whether or not they are American citizens. This threshold respects the inherent dignity of every human life. Alongside the decision to put our men and women in uniform in harm's way, the decision to use force against individuals or groups -- even against a



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sworn enemy of the United States -- is the hardest thing I do as President. But these decisions must be made, given my responsibility to protect the American people.

Going forward, I've asked my administration to review proposals to extend oversight of lethal actions outside of warzones that go beyond our reporting to Congress. Each option has virtues in theory, but poses difficulties in practice. For example, the establishment of a special court to evaluate and authorize lethal action has the benefit of bringing a third branch of government into the process, but raises serious constitutional issues about presidential and judicial authority. Another idea that's been suggested -- the establishment of an independent oversight board in the executive branch -- avoids those problems, but may introduce a layer of bureaucracy into national security decision-making, without inspiring additional public confidence in the process. But despite these challenges, I look forward to actively engaging Congress to explore these and other options for increased oversight.

I believe, however, that the use of force must be seen as part of a larger discussion we need to have about a comprehensive counterterrorism strategy -- because for all the focus on the use of force, force alone cannot make us safe. We cannot use force everywhere that a radical ideology takes root; and in the absence of a strategy that reduces the wellspring of extremism, a perpetual war -- through drones or Special Forces or troop deployments -- will prove self-defeating, and alter our country in troubling ways.

So the next element of our strategy involves addressing the underlying grievances and conflicts that feed extremism -- from North Africa to South Asia. As we've learned this past decade, this is a vast and complex undertaking. We must be humble in our expectation that we can quickly resolve deep-rooted problems like poverty and sectarian hatred. Moreover, no two countries are alike, and some will undergo chaotic change before things get better. But our security and our values demand that we make the effort.

This means patiently supporting transitions to democracy in places like Egypt and Tunisia and Libya -- because the peaceful realization of individual aspirations will serve as a rebuke to violent extremists. We must strengthen the opposition in Syria, while isolating extremist elements -- because the end of a tyrant must not give way to the tyranny of terrorism. We are actively working to promote peace between Israelis and Palestinians -- because it is right and because such a peace could help reshape attitudes in the region. And we must help countries modernize economies, upgrade education, and encourage entrepreneurship -- because American leadership has always been elevated by our ability to connect with people's hopes, and not simply their fears.

And success on all these fronts requires sustained engagement, but it will also require resources. I know that foreign aid is one of the least popular expenditures that there is. That's true for Democrats and Republicans -- I've seen the polling -- even though it amounts to less than one percent of the federal budget. In fact, a lot of folks think it's 25 percent, if you ask people on the streets. Less than one percent -- still wildly unpopular. But foreign assistance cannot be viewed as charity. It is fundamental to our national security, and it's fundamental to any sensible long-term strategy to battle extremism.

Moreover, foreign assistance is a tiny fraction of what we spend fighting wars that our assistance might ultimately prevent. For what we spent in a month in Iraq at the height of the war, we could be training security forces in Libya, maintaining peace agreements between Israel and its neighbors, feeding the hungry in Yemen, building schools in Pakistan, and creating reservoirs of goodwill that marginalize extremists. That has to be part of our strategy.

Moreover, America cannot carry out this work if we don't have diplomats serving in some very dangerous places. Over the past decade, we have strengthened security at our embassies, and I am implementing every recommendation of the Accountability Review Board, which found unacceptable failures in Benghazi. I've called on Congress to fully fund these efforts to bolster security and harden facilities, improve intelligence, and facilitate a quicker response time from our military if a crisis emerges.

But even after we take these steps, some irreducible risks to our diplomats will remain. This is the price of being the world's most powerful nation, particularly as a wave of change washes over the Arab World. And in balancing the tradeoffs between security and active diplomacy, I firmly believe that any retreat from challenging regions will only increase the dangers that we face in the long run. And that's why we should be grateful to those diplomats who are willing to serve.

Targeted action against terrorists, effective partnerships, diplomatic engagement and assistance



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-- through such a comprehensive strategy we can significantly reduce the chances of large-scale attacks on the homeland and mitigate threats to Americans overseas. But as we guard against dangers from abroad, we cannot neglect the daunting challenge of terrorism from within our borders.

As I said earlier, this threat is not new. But technology and the Internet increase its frequency and in some cases its lethality. Today, a person can consume hateful propaganda, commit themselves to a violent agenda, and learn how to kill without leaving their home. To address this threat, two years ago my administration did a comprehensive review and engaged with law enforcement.

And the best way to prevent violent extremism inspired by violent jihadists is to work with the Muslim American community -- which has consistently rejected terrorism -- to identify signs of radicalization and partner with law enforcement when an individual is drifting towards violence. And these partnerships can only work when we recognize that Muslims are a fundamental part of the American family. In fact, the success of American Muslims and our determination to guard against any encroachments on their civil liberties is the ultimate rebuke to those who say that we're at war with Islam.

Thwarting homegrown plots presents particular challenges in part because of our proud commitment to civil liberties for all who call America home. That's why, in the years to come, we will have to keep working hard to strike the appropriate balance between our need for security and preserving those freedoms that make us who we are. That means reviewing the authorities of law enforcement, so we can intercept new types of communication, but also build in privacy protections to prevent abuse.

That means that -- even after Boston -- we do not deport someone or throw somebody in prison in the absence of evidence. That means putting careful constraints on the tools the government uses to protect sensitive information, such as the state secrets doctrine. And that means finally having a strong Privacy and Civil Liberties Board to review those issues where our counterterrorism efforts and our values may come into tension.

The Justice Department's investigation of national security leaks offers a recent example of the challenges involved in striking the right balance between our security and our open society. As Commander-in-Chief, I believe we must keep information secret that protects our operations and our people in the field. To do so, we must enforce consequences for those who break the law and breach their commitment to protect classified information. But a free press is also essential for our democracy. That's who we are. And I'm troubled by the possibility that leak investigations may chill the investigative journalism that holds government accountable.

Journalists should not be at legal risk for doing their jobs. Our focus must be on those who break the law. And that's why I've called on Congress to pass a media shield law to guard against government overreach. And I've raised these issues with the Attorney General, who shares my concerns. So he has agreed to review existing Department of Justice guidelines governing investigations that involve reporters, and he'll convene a group of media organizations to hear their concerns as part of that review. And I've directed the Attorney General to report back to me by July 12th.

Now, all these issues remind us that the choices we make about war can impact -- in sometimes unintended ways -- the openness and freedom on which our way of life depends. And that is why I intend to engage Congress about the existing Authorization to Use Military Force, or AUMF, to determine how we can continue to fight terrorism without keeping America on a perpetual wartime footing.

The AUMF is now nearly 12 years old. The Afghan war is coming to an end. Core al Qaeda is a shell of its former self. Groups like AQAP must be dealt with, but in the years to come, not every collection of thugs that labels themselves al Qaeda will pose a credible threat to the United States. Unless we discipline our thinking, our definitions, our actions, we may be drawn into more wars we don't need to fight, or continue to grant Presidents unbound powers more suited for traditional armed conflicts between nation states.

So I look forward to engaging Congress and the American people in efforts to refine, and ultimately repeal, the AUMF's mandate. And I will not sign laws designed to expand this mandate further. Our systematic effort to dismantle terrorist organizations must continue. But this war, like all wars, must end. That's what history advises. That's what our democracy demands.

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And that brings me to my final topic: the detention of terrorist suspects. I'm going to repeat one more time: As a matter of policy, the preference of the United States is to capture terrorist suspects. When we do detain a suspect, we interrogate them. And if the suspect can be prosecuted, we decide whether to try him in a civilian court or a military commission.

During the past decade, the vast majority of those detained by our military were captured on the battlefield. In Iraq, we turned over thousands of prisoners as we ended the war. In Afghanistan, we have transitioned detention facilities to the Afghans, as part of the process of restoring Afghan sovereignty. So we bring law of war detention to an end, and we are committed to prosecuting terrorists wherever we can.

The glaring exception to this time-tested approach is the detention center at Guantanamo Bay. The original premise for opening GTMO -- that detainees would not be able to challenge their detention -- was found unconstitutional five years ago. In the meantime, GTMO has become a symbol around the world for an America that flouts the rule of law. Our allies won't cooperate with us if they think a terrorist will end up at GTMO.

During a time of budget cuts, we spend \$150 million each year to imprison 166 people -- almost \$1 million per prisoner. And the Department of Defense estimates that we must spend another \$200 million to keep GTMO open at a time when we're cutting investments in education and research here at home, and when the Pentagon is struggling with sequester and budget cuts.

As President, I have tried to close GTMO. I transferred 67 detainees to other countries before Congress imposed restrictions to effectively prevent us from either transferring detainees to other countries or imprisoning them here in the United States.

These restrictions make no sense. After all, under President Bush, some 530 detainees were transferred from GTMO with Congress's support. When I ran for President the first time, John McCain supported closing GTMO -- this was a bipartisan issue. No person has ever escaped one of our super-max or military prisons here in the United States -- ever. Our courts have convicted hundreds of people for terrorism or terrorism-related offenses, including some folks who are more dangerous than most GTMO detainees. They're in our prisons.

And given my administration's relentless pursuit of al Qaeda's leadership, there is no justification beyond politics for Congress to prevent us from closing a facility that should have never have been opened. (Applause.)

AUDIENCE MEMBER: Excuse me, President Obama --

THE PRESIDENT: So -- let me finish, ma'am. So today, once again --

AUDIENCE MEMBER: There are 102 people on a hunger strike. These are desperate people.

THE PRESIDENT: I'm about to address it, ma'am, but you've got to let me speak. I'm about to address it.

AUDIENCE MEMBER: You're our Commander-in-Chief --

THE PRESIDENT: Let me address it.

AUDIENCE MEMBER: -- you can close Guantanamo Bay.

THE PRESIDENT: Why don't you let me address it, ma'am.

AUDIENCE MEMBER: There's still prisoners --

THE PRESIDENT: Why don't you sit down and I will tell you exactly what I'm going to do.

AUDIENCE MEMBER: That includes 57 Yemenis.

THE PRESIDENT: Thank you, ma'am. Thank you. (Applause.) Ma'am, thank you. You should let me finish my sentence.

Today, I once again call on Congress to lift the restrictions on detainee transfers from GTMO. (Applause.)



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I have asked the Department of Defense to designate a site in the United States where we can hold military commissions. I'm appointing a new senior envoy at the State Department and Defense Department whose sole responsibility will be to achieve the transfer of detainees to third countries.

I am lifting the moratorium on detainee transfers to Yemen so we can review them on a case-by-case basis. To the greatest extent possible, we will transfer detainees who have been cleared to go to other countries.

AUDIENCE MEMBER: -- prisoners already. Release them today.

THE PRESIDENT: Where appropriate, we will bring terrorists to justice in our courts and our military justice system. And we will insist that judicial review be available for every detainee.

AUDIENCE MEMBER: It needs to be --

THE PRESIDENT: Now, ma'am, let me finish. Let me finish, ma'am. Part of free speech is you being able to speak, but also, you listening and me being able to speak. (Applause.)

Now, even after we take these steps one issue will remain -- just how to deal with those GTMO detainees who we know have participated in dangerous plots or attacks but who cannot be prosecuted, for example, because the evidence against them has been compromised or is inadmissible in a court of law. But once we commit to a process of closing GTMO, I am confident that this legacy problem can be resolved, consistent with our commitment to the rule of law.

I know the politics are hard. But history will cast a harsh judgment on this aspect of our fight against terrorism and those of us who fail to end it. Imagine a future -- 10 years from now or 20 years from now -- when the United States of America is still holding people who have been charged with no crime on a piece of land that is not part of our country. Look at the current situation, where we are force-feeding detainees who are being held on a hunger strike. I'm willing to cut the young lady who interrupted me some slack because it's worth being passionate about. Is this who we are? Is that something our Founders foresaw? Is that the America we want to leave our children? Our sense of justice is stronger than that.

We have prosecuted scores of terrorists in our courts. That includes Umar Farouk Abdulmutallab, who tried to blow up an airplane over Detroit; and Faisal Shahzad, who put a car bomb in Times Square. It's in a court of law that we will try Dzhokhar Tsarnaev, who is accused of bombing the Boston Marathon. Richard Reid, the shoe bomber, is, as we speak, serving a life sentence in a maximum security prison here in the United States. In sentencing Reid, Judge William Young told him, "The way we treat you...is the measure of our own liberties."

AUDIENCE MEMBER: How about Abdulmutallab -- locking up a 16-year-old -- is that the way we treat a 16-year old? (Inaudible) -- can you take the drones out of the hands of the CIA? Can you stop the signature strikes killing people on the basis of suspicious activities?

THE PRESIDENT: We're addressing that, ma'am.

AUDIENCE MEMBER: -- thousands of Muslims that got killed -- will you compensate the innocent families -- that will make us safer here at home. I love my country. I love (inaudible) --

THE PRESIDENT: I think that -- and I'm going off script, as you might expect here. (Laughter and applause.) The voice of that woman is worth paying attention to. (Applause.) Obviously, I do not agree with much of what she said, and obviously she wasn't listening to me in much of what I said. But these are tough issues, and the suggestion that we can gloss over them is wrong.

When that judge sentenced Mr. Reid, the shoe bomber, he went on to point to the American flag that flew in the courtroom. "That flag," he said, "will fly there long after this is all forgotten. That flag still stands for freedom."

So, America, we've faced down dangers far greater than al Qaeda. By staying true to the values of our founding, and by using our constitutional compass, we have overcome slavery and Civil War and fascism and communism. In just these last few years as President, I've watched the American people bounce back from painful recession, mass shootings, natural disasters like the recent tornados that devastated Oklahoma. These events were heartbreaking; they shook our communities to the core. But because of the resilience of the American people, these events could not come close to breaking us.

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I think of Lauren Manning, the 9/11 survivor who had severe burns over 80 percent of her body, who said, "That's my reality. I put a Band-Aid on it, literally, and I move on."

I think of the New Yorkers who filled Times Square the day after an attempted car bomb as if nothing had happened.

I think of the proud Pakistani parents who, after their daughter was invited to the White House, wrote to us, "We have raised an American Muslim daughter to dream big and never give up because it does pay off."

I think of all the wounded warriors rebuilding their lives, and helping other vets to find jobs.

I think of the runner planning to do the 2014 Boston Marathon, who said, "Next year, you're going to have more people than ever. Determination is not something to be messed with."

That's who the American people are -- determined, and not to be messed with. And now we need a strategy and a politics that reflects this resilient spirit.

Our victory against terrorism won't be measured in a surrender ceremony at a battleship, or a statue being pulled to the ground. Victory will be measured in parents taking their kids to school; immigrants coming to our shores; fans taking in a ballgame; a veteran starting a business; a bustling city street; a citizen shouting her concerns at a President.

The quiet determination; that strength of character and bond of fellowship; that refutation of fear -- that is both our sword and our shield. And long after the current messengers of hate have faded from the world's memory, alongside the brutal despots, and deranged madmen, and ruthless demagogues who litter history -- the flag of the United States will still wave from small-town cemeteries to national monuments, to distant outposts abroad. And that flag will still stand for freedom.

Thank you very, everybody. God bless you. May God bless the United States of America. (Applause.)

3:00 P.M. EDT