

# 13-0422-cv(L), 13-0445-cv(CON)

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**United States Court of Appeals**  
*for the*  
**Second Circuit**

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THE NEW YORK TIMES COMPANY, CHARLIE SAVAGE, SCOTT SHANE,  
AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION,

*Plaintiffs-Appellants,*

– v. –

UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES  
DEPARTMENT OF DEFENSE, CENTRAL INTELLIGENCE AGENCY,

*Defendants-Appellees.*

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

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**JOINT APPENDIX**  
**Volume 3 of 3 (Pages JA576 to JA870)**

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TABLE OF CONTENTSAppendix PageVOLUME 1

District Court Docket Sheet, Case No. 1:11-cv-09336-CM .....	JA001
District Court Docket Sheet, Case No. 1:12-cv-00794-CM .....	JA009
Complaint filed by Scott Shane, Charlie Savage and the New York Times in Case No. 1:11-cv-09336-CM, December 20, 2011 .....	JA024
Complaint filed by the American Civil Liberties Union and the American Civil Liberties Union Foundation in Case No. 1:12-cv-00794-CM, February 1, 2012 .....	JA036
Answer of Defendants filed in Case No. 1:11-cv-09336-CM, Jan. 23, 2012 .....	JA049
Answer of Defendants filed in Case No. 1:12-cv-00794-CM, March 5, 2012 .....	JA058
Notice of Motion for Summary Judgment by Defendants, June 20, 2012 .....	JA070
Declaration of Sarah Normand, June 20, 2012 .....	JA072
Exhibit A: December 20, 2011 Complaint filed by Scott Shane, Charlie Savage and the New York Times <i>[omitted, see JA024]</i>	
Exhibit B: February 1, 2012 Complaint filed by the American Civil Liberties Union and the American Civil Liberties Union Foundation <i>[omitted, see JA036]</i>	
Exhibit C: April 3, 2012 Eric Ruzicka letter to Sarah Normand.....	JA080
Exhibit D: March 5, 2012 Remarks presented by Eric Holder at Northwestern University School of Law.....	JA082
Exhibit E: April 30, 2012 Remarks presented by John O. Brennan at the Woodrow Wilson International Center for Scholars .....	JA087

Appendix Page

Exhibit F: June 20, 2012 Remarks presented by Harold  
Hongju Koh at the American Society of International Law ..... JA112

Exhibit G: September 16, 2011 Remarks presented by  
John O. Brennan at Harvard Law School ..... JA127

Exhibit H: September 30, 2011 Remarks presented by President  
Barack Obama ..... JA138

Exhibit I: October 26, 2011 Transcript of Interview of  
President Barack Obama on The Tonight Show ..... JA142

Exhibit J: May 29, 2012 New York Times article “Secret  
‘Kill List’ Proves a Test of Obama’s Principles and Will” ..... JA165

Declaration of John Hackett, June 20, 2012 ..... JA182

Declaration John Bennett, June 20, 2012 ..... JA201

Exhibit A: October 19, 2011 ACLU letter ..... JA247

Exhibit B: October 25, 2011 CIA letter..... JA260

Exhibit C: November 17, 2011 CIA letter..... JA262

Exhibit D: December 6, 2011 ACLU letter..... JA266

Exhibit E: January 18, 2012 CIA letter ..... JA274

Exhibit F: February 2, 2012 CIA letter ..... JA276

**VOLUME 2**

Declaration of John Bies, June 20, 2012 ..... JA279

Exhibit A: June 11, 2010 Scott Shane letter to OLC..... JA296

Exhibit B: October 27, 2011 OLC letter to Scott Shane ..... JA298

Exhibit C: October 7, 2011 Charlie Savage letter to OLC..... JA300

Exhibit D: October 27, 2011 OLC letter to Charlie Savage..... JA302

Exhibit E: October 19, 2011 ACLU letter..... JA304

Appendix Page

Exhibit F: November 14, 2011 OLC letter .....	JA317
Exhibit G: April 3, 2012 Eric Ruzicka letter to Sarah Normand.....	JA319
Exhibit H: OLC Search Terms .....	JA321
Exhibit I: Index of OLC Documents Withheld .....	JA323
Declaration of Robert Neller, June 20, 2012 .....	JA334
Exhibit A: October 19, 2011 ACLU letter .....	JA344
Exhibit B: October 31, 2011 OFOI letter to ACLU .....	JA357
Exhibit C: December 16, 2011 ACLU letter .....	JA361
Exhibit D: December 27, 2011 OFOI letter to ACLU .....	JA372
Exhibit E: November 7, 2011 SOCOM letter to ACLUF .....	JA374
Exhibit F: December 16, 2011 ACLU letter .....	JA377
Exhibit G: December 27, 2011 OFOI letter to ACLUF .....	JA390
Exhibit H: April 3, 2012 Eric Ruzicka letter to Sarah Normand .....	JA392
Exhibit I: February 22, 2012 Final Version of Speech by Jeh Johnson to Yale Law School .....	JA394
Exhibit J: Vaughn Index.....	JA407
Declaration of Douglas R. Hibbard, June 20, 2012.....	JA410
Exhibit A: October 19, 2011 ACLU letter .....	JA425
Exhibit B: October 27, 2011 OIP letter to ACLUF.....	JA438
Exhibit C: Final Talking points prepared for the use of the Attorney General and others in addressing hypothetical questions about Anwar al-Aulaqi's death .....	JA441
Exhibit D: April 3, 2012 Eric Ruzicka letter to Sarah Normand .....	JA444

Appendix Page

Exhibit E: March 5, 2012 Speech of Eric Holder at Northwestern University School of Law.....	JA446
Exhibit F: Vaughn Index .....	JA452
Notice of Classified Filing, June 20, 2012.....	JA455
Plaintiffs’ Cross-Motion for Partial Summary Judgment, in Case No. 1:11-cv-09336-CM, July 18, 2012 .....	JA457
Plaintiffs’ Notice of Motion for Partial Summary Judgment, in Case No. 1:12-cv-00794-CM, July 18, 2012.....	JA460
Declaration of Nabiha Syed, July 18, 2012 .....	JA462
Exhibit A: October 2, 2011 Transcript from the CNN show “State of the Union with Candy Crowley” .....	JA465
Exhibit B: Peter Finn, “Political, Legal Experts Want Release of Justice Dept. Memo Supporting Killing of Anwar al-Awlaki,” Washington Post (October 7, 2011) .....	JA473
Exhibit C: October 27, 2011 DOJ letter to Scott Shane .....	JA477
Exhibit D: October 27, 2011 DOJ letter to Charlie Savage .....	JA479
Exhibit E: November 4, 2011 New York Times letter on behalf of Scott Shane to the Department of Justice Office of Information Policy .....	JA481
Exhibit F: November 4, 2011 New York Times letter on behalf of Charlie Savage to the Department of Justice Office of Information Policy .....	JA484
Exhibit G: Peter Finn, “Secret U.S. Memo Sanctioned Killing of Aulaqi,” Washington Post (September 30, 2011) .....	JA487
Exhibit H: Charlie Savage, “Secret U.S. Memo Made Legal Case to Kill a Citizen,” The New York Times (October 8, 2011) .....	JA491
Exhibit I: Daniel Klaidman, “Obama Team to Break Silence on al-Awlaki Killing,” Newsweek (January 23, 2012).....	JA498

Appendix Page

Exhibit J: Charlie Savage, “A Not-Quite Confirmation of a Memo Approving Killing,” <i>The New York Times</i> (March 8, 2012) .....	JA503
Exhibit K: March 8, 2012 Transcript from the Senate Appropriations Committee, Hearing on Fiscal Year 2013 Budget for the Justice Department, which contains comments from Patrick Leahy .....	JA506
Exhibit L: June 7, 2012 Transcript from the House Committee on the Judiciary, Hearing on Justice Department Oversight, which contains comments from Jerrold Nadler .....	JA509
Declaration of Colin Wicker, July 18, 2012 .....	JA512
Exhibit 1: October 19, 2011 ACLUF letter .....	JA518
Exhibit 2: April 9, 2012 letter from counsel for Defendants to Judge McMahon.....	JA531
Exhibit 3: April 23, 2012 letter from counsel for Defendants to Judge McMahon .....	JA535
Exhibit 4: May 18, 2009 Transcript of Director’s Remarks at the Pacific Council on International Policy .....	JA538
Exhibit 5: October 25, 2011 Transcript of President Barack Obama on “Tonight Show” with Jay Leno .....	JA550
Exhibit 6: Luis Ramirez, “Panetta Praises Libya Campaign, Thanks Troops”, <i>Voice of America</i> , October 6, 2011 .....	JA568
Exhibit 7: April 10, 2012 Remarks of Stephen W. Preston at Harvard Law School .....	JA570

**VOLUME 3**

Exhibit 8: “U.S. Defense Secretary Refers to CIA Drone Use,” <i>L.A. Times</i> , October 7, 2011 .....	JA576
--	-------

- Exhibit 9: Government’s Sentencing Memorandum in  
United States v. Umar Farouk Abdulmutallab,  
No. 2:10-cr-20005 (E.D. Mich. Feb. 10, 2012) ..... JA579
- Exhibit 10: Peter Finn & Joby Warrick, “CIA Director  
Says Secret Attacks in Pakistan Have Hobbled al-Qaeda,”  
*Wash. Post*, Mar. 18, 2010 ..... JA617
- Exhibit 11: Siobhan Gorman & Jonathan Weisman,  
“Drone Kills Suspect in CIA Suicide Bombing,”  
*Wall. St. J.*, Mar. 18, 2010 ..... JA620
- Exhibit 12: June 27, 2010 Transcript of “Jake Tapper  
Interviews CIA Director Leon Panetta,” ABC News ..... JA625
- Exhibit 13: January 29, 2012 Transcript of the CBS  
network broadcast portion of a 60 Minutes interview  
with Leon Panetta, “The Defense Secretary: Leon Panetta” ..... JA640
- Exhibit 14: Lisa Daniel, “Panetta: Awlaki Airstrike  
Shows U.S.-Yemeni Cooperation,” *American Forces  
Press Service*, Sept. 30, 2011 ..... JA650
- Exhibit 15: Charlie Savage, “A Not-Quite Confirmation  
of a Memo Approving Killing,” *N.Y. Times*, March 8, 2012 ..... JA652
- Exhibit 16: Mark Landler, “Civilian Deaths Due to Drones  
Are Not Many, Obama Says,” *N.Y. Times*, Jan. 30, 2012 ..... JA655
- Exhibit 17: Daniel Klaidman, “Kill or Capture”  
(Houghton Mifflin Harcourt, 1st ed. 2012) ..... JA657
- Exhibit 18: March 8, 2012 “Senate Appropriations  
Subcommittee on Commerce, Justice and Science,  
and Related Agencies Holds Hearing on the Proposed  
Fiscal 2013 Appropriations for the Justice Department” ..... JA665
- Exhibit 19: January 31, 2012 “Senate Select Intelligence  
Committee Holds Hearing on Worldwide Threats” ..... JA693
- Exhibit 20: June 7, 2012 “House Judiciary Committee  
Holds Hearing on Oversight of the Justice Department” ..... JA718



Appendix Page

Exhibit 21: Keith Johnson, “U.S. Seeks Cleric Backing Jihad,” <i>Wall St. J.</i> , Mar. 26, 2010.....	JA794
Exhibit 22: September 30, 2011 Remarks by Secretary Panetta and Canadian Minister MacKay.....	JA797
Exhibit 23: March 25, 2010 Transcript of a speech by Harold Hongju Koh, “The Obama Administration and International Law”.....	JA801
Exhibit 24: May 18, 2012 Letter from counsel for Defendants to Judge McMahon.....	JA815
Declaration of Mark H. Herrington, August 8, 2012.....	JA818
Supplemental Declaration of Douglas R. Hibbard, August 28, 2012.....	JA824
September 11, 2012 Eric Ruzicka letter to Judge McMahon .....	JA828
September 14, 2012 Sarah Normand letter to Judge McMahon.....	JA831
November 20, 2012 Colin Wicker letter to Judge McMahon, and enclosures: .....	JA834
Karen DeYoung, “A CIA Veteran Transforms U.S. Counterterrorism Policy,” <i>Wash. Post</i> , Oct. 24, 2012. ....	JA837
Greg Miller, “Plan for Hunting Terrorists Signals U.S. Intends to Keep Adding Names to Kill Lists,” <i>Wash. Post</i> , Oct. 23, 2012 .....	JA844
Craig Whitlock, “Remote U.S. Base at Core of Secret Operations,” <i>Wash. Post</i> , Oct. 25, 2012.....	JA850
Greg Miller, “CIA Seeks to Expand Drone Fleet, Officials Say,” <i>Wash. Post</i> , Oct. 18, 2012 .....	JA858
November 26, 2012 Sarah Normand letter to Judge McMahon.....	JA861
Declaration of Brigadier General Richard C. Gross, January 16, 2013.....	JA863

Appendix Page

Notice of Appeal filed by Scott Shane, Charlie Savage and the  
New York Times in Case No. 1:11-cv-09336-CM,  
February 1, 2013 ..... JA868

Notice of Appeal filed by the American Civil Liberties Union  
and the American Civil Liberties Union Foundation in  
Case No. 1:12-cv-00794-CM, February 1, 2013 ..... JA869

# **Exhibit 8**

## **to the Declaration of Colin Wicker**

**JA576**

# Los Angeles Times

## WORLD

### U.S.: Defense secretary refers to CIA drone use

October 7, 2011 | 1:27 pm

REPORTING FROM NAVAL AIR STATION SIGONELLA, ITALY -- The U.S. government does not officially acknowledge that CIA drones are carrying out airstrikes in Pakistan, Yemen and other countries. But Defense Secretary Leon E. Panetta came closer than usual Friday in off-the-cuff remarks in Italy.

Speaking to U.S. and NATO troops, first in Naples and later in Sicily, Panetta twice referred to the Predator drones he controlled in his previous job as CIA director. It was a rare on-the-record confirmation of the agency's use of the unmanned aircraft by a senior U.S. official, even though the program has become an open secret in Washington.

When officials talk about the CIA drones, they usually do so anonymously or refer simply to "counter-terrorism operations."

"Having moved from the CIA to the Pentagon, obviously I have a hell of a lot more weapons available to me in this job than I had at the CIA, although the Predators aren't bad," he said in a speech to sailors and Marines at the U.S. Navy's 6th Fleet headquarters in Naples.

Panetta was in Italy for briefings on the NATO air campaign in Libya, which has made extensive use of U.S. Air Force drones. But those operations, because they are controlled by the Pentagon, are not even nominally secret.

A few hours later, addressing U.S. and NATO troops on the tarmac at Naval Air Station Sigonella in Sicily, Panetta's thoughts again turned to the CIA drones as he praised the Libya operation.

"This was a complicated mission, there's no question about it," he said, noting that it involved "the use of Predators, which is something I was very familiar with in my past job."

As he spoke, Panetta was standing next to a U.S. Air Force Global Hawk surveillance drone. After he finished, an Air Force Predator armed with Hellfire missiles rolled down the runway and took off, presumably bound for Libyan airspace.

**JA577**

Panetta stopped short of confirming that CIA Predators were conducting airstrikes. Last week, when Anwar Awlaki, a U.S. citizen considered a key leader of the group Al Qaeda in the Arabian Peninsula, was killed in Yemen, President Obama confirmed his death but didn't say how it was carried out. Unnamed U.S. officials later said the operation was a CIA-led drone strike.

Panetta's comments were not the first time he has spoken publicly about CIA drones. He once described the program to reporters as "the only game in town" for going after militants in remote places. Asked in a PBS interview shortly after moving to the Pentagon about allegations of civilian casualties from CIA drone strikes, Panetta said the agency chose its targets carefully.

But his comments Friday went further than he had in the past by specifically acknowledging the CIA is flying Predators.

Panetta made the comments 10 years to the day after the U.S. went to war in Afghanistan. In the months before the invasion, the CIA began secretly flying the then-new unarmed Predators, equipped with aerial video cameras, over Afghanistan to look for Osama bin Laden. But a move to outfit the aircraft with missiles languished for months.

It was not until after Sept. 11, 2001, that the first Predators armed with Hellfire missiles became operational and were rushed to Afghanistan. Hundreds have entered the U.S. fleet in the decade since — and killed hundreds of suspected militants, mostly in Pakistani border regions.

With their surveillance and striking capabilities, they have become the signature weapon of the U.S. battle against militants over the last decade. At a stop in Brussels earlier in his weeklong trip, Panetta urged NATO allies to move ahead with a plan to buy five Global Hawks for the alliance.

"Over these years — and especially this year — we have dealt heavy blows to Al Qaeda's leadership," Panetta said in a statement Friday on the 10-year anniversary of the invasion of Afghanistan. The statement did not mention drones.

**ALSO:**

YEMEN: Al Qaeda group remains threat to U.S.

NATO: Libyan air war will continue, U.S. Defense chief says

IRAQ: U.S. offers \$10-million reward for leader of Al Qaeda in Iraq

-- David S. Cloud

[http://latimesblogs.latimes.com/world\\_now/2011/10/us-pakistan-yemen-cia-drones.html](http://latimesblogs.latimes.com/world_now/2011/10/us-pakistan-yemen-cia-drones.html)

July 17, 2012

**Exhibit 9**  
**to the Declaration of Colin Wicker**

**JA579**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

CASE NO. 2:10-cr-20005

Plaintiff,

HONORABLE NANCY G. EDMUNDS

-vs-

D-1 UMAR FAROUK ABDULMUTALLAB,

Defendant.

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GOVERNMENT'S SENTENCING MEMORANDUM

INTRODUCTION

As noted by the Court at the time of his plea, and as found by the Probation Department in its Presentence Investigation Report, Defendant Abdulmutallab faces mandatory life sentences as to Counts Four and Six, and a mandatory minimum sentence of thirty years as to Count Two.<sup>1</sup> Defendant also faces up to a life sentence as to Counts One and Seven. The remaining charges, which are Counts Three, Five and Eight, each carry sentences of up to twenty years imprisonment. A summary of the charges, maximum sentences, mandatory minimum sentences, requirement of consecutive sentences, and the government's recommendation as to each is contained in the Sentencing Appendix attached to this Memorandum. The government asks that the Court impose the maximum sentence as to each count.

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<sup>1</sup>Although Count 2 carries a mandatory minimum sentence of 30 years imprisonment, it carries a maximum sentence of up to life imprisonment.

### SENTENCING FACTORS

As applicable to the present case, the Court is required to consider the following factors in imposing sentence:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed --
  - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
  - (B) to afford adequate deterrence to criminal conduct;
  - (C) to protect the public from further crimes of the defendant; and
  - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the sentencing guidelines applicable to the offense; and
- (5) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

18 U.S.C. § 3553(a).

#### A. The Nature and Circumstances of the Offense and the History and Characteristics of the Defendant

The “nature and circumstances of the offense” are straightforward: defendant maliciously attempted to murder 289 innocent people of all nationalities and ethnicities, and, but for a technical problem with his bomb, he would have succeeded. As detailed extensively in the Presentence Investigation Report at ¶¶ 13-24 and in the Supplemental Factual Appendix,<sup>2</sup> defendant was deeply

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<sup>2</sup>Defendant, through his standby counsel, objects to those paragraphs of the presentence report. See Defendant’s Objections, ¶ 1. Defendant states that the objected-to paragraphs contain “information obtained during plea negotiations in this matter and can not at this stage be used against him, for sentencing purposes.” Assuming *arguendo* that the debriefings at which  
(continued...)



committed to his mission, seeking out and finding Al Qaeda and Anwar Awlaki, volunteering for a martyrdom mission, and then becoming involved in planning and training for a significant amount of time. Never did defendant falter in his resolve or reconsider his decision to commit mass murder. Indeed, as of the date that he entered his guilty plea, defendant stated to this Court that he believes that the Koran obliges “every able Muslim to participate in jihad and fight in the way of Allah, those who fight you, and kill them wherever you find them, some parts of the Koran say, an eye for an eye, a tooth for a tooth.” (October 12, 2011, Tr. Vol. 5, page 26.) Defendant added that “participation in jihad against the United States is considered among the most virtuous of deeds in Islam and is highly encouraged in the Koran.” (*Id.* at 27.) In explaining his offense, defendant stated that “I attempted to use an explosive device which in the U.S. law is a weapon of mass destruction, which I call a blessed weapon . . .” (*Id.* at 28.) In short, defendant is an unrepentant would-be mass

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<sup>2</sup>(...continued)

the statements were made were in fact “plea negotiations,” defendant’s argument precisely misses the point. The admissibility of plea negotiations is controlled by Federal Rule of Evidence 410, which is inapplicable at sentencing. Fed. R. Evid. 1101(d)(3); *see also* 18 U.S.C. § 3661 (“No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purposes of imposing an appropriate sentence.”).

Defendant further objects that “the statements made during plea negotiations were protected by Kastigar.” Presumably, by using the term “Kastigar” stand-by counsel is referring to a proffer agreement, sometimes referred to as a Kastigar letter, rather than *Kastigar v. United States*, 406 U.S. 441 (1972), as that case involved a grant of immunity under 18 U.S.C. §§ 6002-6003, which was never extended to Defendant Abdulmutallab. However, no proffer agreement was ever signed by Defendant Abdulmutallab, who, after consultation with his then-counsel, chose to speak to agents without signing such an agreement. There is thus no bar to the Court’s consideration at sentencing of statements defendant made during debriefings.

The Supplemental Factual Appendix is included in order to provide the Court with additional information regarding “the nature and circumstances of the offenses,” particularly Count One. It provides the Court with relevant details regarding other terrorists with whom defendant interacted overseas as part of this plot, including Anwar Awlaki.

murderer, who views his crimes as divinely inspired and blessed, and who views himself as under a continuing obligation to carry out such crimes.

B. The Need for the Sentence to Reflect the Seriousness of the Offense,  
To Promote Respect for the Law, and to Provide Just Punishment  
For the Offense

Had defendant attempted to murder a single individual, he likely would be facing a life sentence. Here, where he attempted to murder two hundred eighty nine individuals, no sentence other than life, as to all the counts which carry such a potential sentence, could possibly reflect the seriousness of defendant's conduct. Under the circumstances of this case, anything less than a life sentence would fail to provide just punishment. Indeed, a life sentence would promote respect for the law.

In order to demonstrate the destructive power of defendant's device as it was designed, the government intends to play for the Court at sentencing a video of the FBI Laboratory's demonstration of PETN explosions. These are the same videos which the Court ruled admissible for trial for the same purpose. Those videos demonstrate explosions of 76 grams of PETN, the amount which was recovered unexploded and unburned from defendant's explosive device, and 200 grams, the amount the FBI has estimated was contained in defendant's device before defendant initiated the explosion.

C. The Need to Protect the Public From Further Crimes  
Of the Defendant

Defendant poses a significant, ongoing threat to the safety of American citizens everywhere.

As noted previously, in pleading guilty, defendant reiterated that it is his religious belief that the Koran obliges “every able Muslim to participate in jihad and fight in the way of Allah, those who fight you, and kill them wherever you find them,” and that “participation in jihad against the United States is considered among the most virtuous of deeds in Islam and is highly encouraged in the Koran.” Thus, by his own words, defendant has shown that he continues to desire to harm the United States and its citizens, and that he views it as his religious obligation to do so.

In addition, Dr. Simon Perry, Ph.D., who was to have testified on behalf of the government at trial as an expert on the concepts of martyrdom and jihad, has prepared a report analyzing defendant’s level of danger. Dr. Perry is a criminologist and co-director of the Program in Policing and Homeland Security Studies at the Hebrew University of Jerusalem. Dr. Perry and a team conducted research into the motivation of forty failed suicide bombers, and developed a psychological profile of such individuals. *See Exhibit A, Memorandum for the Court, by Simon Perry, Ph.D.* In his memorandum, Dr. Perry analyzed the available data on the motivation of suicide bombers, or, to use his preferred term, of an individual engaged in “martyrdom.”<sup>3</sup> Dr. Perry also

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<sup>3</sup>“Martyrdom” is also the term used by defendant in describing his intended behavior. For instance, on December 25, 2009, during the hospital admissions process, defendant told University of Michigan Hospital nurse Julia Longenecker that he had no history of having attempted to harm himself or others. When Ms. Longenecker disputed that characterization, by asking him whether what he had undertaken on the airplane earlier that day was not harming himself and others, defendant replied: “That was martyrdom.”

analyzed the facts of the case, including defendant's extensive debriefing given to the FBI.<sup>4</sup> Dr. Perry's entire report provides a unique analysis of martyrdom bombers in general and Defendant Abdulmutallab in particular; Dr. Perry's conclusion is chilling:

Since UFAM's [Umar Farouk Abdul Mutallab's] motivation to commit martyrdom appears to be great, I believe there is a high probability that given the opportunity, he would try once again to commit an act of martyrdom, endangering his and other innocent lives.

It is my belief that UFAM fits well the profile of the classic martyr as described above. Therefore his act of martyrdom is the result of his expectation to receive religious, personal/ personality and social benefits. As long as he is of the same state of mind and continues to hold the same set of beliefs, the outcome of this "rational choice" decision making process which evaluates the "cost" and the anticipated "benefits" is expected to lead him to martyrdom.

UFAM stated to Agents that he is committed to Jihad. He claimed that once a decision is made, one remains committed to that decision unless something comes up that requires re-examination.

It seems that even the death of Aulahi, his source of religious guidance concerning martyrdom, did not change his state of mind and did not require re-examination. If anything, it has made him more determined.

In summary, in addition to the probability that given the opportunity, UFAM will make another attempt at martyrdom, there also exists the likelihood that he will become a role model and proxy of Fundamentalist Islamic Jihadists, assisting them in the recruitment of new martyrs.

In other words, defendant has enormous motivation to carry out another terrorist attack, but lacks the capability because of his incarceration. The Court has no ability to control defendant's motivation, which in any event appears to be unchanged. However, the Court can control

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<sup>4</sup>See note 2, *supra*. Even if there were some prohibition on the use of defendant's debriefing statements at sentencing, which there is not, they would still be available for Dr. Perry's use, because they are the type of evidence reasonably relied upon by experts in his fields of criminology and psychology. See Fed. R. Evid. 703.

defendant's opportunity to act on those intentions. The Court should use the discretion it has to impose a sentence which ensures that defendant never again has the opportunity to carry out the type of mission he still is highly motivated to conduct.

D. The Need to Provide Defendant With Educational or Vocational Training and Medical Treatment

None of these factors is applicable to the present case. Defendant has a college degree from University College London,<sup>5</sup> and even took post-graduate classes. Defendant has fully recovered from the injuries suffered in his attack, and his health is now excellent.

E. The Kinds of Sentences Available, the Sentencing Guidelines, and the Need To Avoid Unwarranted Sentencing Disparities

In the present case, the Sentencing Guidelines provide for life sentences. As noted above, Counts Four and Six carry statutorily-mandated life sentences. Counts One, Three, Five, Seven and Eight all are subject to the terrorism enhancement of USSG § 3A1.4,<sup>6</sup> which adds twelve levels to

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<sup>5</sup>According to the Times Higher Education World Ratings, University College London is rated the 17th best university in the world for 2011-2012. *See* <http://www.timeshighereducation.co.uk/world-university-rankings/2011-2012/top-400.html>.

<sup>6</sup>USSG § 3A1.4 applies "[i]f the offense is a felony that involved, or was intended to promote a federal crime of terrorism[.]" "Federal crime of terrorism" has the meaning given in 18 U.S.C. § 2332b(g)(5). *See* USSG § 3A1.4 (comment.), n.1.

A "federal crime of terrorism" is defined under 18 U.S.C. § 2332b(g)(5) as an offense that is "calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct," and which also is a violation of 18 U.S.C. § 2332b (relating to terrorism transcending national boundaries, as is Count One), 18 U.S.C. § 32 (relating to destruction of aircraft, as are Counts Five and Eight), 18 U.S.C. § 2332a (relating to weapons of mass destruction, as is Count Seven), *see* 18 U.S.C. § 2332b(g)(5)(B)(i); and which also is a violation of 18 U.S.C. § 46506 (relating to attempted murder on aircraft, as is Count Three), *see* 18 U.S.C. § 2332b(g)(5)(B)(iii).

The record is replete with defendant's statements that he acted "to retaliate against  
(continued...)

each of the base offenses and also places defendant in Criminal History Category VI. As a result, each of the non-mandatory counts has an adjusted offense level above Level 43, which is the highest level contained in the guidelines. *See* USSG § 5, Pt. A, comment. (n.2) (an offense level of more than 43 is to be treated as an offense level of 43). An offense level of 43 calls for a life sentence at any criminal history level. The fact that the terrorism enhancement places defendant in the most serious criminal history category merely reinforces the fact that the Sentencing Commission sought to ensure life sentences for individuals who commit the types of offenses of which defendant was convicted.<sup>7</sup>

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<sup>6</sup>(...continued)

government conduct.” *See* October 12, 2011, Tr. Vol. 5, page 26 (defendant stating he acted “in retaliation for U.S. support of Israel and in retaliation of the killing of innocent and civilian Muslim populations in Palestine, especially in the blockade of Gaza, and in retaliation for the killing of innocent and civilian Muslim populations in Yemen, Iraq, Somalia, Afghanistan and beyond”); *id.* (defendant committed an “act of jihad against the United States for the U.S. killing of my Muslim brothers and sisters around the world”); *id.* at 27 (defendant acted “to avenge”); *id.* (defendant acted “in retaliation”); *id.* at 28-29 (defendant acted “for the U.S. oppression of Muslims,” “for U.S. interference in Muslim countries,” “for U.S. use of weapons of mass destruction on Muslim populations” in various countries, and “for the U.S. wreckage of Muslim lands and property”).

Thus, it is clear that the offenses for which defendant was convicted qualify for the terrorism enhancement, and that defendant acted with the requisite intent to retaliate against the United States government. For purposes of the record, the government asks that the Court make an express finding that the enhancement applies.

<sup>7</sup>The statutory factors also require the Court to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct. A life sentence in the present case would not create any such disparity. To the contrary, Courts routinely impose very stiff sentences on defendants who are convicted of participating in terror plots. For example, in a case involving similar facts, Richard Reid received three non-mandatory life sentences for attempting to explode a bomb aboard an aircraft in flight in 2001 on behalf of al Qaeda, and the maximum sentence on several other non-mandatory counts. *See United States v. Reid*, 02-10013-WGY (D. Mass. 2003); *also e.g., United States v. Faisal Shahzad*, 10 Cr. 541 (MGC) (S.D.N.Y. 2010) (life imprisonment for attempted bombing in  
(continued...)

CONCLUSION

For the reasons stated, the government asks that the Court impose life sentences as to Counts One, Two,<sup>8</sup> Four, Six, and Seven, and twenty year sentences as to Counts Three, Five and Eight.

By

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<sup>7</sup>(...continued)

Times Square, New York); *United States v. Wadih el-Hage, et al.*, S10 98 Cr. 1023 (LBS/LAK) (S.D.N.Y. 2001 and 2010) (life imprisonment for all convicted participants in al Qaeda bombing of U.S. embassies in East Africa); *United States v. Kassir*, S2 04 Cr. 356 (JFK) (S.D.N.Y. 2009) (multiple terms of life imprisonment for operative who set up jihad training camp in the U.S.); *United States v. Mohammed Mansour Jabarah*, 02 Cr. 1560 (BSJ) (S.D.N.Y. 2008) (life imprisonment upon a guilty plea to conspiring to bomb U.S. Embassies in Singapore and the Phillippines); *United States v. Zacarias Moussaoui*, 01 Cr. 455 (LMB) (E.D. Va. 2006) (life sentence for conspiring in the attacks of September 11, 2001); *United States v. Mohammed Salameh, et al.*, 93 Cr. 180 (KTD) (S.D.N.Y. 1999) (1993 bombing of the World Trade Center, resulting in six deaths — sentences of 240 years, 240 years, 180 years, 117 years, 116 years, 108 years); *United States v. Terry Nichols*, 96 Cr. 68-m (D. Colo. 1998) (life imprisonment for conspiracy to bomb the Oklahoma City federal building — defendant acquitted of murder but convicted of manslaughter); *United States v. Abdul Hakim Murad, et al.*, 93 Cr. 180 (KTD) (S.D.N.Y. 1998) (life imprisonment plus 60 years imposed on each of two defendants for a conspiracy to bomb United States airliners in Southeast Asia); *United States v. Omar Abdel-Rahman*, 93 Cr. 181 (MBM) (S.D.N.Y. 1996) (life sentence for seditious conspiracy); *see also United States v. Timothy McVeigh*, 96 Cr. 68-m (D. Colo. 1997) (death sentence for the bombing of the Oklahoma City federal building, resulting in 168 deaths).

<sup>8</sup>Count Two carries a minimum sentence of 30 years imprisonment, but the maximum sentence can be up to life imprisonment.

statute, the sentences on each of Counts One, Two, Four and Six must run consecutively to any other sentence.

Respectfully submitted,

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Dated: February 10, 2012



SENTENCING APPENDIX

Count	Charge	Maximum Sentence	Mandatory Minimum?	Mandatory Consecutive?	Government Request
1.	Terrorism Trans. Nt'l Boundaries	Life	No	Yes	Life/ consecutive to other counts
2.	Possession Firearm/Dest. Device	Life	360 months	Yes	Life/ consecutive to other counts
3.	Attempted Murder	20 years	No	No	240 months*
4.	Use/Carrying of Dest. Device	Life	Life	Yes	Life, consecutive to other counts
5.	Placing Destructive Device in Aircraft	20 years	No	No	240 months*
6.	Possession Destructive Device	Life	Life	Yes	Life, consecutive to other counts
7.	Attempted Use Weapon of Mass Destruction	Life	No	No	Life*
8.	Attempt to Destroy and Wreck Aircraft	20 years	No	No	240 months*

\*The government has no objection to these counts being made concurrent to each other.

SUPPLEMENTAL FACTUAL APPENDIX

This Supplemental Factual Appendix is intended to provide additional information regarding “the nature and circumstances of the offenses,” particularly Count One of the First Superseding Indictment - Conspiracy to Commit an Act of Terrorism Transcending National Boundaries. Specifically, this Supplemental Factual Appendix is intended to provide the Court with details about Defendant Abdulmutallab’s interactions with Al Qaeda in the Arabian Peninsula (AQAP) terrorists in the months leading up to his attack on Northwest Flight 253. As with the Presentence Investigation Report, the bulk of the material provided comes from debriefing statements defendant made to FBI agents from January to April 2010, which may be considered for sentencing. *See Note 2, supra.*

In August 2009, defendant left Dubai, where he had been taking graduate classes, and traveled to Yemen. For several years, defendant had been following the online teachings of Anwar Awlaki, and he went to Yemen to try to meet him in order to discuss the possibility of becoming involved in jihad. Defendant by that time had become committed in his own mind to carrying out an act of jihad, and was contemplating “martyrdom,” *i.e.*, a suicide operation in which he and others would be killed.

Once in Yemen, defendant visited mosques and asked people he met if they knew how he could meet Awlaki. Eventually, defendant made contact with an individual who in turn made Awlaki aware of defendant’s desire to meet him. Defendant provided this individual with the

number for his Yemeni cellular telephone. Thereafter, defendant received a text message from Awlaki telling defendant to call him, which defendant did. During their brief telephone conversation, it was agreed that defendant would send Awlaki a written message explaining why he wanted to become involved in jihad. Defendant took several days to write his message to Awlaki, telling him of his desire to become involved in jihad, and seeking Awlaki's guidance. After receiving defendant's message, Awlaki sent defendant a response, telling him that Awlaki would find a way for defendant to become involved in jihad.

Thereafter, defendant was picked up and driven through the Yemeni desert. He eventually arrived at Awlaki's house, and stayed there for three days. During that time, defendant met with Awlaki and the two men discussed martyrdom and jihad. Awlaki told defendant that jihad requires patience but comes with many rewards. Defendant understood that Awlaki used these discussions to evaluate defendant's commitment to and suitability for jihad. Throughout, defendant expressed his willingness to become involved in any mission chosen for him, including martyrdom - and by the end of his stay, Awlaki had accepted defendant for a martyrdom mission.

Defendant left Awlaki's house, and was taken to another house, where he met AQAP bomb-maker Ibrahim Al Asiri. Defendant and Al Asiri discussed defendant's desire to commit an act of jihad. Thereafter, Al Asiri discussed a plan for a martyrdom mission with Awlaki, who gave it final approval, and instructed Defendant Abdulmutallab on it. For the following two weeks, defendant trained in an AQAP camp, and received instruction in weapons and indoctrination in jihad. During his time in the training camp, defendant met many individuals, including Samir Khan.<sup>9</sup>

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<sup>9</sup> Khan later came to be involved with AQAP's *Inspire* magazine. Both Khan and Awlaki were killed in September 2011.

Ibrahim Al Asiri constructed a bomb for defendant's suicide mission and personally delivered it to Defendant Abdulmutallab. This was the bomb that defendant carried in his underwear on December 25, 2009. Al Asiri trained defendant in the use of the bomb, including by having defendant practice the manner in which the bomb would be detonated; that is, by pushing the plunger of a syringe, causing two chemicals to mix, and initiating a fire (which would then detonate the explosive).

Awlaki told defendant that he would create a martyrdom video that would be used after the defendant's attack. Awlaki arranged for a professional film crew to film the video. Awlaki assisted defendant in writing his martyrdom statement, and it was filmed over a period of two to three days. The full video was approximately five minutes in length.<sup>10</sup>

Although Awlaki gave defendant operational flexibility, Awlaki instructed defendant that the only requirements were that the attack be on a U.S. airliner, and that the attack take place over U.S. soil. Beyond that, Awlaki gave defendant discretion to choose the flight and date. Awlaki instructed defendant not to fly directly from Yemen to Europe, as that could attract suspicion. As a result, defendant took a circuitous route, traveling from Yemen to Ethiopia to Ghana to Nigeria to Amsterdam to Detroit. Prior to defendant's departure from Yemen, Awlaki's last instructions to him were to wait until the airplane was over the United States and then to take the plane down.

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<sup>10</sup> The Court has seen the thirty-four-second excerpt of the video that was subsequently released by AQAP as part of its video *America and the Final Trap*.

**CERTIFICATE OF SERVICE**

I hereby certify that on February 10, 2012, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to Anthony Chambers. I further certify that I have caused a copy of this filing to be delivered and mailed to the defendant, Umar Farouk Abdulmutallab, Register No. 44107-039, Federal Detention Center, East Arkona Road Milan, Michigan.

s/ Darlene Secord  
Paralegal Specialist  
U.S. Attorney's Office

## Memorandum for the Court

### **The Level of Danger Posed by Umar Farouk Abdul Mutallab**

Prepared by: Dr. Simon Perry on behalf of the  
United States Department of Justice

January 2012

**JA595**

## **Introduction**

My name is Dr. Simon Perry. I have a Ph.D in Criminology, received in 2003 from the Criminology Department of the Law Faculty of the Hebrew University in Jerusalem, Israel. My thesis focused on the topic: The "Economical Behavior" of the "Rational Criminal" and Enforcement Policy. In 1987 I received my M.A. in Criminology from the Law Faculty of the Hebrew University in Jerusalem. My thesis was on the "The Presentation of Self of Young Criminals". I also received my undergraduate B.A. degree from the Hebrew University in 1981 majoring in Sociology with minors in Psychology and Law.

I am currently the Co-Director of the Program in "Policing Terrorism Studies" in the Institute of Criminology, Faculty of Law, Hebrew University Jerusalem where I am a professor in the Graduate School lecturing and conducting research in the field of Terrorism and Policing with colleagues in Israel and U.S.

I have done extensive academic lecturing worldwide including at leading American academic forums in the capacity of a guest lecturer at: Yale School of Management in Spring 2009 on "Policing Terrorism Strategy & Tactics", and again in the Fall 2009 on "Decision Making in Law Enforcement Intelligence Counter Terrorism"; the American Society of Criminology in November 2009 on the topic of "The Israeli Model for Policing Terrorism - Goals, Strategies, and Open Questions"; the Hoover Institution, Stanford University, CA in Summer 2006 presenting a seminar entitled "Homeland Security and the War on Terrorism – The Israeli Experience" ; and Princeton University, N.J. in the summer of 2004 where I gave a seminar on "Policing Terror – The Israeli Model".

I have provided extensive training and lectures for Law Enforcement and Intelligence Agencies in the U.S. and Canada as well as for the various branches of the Department of Homeland Security in the areas of: Policing Terrorism, Suicide Terrorism, Homeland Security, and International Organized Crime. I was also the leading presenter in the FBI national training project which focused on the area of Suicide Terrorism.

I joined the Israel National Police in 1978 and served in a variety of positions in the Police Force for 30 years. Some of the positions I held were: Israel Police and Ministry of Public

Security Attaché & Liaison Officer to the USA & Canada; Commander of Intelligence and Operational Division; Commander of the Special Operations Unit; Head of Interpol and International Relations; Commander of National Drug Unit, Head of European Operations, posted in the Netherlands.

I was asked by the United States Department of Justice to prepare the following memorandum in order to provide the court with information which may be useful for sentencing. Specifically, I have been asked to assess the defendant's future dangerousness or likelihood of again attempting a martyrdom mission if released from prison.

In the following memorandum I integrate relevant literature on the topic of Martyrdom as well as findings from a pioneering study of 40 individuals who were recruited to commit acts of suicide bombings and were apprehended and interviewed by the Israel National Police (INP) Negotiation Unit headed by Colonel Shmuel Zoltack. This particular study attempted to learn more about the phenomenon of martyrdom. I served as an advisor for this study on the criminological aspects particularly as they relate to what motivates a person to commit a suicide attack according to the "rational choice theory". An explanation of the rational choice theory is set forth in sections I, II and III (discussion) of this paper.

I was originally supposed to serve as an expert witness at the trial, and therefore received the following materials for trial preparation under a non-disclosure agreement. The materials include reports of Umar Farouk Abdul Mutallab's post-arrest statement to the FBI as well as the reports of his extensive debriefing by the FBI.

The list of materials reviewed to prepare this memorandum were:

1. Interview of Umar Farouk Abdul Mutallab, by FBI agents Timothy Waters and Theodore Peissig on December 25, 2009;
2. A copy of a text message sent by Mr. Abdul Mutallab to his family approximately three months before his mission;
3. Interviews of Umar Farouk Abdul Mutallab (redacted version) from the following dates: 01/29/10; 01/30/10; 01/31/10; 02/02/10; 02/03/10; 02/04/10; 02/05/10;



02/08/10; 02/09/10; 02/12/10; 02/15/10; 02/16/10; 02/19/10; 02/23/10; 04/08/10;  
04/16/10; 04/30/10;

4. Interview of Elaine Christmas;
5. Interview of Julia Longnecker;
6. Interview of Anne Fernandez;
7. Interview of Elnaz Yahyai;
8. Interview of Jolanda Quarshie;
9. Interview of Joyce Kaufman;
10. Interview of Julia Longnecker;
11. Interview of Lamare Mason;
12. Interview of Ollie Pepijn;
13. Interview of Reinald Van Gaal;
14. Interview of Robert Digennaro;
15. Interview of Dionne-Marie Ransom;
16. Interview of Jessica Marie Worsley;
17. Interview of Marvin Steigerwald;
18. Photographs of items found in the possession of Mr. Abdul Mutallab upon his arrest;
19. Photographs of Mr. Abdul Mutallab's injuries;
20. A portion of a video released by Al Qaeda in the Arabian Peninsula, of Mr. Abdul Mutallab.
21. Statements of Mr. Abdul Mutallab to the court during the entry of his guilty plea.

## **The Level of Danger Posed by Umar Farouk Abdul Mutallab**

In this document, I have been asked to examine the level of danger that the convicted Umar Farouk Abdul Mutallab (referred to below as UFAM) poses. In understanding or predicting criminal/terrorist behavior, criminologists define, as in any normative behavior, two necessary conditions: *motivation* to commit a certain behavior and the *opportunity* to carry out that behavior.

### **I. The "rational choice" to "martyrdom" an outcome of *Religious, Personality and Social Background.***

In attempting to understand the *motivation*, initially the phenomenon of suicide bombers is conceived as non rational behavior, whereby the individual sacrifices himself for a cause that in his mind is more important than his own personal interests. One thinks that only altruistic motivation drives the individuals who are willing to make the ultimate sacrifice, for what they believe to be the common good of their society. As a natural outcome of indiscriminate murder, some nature of the behavior, which is clearly both criminal and deviant according to Western behavior and legal standards, the actor is demonized. It is thought that the suicide bomber is driven and motivated by such deep irrational feelings as hatred and revenge. Yet, quite the opposite is the case. **In contradiction to the above perceptions of the phenomenon of suicide bombers, the act of suicide bombing is in fact a "rational choice", as the term is defined in criminology.** The society that breeds suicide bombers succeeds in building incentives for such choices.

The holy act of martyrdom ("Istishad") in fact is not perceived as suicide ("Intichar"), which is forbidden in Islam as it is forbidden in Judaism and Christianity. According to the fundamentalist Islamists, the Martyr ("Shahid") dies in this world but lives on in

paradise. The source of this belief originates from the writing passage in the Koran which states:

*"Don't think that those who died for 'Allah' are dead, But know that they are living with the Almighty God who fulfills all their needs" (Koran 3/169)*

In a pioneering study, 40 individuals who were recruited to commit acts of suicide bombings and were apprehended were interviewed by the Israel National Police (INP) Negotiation Unit. The study attempted to learn more about the phenomenon - especially what *motivates* a person to commit a suicide attack. The subjects of this research came from three groups: individuals who arrived at the scene and tried to activate the explosive but failed due to a technical malfunctioning; individuals who were arrested on the way to the scene; and individuals who committed themselves to the suicide act, received the explosive device, and then changed their minds.

The propaganda which appears in recorded video wills, published letters and other means promotes the claim that suicide bombing is motivated by altruistic and unselfish nationalistic/religious reasoning. Yet it appears from the interviews in the INP study and from other literature that has been published on suicide bombers, that there exists another level beyond that of the declared propaganda disseminated by Fundamentalist Jihadists. Based on the study and literature<sup>1</sup>, it emerges that this lethal behavior is in fact an outcome of a dynamic interaction among three major factors: A. **Religion**, B. **Personality and C. Social Background**. The individual who commits such an extreme act expects to receive three major sets of rewards: religious rewards, personality rewards, and social rewards.

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<sup>1</sup> Should the court find it helpful, a bibliography list of the relevant literature could be submitted.

A. **Religious Background** - The study reinforces the literature and concludes that the typical religious background of the potential martyr is classically characterized by: 1) deep religious feelings; 2) following Islamic laws; 3) spending a great deal of time at the mosque; 4) becoming "Taleb a'Shuhada" – a student of "Shuhada" (Martyrdom).

*This religious concept of martyrdom also offers meaningful personal rewards*, as explained by the Islamic fundamentalist Jihadist focus on the issue of martyrdom, on eternal life in the highest gardens of paradise (jannat al-firdaws). According to this belief, the martyr will go on living in the presence of Allah and will be permitted to see Allah's face and meet the Prophet Muhammad. By pressing the detonator, the Martyr immediately opens the door to Paradise which is the shortest path to Heaven. The first drop of blood shed by a martyr during Jihad washes away all of his past sins instantaneously and protects him against the pain of death. The extremists also claim that the act of martyrdom also opens the path to paradise for seventy of the martyr's beloved ones. And they assert that the martyr will have at his disposal seventy-two "houris", the beautiful black eyed virgins who will serve him in heaven. Militant groups cleverly structure and package their existing struggle as part of the Islamic tradition of Jihad and martyrdom, utilizing ceremonies and rituals linking to holy history.

B. **Personality Background** - These manipulations by the fundamentalists, which are expertly circulated and publicized (via the media, internet, education system, the mosque etc.), offer martyrs significant *personality rewards* as well, such as: self-fulfillment and becoming a hero and receiving fame and honor, which in traditional societies is the most important status that one can be given. Martyrdom also offers a respectful and beneficial way to put an end to negative feelings of depression and helplessness. Naturally these rewards are extremely attractive to individuals who

have some or all of the following psychological characteristics which have been found to be characteristic of the those tested in the INP study - individuals who: do not stand out; exhibit submissive and dependent personalities; have childish behavior; suffer from low self-esteem and are socially isolated; exhibit external locus of control whereby they do not accept any responsibility for failures by placing responsibility on others or circumstances; are characterized by a gap between the need "to be someone" and the ability to achieve it. The most surprising finding is that these individuals, who intended to explode themselves killing people they didn't know, were found to have, in fact, a low level of aggression. A possible explanation for this might be that the extremist religious structure creates a culture of martyrdom which in fact encourages such acts of extreme violence, by transforming cruel terror into sacred missions in the minds of terrorists and their sympathetic observers. The martyr has no personal conflict with his victims; they are perceived as collateral damage in his fulfillment of a holy command.

**C. Social Background** - In contradiction to the above findings regarding the low levels of aggression in martyrs - the study and related literature conclude that the *Social* environment background of the potential "Shahid" is typically characterized by a high level of aggression. This extreme aggression is supported by a culture which provides militant organizations with a "tool kit" of concepts, myths, and symbols. This "tool kit" is used to expose their disciples to high - impacting terror propaganda by means of the media and educational programs.

The *Social* environment is an intrinsic part of a culture which emphasizes values such as honor, revenge and family, before the individual. Such a culture legitimizes and encourages "Istishad" behavior and glorifies the martyr. In such a society martyrdom offers substantial *Social* rewards as well: upgrading of the social status in the community of the individual and as well as that of his/her family, as well as social and economic support for the family.

The suicide bomber's family and the sponsoring fundamentalist organization celebrate martyrdom with festivities, as if it were a wedding, because of the honor that Allah has bestowed upon the family. Many guests gather together at the family's house to offer congratulations. The hosts serve juices and sweets. Supporters and sponsors of suicide bombings create posters, web sites, and public exhibits to honor their "martyrs" and publicize their "heroic" sacrifice.

These findings should not really surprise us, because as documented in the literature, there is a very extensive socialization system through the fundamentalist religious, social and governing institutions that reinforces and supports this behavior by promising personal gains.

In summary, analyzing the study interviews as well as the literature and documentation about the phenomenon, I conclude that - counter to preconceptions - the act that we call "suicide bombing" is in fact a result of rational situational choice, based on an evaluation of the cost and the anticipated benefits. In order to better understand suicide terrorism by extremist Islamists, we must realize that it is irrelevant whether Paradise and all of the expected benefit exist for the martyr. What is important is that the religious suicide terrorist believes that it does.

It should be emphasized that the term "rational" calls attention to the notion of strategic thought, and assumes a processing of information, analysis and evaluation of opportunities and alternatives.

**II. The "rational choice" of "martyrdom" by UFAM is an outcome of his Religion, Personality and Social Background.**

As in the INP's study of the suicide bombers, it seems that in the case of UFAM there appears to be another level beyond the declared reasoning for the terror attack. UFAM's declared reasoning emphasizes the Fundamental Jihadist propaganda and veils the real rational choice he made, based on anticipated cost and religious social and personality benefits. As in the case of many other martyrs (as claimed above), UFAM might believe at least some of the Jihadist propaganda, yet it is clear that it is not his main motivation for martyrdom. For example, in his statement to the court he claims that his attack was an outcome of the fact that the "American people are guilty of the sin, and Obama should pay for the crime".<sup>2</sup> In contradiction to this statement made in court, UFAM previously, in his FBI debriefing<sup>3</sup>, claims that he did not specifically target the U.S. for his mission. He said that he was prepared to pursue whatever Jihad path he was directed (by others) to pursue, regardless of the country or the target. Even the occupation of Palestine, Afghanistan and Iraq by Western troops did not signal a call to Jihad for him (once again this statement contradicts his declarations when pleading guilty at the trial). UFAM was entirely motivated by his realization of his religious obligation to conduct Jihad. In fact, UFAM believes it would be acceptable to conduct attacks against a Muslim country that did not practice and support the fundamentalist beliefs about Islam

Through his own statements and behavior, and without interviewing him directly, there is a great deal that can be learned about UFAM and what brought him to attempt to explode the aircraft. The following paragraphs will point out the main elements that promote the belief that UFAM fits well the profile of the classic martyr as described above.

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<sup>2</sup> References in this memorandum to UFAM's statements refer to the reports of interviews of his debriefings conducted with the FBI (unless otherwise indicated).

<sup>3</sup> UFAM's debriefing by the FBI on 02/15/2010 p.2

**A. UFAM's Religious Background as a Typical Martyr**

As mentioned above, the typical Religious background of the potential "Shahid" is classically characterized by: 1. deep religious feelings; 2. following the Islamic laws; 3. spends a lot of time at the mosque; 4. becoming a student of "Shuhada" (martyrdom). UFAM demonstrates all of these characteristics as seen in the following examples.

1. **Deep religious feelings** - UFAM is clearly guided by deep religious feelings when he writes to his mother<sup>4</sup>: "Allah knows what is best...I ask you for the sake of Allah to let me stay here and come closer to him. This is 'insha allah' (God's will) what is best for me spiritually in my worldly affairs and in the hereafter (after this life)...Oh mother don't despair or worry and never lose hope in the mercy of Allah. Read the speech of Allah and its meanings as much as you can. May Allah take care of you wherever you are like you took care of me all my life. May Allah also take care of me wherever I am and I put my full trust in him. I will be fine wherever I am and nothing will happen to me except what Allah has written which there is no escape from wherever I may be...I will come back "Insha Allah" and we will have a happy reunion by the mercy of Allah and his favor. But not now, sooner or a little while later "Bismilla."

UFAM espouses Aulaqi's lectures which differentiate between the holy act of martyrdom and suicide<sup>5</sup> which as previously discussed is forbidden in Islam.

UFAM believes that: "If we are patient and put our trust in Allah then he will make whatever he has decreed easy for us. And Allah has promised ...hardship ease will definitely come". In what UFAM believes is his last message to his mother ("my phone will be disposed after this message") he writes: "Allah guides us and that Allah saves us from the love of this world and our evil desires....."

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<sup>4</sup> A copy of a text message sent by UFAM to his family approximately three months before his mission.

<sup>5</sup> UFAM's debriefing by the FBI on 02/08/2010 p.10



UFAM follows the principle: "God guides people in ways they don't always expect." Then when you receive a message from God it is viewed as religious evidence supporting your commitment.<sup>6</sup> UFAM felt that Allah would favor this martyrdom path.<sup>7</sup>

When the airplane was close to crossing the border between Canada and the U.S., UFAM went to the restroom, washed his face, brushed his teeth, put on some cologne, came back to his seat, said his final prayers and only then pushed the plunger on the device.<sup>8</sup> Through these acts (prior to pushing the plunger) UFAM prepared himself for martyrdom by **purifying himself - body and soul**.

2. *Following Islamic fundamentalist laws* There is no doubt that UFAM is preoccupied with following Islamic fundamentalist laws. He believes that one needs to actually travel and participate in Jihad to meet one's religious obligation. UFAM was never given a "Fatwah" (religious ruling) regarding his decision to commit Jihad. UFAM believes that All Muslims already know that Jihad is authorized, that no "Fatwah" is needed to be issued on that topic,<sup>9</sup> and that a Muslim has a religious obligation to participate in Jihad and fight just as he does to fast and to pray.<sup>10</sup> UFAM believes one's obligation for Jihad ends only when Muslim lands are free from Western occupation. He believes this would require a global caliphate. When an area is no longer occupied by westerners, Jihad becomes an option rather than an obligation.<sup>11</sup>

UFAM referred several times to the religious commandment of **donation** (which is also one of the five pillars of Islam). "It is binding upon everyone to seek knowledge and to constantly make "duas" (donations)". For example he donated a

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<sup>6</sup> ibid p.10

<sup>7</sup> UFAM's debriefing by the FBI on 01/29/2010 p.10

<sup>8</sup> UFAM's debriefing by the FBI on 01/30/2010 pp.11-12; 02/12/2010 p.8

<sup>9</sup> UFAM's debriefing by the FBI on 02/05/2010 p.4

<sup>10</sup> UFAM's debriefing by the FBI on 02/15/2010 p.2

<sup>11</sup> UFAM's debriefing by the FBI on 02/08/2010 p.9

few hundred Pounds to an organization which supports families of prisoners in the UK.<sup>12</sup>

3. *Spent a lot of time in the mosque* - UFAM reveals to the agents that he indeed spent a lot of time at the mosque, attending various Mosques<sup>13</sup> wherever he has been. UFAM states that at a certain period he began to memorize the Koran and prayed at the Mosque and listened to Aulqi's many lectures on Jihad and Islamic topics.

4. *Student of "Shuhada"* (martyrdom) - UFAM makes a point to present himself as a student of "Shuhada", while he differentiates between Muslims who are Jihadists and those who are not Jihadists such as Sheik Yassir Qudhi. While at UCL, UFAM claimed that he did not want to participate in Jihad and did not at that time subscribe to religious philosophy that supported Jihad<sup>14</sup>. Only later UFAM felt that **God was guiding him to Jihad**, he "saw the doors open" before him. In the summer of 2009, UFAM was facing a two month break from his course work in Dubai, and he viewed it as a sign from God that he should take this opportunity to travel to Yemen, seek out Aulqi and participate in Jihad. Later during the Ramadan the conviction became more intense.<sup>15</sup>

UFAM's religious devotion to martyrdom such as fasting (one of the five pillars of Islam) convinced others such as Abdul Aziz that he was ready to become a martyr<sup>16</sup>. Aulqi suggested that UFAM pray for religious guidance concerning the right time to make the flight and then to travel when he was ready. The group had to have a measure of trust that the martyr would perform the mission. According

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<sup>12</sup> ibid pp.7-8

<sup>13</sup> UFAM's debriefing by the FBI on 12/25/2009 p.2; 02/09/2010 p.8; 02/23/2010 p.2

<sup>14</sup> UFAM's debriefing by the FBI on 02/08/2010 p.7

<sup>15</sup> UFAM's debriefing by the FBI on 01/31/2010 p.11

<sup>16</sup> UFAM's debriefing by the FBI on 02/09/2009 p.5

to UFAM the matter of trust was sensitive. The members of the group were very spiritual about it. They would pray for guidance for the trustworthiness of the individual as they did in UFAM's case. They would pray until they received a signal or sign that the selected individual would actually perform the mission, and only after that would they develop the required trust.<sup>17</sup>

UFAM argues that he does not believe that his family has the religious authority to dissuade him from his decision to commit martyrdom.<sup>18</sup> It would have required a command from a powerful religious authority associated with Jihad such as Aulaqi, to dissuade him from completing his mission. UFAM believes that Aulaqi held all the power to make this decision. UFAM believed he had decided on a path of Jihad, and destiny and/or fate would determine whether martyrdom would be his path.<sup>19</sup>

UFAM believes that martyrdom is already assumed to be part of Jihad and is just one of several ways in which a person can participate in Jihad.<sup>20</sup> A martyr works with people he trusts to determine whether that is the appropriate course of Jihad for him. UFAM prayed for guidance from Allah seeking Jihad, and he wanted Allah to make it easy for him.<sup>21</sup>

## **B. UFAM's Social Background as a Typical Martyr**

### **1. High level of aggression of significant surrounding social environment**

UFAM is a classic example of a Shahid also as far as his significant *social* environment is concerned (as far as we know from the information that we have pertaining to the period of time from when he decided to become a martyr). From

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<sup>17</sup> UFAM's debriefing by the FBI on 02/02/2010 p.3

<sup>18</sup> UFAM's debriefing by the FBI on 02/08/2010 p.9

<sup>19</sup> UFAM's debriefing by the FBI on 02/09/2010 p.3

<sup>20</sup> UFAM's debriefing by the FBI on 02/05/2010 p.4

<sup>21</sup> *ibid* p.3, p.6

this time on, he is exposed to high levels of aggression supported by a culture that provides militant terror propaganda<sup>22</sup> via the: media, internet,<sup>23</sup> newsletters,<sup>24</sup> and religious and other interactions in the mosque and elsewhere.<sup>25</sup> Manipulated by fundamentalists, such as Aulaqi and his internet lectures, UFAM claims that the main motivation for conducting the martyrdom mission included his interpretation of Koranic verses<sup>26</sup> and his regularly attendance at prayers, where he met and interacted with Fundamentalist Islamists. UFAM was familiar with all of Aulaqi's lectures; and they were an important motivator which led UFAM to decide to participate in Jihad. He began listening to the lectures in 2005 and reading Aulaqi's writings, which motivated him to accept martyrdom as a possibility.<sup>27</sup> Aulaqi was not the only influential fundamentalist in UFAM's life. While residing at Abu Tarak's residence in Sana, Yemen he was mainly confined to his residence and discouraged from any communication with the outside world (phone, email). During this period, UFAM spoke regularly with Abu Tarak and three other individuals who visited him daily, speaking with them about Jihad and martyrdom.<sup>28</sup> UFAM discussed the concept of Jihad also with Uthmann who supported Mujahidin worldwide already from 2005. He was deeply influenced by a Jihadist who preached in England and elsewhere and used to meet with him intensively (as often as 3 times a week).<sup>29</sup> UFAM associated with Aulaqi who frequently spoke of Jihad and interacted with other fighters, and while in Yemen, he met with a man from Al Qaeda who further deepened his conviction.<sup>30</sup>

2. *Encouragement and glorification of the martyr* - Indeed we see in the case of UFAM that sponsors of suicide bombings use a "tool kit" of concepts, myths, symbols, ceremonies and rituals that honor and publicize their "martyrs" and their

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<sup>22</sup> UFAM's debriefing by the FBI on 01/30/2010 p.6

<sup>23</sup> UFAM's debriefing by the FBI on 02/23/2010 pp. 1-2

<sup>24</sup> UFAM's debriefing by the FBI on 01/29/2010 p.8

<sup>25</sup> UFAM's debriefing by the FBI on 12/25/2009 p.2

<sup>26</sup> UFAM's debriefing by the FBI on 01/29/2010 p.10

<sup>27</sup> UFAM's debriefing by the FBI on 02/05/2010 p.3

<sup>28</sup> UFAM's debriefing by the FBI on 12/25/2009 p.2

<sup>29</sup> UFAM's debriefing by the FBI on 01/31/2010 p.6

<sup>30</sup> *ibid* p.3

“heroic” sacrifice, (with videos, web sites, posters etc). UFAM watched propaganda videos<sup>31</sup> which were intended for the Mujahedeen community and that glorified martyrs attacking the secular corrupt Muslim regimes such as the Yemen government. The video was created as propaganda and to provide justification for the attack, as well as to show the capabilities of AQ in Yemen.

UFAM himself participated in this practice of preparing a martyrs' video after he was told by Aulaqi that he would bring down a plane and that he should prepare a video. UFAM spent time thinking about his martyr's video.<sup>32</sup> Approximately on the 2<sup>nd</sup> or 3<sup>rd</sup> of Dec. 2009, UFAM made a martyr's video with the help of two video technicians who brought the equipment. They brought a black flag with Islamic writing for the background as well as clothing<sup>33</sup> and other props. It took them approximately 2 or 3 days to complete the video.

**C. UFAM's Personality Background and Personal Reinforcement as a Typical Martyr**

1. **Martyr's reward** - Islamic Fundamentalist Jihadists preach and emphasize that martyrdom offers meaningful personal rewards, in the eternal life at the highest gardens of paradise. Interestingly, UFAM never mentions these rewards and does not raise these reinforcements as reasons for his decision to become a martyr. This phenomenon is characteristic also with other martyrs who believe that revealing the expected rewards lessens the importance of their act. Yet we can learn that the rewards of martyrdom play a significant part for UFAM since when he talks about Aulaqi's martyrdom he stresses that he believes that if Aulaqi were to be killed, he would be entitled to a **martyrs reward**. UFAM explains (again not in the context of his own martyrdom) that there are different degrees of

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<sup>31</sup> UFAM's debriefing by the FBI on 02/02/2010 p.4

<sup>32</sup> UFAM's debriefing by the FBI on 01/29/2010 p.15; 02/09/2010 p.7

<sup>33</sup> UFAM's debriefing by the FBI on 01/29/2010 p.16

reward for martyrdom.<sup>34</sup> For example UFAM believes that if the accusations against Aulaqi were true (allegations of solicitation of prostitution) Aulaqi could repent for these sins and his commitment to Jihad would outweigh such transgressions. He adds that people are not perfect and that they make mistakes.<sup>35</sup> We can learn that UFAM is concerned and troubled about accountability to God for committed sins that can be forgiven by committing martyrdom. UFAM explains that in Allah's sliding scale of forgiveness, a **Muslim's punishment to hell** can be removed at any time. In the Islamic faith, some sins of the Muslim can be repaired through religious faith and devotion. Sins can be forgiven if you repent just before death since Allah's mercy overcomes his anger.<sup>36</sup>

UFAM focuses on and gave lectures about black magic - its origins, preventions and cures. From this one can deduce that he is preoccupied (to say the least) with the unknown and the mystical. He speaks about "jinns" (which are frequently mentioned in the Koran and the Haddith). "Jinns" are creatures made from fire which have the properties of light. UFAM believes that Jinns frequently possess people and that they use their possessed to do their work by proxy.<sup>37</sup> Martyrdom guarantees Paradise and therefore protects one from evil forces.

We can also learn about UFAM's beliefs and expectations regarding the afterlife from his writings to his mother<sup>38</sup>: "May Allah reward you with "Jannah" (heaven) where no soul is unhappy and have a good life for what you've done for me. He is well aware and never forgets. Amen. May peace, serenity and tranquility of Allah descend on you always amen...May Allah make it a successful and happy event for you all, amen".

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<sup>34</sup> UFAM's debriefing by the FBI on 04/16/2010 p.2

<sup>35</sup> UFAM's debriefing by the FBI on 02/15/2010 p.3; 02/19/2010 p.3

<sup>36</sup> UFAM's debriefing by the FBI on 02/05/2010 p.4

<sup>37</sup> UFAM's debriefing by the FBI on 01/31/2010 p.7

<sup>38</sup> From a copy of a text message sent by UFAM to his family approximately three months before his mission.

2. **Low levels of aggression** - Similar to the surprising finding in the INP study that found low levels of aggression among the individuals who intended to explode themselves, killing innocent people they didn't know, UFAM also expresses a low level of aggression. On the day of his arrest, when asked by a hospital nurse:<sup>39</sup> "...about today on the plane, don't you consider that harming yourself or others?" UFAM replied: "no that is martyrdom". UFAM claims that he was resolved to kill innocent people and considered them to be "collateral damage". UFAM worked through all of these issues with Aulaqi's guidance, believing in the righteousness of the attack, by, in his mind, transforming cruel terror into sacred missions (fulfillment of a holy command). UFAM tells the investigators that he had hardened himself as someone who would do whatever was asked of him in support of the Jihad.<sup>40</sup> He quotes from the article "Constants of Jihad" (previously identified as being very influential in his decision to commit Jihad), a verse which states "**fighting has been prescribed for you but you hate it**". UFAM felt this statement aligned very closely to verses from the Koran, and that it means that at times one needs to participate in bad acts such as "fighting to achieve the greater good".<sup>41</sup>

The investigating agents inquired whether any specific act or event by the US motivated UFAM to conduct Jihad. He replied that his motivation was the religious obligation to conduct Jihad not hatred toward the US.<sup>42</sup> He was prepared to fulfill his mission of Jihad against whatever enemy was identified by Aulaqi. UFAM did not choose the target or the mission, it was chosen for him.<sup>43</sup>

3. **Submissive and dependent personality** - UFAM, by his own admission, is highly influenced by leaders that, as we have seen, dictate for him existential decisions. Sheikh Gumi is the most influential person in UFAM's life prior to UFAM's decision to conduct Jihad. UFAM replaces Sheikh Gumi and becomes completely

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<sup>39</sup> Julia Longnecker's interview by the FBI on 12/29/2009 pp.1-2

<sup>40</sup> UFAM's debriefing by the FBI on 01/31/2010 p.5

<sup>41</sup> UFAM's debriefing by the FBI on 02/15/2010 p.1

<sup>42</sup> UFAM's debriefing by the FBI on 02/23/2010 p.4

<sup>43</sup> Once again as explained above (p.9 of this memorandum) what UFAM said when interviewed by FBI agents is a direct contradiction to later statement in court upon the entry of his guilty plea.

committed to Sheikh Aulaqi.<sup>44</sup> He claims that if he would have experienced doubt about conducting Jihad he still would have continued forward with the martyrdom mission. The only way that UFAM would not have followed through with his mission would be if Aulaqi or Abdul Aziz had for some reason directed him not to complete the mission.<sup>45</sup> UFAM rationalizes that this exhibition of submissive and dependent personalities is in fact a religious command - that every Muslim should swear allegiance to a leader.<sup>46</sup>

### **III. Discussion**

In an attempt to predict the probability that UFAM will commit a future criminal/terrorist act, this document aims to better understand his "rational choice" and analyzes his motivation to become a martyr. UFAM, by his own testimony, claims that the decision to actually pursue Jihad and become a martyr is an outcome of a decision making process. Only upon completion of that decision making process,<sup>47</sup> he argues, could he be certain that martyrdom was the right course of action for him. The criminological theory of "rational choice" bases the decision making process on an evaluation of the "cost" and the anticipated "benefits" of one's actions.

In this memorandum, which is based on the INP study, literature that has been published on suicide bombers as well as UFAM's statements and reported behavior, I conclude that that UFAM's act of martyrdom is an outcome of a dynamic interaction between his *Religious Beliefs, Personality and Social Backgrounds*.

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<sup>44</sup> UFAM's debriefing by the FBI on 02/08/2010 p.10

<sup>45</sup> ibid

<sup>46</sup> UFAM's debriefing by the FBI on 02/09/2010 p.4

<sup>47</sup> UFAM's debriefing by the FBI on 02/15/2010 p. 1



UFAM's *religious* background is that of a classical martyr and is characterized by: deep religious feelings; following Islamic laws; spending a lot of time in mosques with Fundamentalist Jihadists; becoming a student of "Shuhada".

UFAM is a classic example of a martyr also as far as his *social* environment background is concerned. He is exposed to high levels of aggression by manipulating Islamic Fundamentalist Jihadist sponsors of suicide bombings. These sponsors preach and emphasize that martyrdom offers glorification and meaningful personal rewards, in the eternal life in the highest gardens of paradise.

From a *personality* point of view, UFAM overcomes his hesitation to kill innocent people, by working through this issue with Aulqi's guidance and by believing in the righteousness of the attack. He does this by, in his mind, transforming cruel terror into sacred missions which are the fulfillment of a holy commandment and in which the victims are considered to be "collateral damage". Also from the personality point of view it is interesting to see that UFAM rationalizes his submissive and dependent personality as his compliance with the religious commandment that every Muslim should swear allegiance to a leader.

It is important to emphasize here that if UFAM believed that he had completed his obligation to Jihad with his failed attempt, one could consider him to be less of a threat in the future. On the contrary, UFAM claims that the fact that the bomb did not explode was merely evidence that it was not his time to die. He did not believe that he had failed to deploy the device properly.<sup>48</sup> UFAM believes that the outcome of his mission was in God's hands. He believes that the failed martyrdom mission could be the result of God wanting to purify him (since he was not ready for martyrdom yet). UFAM claims that patience is necessary until purification.<sup>49</sup> The failed martyrdom mission, in his mind, is no more than a possible test of patience imposed on him by God. One can interpret this rhetoric as meaning that he has not given up on aspirations to martyrdom. When asked if he still had an obligation to commit Jihad in light of the fact that his

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<sup>48</sup> UFAM's debriefing by the FBI on 02/08/2010 p.10

<sup>49</sup> UFAM's debriefing by the FBI on 02/19/2010 p.3

martyrdom operation failed, UFAM answered that the obligation to Jihad still exists for all able bodied Muslims. Essentially in his opinion, only if there is no capability to commit Jihad, then there is no obligation.<sup>50</sup> Since he felt that Jihad was the right decision, he claimed that no one could have convinced him to reconsider. Therefore, it is quite possible that, once he deems himself purified, he might try another attempt at martyrdom given the opportunity.

In addition to the likelihood that given the opportunity, UFAM will make another attempt at martyrdom, there also exists the prospect that he will present a danger by becoming a role model and an example for other potential martyrs. UFAM has lectured in the past about Islamic faith<sup>51</sup> in various forums. From his failed attempt, debriefings and statements it is clear that he is very opinionated and very articulate about his Fundamentalist Islamic Jihadist beliefs. UFAM's experience, eloquence and passion for lecturing, if given a platform from which to speak to the world, will in my opinion turn him into a strong advocate/spokesman on behalf of Fundamentalist Islamic Jihadists. When interviewed by agents<sup>52</sup>, UFAM replied that if he would have been asked by a leader from AQ<sup>53</sup> to assist in recruitment he believes he would have attempted to seek out individuals and instruct them independently. Therefore, I believe that if: a. given the **opportunity** to communicate with other Jihadist sympathizers; and b. given the **command** from those whom he perceives as leaders - UFAM will be willing to become a role model and proxy for Fundamentalist Islamic Jihadists assisting them in the recruitment of new martyrs

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<sup>50</sup> ibid p.4

<sup>51</sup> UFAM's debriefing by the FBI on 01/31/2010 p.7

<sup>52</sup> UFAM's debriefing by the FBI on 02/15/2010 p.6

<sup>53</sup> UFAM is highly influenced by leaders that dictate for him existential decisions (see section II.c.3.) and this is another example, making it clear that he needs a leader who will give him the command.

#### **IV. Conclusion**

Since UFAM's **motivation** to commit martyrdom appears to be great, I believe there is high probability that given the **opportunity**, he would try once again to commit an act of martyrdom, endangering his and other innocent lives.

It is my belief that UFAM fits well the profile of the classic martyr as described above. Therefore his act of martyrdom is the result of his expectation to receive religious, personal/ personality and social benefits. As long as he is of the same state of mind and continues to hold the same set of beliefs, the outcome of this "rational choice" decision making process which evaluates the "cost" and the anticipated "benefits" is expected to lead him to martyrdom.

UFAM stated to Agents that he is committed to Jihad. He claimed that once a decision is made, one remains committed to that decision unless something comes up that requires re-examination.<sup>54</sup>

It seems that even the death of Aulaqi, his source of religious guidance<sup>55</sup> concerning martyrdom, did not change his state of mind and did not require re-examination. If anything, it has made him more determined.

**In summary, in addition to the probability that given the opportunity, UFAM will make another attempt at martyrdom, there also exists the likelihood that he will become a role model and proxy of Fundamentalist Islamic Jihadists, assisting them in the recruitment of new martyrs.**

**Dr. Simon Perry**

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<sup>54</sup> UFAM's debriefing by the FBI 03/15/2010 p.3

<sup>55</sup> ibid p.8

**Exhibit 10**  
**to the Declaration of Colin Wicker**

**JA617**

# The Washington Post

## CIA director says secret attacks in Pakistan have hobbled al-Qaeda

By Joby Warrick and Peter Finn  
Washington Post Staff Writers  
Thursday, March 18, 2010; A01

Aggressive attacks against al-Qaeda in Pakistan's tribal region have driven Osama bin Laden and his top deputies deeper into hiding and disrupted their ability to plan sophisticated operations, CIA Director Leon Panetta said Wednesday.

So profound is al-Qaeda's disarray that one of its lieutenants, in a recently intercepted message, pleaded with bin Laden to come to the group's rescue and provide some leadership, Panetta said. He credited improved coordination with Pakistan's government and what he called "the most aggressive operation that CIA has been involved in in our history," offering a near-acknowledgment of what is officially a secret war.

"Those operations are seriously disrupting al-Qaeda," Panetta said. "It's pretty clear from all the intelligence we are getting that they are having a very difficult time putting together any kind of command and control, that they are scrambling. And that we really do have them on the run."

Panetta is one of several senior officials who have stepped forward to argue that the administration is making gains against extremists, in part to rebut Republican criticism that President Obama has weakened national security. He is not the first CIA director to point to progress in the war against al-Qaeda, claims that sometimes prove too ambitious. "I have an excellent idea of where [bin Laden] is," then-CIA Director Porter J. Goss told an interviewer in 2005.

Senior Obama administration officials this week have given sharply different views on how bin Laden would be dealt with if he fell into U.S. hands. Gen. Stanley A. McChrystal, the commander of U.S. and NATO forces in Afghanistan, said Wednesday that the military would "certainly" try to capture bin Laden alive and "bring him to justice."

A day earlier, Attorney General Eric H. Holder Jr. told a congressional panel that bin Laden would never go on trial in the United States because the chances of him being caught alive are "infinitesimal." He predicted flatly that bin Laden will be killed -- either by U.S. forces or by al-Qaeda operatives determined to prevent him from being captured.

Panetta said the agency has a plan in the event that a top al-Qaeda leader is captured. "The most likely scenario is you bring them to a military facility, and we would then do the questioning" there, he said.

### A steady toll on al-Qaeda

Reflecting on his 13 months at the helm of the CIA, Panetta made no prediction about the fate of the man who has eluded a worldwide manhunt for nine years. But he said the combined U.S.-Pakistani campaign is taking a steady toll in terms of al-Qaeda leaders killed and captured, and is undercutting the group's ability to coordinate attacks outside its base along the Afghanistan-Pakistan border.

To illustrate that progress, U.S. intelligence officials revealed new details of a March 8 killing of a top al-Qaeda commander in the militant stronghold of Miram Shah in North Waziristan, in Pakistan's autonomous tribal region. The al-Qaeda official died in what local news reports described as a missile strike by an unmanned aerial vehicle. In keeping with long-standing practice, the officials spoke on the condition of anonymity because the CIA formally declines to acknowledge U.S. participation in attacks inside Pakistani territory.

Hussein al-Yemeni, the man killed in the attack, was identified by one intelligence official as among al-Qaeda's top 20 leaders and a participant in the planning for a Dec. 30 suicide bombing at a CIA base in the province of Khost in eastern Afghanistan. The bombing, in which a Jordanian double agent gained access to the CIA base and killed seven officers and contractors, was the deadliest single blow against the agency in a quarter-century.

Panetta's upbeat remarks contrasted with recent intelligence assessments of continuing terrorist threats against the U.S. homeland. But he also said al-Qaeda will continue to look for ways to strike inside the United States, and he noted that the organization is seeking to recruit people who lack criminal records or known ties to terrorist groups.

He cited the recent examples of Najibullah Zazi, an Afghan immigrant who targeted the New York subway system and pleaded guilty to terrorism charges, and Umar Farouk Abdulmutallab, a Nigerian charged with attempting to detonate explosives on a commercial flight about to land in Detroit.

"How many other Zazis are there -- the people who have a clean record who suddenly, for some crazy reason, decide to get involved with jihad?" Panetta said. "The bomber in Detroit -- this person suddenly goes off, has a U.S. visa, and within 30 days he's recruited to strap a bomb on and come to this country. What we are seeing is that they are now looking for those kind of clean credentials."

Such threats make it all the more necessary to strike al-Qaeda in its home base, Panetta said. "The president gave us the mission to disrupt, dismantle and defeat al-Qaeda and their military allies. and I think that's what we are trying to do."

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Counting the March 8 operation, the CIA is believed to have mounted 22 such strikes this year, putting the agency on course to exceed last year's roughly 53 strikes, a record. The March 8 event is believed to have been the first to occur in an urban area; a U.S. intelligence official familiar with the operation said the building that was targeted housed "a large number of al-Qaeda" fighters who were developing explosives. There were no other casualties, the official said.

Panetta, while declining to comment on the strike itself, said the death of the al-Qaeda commander sent a "very important signal that they are not going to be able to hide in urban areas."

He also cited recent arrests of top Taliban figures -- most notably Mullah Abdul Ghani Baradar, captured in Karachi in early February -- as tangible evidence of improving ties with Pakistan's intelligence service. He said that Pakistan has given the CIA access to Baradar since his capture and added that "we're getting intelligence" from the interrogation.

A senior intelligence official revealed that Baradar was tracked down as part of a joint operation with Pakistan that targeted members of a Taliban leadership council known as the Quetta Shura. A breakthrough came when the intelligence agencies obtained a list of Taliban phone numbers, one of which led them directly to Baradar, the official said.

Panetta said coordination between the CIA and its Pakistani counterparts had improved over the past year, despite occasional "friction based on past history."

"Generally we've had much better relationships," he said. "We do a lot more operations together. That's how Baradar was captured as well as others. . . . They have been much more tolerant of the operations we have there."

#### Where is bin Laden?

Panetta said the agency does not know precisely where bin Laden and his top deputy, Ayman al-Zawahiri, are hiding, but he said agency officials believe the two are inside Pakistan, "either in the northern tribal areas or in North Waziristan, or somewhere in that vicinity."

While there have been no confirmed sightings of either man since 2003, the continued pressure increases the opportunities for catching one or both, Panetta said. "We thought that the increased pressure would do one of two things: that it would either bring them out to try to exert some leadership in what is an organization in real trouble, or that they would go deeper into hiding," he said. "And so far we think they are going deeper into hiding."

Inside the door of Panetta's office is a color-coded map of the tribal areas in Pakistan, the only map on a wall decorated with photographs of Panetta's long career in Washington.

"You can bet there is going to be a conversation in this office during the day that involves something on that map," he said.

*Staff writer Craig Whitlock and staff researcher Julie Tate contributed to this report.*

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# **Exhibit 11**

## **to the Declaration of Colin Wicker**

**JA620**

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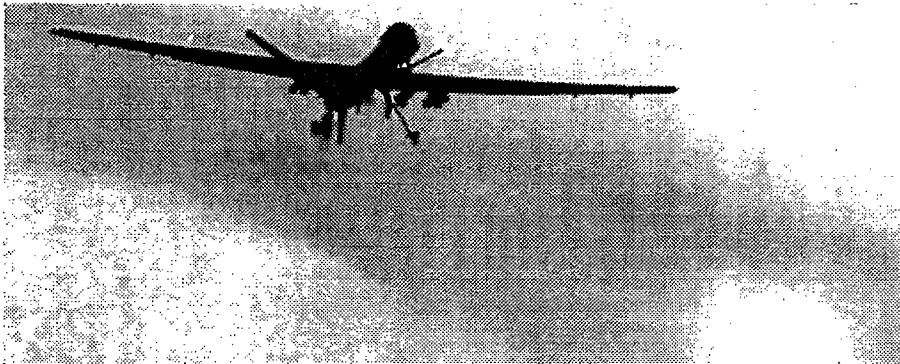
WSJ.com

ASIA NEWS | March 18, 2010

# Drone Kills Suspect in CIA Suicide Bombing

*Agency Hits Back After December Deaths of Seven Agents; Panetta and McChrystal See Pressure Rising on al Qaeda, Taliban*

By SIOBHAN GORMAN And JONATHAN WEISMAN



Associated Press

A U.S. Predator drone flies over the moon above Kandahar Air Field.

WASHINGTON—A Central Intelligence Agency drone strike last week killed a top al Qaeda trainer suspected of being involved in December's suicide bombing that killed seven CIA officers at a base in Afghanistan, U.S. officials say.

The March 8 strike on a suspected bomb-making facility in Miran Shah, Pakistan, killed as many as 15 people, including Hussein al-Yemeni, a rising star in the al Qaeda network led by Osama bin Laden, according to people familiar with the strike.



Bloomberg News

CIA Director Leon Panetta at his office in Langley, Va., in September.

In an interview Wednesday, CIA Director Leon Panetta confirmed Mr. al-Yemeni's death. "We now believe that al-Yemeni, who was one of the top 20 [al Qaeda leaders], was one of those who was hit," Mr. Panetta said. "He is somebody who we believe was one of those who was involved in providing the explosives for the Khost attack."

Meanwhile, the top U.S. commander in Afghanistan, Gen. Stanley McChrystal, said there were signs high-level Taliban leaders were becoming more amenable to U.S.-backed reconciliation efforts. He said the group's leadership appeared to have been rattled by the recent capture inside Pakistan of Mullah

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Abdul Ghani Barader, the Taliban's operations chief, as well as by the stepped-up military campaigns against the armed group in both Afghanistan and Pakistan.

Mr. al-Yemeni, who was in his late 20s or early 30s, was on a small council that helped plan the December strike on a forward CIA operating base just outside the Afghan city of Khost, according to officials familiar with the operation. He was involved in training Taliban and foreign Al Qaeda recruits for strikes on troops in Afghanistan and targets outside the region.

The Khost bombing was carried out by a suspected double agent, Jordanian physician Humam Khalil Mohammed, who convinced Jordanian and U.S. intelligence officials he would lead them to the top echelon of al Qaeda, including the terror network's second-in-command, Egyptian Ayman al-Zawahiri. The bomber showed intelligence officials a picture of himself with Mr. Zawahiri to prove his value.



A drone strike in Pakistan apparently kills a top al Qaeda trainer who helped supervise December's suicide bombing at a Central Intelligence Agency post in Afghanistan. WSJ's Jonathan Weisman joins The News Hub from Washington with more details.

Killing Mr. al-Yemeni was very important to the CIA because of his status in al Qaeda and his involvement in the Khost attack, Mr. Panetta said. Mr. Panetta didn't speak directly to the circumstances of the death; the CIA doesn't discuss covert action.

"Anytime we get a high value target that is in the top leadership of al Qaeda, it seriously disrupts their operations," Mr. Panetta said. "It sent two important signals," Mr. Panetta said. "No. 1 that we are not going to hesitate to go after them wherever they try to hide, and No. 2 that we are continuing to target their leadership."

Mr. al-Yemeni also served as a liaison with a range of affiliated militant groups, including al-Qaeda's affiliate in Yemen, the Haqqani network in the Pakistani region of North Waziristan, and the Afghan and Pakistani Taliban, another U.S. counterterrorism official said. A specialist in bombs and suicide operations, he was also a conduit in Pakistan for money, messages and recruiting, the official added.

Mr. Panetta said the pressure on al Qaeda is growing on the border region between Pakistan and Afghanistan and could be stepped up further. The Pakistanis are also "talking about the possibility of going into North Waziristan," Mr. Panetta said. That is the tribal area where Mr. al-Yemeni was killed and is the home of the Haqqani network, a terror group which coordinates with the Taliban in Afghanistan.

Mr. al-Yemeni appears to be the second Khost attack planner who had been killed since the Dec. 30 bombing of the CIA base. Pakistani Taliban chief Hakimullah Mehsud, who claimed credit for the Khost attack in a video with the bomber, is presumed dead because he hasn't resurfaced since another drone strike earlier this year, said a U.S. counterterrorism official.

Within days of his appointment as CIA director last year, Mr. Panetta decided his focus would be Pakistan's lawless tribal region. The battle against al Qaeda in Pakistan would become Panetta's war.

"The president of the United States gave us the mission of disrupting, dismantling and defeating al Qaeda and its militant allies," Mr. Panetta said. "We've virtually doubled our operations. We're putting tremendous pressure on al Qaeda as a result of that."

Presiding over the CIA's campaign against al Qaeda and its affiliates, Mr. Panetta has produced the CIA's highest annual tally of drone strikes—more than 65 since he took his post—that have taken out 400 to 500 militants. A U.S. counterterrorism official said Wednesday that in those strikes, around 20 noncombatants were killed, generally because they were right near a combatant.

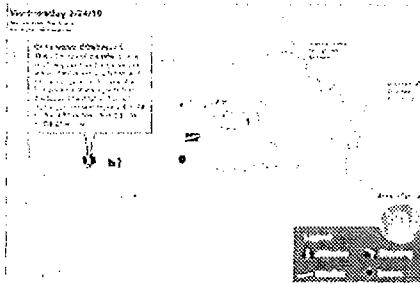
He has also made the CIA's drone program, a Bush-era assassination campaign that doesn't sit well with human-rights advocates, a staple of U.S. counterterrorism operations. And he has done it with the same team that was responsible for the practices that Mr. Panetta and President Barack Obama once criticized.

JA622

The results of the campaign, which includes the capture over the last two months of 20 al Qaeda and Taliban militants, have bolstered support for Mr. Panetta in Islamabad and Washington. In the fall, when he proposed an expansion of the drone program to a fleet of 14 pilotless planes from seven, the White House was quick to approve it, according to a senior intelligence official.

Democratic Sen. Dianne Feinstein, the Senate intelligence committee chairman who worried about Mr. Panetta's lack of spy experience, now praises his "unique set of credentials."

### Regional Violence



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Republican Sen. Christopher S. Bond of Missouri, who tangled with Mr. Panetta during his confirmation hearing, now says he has "won over a lot of cynics, and he's among the very best of the intelligence appointments the current administration has made."

But the CIA's success in Pakistan comes with risks. The intensified focus on killing al Qaeda militants worries a number of CIA veterans, who say the agency is doing the military's most risky legwork while neglecting the agency's core mission, which is to collect secrets that help forecast emerging threats overseas.

"Allowing the agency to do what I think is a military job is ridiculous," said Margaret Henoeh, a former senior CIA official, who added that there is no reason the Defense Intelligence Agency can't be responsible for tactical intelligence operations.

Meanwhile, others worry that the administration will become over-reliant on the drone program because it produces tangible results. "There's no question in my mind this is disrupting and hurting the enemy badly, but at the same time, you don't win this way," said Michael Hurley, a former CIA counterterrorism official.

Mr. Panetta said he understands these concerns, which is why he has asked his staff to develop a strategy to address terrorist threats not just in Afghanistan and Pakistan, but in Yemen, Somalia and other emerging terrorist hot spots. He also needs to make sure the agency doesn't lose sight of trends in other areas of the world, Mr. Panetta said. "I can't afford to be surprised," he said.

—Yochi J. Dreazen contributed to this article.

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**'This Week' Transcript: Panetta**

June 27, 2010 —

abcnews.go.com

Jake Tapper Interviews CIA Director Leon Panetta

ABC News "This Week" Jake Tapper interviews CIA Director Leon Panetta Sunday, June 27, 2010

TAPPER: Good morning and welcome to "This Week."

This morning of this week, exclusive. CIA Director Leon Panetta. His first network news interview.

Top questions on the threats facing the U.S., and whether the CIA is up to the task.

(BEGIN VIDEO CLIP)

PANETTA: And what keeps me awake at night--

(END VIDEO CLIP)

TAPPER: The latest on Al Qaida, the hunt for Osama bin Laden, Iran, North Korea, global hotspots in an increasingly dangerous world, and the threat of homegrown terrorists.

(BEGIN VIDEO CLIP)

PANETTA: We are being aggressive at going after this threat.

(END VIDEO CLIP)

TAPPER: CIA Director Leon Panetta only on "This Week."

Then, the McChrystal mess.

(BEGIN VIDEO CLIP)

PRESIDENT BARACK OBAMA: I welcome debate among my team, but I won't tolerate division.

(END VIDEO CLIP)

TAPPER: The change in command in Afghanistan raises new questions about the president's strategy to win the war. That and the rest of the week's politics on our roundtable with George Will, author Robin Wright of the U.S. Institute of Peace, David Sanger of the New York Times, and the Washington Post's Rajiv Chandrasekaran.

And as always, the Sunday Funnies.

(BEGIN VIDEO CLIP)

DAVID LETTERMAN, TALK SHOW HOST: It took President Obama 45 minutes to make a decision to pick a new Afghanistan commander, 45 minutes. It took him six months to pick a dog for the White House.

**JA626**

TAPPER: Good morning. When the president takes a look at the world, he's confronted with threats literally all over the map. In Afghanistan, U.S. and international forces struggle to make headway against the Taliban. Iran moves ahead with a nuclear program in defiance of international condemnation. North Korea becomes even more unpredictable as it prepares for a new supreme leader. New terror threats from Pakistan, Yemen, Somalia. No one knows these threats better than the president's director of the Central Intelligence Agency, Leon Panetta. He's been in the job for 16 months, and he's here with me this morning, his first network news interview. Mr. Panetta, welcome.

PANETTA: Nice to be with you, Jake.

TAPPER: Now, this was a momentous week, with President Obama relieving General McChrystal of his command. When this was all going down, you were with General Petraeus at a joint CIA-CENTCOM conference. And I want to ask you about the war in Afghanistan, because this has been the deadliest month for NATO forces in Afghanistan, the second deadliest for U.S. troops, with 52 at least killed this month. Are we winning in Afghanistan, and is the Taliban stronger or weaker than when you started on the job?

PANETTA: I think the president said it best of all, that this is a very tough fight that we are engaged in. There are some serious problems here. We're dealing with a tribal society. We're dealing with a country that has problems with governance, problems with corruption, problems with narcotics trafficking, problems with a Taliban insurgency. And yet, the fundamental purpose, the mission that the president has laid out is that we have to go after Al Qaida. We've got to disrupt and dismantle Al Qaida and their militant allies so they never attack this country again.

Are we making progress? We are making progress. It's harder, it's slower than I think anyone anticipated. But at the same time, we are seeing increasing violence, particularly in Kandahar and in Helmand provinces. Is the strategy the right strategy? We think so, because we're looking at about 100,000 troops being added by the end of August. If you add 50,000 from NATO, you've got 150,000. That's a pretty significant force, combined with the Afghans.

But I think the fundamental key, the key to success or failure is whether the Afghans accept responsibility, are able to deploy an effective army and police force to maintain stability. If they can do that, then I think we're going to be able to achieve the kind of progress and the kind of stability that the president is after.

TAPPER: Have you seen any evidence that they're able to do that?

PANETTA: I think so. I think that what we're seeing even in a place like Marjah, where there's been a lot of attention -- the fact is that if you look at Marjah on the ground, agriculture, commerce is, you know, moving back to some degree of normality. The violence is down from a year ago. There is some progress there.

We're seeing some progress in the fact that there's less deterioration as far as the ability of the Taliban to maintain control. So we're seeing elements of progress, but this is going to be tough. This is not going to be easy, and it is going to demand not only the United States military trying to take on, you know, a difficult Taliban insurgency, but it is going to take the Afghan army and police to be able to accept the responsibility that we pass on to them. That's going to be the key.

**JA627**

TAPPER: It seems as though the Taliban is stronger now than when President Obama took office. Is that

fair to say?

PANETTA: I think the Taliban obviously is engaged in greater violence right now. They're doing more on IED's. They're going after our troops. There's no question about that. In some ways, they are stronger, but in some ways, they are weaker as well.

I think the fact that we are disrupting Al Qaida's operations in the tribal areas of the Pakistan, I think the fact that we are targeting Taliban leadership -- you saw what happened yesterday with one of the leaders who was dressed as a woman being taken down -- we are engaged in operations with the military that is going after Taliban leadership. I think all of that has weakened them at the same time.

So in some areas, you know, with regards to some of the directed violence, they seem to be stronger, but the fact is, we are undermining their leadership, and that I think is moving in the right direction.

TAPPER: How many Al Qaida do you think are in Afghanistan?

PANETTA: I think the estimate on the number of Al Qaida is actually relatively small. I think at most, we're looking at maybe 50 to 100, maybe less. It's in that vicinity. There's no question that the main location of Al Qaida is in tribal areas of Pakistan.

TAPPER: Largely lost in the trash talking in the Rolling Stone magazine were some concerns about the war. The chief of operations for General McChrystal told the magazine that the end game in Afghanistan is, quote, "not going to look like a win, smell like a win or taste like a win. This is going to end in an argument."

What does winning in Afghanistan look like?

PANETTA: Winning in Afghanistan is having a country that is stable enough to ensure that there is no safe haven for Al Qaida or for a militant Taliban that welcomes Al Qaida. That's really the measure of success for the United States. Our purpose, our whole mission there is to make sure that Al Qaida never finds another safe haven from which to attack this country. That's the fundamental goal of why the United States is there. And the measure of success for us is do you have an Afghanistan that is stable enough to make sure that never happens.

TAPPER: What's the latest thinking on where Osama bin Laden is, what kind of health he's in and how much control or contact he has with Al Qaida?

PANETTA: He is, as is obvious, in very deep hiding. He's in an area of the -- the tribal areas in Pakistan that is very difficult. The terrain is probably the most difficult in the world.

TAPPER: Can you be more specific? Is it in Waziristan or--

PANETTA: All i can tell you is that it's in the tribal areas. That's all we know, that he's located in that vicinity. The terrain is very difficult. He obviously has tremendous security around him.

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But having said that, the more we continue to disrupt Al Qaida's operations, and we are engaged in the most aggressive operations in the history of the CIA in that part of the world, and the result is that we are disrupting their leadership. We've taken down more than half of their Taliban leadership, of their Al Qaida leadership. We just took down number three in their leadership a few weeks ago. We continue to disrupt them. We continue to impact on their command-and-control. We continue to impact on their ability to plan attacks in this country. If we keep that pressure on, we think ultimately we can flush out

TAPPER: When was the last time we had good intelligence on bin Laden's location?

PANETTA: It's been a while. I think it almost goes back, you know, to the early 2000s, that, you know, in terms of actually when he was moving from Afghanistan to Pakistan, that we had the last precise information about where he might be located. Since then, it's been very difficult to get any intelligence on his exact location.

TAPPER: We're in a new phase now of the war, in which the threat can come from within, the so-called homegrown terrorists or the lone wolf terrorists. I'm talking about Faisal Shahzad, the would-be Times Square bomber; Umar Farouk Abdulmutallab, the failed Christmas Day bomber; Lieutenant (sic) Nidal Hasan, the Fort Hood shooter. What do these incidents and the apparent increased occurrences of these types of attacks say about the nature of the threat we face?

PANETTA: I think what's happened is that the more we put pressure on the Al Qaida leadership in the tribal areas in Pakistan -- and I would say that as a result of our operations, that the Taliban leadership is probably at its weakest point since 9/11 and their escape from Afghanistan into Pakistan. Having said that, they clearly are continuing to plan, continuing to try to attack this country, and they are using other ways to do it.

TAPPER: Al Qaida you're talking about.

PANETTA: That's correct. They are continuing to do that, and they're using other ways to do it, which are in some ways more difficult to try to track. One is the individual who has no record of terrorism. That was true for the Detroit bomber in some ways. It was true for others.

They're using somebody who doesn't have a record in terrorism, it's tougher to track them. If they're using people who are already here, who are in hiding and suddenly decide to come out and do an attack, that's another potential threat that they're engaged in. The third is the individual who decides to self-radicalize. Hasan did that in the Fort Hood shootings. Those are the kinds of threats that we see and we're getting intelligence that shows that's the kind of stream of threats that we face, much more difficult to track. At the same time, I think we're doing a good job of moving against those threats. We've stopped some attacks, we continue to work the intelligence in all of these areas. But that area, those kinds of threats represent I think the most serious threat to the United States right now.

TAPPER: All three of those individuals were tied in some way to an American cleric who is now supposedly in Yemen, Anwar al-Awlaki. He has said to be on an assassination list by President Obama. Is that true and does being an American afford him any protection that any other terrorist might not enjoy?

PANETTA: Awlaki is a terrorist who has declared war on the United States. Everything he's doing now is to try to encourage others to attack this country, there's a whole stream of intelligence that goes back to Awlaki and his continuous urging of others to attack this country in some way. You can track Awlaki to the Detroit bomber. We can track him to other attacks in this country that have been urged by Awlaki or that have been influenced by Awlaki. Awlaki is a terrorist and yes, he's a U.S. citizen, but he is first and foremost a terrorist and we're going to treat him like a terrorist. We don't have an assassination list, but I can tell you this. We have a terrorist list and he's on it.

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TAPPER: "The New York Times" reported this week that Pakistani officials say they can deliver the network of Sirajuddin Haqqani, an ally of Al Qaida, who runs a major part of the insurgency into Afghanistan into a power sharing arrangement. In addition, Afghan officials say the Pakistanis are



Case 1:12-cv-00794-CM Document 36-3 Filed 07/18/12 Page 11 of 45  
pushing various other proxies with Pakistani General Kayani personally offering to broker a deal with the Taliban leadership. Do you believe Pakistan will be able to push the Haqqani network into peace negotiations?

PANETTA: You know, I read all the same stories, we get intelligence along those lines, but the bottom line is that we really have not seen any firm intelligence that there's a real interest among the Taliban, the militant allies of Al Qaida, Al Qaida itself, the Haqqanis, TTP, other militant groups. We have seen no evidence that they are truly interested in reconciliation, where they would surrender their arms, where they would denounce Al Qaida, where they would really try to become part of that society. We've seen no evidence of that and very frankly, my view is that with regards to reconciliation, unless they're convinced that the United States is going to win and that they're going to be defeated, I think it's very difficult to proceed with a reconciliation that's going to be meaningful.

TAPPER: I know you can't discuss certain classified operations or even acknowledge them, but even since you've been here today, we've heard about another drone strike in Pakistan and there's been much criticism of the predator drone program, of the CIA. The United Nations official Phil Alston earlier this month said quote, "In a situation in which there is no disclosure of who has been killed for what reason and whether innocent civilians have died, the legal principle of international accountability is by definition comprehensibly violated." Will you give us your personal assurance that everything the CIA is doing in Pakistan is compliant with U.S. and international law?

PANETTA: There is no question that we are abiding by international law and the law of war. Look, the United States of America on 9/11 was attacked by Al Qaida. They killed 3,000 innocent men and women in this country. We have a duty, we have a responsibility, to defend this country so that Al Qaida never conducts that kind of attack again. Does that make some of the Al Qaida and their supporters uncomfortable? Does it make them angry? Yes, it probably does. But that means that we're doing our job. We have a responsibility to defend this country and that's what we're doing. And anyone who suggests that somehow we're employing other tactics here that somehow violate international law are dead wrong. What we're doing is defending this country. That's what our operations are all about.

TAPPER: I'd like to move on to Iran, just because that consumes a lot of your time as director of the CIA. Do you think these latest sanctions will dissuade the Iranians from trying to enrich uranium?

PANETTA: I think the sanctions will have some impact. You know, the fact that we had Russia and China agree to that, that there is at least strong international opinion that Iran is on the wrong track, that's important. Those sanctions will have some impact. The sanctions that were passed by the Congress this last week will have some additional impact. It could help weaken the regime. It could create some serious economic problems. Will it deter them from their ambitions with regards to nuclear capability? Probably not.

TAPPER: The 2007 national intelligence estimate said all of Iran's work on nuclear weapons ended in 2003. You don't still believe that, do you?

PANETTA: I think they continue to develop their know-how. They continue to develop their nuclear capability.

TAPPER: Including weaponization?

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PANETTA: I think they continue to work on designs in that area. There is a continuing debate right now as to whether or not they ought to proceed with the bomb. But they clearly are developing their nuclear capability, and that raises concerns. It raises concerns about, you know, just exactly what are their

intentions, and where they intend to go. I mean, we think they have enough low-enriched uranium right now for two weapons. They do have to enrich it, fully, in order to get there. And we would estimate that if they made that decision, it would probably take a year to get there, probably another year to develop the kind of weapon delivery system in order to make that viable.

But having said that, you know, the president and the international community has said to Iran, you've got to wake up, you've got to join the family of nations, you've got to abide by international law. That's in the best interests of Iran. It's in the best interests of the Iranian people.

TAPPER: The administration has continually said that Iran has run into technical troubles in their nuclear program. Is that because the Iranians are bad at what they do, or because the U.S. and other countries are helping them be bad at what they do, by sabotaging in some instances their program?

PANETTA: Well, I can't speak to obviously intelligence operations, and I won't. It's enough to say that clearly, they have had problems. There are problems with regards to their ability to develop enrichment, and I think we continue to urge them to engage in peaceful use of nuclear power. If they did that, they wouldn't have these concerns, they wouldn't have these problems. The international community would be working with them rather than having them work on their own.

TAPPER: How likely do you think it is that Israel strikes Iran's nuclear facilities within the next two years?

PANETTA: I think, you know, Israel obviously is very concerned, as is the entire world, about what's happening in Iran. And they in particular because they're in that region in the world, have a particular concern about their security. At the same time, I think, you know, on an intelligence basis, we continue to share intelligence as to what exactly is Iran's capacity. I think they feel more strongly that Iran has already made the decision to proceed with the bomb. But at the same time, I think they know that sanctions will have an impact, they know that if we continue to push Iran from a diplomatic point of view, that we can have some impact, and I think they're willing to give us the room to be able to try to change Iran diplomatically and culturally and politically as opposed to changing them militarily.

TAPPER: There was a big announcement over the weekend. South Korea and the U.S. agreed to delay the transfer of wartime operational control to Seoul for three years because of the belligerence of North Korea. Kim Jong-il appears to be setting the stage for succession, including what many experts believe that torpedo attack in March on a South Korean warship. They believe that this is all setting the stage for the succession of his son, Kim Jong-un. Is that how you read all this and the sinking of the warship?

PANETTA: There is a lot to be said for that. I think our intelligence shows that at the present time, there is a process of succession going on. As a matter of fact, I think the--

TAPPER: Was the warship attack part of that?

PANETTA: I think that could have been part of it, in order to establish credibility for his son. That's what went on when he took power. His son is very young. His son is very untested. His son is loyal to his father and to North Korea, but his son does not have the kind of credibility with the military, because nobody really knows what he's going to be like.

**JA631**

So I think, you know, part of the provocations that are going on, part of the skirmishes that are going on are in part related to trying to establish credibility for the son. And that makes it a dangerous period.

Will it result in military confrontation? I don't think so. For 40 years, we've been going through these

Case 1:12-cv-00794-CM Document 36-3 Filed 07/18/12 Page 13 of 45  
kinds of provocations and skirmishes with a rogue regime. In the end, they always back away from the brink and I think they'll do that now.

TAPPER: The CIA recently entered into a new \$100 million contract with Blackwater, now called Xe Services for Security in Afghanistan. Blackwater guards allegedly opened fire in a city square in Baghdad in 2007, killing 17 unarmed civilians and since then, the firm has been fighting off prosecution and civil suits. Earlier this year, a federal grant jury indicted five Blackwater officials on 15 counts of conspiracy weapons and obstruction of justice charges. Here's Congresswoman Jan Schakowsky, a Democrat from Illinois, who's a member of the House Intelligence Committee.

(BEGIN VIDEO CLIP)

REP. JAN SCHAKOWSKY (D), ILLINOIS: I'm just mystified why any branch of the government would decide to hire Blackwater, such a repeat offender. We're talking about murder, a company with a horrible reputation, that really jeopardizes our mission in so many different ways.

(END VIDEO CLIP)

TAPPER: What's your response?

PANETTA: Since I've become director, I've asked us to -- asked our agency to review every contract we have had with Blackwater and whatever their new name is, Xe now. And to ensure that first and foremost, that we have no contract in which they are engaged in any CIA operations. We're doing our own operations. That's important, that we not contract that out to anybody. But at the same time, I have to tell you that in the war zone, we continue to have needs for security. You've got a lot of forward bases. We've got a lot of attacks on some of these bases. We've got to have security. Unfortunately, there are a few companies that provide that kind of security. The State Department relies on them, we rely on them to a certain extent.

So we bid out some of those contracts. They provided a bid that was underbid everyone else by about \$26 million. And a panel that we had said that they can do the job, that they have shaped up their act. So their really was not much choice but to accept that contract. But having said that, I will tell you that I continue to be very conscious about any of those contracts and we're reviewing all of the bids that we have with that company.

TAPPER: This month, Attorney General Eric Holder announced that Assistant United States Attorney John Durham is close to completing a preliminary review of whether or not there's evidence that CIA agents or contractors violated the law when they used brutal methods, some call it torture, to interrogate terrorist detainees. Do you oppose this investigation? Are your officers -- your current officers, concerned about their legal jeopardy in the future under a future administration and what kind of guarantees can you give them?

PANETTA: Well look, CIA is an agency that has to collect intelligence, do operations. We have to take risks and it's important that we take risks and that we know that we have the support of the government and we have the support of the American people in what we're doing. With regards to this investigation, I know the reasons the attorney general decided to proceed. I didn't agree with them, but he decided to proceed. We're cooperating with him in that investigation. I've had discussions with the attorney general. He assures me that this investigation will be expedited and I think in the end, it will turn out to be OK. What I've told my people is please focus on the mission we have. Let me worry about Washington and those issues. And I think that's -- they have and I think frankly the morale at the CIA is higher than it's ever been.

JA632

TAPPER: We only have a few minutes left, but I want to ask, you're now privy to information about some of the ugliest, toughest tactics carried out by intelligence agencies with the purpose of defending our nation, stuff that probably as a member of Congress or OMB director of White House chief of staff, you suspected, but didn't actually know for a fact. How rough is it, and does any of it ever make it difficult for you to sleep at night or run to do an extra confession?

PANETTA: Well, I didn't realize that I would be making decisions, many decisions about life and death as I do now. And I don't take those decisions lightly. Those are difficult decisions. But at the same time, I have to tell you that the most rewarding part of this job -- I mean, we had a tragedy where we lost seven of our officers and it was tragic. But at the same time, it also provided a great deal of inspiration because the quality of people that work at the CIA are very dedicated and very committed to trying to help save this country and protect this country. They're not Republicans, they're not Democrats, they're just good Americans trying to do their job and that, I think, is the most rewarding part of being director of the CIA.

TAPPER: What's the flip side? Sleepless nights?

PANETTA: The flip side is you have to spend an awful lot of time worried about what the hell is going to go on over there and that keeps me up at night.

TAPPER: What -- this is my last question for you because we only have about a minute left -- what terrorist threat are we as a nation not paying enough attention to?

Or forget terrorist threat, what threat are we not paying enough attention to?

PANETTA: I think the one I worry about is, again, the proliferation of nuclear weapons and the fact that one of those weapons could fall into the hands of a terrorist. I think that's one concern. And there is a lot of the stuff out there, and you worry about just exactly where it's located and who's getting their hands on it.

The other is the whole area of cyber security. We are now in a world in which cyber warfare is very real. It could threaten our grid system. It could threaten our financial system. It could paralyze this country, and I think that's an area we have to pay a lot more attention to.

TAPPER: All right, Director Leon Panetta, thank you so much for coming here today. Really appreciate it.

TAPPER: Scenes from the McChrystal mess, one of many topics for our roundtable with George Will; from The Washington Post Rajiv Chandrasekaran; from the New York Times, David Sanger, and from the U.S. Institute of Peace, Robin Wright.

Thanks so much for joining us.

Normally, I would just go into the McChrystal thing, but Panetta does so few interviews, I do want to go around and just get your take on what you found most interesting.

George, I'll start with you.

WILL: Well, four things. First of all, he repeated the fact that we are in Afghanistan to prevent it from becoming a sovereignty vacuum into which Al Qaida could flow. He said there may be as few as 50 Al Qaida there now, which means we're there to prevent Afghanistan from becoming Yemen and Somalia, which raises the question of what we'll do about them.

Case 1:12-cv-00794-CM Document 36-3 Filed 07/18/12 Page 15 of 45  
Second, the president said our job, on December 1st, is to break the momentum of the Taliban. And Mr. Panetta did not really say we'd done that.

Third, the point of breaking the momentum of the Taliban was to encourage reconciliation so we can get out on -- begin to get out in July 2011. And Mr. Panetta did not suggest there was much evidence of reconciliation, which brings us to the...

TAPPER: Quite the opposite, actually.

WILL: Right, which brings us to the fourth consideration. The argument since the McChrystal debacle is the meaning of the July 2011 deadline. And it evidently has not much meaning.

TAPPER: Rajiv?

CHANDRASEKARAN: That point on reconciliation was a fundamental admission. Reconciliation is a key tenet of the Obama administration's Afghanistan strategy: apply pressure so you'll get those guys to the negotiating table; come up with a deal. We've been pushing the Karzai government for a big peace jirga. Moving forward on that front, Director Panetta sees no sign that any of those key insurgent groups are really ready to come to the table, negotiate meaningfully. That's a big red flag here.

TAPPER: David, you, like everyone else here, knows a lot of stuff about a lot of stuff. But you're, maybe, most expert on Iran. Did he say anything about Iran you thought was interesting?

SANGER: You know, Jake, I saw three things, I thought that he said that was notable. The first was that he believed that the Iranians are still working on the designs for nuclear weapons. Now, that is clearly in contravention to what was in the 2007 NIE, which was the last national intelligence estimate that was put together in the Bush administration.

He said -- he was more specific on the timeline. He said it would take them a year to enrich what they currently had in the way of nuclear fuel into bomb fuel and then another year to turn it into a weapon. So that gives you a pretty good sense where the U.S. believes, you know, is the outline of how far they could let the Iranians go.

And, finally, he said that there was a division with the Israelis on the question of whether the Iranians have determined that they should go ahead with a weapons program with the U.S. believing that there's been no decision made and the Israelis believing that, in fact, the Iranian leadership does want to move ahead with a weapon. I thought all three of those were pretty newsy.

TAPPER: Robin?

WRIGHT: Yes, I -- they took the best headlines already.

(LAUGHTER)

But it's clear that one of the things that's been most interesting in this town is the expected national intelligence estimate on Iran and it's been delayed over and over and over. And he basically gave us an outline of what is going to contain and the concern that we're going to reverse what was the controversial NIE under the Bush administration, that Iran wasn't working on weaponization and now the U.S. believes it is. And of course that then escalates the timetable, how much time do we have to try to get the Iranians to come to talk to us, to engage with the international community. And this is going to, I think, play into the questions of what do we do next since there's every indication, as he said, that the sanctions alone are

Case 1:12-cv-00794-CM Document 36-3 Filed 07/18/12 Page 16 of 45  
not going to be enough to convince them to either give up their enrichment program or to come back in the negotiating table.

TAPPER: Interesting. Well let's move on to the big news of the week which is obviously President Obama's dismissal of General Stanley McChrystal. George, do you think the president did the right thing?

WILL: Life is full of close calls, this is not one of them. He did the right thing and he did it with the right way, with the right words and an agreeable parsimony of words saying this is just not behavior acceptable at the senior levels of our military. And then he picked the only man around who could fill the leadership vacuum in Petraeus. But this again raises the question of you're sending Petraeus into a situation with this deadline. One of the reasons of setting the July deadline was to concentrate the mysterious mind of Hamid Karzai on what, reconciliation. But having the deadline makes the incentive for the Taliban to reconcile minimal.

TAPPER: And in fact, here's Senator Lindsey Graham talking about that this week.

(BEGIN VIDEO CLIP)

SEN. LINDSEY GRAHAM (R), SOUTH CAROLINA: I would argue that when the Taliban sends around leaflets quoting members of the administration and suggesting to people in Afghanistan after July, the Americans are going to leave you, that the enemy is seizing upon this inconsistency and uncertainty.

(END VIDEO CLIP)

TAPPER: David, can we do this on this timetable? The timetable is July 2011, U.S. troops will begin to withdraw, according the Vice President Biden, a lot of troops. According to other members of the administration, maybe not so much. But is this timeline even feasible?

SANGER: It strikes me from listening to what we have heard this past week and the underlying debate that was taking place before General McChrystal was dismissed that the general's timeline and the politicians' time lines are very different. President Obama has got a big reason to want to begin to withdraw, even if it's a small withdrawal, by next summer.

There's an election that follows here in a few months after that. But at the same time, anybody who has done counterinsurgency work in the military tells you the same thing which is counterinsurgency is taking a decade or more. That was the British experience in Malaysia. It's been the experience in many other countries.

And certainly if you look at what Director Panetta said today about how the Taliban are not yet facing any incentive to reach reconciliation, it tells you that it would take a much longer time. And I think that's the fundamental issue. You know, the president said he doesn't mind dissent, he can't stand division. Firing General McChrystal I think only submerged the dissent. It is going to come back when this review takes place in December of the overall policy.

TAPPER: Robin?

**JA635**

WRIGHT: Absolutely. And I think that one of the challenges is it's not when they do the review in December, they have to look at what can they accomplish in the remaining six months and the fact is, this is Afghanistan, this is not Iraq. This is a place where you don't have a middle class. You don't have a lot of literacy even among the army and the police you're trying to recruit. The tribal structure, we relied in Iraq on the tribes to be the ones we could recruit to turn against al Qaeda. In Afghanistan, they have been

Case 1:12-cv-00794-CM Document 36-3 Filed 07/18/12 Page 17 of 45  
decimated first by the decade-long war with the Soviet Union by the war lords and the civil war afterwards, and by the Taliban. And so you don't have the kind of network that you can turn in your favor to help lure, either defeat the Taliban or lure the Taliban in. And so the obstacles we face with just a year left in the cycle are truly daunting. And it's very hard to see how we can be very successful.

TAPPER: Rajiv, you just returned from Afghanistan. You were there a couple of weeks ago. And in fact, you were in Marjah.

CHANDRASEKARAN: Yes.

TAPPER: What did you see?

CHANDRASEKARAN: A long, hard slog there. Contrary to the initial messaging out of the Pentagon and the White House that Marjah was turning successful very quickly, what I saw was the start of what is going to be a month's long effort to try to stabilize it. And what they had hoped -- General McChrystal and Petraeus hopes for is that Marjah would be exhibit A in demonstration momentum, showing that the strategy is working. TAPPER: It's a relatively small town, 60,000 or so.

CHANDRASEKARAN: And it really should be a fairly self-contained fight. And it is, but it's not moving as quickly as they want. Now, the White House I don't think was under illusions that counter-insurgency wouldn't take a long time in Afghanistan. I think what they were hoping for was that in this narrow window, the 18 months between President Obama's decision to commit those 30,000 additional troops and next summer, that they would get enough momentum that it would compel the insurgents to sue for peace. It would get the Afghan government to get off the fence and move more quickly, to be able to field more Afghan security forces. That U.S. civilians would get out there and start to engage in helpful reconstruction efforts.

What we're now seeing is that all of that is taking much longer than anybody anticipated. Really raising the question, what can you accomplish by the summer of 2011?

Now, you know, I think President Obama, he managed to escape any short-term political peril in naming General Petraeus to succeed General McChrystal, something with broad bipartisan support here in this town this week. But I think this comes with a potential longer-term political cost, Jake, because he's now putting out in Kabul the godfather of counter-insurgency, the guy who wrote the Army field manual on this. So that at the end of this year, when the White House has a strategy review, and next spring as they start to debate what will the pace of that drawdown be, he's going to have -- General -- having Petraeus there is a much more formidable advocate for delaying this drawdown or really attenuating it compared to what McChrystal would have been.

TAPPER: George?

WILL: And when I saw the godfather of counter-insurgency in Tampa about two months ago, it was clear to me that he read the crucial paragraph in the president's December 1st speech about the withdrawal deadline. The phrase "conditions-based withdrawal" is making the deadline all loophole and no deadline. That is to say, you can stay as long as you need. We just hope the conditions will be good then, and that hope is not a policy.

**JA636**

WRIGHT: One of the things that's so important is the fact that, as David pointed out, there are different -- the division that was represented in the McChrystal firing is still there. And it's going to play out over the next year, because the political timeline is what the White House is thinking about. The military is thinking about do they want to be seen to replicate the Soviet experience? After a decade, they still

haven't managed to succeed. And here they are, the mightiest military in the world, fighting alongside the mightiest military alliance in the world, against a ragtag militia that has no air power, has no satellite intelligence, has no tanks, and the United States can't defeat that. What kind of image does that leave at a time when the United States leaves, it is not only superior moral power but the superior military power in the world?

TAPPER: David?

SANGER: You know, Rajiv is exactly right that putting General Petraeus in place bolsters the argument for continuing a counter-insurgency. But if you listen to what Director Panetta said today, all of the other evidence that we have that the application of more troops, at least so far, has not quieted the Taliban.

It also bolsters Vice President Biden's case, that in fact applying more troops is not necessarily going to turn this around. And that's why I think we're headed for a much bigger collision later in the year on the strategy.

WILL: And the collision is going to be between the president and his base. The president, going into the 2010 elections, looking forward to 2012, hoped for three things. Rapid creation of jobs, the health care bill becoming more popular after it was signed. Neither has happened. And third, radical improvement in Afghanistan. The biggest number haunting the White House has to be enthusiasm deficit between Republicans eager to vote and Democrats tepid about this. And Afghanistan is going to do nothing to energize his base.

CHANDRASEKARAN: Not only not energize his base, it's won him no Republican support. The most concerning quote uttered by General McChrystal is not anything in those Rolling Stone interviews, nothing about the vice president, about Holbrooke. The most alarming thing for Washington that he said recently was in Europe, a couple of weeks ago, when he acknowledged that it's going to take far more time to convince the Afghans that international forces are there to protect them. That's a fundamental prerequisite to counter-insurgency.

TAPPER: In Kandahar. And he said that the Kandahar operation was going to be delayed because of that.

CHANDRASEKARAN: If you've got these guys who don't want us to be helping them out, helping to protect them, how do you do this?

TAPPER: Right now, President Obama is in Toronto, and I want to move on to the G-20 conference, because there's been a big debate there between President Obama and many in Europe about stimulus versus austerity. Spending more money to help the economy versus focusing on debt. Here's Treasury Secretary Tim Geithner.

(BEGIN VIDEO CLIP)

TREASURY SECRETARY TIMOTHY F. GEITHNER: There's another mistake governments, some governments have made over time, which is to, in a sense, step back too quickly. What we want to do is continue to emphasize that we're going to avoid that mistake, by making sure we recognize that, you know, it's only been a year since the world economy stopped collapsing.

(END VIDEO CLIP)

TAPPER: Rajiv, what does this debate mean for the president's agenda?

JA637



CHANDRASEKARAN: Well what this debate that played out over the weekend in Toronto means is that the president now faces opposition not just among Republicans on Capitol Hill to additional stimulus activity but he's facing it from his European allies who are also concerned about growing government debt. Certainly the fallout from the Greek debt crisis reverberating around continental Europe. The Germans, the British are all very concerned about this and the president, Secretary Geithner, wanted to get out of Toronto, they really haven't gotten in terms of a commitment among the G-8 allies to do more of the second round of stimulus sending.

TAPPER: David, you know, you and I have been on these trips. The president really likes the G-20 more than he likes the G-8. He kind of thinks the G-8 is an anachronism.

SANGER: He does because the G-8 is filled, by and large, with older economies, Europe, Canada, Japan, all of whom are deeply in debt at this point, none of which feel that they can afford this kind of stimulus. And so when he brings in the G-20 for all the difficulties of managing a group that large, and the G-20 could barely come to an agreement on when to break for lunch, there -- the one advantage they bring is that there are big, growing economies there -- China, Brazil, India, and these are countries I think that the president feels over time he can manage to help stimulate the world economy in a way that he'll never get out of the old G-7.

WILL: And in the G-8, Germany lives large. And Germany and the United States have different national memories. The great economic trauma of the United States is the deflationary episode of the 1930s, the Depression. For Germany, the national memory is the inflation of the 1920s that destroyed the republic and brought on Hitler. Furthermore, the Europeans are not in that big mood to be lectured by us. They say, where did this crisis start? Oh, that's right, it was in the United States. Whose central bank kept interest rates at a bubble producing low for too long? Whose social policy encouraged an unreasonably high home ownership in the United States? And by the way, whose stimulus has by its own criterion, failed?

TAPPER: Now Robin, one of the things that the White House says is look at the growth rates. Germany, less than 1 percent. Europe, as a whole, about 1 percent. The U.S., 2.7 percent. How can they lecture us or disagree with us when our way is winning?

WRIGHT: Well, look, I think the stakes in Canada are really that two years ago, or the last two years, you have seen the international community respond, or the major economies respond as one voice. They've followed the same kind of pattern. For now, they're beginning to differ. And the danger is recovery is a lot about psychology. And if there's a sense of uncertainty, there's a danger that people don't know which way things are going to go. And the U.S. keeps arguing, look, if you don't keep stimulus, you're not likely to generate whether it's new jobs or and if you retrench too far, then that affects the sense of recovery, that you have to cut back, and that hurts the economies across the board. So there's real danger that the uncertainty generated out of Canada is going to begin to play against that sense -- the kind of momentum they've created.

SANGER: And the president's also in the position in Canada of saying, don't do as I do, do as I say. I mean, just the day before he left, Congress could not come to an agreement on a very small extension of unemployment benefits, the most basic stimulus effort that the president tried to push.

TAPPER: 1.2 million Americans are going to lose their unemployment benefit extensions -- or unemployment benefits this week.

**JA638**

SANGER: That's right. So there's a fundamental stimulus action and the president had to go up and tell the Europeans they weren't doing enough for stimulus. TAPPER: George. why can't they pass this

unemployment extension? I don't understand. The Republicans say spending cuts should pay for this, the Democrats know it's emergency spending. It seems like this is something where there could be a compromise.

WILL: Well, partly because they believe that when you subsidize something, you get more of it. And we're subsidizing unemployment, that is the long-term unemployment, those unemployed more than six months, is it at an all-time high and they do not think it's stimulative because what stimulates is the consumer and savers' sense of permanent income. And everyone knows that unemployment benefits are not permanent income.

TAPPER: Rajiv, I'm going to let you have the last word, we only have a minute left.

CHANDRASEKARAN: Both sides in this town have an incentive to let this drag out longer. The Republicans certainly playing to their base don't want to be seen as adding to the debt issues in a midterm election year. The Democrats I think are trying to sort of push the Republicans and trying to make them look like the party that's denying 1.2 million people an extension of these benefits.

And so, this is going to play out for several more weeks, and both sides are going to try to use it for their -- unfortunately, for their political gain, as we head toward the November midterms.

TAPPER: All right. Well, the roundtable will continue in the green room on abcnews.com. Hopefully they'll talk about Wall Street reform. We didn't get a chance to talk about that today. And at abcnews.com, you can also later find our fact checks of our newsmakers, courtesy of the Pulitzer Prize-winning Politifact.

**Exhibit 13**  
**to the Declaration of Colin Wicker**

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## The Defense Secretary: Leon Panetta

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Leon Panetta has both balanced the budget and eliminated Osama bin Laden. Now as secretary of defense, he's fighting multiple wars, pursuing al Qaeda, and trying to keep Iran from building an atom bomb. Scott Pelley reports.

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Leon Panetta's mother wanted her son to be a concert pianist, but hopefully she wouldn't be disappointed that he's instead gone on to be a congressman, White House chief of staff, director of the Office of Management and Budget, head of the CIA, and now secretary of defense, where he is managing three million employees, fighting multiple wars, pursuing al Qaeda all over the world, and trying to keep Iran from building an atom bomb. Mr. Panetta's mother would probably also be pleased that her son still owns the northern California family farm where he was raised. That's where Mr. Panetta escapes from Washington -- tending the walnut trees that he and his brother planted 65 years ago, and even playing a bit of piano. Scott Pelley reports.

**JA641**

The following script is from "Defense Secretary Panetta" which originally aired on Jan. 29, 2012 and was broadcast on June 10, 2012. Scott Pelley is the correspondent. Henry Schuster, producer.

## 60 Minutes Overtime

### At home with Leon Panetta »



No one would have picked a 73-year-old, affable, former congressman as the one to track down Osama bin Laden. But as we first told you earlier this year, Leon Panetta has held the toughest jobs in Washington and quietly done what seems impossible. Before bin Laden, Panetta helped balance the federal budget. In a long career he'd been budget director and White House chief of staff, but by 1997 he left Washington and went home to California. It was 12 years later, President-elect Obama made an odd request. Would Panetta lead the CIA? Panetta had never worked in intelligence, but his team put a Navy Seal in bin Laden's bedroom. Last summer the president made Panetta secretary of defense, in charge of managing three million employees, fighting three wars, and stopping Iran from building an atom bomb.

This past January, before the president spoke to the nation, he had a few words for Leon Panetta.

*[President Obama: Good job tonight, good job.]*

With nearly the entire government assembled for the State of the Union address maybe 10 people in the room knew what that was about. The Navy's Seal Team Six had just rescued two hostages, including an American woman. This time the action was in Somalia.

Scott Pelley: In how many countries are we currently engaged in a shooting war?

Leon Panetta: It's a good question. That's-- you know, it's--

Pelley: You have to stop and count.

Panetta: Gotta stop-- I'll have to stop and think about that, because you know, obviously we're going after al Qaeda, wherever they're at. And clearly, we're confronting al Qaeda in Pakistan. We're confronting the nodes of al Qaeda in Yemen, in Somalia, in North Africa.

When you're secretary of defense it's a small world and a dangerous one. Panetta was covering it when we caught up with him on a trip to Afghanistan, where he has 90,000 troops, Iraq, where the war was ending, and Libya where he'd helped depose Qaddafi. Panetta travels on a flying command post, where he can reach every American warplane, submarine and missile silo. If the president ordered a nuclear war, Panetta would launch it from what they call the doomsday plane.

Pelley: The president would reach you on this aircraft.

Panetta: The president would reach me on this aircraft and very possibly be on this aircraft, to be able to direct what happens in that situation.

We noticed Panetta's Spartan compartment is built for two. Two chairs, two bunks, two phones - for him and the president. But on this trip Panetta wasn't worried about Russia's thousands of nuclear weapons, he was thinking of what he would do if Iran built just one.

Panetta: The United States, and the president's made this clear, does not want Iran to develop a nuclear weapon. That's a red line for us. And it's a red line obviously for the Israelis so we share a common goal here. If we have to do it, we will do it.

- 1
- 2
- 3
- 4
- [Next Page »](#)

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June 10, 2012 7:03 PM

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Pelley: What is it?

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Panetta: If they proceed and we get intelligence that they're proceeding with developing a nuclear weapon then we will take whatever steps are necessary to stop it.

Pelley: Including military steps?

Panetta: There are no options that are off the table.

We were surprised to hear how far he thinks Iran has come.

Panetta: The consensus is that, if they decided to do it, it would probably take them about a year to be able to produce a bomb and then possibly another one to two years in order to put it on a deliverable vehicle of some sort in order to deliver that weapon.

Of course, Panetta knows more than he tells. Maybe he knows who's bombing Iranian scientists, why Iran's missile facility mysteriously blew up or how a computer virus wrecked Iran's uranium enrichment plant. Judging from the U.S. spy drone that fell in Iran, America and its allies are waging war without sending thousands of troops.

The doomsday plane is laden with secret gear, we can't show you most of it. It's so heavy the Air Force refueled it twice in the night sky over the Atlantic. It turns out the lightest thing on board was the heart of the man with a world of worry.

Pelley: How do you launch the nuclear response from this airplane? You pick up this phone?

Panetta: Don't touch anything Scott. (laugh)

Leon Panetta is rarely far from an eyelid collapsing, ground shaking, belly laugh. It's involuntary and to people around him its reassuring that, with lives at stake, he stays in touch with his humanity and where he came from.

Leon Panetta lives on the farm where he grew up. He and his brother planted these walnut trees, 65 years ago, with their father, and the Panetta's stick to their roots in northern California. He and his wife Sylvia raised three boys here; one of whom served in Afghanistan. Panetta's parents had arrived here from Italy without a word of English.

Pelley: Did you pick the walnuts?

Panetta: Used to pick 'em all the time. My dad used to have a pole and hook, and shake every one of these branches, and hit the walnuts. And my brother and I used to be underneath collecting the walnuts, putting 'em in sacks. And, you know, my dad often said I was well-trained to go to Washington because I'd been dodging these nuts all my life.

His mother wanted a pianist. But Panetta orchestrated a run for Congress and, for 16 years, represented his home district. He became President Clinton's budget director and worked with Congress to balance the federal budget for the only time in the last 42 years.

Pelley: A lot of people were surprised when your name came up for director of Central Intelligence.

Panetta: I was kind of surprised, as well. I spent most of my life working on budget issues and thought that you know, that would more likely be an area that they might want me. But the president said, "I need somebody who can restore the credibility of the CIA." And for me, that represented a challenge.

The first challenge, ordered by the president, was to rethink the search for Osama bin Laden. There hadn't been a good lead since the U.S. lost him in 2001 in the mountains of Tora Bora, Afghanistan. Within a year and a half of Panetta taking over as director of Central Intelligence, the U.S. tracked al Qaeda couriers to a house in a town called Abbottabad, deep inside Pakistan. Panetta sent satellites, drones, officers and spies to watch it for eight months, but they were never sure that bin Laden was there.

**JA644**

- [« Previous Page](#)
- [1](#)
- [2](#)
- [3](#)
- [4](#)
- [Next Page »](#)

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On April 30th, 2011, Mr. Obama and Panetta made a point of being seen at the White House Correspondent's Dinner. Panetta's belly laugh was heard at every presidential punch line, but both men knew they'd just pulled the trigger. Seal Team Six would launch in 16 hours.

Panetta: The risks are, were, enormous, you know, going in that far, the prospect of detection, the prospect that, you know, one of these helicopters might go down, the fact that once they arrived there, we might, you know, have a shooting war with Pakistanis take place.

Pelley: With all of those risks you were facing, you recommended going ahead with this, to the president. Why?

Panetta: You know, in the 40 years I've been in government this, for me, was probably the most remarkable operation that I was a part of because everybody played their role in a very effective and responsible way. This was the best case we had on bin Laden since Tora Bora. And because of that, because for 10 years we had run into dead ends trying to track bin Laden down, I thought for that reason alone, we had a responsibility to act.

This is Panetta running the mission from CIA headquarters. He acted without telling our Pakistani allies. Because Panetta couldn't figure how bin Laden lived more than five years, undetected, about a mile from Pakistan's military academy - it's West Point.

Pelley: Elements of the Pakistani government knew he was there?

Panetta: I personally have always felt that somebody must have had some sense of what was happening at this compound. Don't forget, this compound had 18 foot walls around it. Twelve foot walls in some areas, 18 foot walls elsewhere, a seven foot wall on the third balcony of the house. It was the largest compound in the area. So you would have thought that somebody would have asked the question, "What the hell's goin' on there?"

**JA646**

Pelley: Is that why you recommended we not tell the Pakistanis that we were coming?

Panetta: We had seen some military helicopters actually going over this compound.

Pelley: Pakistani military helicopters?

Panetta: And for that reason, it concerned us that, if we, in fact, brought 'em into it, that they might give him, give bin Laden a heads up.

Pelley: I appreciate the diplomatic problems you have, Mr. Secretary, but everything you're telling me in this interview indicates that the Pakistani government knew he was there and that that's what you believe.

Panetta: I don't have any hard evidence, so I can't say it for a fact. There's nothing that proves the case. But as I said, my personal view is that somebody somewhere probably had that knowledge.

There's one more thing that Secretary Panetta noticed after the raid -- no escape route from the house. It's as if the occupant was expecting plenty of warning. Before it was torn down in February, the house was already short one brick. It's hanging on the wall of Panetta's office -- a memento CIA officers brought him -- labeled with bin Laden's code name: Geronimo, Abbottabad Pakistan.

Before the raid, President Obama nominated Panetta for secretary of defense. He took office over 11 months ago, arriving these days at the Pentagon at dawn and working well into the night.

- [« Previous Page](#)
- [1](#)
- [2](#)
- [3](#)
- [4](#)
- [Next Page »](#)

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## The Defense Secretary: Leon Panetta

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Last January, Panetta was aboard the USS Enterprise in the Atlantic Ocean, they even let the boss clear one of his planes to land.

He may be directing shadow wars in more places than he can count but one of his biggest challenges now is to manage the massive budget cuts in his big-ticket military ordered by Congress.

Panetta: The reality is that we now are facing, as a result of congressional action, having to take down the defense budget by, you know, well over \$450 billion, over the next 10 years.

Pelley: And that will mean what?

Panetta: We'll have to make some very tough decisions about how we do this. The last thing I want to do is to make the mistakes of the past. We still have to protect the best military in the world, we still have to have a military that protects us against a lot of threats that are out there, terrorism, Iran, North Korea, nuclear proliferation, problem of cyber attacks, rising powers like China.

That's quite a list, for the globe trotting secretary of defense but the toughest part of the job is right here, at his desk.

Pelley: In your long career in government you've never had to make decisions of life and death.

Panetta: In some ways, in this job, I am doing that every day. And the toughest thing in this job frankly is writing the condolence letters to the parents of those young men who are killed in action. And that loss, having been a parent of someone who is stationed over there, you know what that means. But I also say to them, "You know, your son or daughter is really a true hero and patriot because they were willing to give their life for their country."

**JA648**

And that means that they'll never be forgotten." And I hope that's some measure of comfort for them. Because, in the end, it's the only comfort I have is to know that these kids, when they put their lives on the line, are helping America be strong for the future.

- [« Previous Page](#)
- [1](#)
- [2](#)
- [3](#)
- [4](#)

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# U.S. DEPARTMENT OF DEFENSE

## United States Department of Defense

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- Transcripts
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- Highlights
- Photo Essays
- Week in Photos

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#### NEWS ARTICLE

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## Panetta: Awlaki Airstrike Shows U.S.-Yemeni Cooperation

By Lisa Daniel  
American Forces Press Service

WASHINGTON, Sept. 30, 2011 – A U.S. airstrike that killed Yemeni-based terrorist Anwar al-Awlaki early this morning is a testament to the close cooperation between the United States and Yemen, Defense Secretary Leon E. Panetta said today.

During a media availability with Canadian Defense Minister Peter MacKay at the Pentagon, Panetta said Awlaki - a U.S.-born Muslim cleric who used his English-language skills to advocate violence against Americans as part of al-Qaida in the Arabian Peninsula -- had long been a target of U.S.-Yemeni counterterrorism operations.

"This has been a bad year for terrorists," he said. "We just have seen another major blow against al-Qaida, against someone who truly was an operational arm of al-Qaida in this node in Yemen."

Awlaki was high on the military-intelligence list of terrorist targets, close behind Osama bin Laden, because he "continued to try to inspire people to attack this country," Panetta said.

"This country is much safer because of the loss of Awlaki," he added.

President Barack Obama announced the killing of Awlaki this morning at the retirement ceremony of Navy Adm. Mike Mullen, outgoing chairman of the Joint Chiefs of Staff.

Calling Awlaki "the leader of external operations" for al-Qaida in the Arabian Peninsula, Obama said his death "marks another significant milestone in the broader effort to defeat al-Qaida and its affiliates."

Obama and Panetta congratulated the Yemenis on their intelligence and operational assistance in targeting Awlaki.

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9/30/2011 8:33:11 PM

Another surprise blow to Al-Qaida thanks to the United States and Yemen. Mr. Awlaki was indeed a dangerous person because of his abilities to communicate his messages to young Muslims throughout the world. After all, several people, including soon to be former Army Major Nidal Hassan, communicated with this man via the Internet prior to executing their "missions of jihad". Even though the U.S. is dealing with budget issues, this event proves that we must continue these operations against these enemies of the state no matter how long it takes.

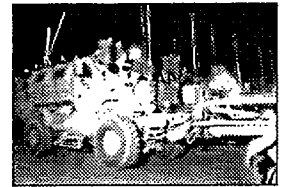
- Shawn McFadden, USNS Patuxent

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- [Today in DOD](#)
- [About DOD](#)
  - [Leaders](#)
  - [Organization](#)
  - [Mission](#)
  - [History](#)
- [Frequently Asked Questions](#)
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- [Top Issues](#)
  - [Afghanistan](#)
  - [Iraq](#)
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  - [DOD News Page](#)
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JA651

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**to the Declaration of Colin Wicker**



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March 8, 2012

# A Not-Quite Confirmation of a Memo Approving Killing

By CHARLIE SAVAGE

WASHINGTON — For months, the Obama administration has refused to confirm or deny the existence of a Justice Department memorandum that approved the targeted killing of a United States citizen, Anwar al-Awlaki, who died in a drone strike in Yemen last September.

But in an exchange at a budget hearing on Thursday, Senator Patrick J. Leahy and Attorney General Eric H. Holder Jr. came close to implicitly conceding that there is indeed such a memo, which was written by the Justice Department's Office of Legal Counsel.

Mr. Leahy, a Vermont Democrat who is chairman of the Senate Judiciary Committee, brought up a conversation he said he and Mr. Holder had earlier this week about a speech on "drones and targeting of U.S. citizens" that the attorney general delivered on Monday.

"I still want to see the Office of Legal Counsel memorandum and I would urge you to keep working on that," Mr. Leahy said to Mr. Holder. "I realize that's a matter of some debate within the administration but ..."

The senator then paused, smiled and laughed. Mr. Holder responded by nodding and said, chuckling, "That would be true."

The New York Times published an account of the Office of Legal Counsel memorandum in October, citing people who had read it, and filed a Freedom of Information Act request seeking access to it. But the Justice Department rejected that request, refusing to confirm or deny whether the document existed. The newspaper has since filed a lawsuit seeking to make it public, and the department has maintained that position in the litigation.

Mr. Holder's affirmation of Mr. Leahy's remarks was ambiguous and fell short of explicit acknowledgment that there is a memo about the targeting of citizens whose proposed release led to internal administration debate. Tracy Schmalzer, a Justice Department spokeswoman, said the exchange did not amount to an inadvertent confirmation that there is any such document.

"We do not confirm or deny that such a memorandum exists," she said.

Mr. Holder's speech sketched the outlines of the administration's theory for why it is lawful under certain circumstances for the executive branch to kill citizens who are deemed to be terrorists, but contained no explicit legal citations.

JA653



As first reported in January by Newsweek, national security officials were split about how to respond to bipartisan calls to disclose the memo. They eventually agreed that Mr. Holder would deliver a more limited account of their legal reasoning in a speech instead.

The speech, however, was delayed for months. Its delivery has revived calls from some lawmakers and commentators to disclose the actual document, although others — notably Senator Dianne Feinstein, the California Democrat who leads the Senate’s intelligence oversight efforts — portrayed themselves as satisfied.

Although American drone strikes in Yemen have been widely reported, the Obama administration considers them “covert,” so officials may not discuss them. That awkward situation may be related to the reams of government documents made public by WikiLeaks that have not been technically declassified, so the government treats them as if they were still secret.

Specifically, diplomatic cables published in 2010 disclosed a secret deal under which the Yemeni government had granted permission for the United States to carry out strikes aimed at terrorists, but the Yemeni government would lie that it, not Americans, had carried out the bombings.

At a hearing in November, Mr. Leahy pressed Mr. Holder to show the Judiciary Committee the memo. Mr. Holder’s reply then had been much more cautious, saying he “cannot address whether or not there is an opinion on this area.”

**Exhibit 16**  
**to the Declaration of Colin Wicker**

**JA655**



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January 30, 2012

# Civilian Deaths Due to Drones Are Not Many, Obama Says

By MARK LANDLER

WASHINGTON — President Obama on Monday defended the use of drones to strike suspected terrorists in Pakistan and elsewhere, saying the clandestine program was “kept on a very tight leash” and enabled the United States to use “pinpoint” targeting to avoid more intrusive military action.

Mr. Obama, in an unusually candid public discussion of the Central Intelligence Agency’s covert program, said the drone strikes had not inflicted huge civilian casualties. “We are very careful in terms of how it’s been applied,” he said. “It is important for everybody to understand that this thing is kept on a very tight leash.”

The president made the remarks in answer to questions posed by people during a live Web interview sponsored by Google Plus, the social media site of Google. He also spoke about the economy, laughed at a comedian’s impersonation of him, and declined a woman’s request to sing or do a dance.

The subject of drones came up when a viewer asked Mr. Obama about a report in The New York Times on Monday about the State Department’s use of drones for surveillance purposes to protect its diplomatic installations in Iraq. Mr. Obama confirmed their use for surveillance, but said he thought the article was “a little overwritten.” He added that drones were a key part of the country’s offensive against Al Qaeda.

The C.I.A.’s drone program, unlike the use of armed unmanned aircraft by the military in Afghanistan and previously in Iraq, is a covert program, traditionally one of the government’s most carefully-guarded secrets. But because of intense public interest — the explosions cannot be hidden entirely — American officials have been willing to discuss the program on condition of anonymity.

Until Monday, Mr. Obama, who has overseen a dramatic expansion of the use of drones in Pakistan and on a smaller scale in Yemen and Somalia, had spoken only indirectly about the program. For example, after a C.I.A. drone strike in September killed Anwar al-Awlaki, the American-born Qaeda propagandist hiding in Yemen, Mr. Obama never mentioned the agency, its unmanned aircraft or the missiles they fired.

Instead, speaking at a Virginia military base, he said Mr. Awlaki “was killed” in what he said was “a tribute to our intelligence community.” The secrecy has prevented an open debate on legal and ethical questions surrounding the strikes, since neither intelligence officials nor members of Congress can speak openly about them.

*Scott Shane contributed reporting.*

**JA656**

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**to the Declaration of Colin Wicker**

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THE WAR ON TERROR  
AND THE SOUL OF THE  
OBAMA PRESIDENCY



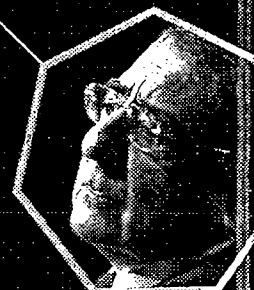
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# KILL OR CAPTURE

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THE WAR ON TERROR AND THE SOUL  
OF THE OBAMA PRESIDENCY

Daniel Klaidman



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JA659

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JA660

## A NOTE ON SOURCES

For this book I drew on interviews with more than two hundred sources, most of whom are current or former Obama administration officials. I also benefited from the valuable perspective of many who served in previous administrations, both Democratic and Republican. I talked to numerous academics and legal experts for their insights on the range of issues covered herein. As often as possible, I consulted internal government documents, including contemporaneous notes of key meetings taken by participants and private emails. I also relied on the transcripts of speeches, press conferences, and background briefings provided by the White House and other government agencies. In those instances where I rely on exclusive reporting in newspaper or magazine stories, I cite them in the body of the text.

Ultimately, narrative accounts of events unfolding essentially in real time depend on the willingness of participants to speak candidly to reporters about what they've observed firsthand. Most of the interviews for this book were conducted on background, which means I agreed not to attribute direct quotes by name. For a variety of reasons, individuals working in presidential administrations are simply unwilling to discuss the inner workings of government—how im-

JA661



Bash, to see if they'd had a successful hit. When they finally took Mehsud out in August 2009, Emanuel celebrated. He had a hawkish side to him, having volunteered with the Israeli Defense Forces as a civilian during the 1991 Gulf War. But above all, Emanuel recognized that the muscular attacks could have a huge political upside for Obama, insulating him against charges that he was weak on terror. "Rahm was transactional about these operational issues," recalled a senior Pentagon official. "He always wanted to know 'how's this going to help my guy,' the president."

Though the program was covert, Emanuel pushed the CIA to publicize its kinetic successes. When Mehsud was killed, agency public affairs officers anonymously trumpeted their triumph, leaking colorful tidbits to trusted reporters on the intelligence beat. Newspapers described the hit in cinematic detail, including the fact that Mehsud was blown up on the roof of his father-in-law's compound while his wife was massaging his legs.

The question remained: Could the shadow warriors capture terrorists? Or could they only kill them? Around the time of the Mehsud strike, US Special Operations Forces had a bead on a major al-Qaeda terrorist. For years the CIA and military had been hunting Saleh Ali Saleh Nabhan, a senior member of al-Qaeda's East Africa branch and a critical link between al-Qaeda and its Somalia-based affiliate, the Shabab. Nabhan had been implicated in a number of deadly terrorist attacks in East Africa, including the bombing of an Israeli-owned resort in Mombasa, and he was a suspect in the US embassy bombings in Kenya and Tanzania. Taking him out would have been a major victory in the war on terror. But capturing him would have been an even bigger coup, a potentially huge intelligence windfall that could have helped counterterrorism officials understand the connections between al-Qaeda and its offshoots. After months of patiently watch-

the potential value of captures: the Somali militant provided a vast amount of critical information about the tactics, operational capabilities, and personnel of the Shabab and AQAP, as well as important insight into the burgeoning alliance between the two groups. Ironically, his capture (and the intelligence he provided) would also lead to the most controversial kill of Obama's presidency.

US intelligence had been tracking Anwar al-Awlaki for years, but in the wake of the bin Laden operation, Obama had become fixated on taking out the charismatic cleric. FBI Director Robert Mueller, an active participant at the Tuesday counterterrorism briefings, plied the president with chilling intelligence reports on Awlaki. During one briefing, Obama told his counterterrorism advisers that Awlaki was his top priority, even over Ayman al-Zawahiri, who had succeeded bin Laden as the leader of al-Qaeda. The assessment of the intelligence community was that Zawahiri's utter lack of charisma and leadership qualities made him far less of a threat. "Awlaki had things on the stove that were ready to boil over," one of Obama's national security advisers observed. "Zawahiri was still looking for ingredients in the cupboard."

The president made sure that Brennan had Awlaki updates at every Terror Tuesday meeting. "I want Awlaki," he said at one. "Don't let up on him." Hoss Cartwright thought Obama's rhetoric was starting to sound like George W. Bush's, whom he had briefed on many occasions. "Do you have everything you need to get this guy?" Obama would ask. Most lethal operations in Yemen had been conducted by the US military. But in the summer of 2011, the Awlaki hit job was turned over to the CIA, for a highly pragmatic reason: the United States had built a new drone base in a strategically located Persian Gulf country. It was a regime with which the CIA had far better ties than the military, allowing it to conduct sensitive operations from

JA663

certain locations that were off-limits to JSOC. The Defense Department turned over as many as eight of its drones to agency operators so that they could keep a bigger presence focused on Yemen. Meanwhile, the Pentagon put additional drones into nearby Djibouti, finished construction on a base in Ethiopia, and transferred drones there from the Seychelles. What was striking was that JSOC accepted the CIA's primary role in the hunt for Awlaki without complaint. Like the bin Laden mission, it was an example of the near-seamless integration of counterterrorism operations between the military and the CIA, a hallmark of Obama's war.

It was more than just Awlaki's ability to recruit over the Internet or his intuitive grasp of American society that drew Obama's attention. What worried Obama most was Awlaki's relentlessness and ingenuity in developing murderous plots that could get around America's best defenses. There had been the Christmas Day plot, which had come perilously close to succeeding. Then, in October 2010, AQAP had managed to put improvised bombs—ink toner cartridges filled with explosive material placed inside HP printers—on cargo planes headed to the American homeland. (They were intercepted as a result of a tip from Saudi intelligence.) Over the summer of 2011 Obama was regularly updated on a particularly diabolical plan that AQAP's master bomb builder, Ibrahim Hassan Tali al-Asiri, was devising. The intelligence indicated that AQAP was close to being able to surgically implant bombs in people's bodies. The wiring was cleverly designed to circumvent airport security, including metal detectors and full-body scanners. AQAP's terror doctors had successfully experimented with dogs and other animals. Obama and his advisers were in a race against time to kill Awlaki.

Warsame's capture couldn't have come soon enough. The Navy SEALs seized his laptop computer, a hard drive, two USB thumb drives, and a memory card. The hardware was filled with emails and

# **Exhibit 18**

## **to the Declaration of Colin Wicker**

**JA665**

CQ CONGRESSIONAL TRANSCRIPTS  
Congressional Hearings  
March 8, 2012

## Senate Appropriations Subcommittee on Commerce, Justice and Science, and Related Agencies Holds Hearing on the Proposed Fiscal 2013 Appropriations for the Justice Department

### LIST OF PANEL MEMBERS AND WITNESSES

MIKULSKI:

Good morning, everybody. Good morning, everybody. The Commerce, Justice Appropriations Subcommittee will come to order.

This morning, we -- this morning, we welcome the attorney general of the United States. And as is the usual and customary way, Senator Hutchison and I will make opening statements.

We'll go to you, Mr. Attorney General, for yours. And you may summarize, with unanimous consent that all statements be included in the record.

Senator Shelby, our colleague and former ranking on this subcommittee, has a banking hearing. With Senator Hutchison's concurrence, we'll go right to Senator Shelby for the first question.

Does that sound OK?

And then we will observe senators in their order of arrival. And we expect robust participation. We're going to strictly adhere to the five minute rule.

So having laid the groundwork, I just want to say good morning and welcome to our first CJS Subcommittee hearing, the attorney general of the United States, in which we will hear his presentation on the Department of Justice budget.

We have a very positive relationship with the attorney general. He's brought to the Justice Department the experience of a career prosecutor. He's been dedicated to fighting violent crime and terrorism.

He knows that he is pioneering work, now working with our administration on how to deal with the new and emerging threat of cybersecurity, which is how do we protect our citizens, and his views and recommendations on protecting our civil liberties.

Well, Mr. Attorney General, before we get into the numbers about the money, I would just like to thank you, and in thanking you, want to thank all the hard working men and women who do work at the Department of Justice.

There are 119,000 employees who work there; 25,000 are federal agents and people that work at FBI, DEA, the U.S. Marshals, the Alcohol and Firearms. We have 20,000 prison guards and correctional staff, and 10,000 prosecutors and investigators.

They've done some amazing accomplishments which I'll talk about in -- when I get to my question period. But we want to thank them, because every day, in every way, they stand sentry, either to keep -- to do prevention and intervention, to make sure they're out on the street doing traditional violent crime work, to really being all over the world, and then fighting issues related to white collar crime.

As the chair of the CJS Subcommittee, I have three priorities when examining the budget. Community security, how does the budget support the mission of keeping our communities safe; national security, what resources are needed to keep America safe; and then oversight and accountability, no boondoggles on the watch of this subcommittee.

And I want to make sure the Justice Department has what it needs to do its mission.

There's only -- as I looked at the president's budget, I saw -- noted that there was only one new initiative, and that's the expansion of mortgage and financial fraud. That request is \$611 million. It's a modest \$5 million targeted increase.

JA666

We're going to want to hear more about that, because we in our own state of Maryland have seen such a rising number of scams and schemes and predatory lending practices. And we need to know kind of what you want to do with the money.

We can't have a strong, economically vibrant community unless they're safe, whether it's in our neighborhoods, whether it's protecting small business on Main Street.

So I want to know how the budget will keep America safe at home on Main Street. The request for \$2 billion for grants to state and local law enforcement, I wonder if it's sufficient. This is \$32 million below the 2012.

And we would might to consider reorganizing -- you know, reorganizing priorities. The state and local funding seems to have born the brunt of budget cuts. Since 2010, grants have been cut by a billion dollars in local funding.

Now, part of this was the ax -- A-X and A-C-T-S -- ax and acts of the Congress itself. Many of my colleagues don't realize that cuts have consequences in discretionary spending. So we need to hear your view on what we can do.

We know the GAO has recommended that you should conduct a review and eliminate unnecessary duplication. We support that.

We also want to look in community security at the protecting of our children. One of the areas of bipartisan support is in the money to catch predators who use the Internet to stalk children, break up children's pornography rings and track down and arrest these child molesters.

We understand you're requesting \$328 million. And we'll look forward to seeing how you will allocate that and what to do.

The southwest border, my colleague, Senator Hutchison, has worked assiduously in that area. I want to know that this is not only a bipartisan support, we think it ought to be nonpartisan to support our border. I'll let her raise those questions in there.

In the area of cyber threats, our nation faces a growing and pervasive threat overseas, from hacker, cyber spies and cyber terrorists. We need safe and resilient networks.

We worry about online banking and commerce, the safety of our power grids, air traffic control systems, digitized records. Yesterday, the Congress held, with the administration -- the Senate held a cyber exercise. The majority of the senators were there to listen to an exercise on an attack on a major city's power grid.

It was chilling. It was terrifying to know what happened there and what we could do to protect it. So we need to know about cyber.

Finally, I want to know how the Justice Department is improving its accountability to taxpayers. You know, you've gotten a bad rap, some of them about lavish banquets, cost overruns, the I.G. doing its audits. And it should.

So we want to know how we stand sentry over the money we do spend. We have very specific questions. But with the number of people here, I'm shortening my statement.

I'm going to turn now to Senator Hutchison and then to you.

HUTCHISON:

Well, thank you, Madam Chairman, very much, not only for the deference on border security, where I live, but also on the way you run this committee, which is for us to do what's right for America.

Mr. Attorney General, I do want to address some of the areas of border security. First of all, SCAAP funding is something that continues to be short changed by your budgets.

SCAAP, of course, is the reimbursement for local law -- law -- counties that incarcerate illegal alien prisoners. And along the border, our counties are generally very poor and don't have those kinds of resources, and each year, you continue to not fund.

We did put the money back in last year \$240 million.

HUTCHISON:

But I would hope that you would support increasing that as we go through this process, because we must incarcerate these illegal alien criminals who are mostly in the drug cartel and operations, so that this will not be borne by the counties on the border.

In response to Operation Fast & Furious, language was included in last year's bill that would prohibit federal law enforcement agencies from selling operable weapons to cartels.

This request that you're giving us removes that language, saying it's unnecessary.

Mr. Attorney General, we just want to make positively sure that what happened does not happen again. And I would hope that you would support our insertion of that language again.

Last year our -- our -- our Commerce Justice State Bill provided \$10 million to expand the capacity at the overcrowded El Paso Intelligence Center.

And this is critical for our Southwest border information sharing and has the potential to become the border's focal point to help stop the flow of narcotics, combat illegal immigration and end human trafficking and firearms smuggling.

It is imperative that this El Paso Intelligence Center and the DEA take full advantage of the resources available from the Department of Justice agencies, the FBI, the U.S. Marshals and the ATF and I hope that you can give us an update on the status of this funding and the project.

There have been reports that cartels across the border are attempting to recruit college students to smuggle drugs into the country. And it says that minors are more appealing because criminal penalties are lighter for them.

One of the good parts of your budget request is \$312 million for juvenile justice prevention programs. And I will be interested in hearing if you think -- if you're aware of these border threats to our youth and if some of that money that you are requesting could be put on the border to try to make sure that we try to help our youth overcome the cartel overtures.

In addition, there is a requested cut of 1.5 percent from state and local law enforcement grants, which are very important grants again to these local counties and the local law enforcement agencies along the border that have such a burden with the trafficking that is coming across the border.

And I would hope that you would help us restore that funding.

The VALOR Program, the violence against law enforcement and ensuring officer resilience and survivability is one that I applaud your efforts to put in place.

And unfortunately, the number of federal, state and local officers who died in the line of duty in America last year increased from 153 to 173.

The feedback from the training and research being conducted through VALOR is very positive, including the Alert Center at Texas State University, which was credited by the two officers who came into Fort Hood when Major Nidal Hasan started shooting unarmed military people.

Both of those officers survived, even though Sergeant Munley was shot several times but they both credited their swift response that day to the Alert Active Shooter training program that they had received.

So that's something that's very good that I applaud in your -- in your budget.

I want to state a concern that I have about the U.S. National Parks Service pushing for construction, which is in progress on an unmanned border crossing at the Big Bend National Park in South Texas.

This is not a Department of Justice decision but it is going to affect some of the personnel. And I'm concerned that this is an area where illegal immigrants can walk across. The water is knee deep and you can walk right across the river and into Big Bend.

And having an unmanned border crossing I think is insufficient. And so we're gonna talk about that at some point to see if we can get FBI, DEA, ATF, border patrol, somebody to man a place like that where it is so vulnerable.

**JA668**

And last but not least, General Holder, I'm gonna ask you some questions about your Public Integrity Unit. I'm going to give you full credit for dismissing the case against Senator Ted Stevens when you learned of the corruption within that division of your department.

I'm gonna ask you questions because there -- the report will be public within days. And if there's anything that you should take as your major responsibility it is that the Public Corruption Unit and the Department of Justice is fair and evenhanded.

And clearly that was not the case in the prosecution of a great friend to many of us and a great patriot for our country who, unfortunately, was very badly abused by the Department of Justice.

But we'll say you did dismiss the case when you learned of the misbehavior and I gave you credit on the Senate floor for doing that and will again.

But I do want to ask you about the report at -- when we have time to ask questions.

Thank you.

MIKULSKI:

Mr. Attorney General?

HOLDER:

Thank you.

Chairman -- Chairwoman Mikulski, Ranking Member Hutchison, other distinguished members of the subcommittee, I want to thank you very much for the opportunity to appear before you today and for your continued support of the justice department's critical work.

I look forward to discussing the president's fiscal year 2013 budget for the department and how these investments would be used to build on what I think is our extraordinary record of success.

Now, the president's budget proposal demonstrates a clear commitment to advancing the department's core missions and augmenting our ability to fulfill our most important obligation that as to protecting the American people.

Despite the significant fiscal restraints the federal government has faced in recent years, the 116,000 dedicated employees who serve in the department offices around the world have made significant and, in many cases, historic progress in safeguarding our citizens from terrorism, from violent crime, from financial fraud and from a range of threats that often disproportionately threaten the most vulnerable members of our society.

We've also proven our commitment to acting as sound stewards of precious taxpayer dollars.

Now, as you can see in the most recent budget request, proposed spending increases have been exceeded by proposed cuts. In fact, as a result of numerous steps taken to streamline operations, almost \$700 million worth of savings have been developed and reinvested in critical mission areas.

And I believe that the department is perhaps more efficient and more effective than ever before. Our recent achievements underscore this point, especially when you consider our national security efforts.

By continuing to work collaboratively alongside U.S. and international partners, we have identified and disrupted numerous alleged terrorist plots including one by two Iranian nationals to assassinate the Saudi ambassador to the United States.

We have thwarted multiple plots devised by homegrown extremists. And we have secure convictions and robust sentences against a number of dangerous terrorists.

In October the department obtained a guilty plea from Umar Farouk Abdulmutallab for his role in the attempted bombing of an airplane on Christmas Day in 2009. Just last month Abdulmutallab was sentenced to four life-terms in prison.

In November we secured the conviction of Viktor Bout, a notorious arms dealer who sold millions of dollars in weapons for use in killing Americans.

And in December Waad Ramadan Alwan pleaded guilty to 23 charges including conspiracy to use a weapon of mass destruction against U.S. nationals abroad, attempting to provide material

**JA669**



support to Al Qaida in Iraq and conspiracy to transfer, possess and export explosive devices against U.S. troops in Iraq.

The list goes on and on.

And with the sustained and increased investments included in the president's budget for the comprehensive National Cybersecurity Initiative, the High Value Detainee Interrogation group, the Joint Terrorism Task Forces, the Render Safe program and other key national security efforts, the department will be able to strengthen our critical surveillance and intelligence gathering capabilities.

It will also allow us to bring our fight against financial fraud to a new level. On Monday, as many of you know, President Obama issued a proclamation to mark the beginning of this year's Consumer Fraud Protection week.

HOLDER:

And I'm proud to note that the justice department's consumer protection branch has established a record of success in defending the interests of American consumers that is worth celebrating and will be expanded upon.

In 2011 alone, our consumer protection -- Consumer Protection Branch attained a 95 percent conviction rate, recovered more than \$900 million in criminal and civil fines, restitution, and penalties, and obtained sentences totalling more than 125 years of imprisonment against more than 30 individuals.

This represents remarkable and unprecedented progress. But it really is only the beginning. In fact, since the start of the administration, the Justice Department has signaled an unwavering commitment to combating and preventing a wide range of financial and health care fraud crimes. And we've taken bold steps to address the causes and the consequences of the recent economic crisis.

Through the efforts of the president's Financial Fraud Enforcement Task Force, which was launched in 2009, in which I'm proud to chair, charges have been brought against numerous CEOs, CFOs, corporate owners, board members, presidents, general counsels, and other executives of Wall Street firms, hedge funds, and banks who have been engaged in fraudulent activity.

In recent months, we have obtained prison sentences of up to 60 years in a variety of fraud cases; including multi-million dollar Ponzi schemes, and the largest hedge fund insider trading case in U.S. history. And just this week, we secured a conviction against the former board of directors' chairman for an international bank, orchestrating a \$7 billion investment fraud scheme.

And the task force has established two new working groups; the Consumer Protection Working Group, which will enhance civil and criminal enforcement of consumer fraud, and the Residential Mortgage- Backed Securities Working Group, which will bring federal and state partners together to investigate and to prosecute abuses in our housing markets. Both will help to amplify existing efforts, and to foster cooperation and collaboration in the department's response to these problems.

Just a few weeks ago, a similar collaborative approach led the Departments of Justice and Housing and Urban Development, as well as with other agencies, and 49 state attorneys general to achieve a landmark \$25 billion settlement with the nation's top five mortgage services, the largest joint federal-state settlement in our nation's history.

Now, although this will not on its own cure all that ails our housing market, this agreement bill is on the record; fair lending settlement obtained by the Civil Division's Fair Lending Unit last year, and will provide substantial relief to homeowners. It also provides a blueprint for future collaboration across levels of government, state borders, and party lines.

But there is perhaps no better illustration of our recent progress than the department's groundbreaking work to combat health care fraud. Over the last fiscal year alone, in cooperation with the Department of Health and Human Services, as well as other partners, by utilizing authorities provided under the False Claims Act, and other essential statutes, we were able to recover nearly \$4.1 billion in frauds -- funds that were stolen or taken improperly from federal health care programs. And that is the highest amount ever recorded in a single year.

Over the same period, we opened more than 1,100 new criminal health care fraud investigations, secured more than 700 convictions, and initiated nearly 1,000 new civil health care fraud investigations. And for every dollar that we have spent combating health care fraud, we have returned, on average, about \$7 to the United States Treasury, the Medicare Trust Fund, and

**JA670**

others.

Now, these numbers are stunning. But my colleagues and I recognize that we cannot be satisfied. And this is no time to become complacent. And that's why, in addition to helping us build on this record of success, the president's budget request also would bolster our fight against drug trafficking, international crime networks, gangs, and cyber criminals.

It would increase our efforts to protect the law enforcement officers who keep us safe, and expand upon the work being done by our Civil Rights Division to guarantee that the rights of all Americans are protected in border areas, workplaces, housing markets, and voting booths.

I am committed to building on these, and our other many achievements. And I know that you understand that in this time of uncommon threats and complex challenges, we simply cannot afford to cut back on the amount and the quality of justice that we are obligated to deliver. The department must remain vigilant in protecting this nation, and in enforcing the law. And these efforts must be appropriately and adequately funded.

So I look forward to continuing to work with the members of this subcommittee, and your colleagues throughout Congress, to accomplish this. I would be happy to answer any questions that you might have.

MIKULSKI:

Thank you, Mr. Attorney General. And your full statement will be entered into the record. As a matter of senatorial courtesy, we're going to turn to Senator Shelby, who has a banking committee that he must join. Then I'll pick up with -- followed by Senator Hutchison. We will recognize the members in order of arrival, and we'll follow the five-minute rule.

Senator Shelby?

SHELBY:

Thank you. Thank you, Madam Chairman. Good morning, Mr. Attorney General.

HOLDER:

Morning.

SHELBY:

Two key Department of Justice facilities will soon be operating on Redstone Arsenal; the FBI's Terrorist Explosive Device Analytical Center, or TEDAC, and the ATF's National Center for Explosives Training and Research, known as NCETR. These two national assets will help law enforcement officials deal with the growing threat posed by terrorists and criminal use of powerful explosives.

You and I have discussed these facilities previously, and I believe you agreed then with me, that the missions of NCETR and TEDAC are distinct, but complementary, and that it made sense to collate -- co-locate at Redstone, where there's a lot of property, lot of land.

For the benefit of the committee, Mr. Attorney General, can you describe how the Department of Justice will utilize NCETR and TEDAC?

HOLDER:

... run chiefly by the FBI, deals with the examination of IEDs that we see coming out of Afghanistan, other places. NCETER, by contrast, run by the ATF, deals with, I wouldn't want to call it the "more common," but other explosive...

SHELBY:

More prevalent, maybe?

HOLDER:

More prevalent explosive devices that we see. And I think that you're right. They have fundamentally different responsibilities, but that they complement one another. The location of them in that place I think makes a great deal of sense.

SHELBY:

Could you describe the value of collate -- locating these facilities on a large federal arsenal with lots of range of space?

HOLDER:

Yeah. I mean, I think there's a great deal of cross-pollination, the ability to talk to one another. Although, the purposes are distinct, there are certainly going to be scientific things that -- breakthroughs, perhaps, that you can exchange information by having people who are relatively close by.

I think that having the two agencies that are primarily responsible for explosives determination and prevention, and having them close by, even though they have distinct roles that have been, I think, pretty well delineated. It is good to have them there and talking to one another.

SHELBY:

(OFF-MIKE) highest per capita Ph.D. communities in science and engineering.

HOLDER:

There's a lot of smart people there. That's true.

SHELBY:

(OFF-MIKE)

HOLDER:

We'll use smart people wherever we can find them. And there are a lot there. That is fair.

SHELBY:

(OFF-MIKE) and pay for it, I guess. Attorney General Holder, the Justice Department is seeking funds this year to activate a new women's prison in Aliceville, Alabama. This prison was designated as a female-only facility based on input from your department. And it cost nearly a quarter of a billion (inaudible) prison said it was one of their top priorities.

HOLDER:

Yeah. We want to activate it. It was specially designed to deal with the unique needs that female prisoners have. We have the needed -- we have the needed -- we need to expand our capacity to handle female prisoners in the federal system.

Given the fact that the facility was specially configured for female prisoners, it would be our hope to activate it as quickly as we can, and for the use for which it was designated.

SHELBY:

Well, you've done a lot in it, and it's finished. I hope you do that soon, because to activate it, it costs hardly anything compared to what it cost to build.

HOLDER:

No. I don't disagree with that. And the need is clearly there for the expanding female population, unfortunately, that we see in the federal prison system.

SHELBY:

Be a priority for you in that area?

HOLDER:

We want to bring on-line as many of these facilities as we can. And this is one that, as I understand it, is extremely close. We're just about ready to just open it.

SHELBY:

Madam Chairman, thank you very much for taking me out of order. And I appreciate very much.

MIKULSKI:

Mr. Attorney General, I have two questions. They actually -- I had many, but will submit them for the record.

First of all, federal prisons; as I look at the department's budget, almost one-third of the Justice Department money is going into federal prisons. That amount is -- is now at \$6 billion, and it is rapidly approaching almost what the FBI budget is, which is \$8 billion.

Now, my question is, what's going on with federal prisons? Now if people are incarcerated -- first of all, we want the bad guys and gals off the street. So we want you to prosecute and incarcerate particularly where there are people who constitute a danger to our country or to our communities.

JA672

But we -- I don't know if we can sustain this growth. And then I'm concerned about once we put them in, it's a revolving door. And we keep expanding their prisons with the same people. They keep coming back.

Could you elaborate on your department's needs? But is there any recommendations you'd have to -- to begin to contain the prison population? Are we federalizing too many crimes? Is recidivism the problem?

Again, safe streets, but this is really an ever-increasing part of our appropriations.

HOLDER:

I think there are a whole variety of reasons why we see the prison population expanding. We now have about 215,000 or so people in the federal system.

That number goes up every year. It is for that reason that we consistently come back to this committee asking for additional funds for -- for BOP.

I think there are a variety of reasons why you see people coming into the system. We are good partners with our state and local counterparts, and we try to help them to the extent that we can.

And so some cases that violate both federal law and state law, and if they have very serious criminals, we bring into the federal system, if there are evidentiary rules or more harsh sentences that we can give to them.

But I think the point that you hit on that -- is something that I think we really need to focus on, is how can we rehabilitate people so that we cut down on recidivism rates?

One of the things that we have talked about is the Second Chance Act, coming up with ways in which we make available to people reentry possibilities, so that they have the chance of not being recidivists, coming up with educational, vocational, drug treatment programs while we have them in prison.

We've actually seen I think pretty good success being done by some state systems that I -- has been shared with me by the Pew Research Foundation. I think we can learn a lot from them in that regard.

MIKULSKI:

Well, Mr. Attorney General, we would really look forward to specific recommendations, where, again, we can -- we want our local and our federal law enforcement to prosecute and get bad people off the street, whether they're terrorists or whether they're terrorizing a neighborhood like some of the drug dealers in -- in some of my own communities in Maryland.

At the same time, we don't want our federal prisons to be an incubator for more crime, where the lessons that they learn when they go to prison is not to commit crimes again, but how to be better crooks. We want our prisons to teach them how to be better citizens, and then to come back to a community support system where they don't fall back into the behavior that got them.

So I'm concerned that our federal prisons are such that we need to really take a look and evaluate and learn some of these lessons.

So we want to work with you. I know you feel that way. You're very experienced in street crime, which takes me to the other.

I'm -- ultimately while you've done this fantastic job of fighting terrorism, keeping America safe, it's been stunning what our national security services have accomplished, both military and civilian.

But you know, again, I'll come back to streets and neighborhoods. You know, we have communities that face crime every single day. And when you talk to our local law enforcement, our local prosecutor's offices and so on, they feel they're under the gun.

They need Burn (ph) Grants. They need cops on the beat and so on.

Do you feel that the -- this is sufficient funding? Because in the last couple of years -- in 2010, we had \$3.7 billion that went into state and local grants.

Due to acts of Congress and so on, now we -- we're down to \$2 billion. Yet everywhere I go in Maryland, from our local police commissioners to local district attorneys or state's attorneys, as

JA673

they're called in my state, people say, "we need those Justice Department grants."

They either give us better technology. They give us tools to deal with violence against women. They express gratitude for the Lethal Index. They need you. They love having you as a partner.

Do we have enough money in the right places to do the job to protect our communities?

HOLDER:

Well, we have in the budget request I guess \$2.04 billion for state and local assistance programs; \$1.4 billion for Office -- OJP, Office of Justice Programs, about \$290 million for COPS and about \$412 million for the Office on Violence Against Women.

We think that -- this is a level that's about equal to the level we requested last year. It is lower than the numbers that you had said.

But I think that given the budget realities that we face, the amount that we have requested is strong on law enforcement. It's strong for science. It's strong for victims.

Would I like to have more money? Yes. But the realities -- the budget realities that we confront and the needs to stay within a budget in the executive branch I think have gotten us to this point.

But I think that through the provision of this money, through the technical assistance that we can also provide to our state and local partners, we can I think do the job.

I met with the Association of Attorneys General just this week. I think the partnership that we have is an unprecedented one. And I think the combination of that partnership, the sensitivity that I think we have to their needs, and the \$2 billion that we're seeking here will allow us to be - to be good partners.

MIKULSKI:

We have many questions.

So I'm going to turn to Senator Hutchison. What I would find very helpful is two things. One, if you look at your Burn (ph) Grants, cops on the beat and so on, what was the amount of money requested by state and local people to apply for those grants and what could you fund?

(CROSS TALK)

MIKULSKI:

No, my time is up. So I'd like that for the record. The second thing is the GAO report raises issues related to duplication of services. I would like to have your reaction to the GAO report on how we can streamline, get more efficiencies.

I think you're already on that road. But let me turn to...

HOLDER:

We are -- I'm sorry.

MIKULSKI:

... Senator Hutchison.

HUTCHISON:

Thank you, Madam Chairman.

Mr. Attorney General, we will have questions for the record, but I wanted to pursue this Public Integrity Unit's misconduct against Senator Stevens.

A -- the court appointed council -- after you moved to dismiss the case, the court appointed council to investigate the botched prosecution of Senator Stephens and found that the prosecutors engaged in systematic concealment of evidence, but they were not guilty of criminal contempt.

And according to the summary that was put out in the public, the full report coming later, it said that the court said despite findings of widespread and at times intentional misconduct, the special council, Mr. Schuelke, recommended against contempt charges because prosecutors did not obey -- disobey a clear and unequivocal order by the judge, as required under law.

Now Judge Sullivan said, upon review of the docket and proceedings in the Stevens case, Mr. Schuelke concludes no such order existed in this case. Rather the court accepted the repeated representations of the subject prosecutors, that they were familiar with their discovery obligations, were complying with those obligations, and were proceeding in good faith.

My question to you is, does it concern you that the only reason these prosecutors escaped criminal charges is that the judge in the Stevens case didn't file an order specifically telling the prosecutors that they should follow the law?

HOLDER:

Well, I think we have to take into account the variety of things. When I was made aware of the issues that led to the inquiry that Judge Sullivan ordered, I made sure -- I ordered that the case be dismissed.

I also ordered that an Office of Professional Responsibility report be done as an internal Justice Department, which has now been completed. It is now in its final stages of being worked through.

HUTCHISON:

Will it be made public, Mr. Attorney General?

HOLDER:

I'm hoping that we can. There are privacy interests that we have to deal with. But my hope is to get that report -- as much of the report made public as we possibly can.

It is an exhaustive study. It is hundreds of pages long. I think the people at OPR have done a good job and have made -- and there are recommendations with regard to sanctions that ought to be made. I'm hoping that we will make that -- make that available.

HUTCHISON:

I'm going to request that you do.

HOLDER:

OK. The report -- I'm not really at liberty to discuss the report that Mr. Schuelke did. We have gotten a limited number of those reports I think in the Justice Department, 10 or 15 of them. And they are under -- we are under by the judge not to discuss those.

But I've had a chance to review certainly the summary and portions of it. And some of the findings that are made there are disturbing. They were disturbing when I made the decision to dismiss the case.

We have done a lot I think since that time to come up with ways in which we try to prevent those kinds of mistakes from happening again. We have an extensive training program. We have hired somebody who is responsible as a coordinator to make sure that discovery in criminal cases and civil cases that the Justice Department is involved in so we don't fall back into those same kinds of errors.

We have talked to -- I have spoken to members of the judiciary all to make sure that what happened in the -- the case involving Senator Stevens is not -- not replicated. But I would urge everybody to understand that this Justice Department, this attorney general, when we made that determination that mistakes occurred, took the extraordinary step of dismissing that case.

HUTCHISON:

Which I gave you full for. Now let me ask you, four of the six prosecutors, according to reports, who were investigated oppose releasing the report, and their names had been redacted. I want to ask you if any of these prosecutors are still in the Justice Department system.

HOLDER:

I -- I have to check that just to make sure, but I believe all of the prosecutors who are -- were involved in that case are still in the department. I believe that's true. I'm not totally sure of that.

HUTCHISON:

Does that trouble you that there would be findings of misconduct in such a sensitive area that they would still be -- that you would not let them go outside of our justice system?

HOLDER:

Well, it depends on the nature of the misconduct, what it is that they did, the mistakes that were

made. And I think one has to look at the Shilky (ph) report that is about to be released, combined with the OPR report and the recommendations for sanctions that are contained in that OPR report, to look at what exactly should happen to these people.

Was the incident an isolated one? How serious was it? What is the nature of their contribution...

HUTCHISON:

Are you going to do that, Mr. Attorney General? Are you going to make a decision regarding people who have clearly exhibited that they do not have the integrity to prosecute in this sensitive area? Will you tell the committee what your actions are when you have made that determination?

HOLDER:

Well, the actions that we take, I don't think there is any Privacy Act interest that prevents us from sharing with the public, with this committee what actions we have ultimately decided to take against those people who are found to have been culpable.

HUTCHISON:

I'll ask that you report that to the committee. Thank you, Madam Chairman.

MIKULSKI:

Senator Brown?

BROWN:

Thank you, Madam Chair. And thank you, General, for your service. You've established a new residential mortgage-backed securities working group. Thank you for that. I want to talk in a moment about that.

But last week the -- Phil Angelides from Senator Feinstein's state, former chair of the Financial Crisis Inquiry Commission, observed that what -- what -- the number of lawyers, some 55 lawyers, investigators, and other staff of the working group I just mentioned, that that is -- that is far fewer than the 100 law enforcement professionals dedicated to the Dallas Bank Fraud Task Force during the savings and loan era.

He also suggested -- Mr. Angelides also suggested Congress should extend the statute of limitations for financial institutions fraud from five years to 10 years, as Congress did in 1989 when it passed the Federal Institutions Reform Recovery Enforcement Act after the savings and loan crisis.

And you of course are aware of the public sentiment of -- of anxiety, frustration, outrage, pick your noun, towards the fact that so few people have been prosecuted. Talk to me about the working group, the dollars you're dedicating of the \$55 million increase you're asking for. Is it going to go into the RMBS working group?

And comment, if you would, on Mr. Angelides's recommendation that the statute of limitations, similarly to 20 years ago on a, if not a similar scandal, surely a scandal, that when they -- when it lengthened to 10 years by Congress then if that's something we should do.

HOLDER:

The -- I will say first off that this whole mortgage fraud problem -- scandal that we are dealing with is something we have taken extremely seriously. We brought charges against about 2,100 people last year -- over the course of the last few years in connection with the mortgage problem. The number of people who -- I guess you mentioned there are 55 federal personnel to vote (ph) to this new the (ph) RMBS task force. That's the federal component.

But one of the things that I think is unique about that is that we're working with our state and local partners, and in particular state attorneys general. And so the number of people who are ultimately devoted to that task force will be, I think, substantially greater than that. And I suspect we will also be adding people from various U.S. attorneys offices around the country.

I think we're looking at four or five that will be intimately involved in this. So I think that number will ultimately go up. We're going to have adequate resources in terms of the numbers of people to do the job that we need to do with regard to the residential mortgage-backed securities working group.

With regard to the extension of the statute of limitations, I mean, I think that is something that I'd be more than glad to discuss with the members of this committee after I've had a chance to speak with the prosecutors on the ground to see if in fact that is something that we need.

**JA676**

We want to use all the tools that we have, and also consider any possibilities that we might want to acquire, so that we can hold accountable the people who -- and institutions -- who really had a devastating impact on our nation's economy and continue to have a lingering effect on our nation's economy, and in particular the housing market, which drags down the recovery.

BROWN:

We will -- thank you for that. And we will be following up with your office on the wisdom, hearing from your prosecutors that might be in the middle of initiating these cases or in the middle of these cases that -- the importance of that extra five years in the statute of limitations.

Let me talk for a moment about gas prices. You know, oil prices are well over \$100 per barrel. DOE and the CFTC have told us inventories of oil are sufficient. Domestic production is up. We hear that. The number of rigs has grown. The consumption is down.

All reasons that gas prices should not be going up, understanding the turmoil in the Middle East and the -- the discussion of Iran. It's my understanding that over the -- some analysts have estimated speculation may be adding 50 cents to the price per gallon of gas.

It's my understanding over the last year, DOG -- DOJ organized the Oil and Gas Price Fraud Working Group to determine the role speculators in potential price manipulation are having on the price of gasoline. What -- what have you found? What are your next steps? What can we expect?

HOLDER:

That working group continues in effect. In fact, they're having a call today to discuss the situation in which we find ourselves with regard to these rising gas prices. And the committee -- that working group itself will be meeting before the end of this week. The work of that committee or that group has been ongoing and looking to see if there are inappropriate manipulations of the market.

The FTC is also working in this area. And I don't want to speak for them, but I understand they are working no a report of some sort that we should be seeing, I believe relatively soon, but that is, again, the FTC working independently of us. But within the department, that oil and gas working group has been active. And as I said, has a call today and a meeting that will happen I think by tomorrow.

BROWN:

OK. I would like to request that after that meeting today or tomorrow, after the phone call and after the meeting today or tomorrow, that that task force brief me and other members of the subcommittee who have expressed interest.

HOLDER:

All right. To the extent we can, we will certainly do that.

MIKULSKI:

Mr. Attorney General, we really would like to see that. This is very, very, very important. We would now like to turn to Senator Murkowski.

MURKOWSKI:

Thank you, Madam Chairman. And Mr. Attorney General, welcome this morning. I want to follow on to Senator Hutchison's questions regarding the -- the prosecution of Senator Ted Stevens. I think so many of us were absolutely shocked.

We were -- I was horrified as a friend and as an Alaskan to -- to read Judge Sullivan's comments that this ill-gotten verdict not only resulted in -- in the loss of Senator Stevens losing his seat, but in his words, tipped the balance of power in the United States Senate. Pretty -- pretty powerful in terms of what the Department of Justice did to a great man.

I appreciate and I recognize and I thank you for your actions in dismissing that case and in your decision to not attempt to retry. And I join Senator Hutchison with that. But there are questions that still remain. You know that. I have a long series of them.

And what I would like to do is submit them to you today and ask that you respond to them prior to the release of the report, which is due to come out next Wednesday, the 15th of March. So I would appreciate your attention to that. I -- I have a question regarding what is happening now with the release of this report. The USA Today reported that the Department of Justice has spent \$1.8 million in defending prosecutors from allegations that they broke the law in the Stevens prosecution.

**JA677**



And Senator Grassley was -- was one who mentioned that it seems like this is an unseemly high amount of money being spent by the taxpayers to defend what appears to be egregious misconduct.

And again, Senator Hutchison has noted the words that Judge Sullivan used in his order saying that the report demonstrated significant, widespread and at times intentional misconduct by the prosecutors.

Now, I understand that the \$1.8 million went for attorney's fees to defend the actions of the justice department prosecutors who are under investigation for contempt by the counsel appointed by Judge Sullivan.

The report of that counsel again is -- is due to be released on the 15th.

In addition to spending taxpayer money to defend your attorneys, did the taxpayers also pay for the attorneys to argue that the contents of this report should not be publicly released?

You have stated that this is a matter that -- that has risen to a level of -- of public attention. So if you can answer that question for me and also whether the justice department supports the merits of the appeal that has been raised by Mr. Edward Sullivan, who is one of the prosecutors, who has asked the U.S. Court of Appeals for an emergency stay to prevent the release of this report next week.

So the question is whether you support the merits of that appeal and -- and, again, whether or not the taxpayers are on the hook to -- to pay for his attorneys to argue that this report should be kept from the public.

HOLDER:

Yeah, I -- I don't think we take any position with regard to the -- with regard to what he has said about his desire to keep the report sealed. But we -- the justice department has indicated that we do not object to the release of the report.

I think that given the issues that we found there, the -- the magnitude of the case and -- and, frankly, the magnitude of the errors that led me to decide to dismiss the case that there is a legitimate public interest in knowing as much as we can about what happened, why it happened, what steps the justice department has taken in connection with the -- these findings of -- of -- of misconduct.

MURKOWSKI:

So is the justice department paying for his attorney's fees in this matter to keep this from -- from being made public?

HOLDER:

I don't know about him specifically but I do know that as a result of the charges that were brought against them, I -- I think the determination was made that there would be a conflict of interest for the justice department to defend them, which would be typically how we would do it.

And they were therefore allowed to get outside counsel and under the regulations the justice department then pays for those legal representations, which has happened in a variety of cases, a variety of circumstances when attorneys general have been -- had lawyers who have been reimbursed by -- by the government.

I'm hoping I won't have to do that but other attorneys general have done that.

MURKOWSKI:

So -- so even -- even now that the independent counsel that Judge Sullivan had appointed, even though that counsel has found that members of the -- of the Stevens prosecution had engaged in significant, widespread and at times intentional, again, intentional misconduct, does -- does the government have any recourse to recover the funds that have been paid for their attorneys -- for their attorneys' fees when they have engaged in intentional misconduct?

Now, you mentioned in your comments to -- to Senator Hutchison that after the -- the -- the Office of Public Responsibility report that there may be sanctions that -- that we will see.

But is -- is there recourse? Are you pursuing any recourse? It -- it seems to me that in an instance like this where it has been made clear that the intentional -- that the conduct was intentional, that it was substantial and it was widespread, that we should not be defending and paying for the attorney's fees to -- to -- to again allow these individuals to -- to conduct such

JA678

(inaudible).

To learn that they're still within the Department of Justice doesn't give me much confidence.

HOLDER:

Well, I mean, this certainly -- one of the things that I think happens is that because the justice department can't represent these people and they have their own views of what happened, they want to be able to explain with -- with counsel, defend themselves.

That is why their -- the expenditure of money actually occurred. And that is why they were allowed to get outside counsel.

And as I said, that has happened, not frequently, but it's certainly happened in -- in the past. And we acted in, with regard to them, as we have done in the past with regard to the retention of -- of outside counsel.

MURKOWSKI:

I would think that \$1.8 million to go to defend these attorneys who have engaged in intentional misconduct is -- is just stunning to me. I'd like to think that there could be some recourse.

Madame Chairman, I'm well over my time. I thank you for your indulgence.

MIKULSKI:

It was important that you have the opportunity to pursue, completely pursue your line of questioning.

To me, the situation that has been presented by you and Senator Hutchison reminding the committee is deeply troubling. We must have public integrity.

We also must have an independent judiciary. We have to have, regardless of which party is in the White House, a justice department that we believe in and that the American people believe in.

So I know the attorney general will be responsive and then we'll take it from there.

HUTCHISON:

Madame Chairman, I just want to thank you for those comments and agree wholeheartedly.

And I do think the attorney general took a major first step when he dismissed the case. That was huge. But now we must follow up so that there is no question that the people who did this and the report with show whatever it shows, that they're not able to prosecute ever again, ever.

MIKULSKI:

Thank you.

HUTCHISON:

Thank you.

MIKULSKI:

Senator Pryor?

PRYOR:

Thank you, Madame Chair.

And Mr. General, welcome to the committee. Thank you for being over here.

I just want to add my voice to something that was said earlier about prison overcrowding. And I could go through the facts and figures on that but you know those better than any of us do.

It's just a -- a real concern. And we have a -- one of the prisons that's on the short list is actually in Arkansas and back in 20 -- in FY2010 it was scheduled to be funded in 2014.

Well, now it keeps getting pushed back, now it's 2018. So it's just an example of us not being able to get to some of the real needs that we have.

So I know I'm not alone in that. So I just want to voice my concern there.

**JA679**

Let me ask about sequestration. I don't believe anyone's had a chance to ask about sequestration. And I'm curious about what in the justice department you all perceive will happen to the DOJ funding if sequestration does in fact take place.

And what plan -- what steps you're taking to, you know, address that?

HOLDER:

Well, I certainly hope that's something that we don't have to face.

And as we look at it, we -- we're -- we'd be looking at an across-the-board cut of about 7.8 percent, which would mean a cut of about \$2.1 billion.

No justice component would be exempt from those -- those cuts. And from an operational perspective I think we would have to cut funding and non-personnel funding.

We are estimating that we'd have to furlough all position types including agents, federal agents, FBI agents, DEA agents, ATF agents and attorneys who try cases, investigate cases for an average of about 25 days.

We'd have to lose permanently a pretty substantial number of -- of -- of jobs. And this would have -- this across-the-board cut would have a devastating impact on the justice department's ability to protect the American people, to do investigations.

It would be something that would -- would -- would just simply be devastating. And my hope would be that Congress will find a way to avoid this sequestration, which just from my own parochial interests, which I think actually are the nation's as well, to really avoid the -- the very negative consequences that could have a permanent impact on -- on -- on our well-being.

PRYOR:

And so you -- you mention these furloughs but I assume also you'd -- you'd have to suspend the funding of all kinds -- many of your programs that help local and state law enforcement agencies.

HOLDER:

That's an excellent point. I mean the collateral consequences -- the consequences are not restricted to simply what happens to the justice department here in Washington and in our field offices.

Our -- our ability to be good state and local partners would certainly be impacted by the reduced amounts of money that we'd be able to share with our -- our state and local partners in terms of grants, cops on the beat.

It would be a devastating thing for this to happen.

PRYOR:

And let me ask about personnel here for a second, little different context.

The John R. Justice Program, there are right now about 1,600 prosecutors and about 1,200 public defenders I believe in last fiscal year that received assistance under that program to help them pay off for student loans, et cetera.

But this budget, as I understand it, that's been submitted does not have funding for that program this year. So I guess, you know, my concern there would be that we want the best and the brightest out there trying cases and, on both sides, again this is public defenders and prosecutors and our criminal justice system, it's critical that we have good representation on both sides.

And I'm afraid that we're going to lose a lot of talent if we don't have a program like this. And I was wondering if you share that concern, and what you -- what steps you think we can do to try to keep the best and the brightest, you know, coming onboard?

HOLDER:

No. I do share that concern. We want the best and the brightest to come and take what are low-paying jobs on the prosecution side, on the defense side. These kids -- these younger people -- I guess I can call them kids now -- out of law school and -- with enormous amounts of debt.

And I don't want them to make career choices based on how they're going to repay those loans,

**JA680**

as opposed to following their passions and take their great skills to become members of the Justice Department, state and local prosecutors offices or, on the other side, to be good defense attorneys.

And that is one of the things that I am concerned about. So, you know, we have a tough budget. And you're right that money is not there to the extent that it was in the past.

And so to the extent that we can work on ways in which we come up with creative things to do to make sure that those career decisions, especially those first job career decisions by people coming out of law school, is not a -- is not a function of their financial concerns, but really is a function of how they want to help build a better society.

PRYOR:

Thank you. And Madam Chair, I don't really have time to ask another question. But I would like to just make an observation.

The -- the chair of the subcommittee here yesterday took a leadership role in a cyber security exercise in a classified setting. And we appreciate her leadership on that, and getting all of us to go and participate in that. It was very informative, very interesting.

And I know that the Department of Justice has been very involved in what's going on with federal government cyber security issues, and all the task force and everything you're working on. But I also hope that you will not neglect the private sector, but -- as well as state and local -- you know, the state and local governments, because they have a role to play in this as well.

HOLDER:

That's exactly right. This is not something that the federal government can handle by itself. This is a national security issue certainly. But it's also an infrastructure issue which involves our state and local partners.

And then one looks at just the amount of theft that occurs, intellectual property theft in particular, so that the private sector has to be involved as well. We have to come up with mechanisms, means by which all of those various components talk to one another, if we ultimately want to be successful in what I think is the most pressing thing that we're going to be facing in -- in the coming years.

PRYOR:

Thank you. Thank you.

MIKULSKI:

Thank you, Mr. Attorney General.

I want to go back to the excellent question Senator Pryor raised about the impact of sequester. Could we have that answer in more detail in writing, so that everybody would have a chance to study it and go over it in programs and so on, so we can really grasp the full consequences?

HOLDER:

Definitely.

MIKULSKI:

I'd now like to turn to Senator Graham.

GRAHAM:

Thank you, Madam Chairman. I'd like to add my vice to what you just echoed and Senator Pryor, that sequestration, as it is set up, would devastate the Department of Justice, our ability to defend ourselves and destroy the military. And surely to God, we can find a better way to do it than that.

So I think you're dead-on. This is just an ill -- ill-conceived idea of cutting money blindly, in my view.

Now, you're were in South Carolina a couple days ago? Is that right, Mr. Attorney General?

HOLDER:

Yesterday.

GRAHAM:

**JA681**

Yesterday. Well, we glad to have you. Hope you spent money while you were there.

HOLDER:

I did.

GRAHAM:

Good, good. But the National Advocacy Center in Columbia you visited -- what would you tell the committee about the National Advocacy Center in terms of being of value to the nation?

HOLDER:

It is an invaluable resource for us...

GRAHAM:

Did you all hear that? OK. I'm sorry. Go ahead.

HOLDER:

No, I mean it is. It is an invaluable resource for the training that goes on in the Justice Department. It is one that, you know, I -- I think could actually be expanded.

I'm concerned that we're not interacting with our state and local partners to the extent that we once did in doing training with them. We're trying to bring into the advocacy center people from the defense side as well.

It's where people learn to be good trial lawyers, learn a variety of skills, learn their ethical obligations in addition. It's an invaluable resource.

GRAHAM:

Well, we appreciate your visit. And it'd be a place where -- you know, cyber security is the -- probably the issue of the 21st century. And whether it's a crime, an act of war, it depends I guess who's involved, but a lot of local law enforcement folks probably have no idea how to handle this. And it would be a good way to kind of educate the country as a whole.

And the collaboration between the University of South Carolina and the NAC I appreciate. And I want the committee to know that we took about 200 or 300 Department of Justice jobs out of Washington, because after 9/11, we were worried about having every part of our government in one city.

And we moved those folks down to the South Carolina and Columbia. And you leased a building from the university. It saved about \$35 million. So I just want to applaud you for trying to be creative, to decentralize DOJ, so in case we're attacked here, we don't lose all of our -- all of our national assets.

And it was a way to save money.

HOLDER:

We also have that relationship with the university about the rule of law component as well. And I think that's been a good synergy.

GRAHAM:

To my colleagues, I've been to Afghanistan and Iraq, like many of you. And we're trying to develop a rule of law program in Iraq, Afghanistan, Africa, you name it, without some basic rule of law no country can develop. And all the lessons we've learned the hard way, from making mistakes but finally getting it right, in many ways, we're trying to create a center at the University of South Carolina where those who have been overseas can share their thoughts about what worked, what didn't.

You could train before you went. Department of Justice, Department of Agriculture, Department of Defense, this is a team. This war requires a team concept.

And we're trying to reach out to the Islamic world and create partnerships with lawyers and attorney generals and judges in the Islamic world, so we can understand them better and they can understand us.

And I'm excited about it and I appreciate your support.

Now, Justice Scalia came out yesterday or the day before talking about -- he thought it would be wise if we looked at our Federal Criminal Code, particularly in the drug area, and see if we could

reform it.

I think he's right. I think we've federalized way too many crimes, creating work for our judiciary that could probably be better handled at the state level.

And what do you think about the idea of revamping the Federal Criminal Code and looking at maybe undoing some of the over- federalization?

HOLDER:

I've asked -- when I came into office, I've set in place a number of working groups to look at that problem, that issue. Are we bringing the right people into the federal system? Are the sentences that we have for the crimes that are federal ones appropriate?

GRAHAM:

Like crack cocaine, and we finally fixed that. But that was just sort of an -- an indefensible sentencing disparity.

HOLDER:

Right. I think the bipartisan effort that resulted in the lowering of that ratio from 100 to about 16 to one was -- was something that was long overdue and I think was a great example. People don't focus on it, but it was an example of, you know, Republicans and Democrats getting together and doing the right thing, not only for the system, but something I think was morally right as well.

GRAHAM:

And an area where we may disagree, we'll talk about the law of war later. We don't have time here. But the recess appointments made by President Obama a while back to the NLRB, is there a situation similar to that in the history of the Senate, or by a previous president, of appointing someone to a federal agency under those circumstances that you're aware of?

HOLDER:

Well, I mean, if you look at the 23-page, I think it is -- 23-page report by the Office of Legal Counsel, they go through a variety of precedents. They look at the laws that exist, tradition.

And the conclusion that they reached was that given the length of the -- of the recess, 20 days or so, that the appointments were, in fact, appropriate. This is obviously something that the courts are going to ultimately decide, but, I think that the OLC opinion was accurately -- accurately described.

GRAHAM:

I think Senator Alexander will have a discussion with you about that. But I take a different view. But I'll let him discuss that with you.

Finally, just to not, I think maybe it was last week we had a plea bargain with a military commission detainee who was one of the KSM close confidants. And I know Mark Martins is the chief prosecutor, and you've got a good defense team down there.

I do support Article 3 courts for terrorism trials when appropriate. But I just want to acknowledge your support for military commissions in appropriate circumstances.

And with your help, I think we've got these things up and running. And I look forward to more action coming out of Guantanamo Bay to get some of these people through the legal system.

So thank you for that support. And to all those at Guantanamo Bay doing their job, you're going a great service, particularly the defense counsels.

HOLDER:

I think that's right. And I think people should understand that when I sent people down for military commission treatment, that revised commissions that exist, as I said in my speech at Northwestern, have many of the elements of due process that we consider vital to the American system.

I think we have great defense lawyers down there. The military system doesn't get the credit that it deserves for the fair way in which it deals with people. And under the direction of Mark Martins, who's a person I've known for, you know, some time, I think you'll be proud of the work they do.

MIKULSKI:

**JA683**

Thank you very much, Mr. Attorney General. We're now going to turn to Senator Feinstein. Before Senator Pryor leaves, I thank you and others for mentioning the cyber exercise yesterday, and all who participated. Next week we're going to hear from the FBI, and we're going to do an open hearing, and then we're going to do a classified hearing. You'll get -- this would be an opportunity to ask many of your cyber questions and go into the level of detail I think the committee would like. Thank you.

Senator Feinstein?

FEINSTEIN:

Thanks very much, Madam Chairman. And welcome, General. I want to associate myself with the comments of Senator Murkowski and Senator Hutchison. To me, the tragedy is that Ted Stevens died before he knew this was a faulty prosecution. And that to me elevates this to a new low -- a new height. And so I think this investigation is really important. And I think that actions have to be taken. And I just wanted to express that.

I wanted to follow up on Senator Brown's comment. It's my understanding that more -- there's more oil available in the United States than demand calls for. And as a matter of fact, surplus is being sold outside. This, I think, would bring to special attention the issue of speculation. And I hope the study that you're doing is going to take a good look at the financial marketplace with regard to its ability to impact price in this way.

HOLDER:

Well, as I said, the oil and gas working group that we formed last year as part of the president's Financial Fraud and Enforcement Task Force has been meeting. It just happens that they are having a call today, a meeting. I think either tomorrow or on Monday the full committee will be getting together to look at the issues that you've raised and the issues that Senator Pryor raised.

FEINSTEIN:

Good. Thank you.

As you know, Title VII of the Foreign Intelligence Surveillance Act expires at the end of the year. This allows for electronic surveillance of targets outside the United States. Senator Mikulski and I both serve on the Senate Intelligence Committee, and we've done extensive oversight of the government's use of these surveillance authorities, and look forward to working with you to make sure Congress can reauthorize Title VII well before the end of 2012.

We need to maintain the collection of critical foreign intelligence and provide certainty to intelligence professionals in that regard. For members of this committee that don't follow this issue closely, could you explain the need to reauthorize Title VII of FISA, and the efforts taken to protect the civil liberties and privacy of Americans as this title is carried out?

HOLDER:

Well, the surveillance authorities that are in the FISA amendments act are absolutely critical to our national security. On a day-to-day basis I authorize, FISA's head of the National Security Division does, sometimes the deputy attorney general. It is a critical tool that we have in keeping the American people safe.

And so the administration strongly supports the reauthorization, and as you indicated, hopes that it occurs well before the end of the year so that the certainty that is needed by the men and women who are in our intelligence community will have some degree of assuredness that those tools will remain there and that our fight against those who would do harm to the United States can continue.

FEINSTEIN:

Thank you. I also want to thank you for your enormous help and the help of the FBI with respect to national security. The FBI now has some 15,000 people located around the United States essentially doing intelligence work. So that transition has been effectively made.

Director Mueller at our worldwide threat hearing indicated to us that in the past year there have been 20 arrests in the United States of people in this country planning or participating in attempted terrorist attacks. And as you mentioned in your recent testimony, Umer Farooq Abdul Muttalib was recently sentenced to life in prison.

Now, I also want to say that even though its specific activities are classified, in your written testimony you mentioned the High-Value Detainee Interrogation Group, or the HIG, as we call it. I can say that we've seen the excellence -- excellent intelligence the HIG is producing. And earlier this week, also four principal members of hacking groups, Anonymous and LulzSec, were charged with computer hacking, and a fifth member plead guilty.

Now to my questions. It's two-fold. I think we have to begin to look for redundancy and duplication of effort. We now have a counter- terrorism center. We now have Homeland Security with intelligence. And we also now have the FBI. And so I hope you will take a look at that because the dollars are precious and we're already experiencing cuts in the intelligence budget.

And so here's my question. What are in the national security area your budget reductions? What will that mean for counter- terrorism, and are there any gaps in our efforts?

HOLDER:

I don't -- I think that we have adequate amounts of money contained in the budget that we have requested.

If you look at the amount of money that has gone to the FBI for -- in the national security sphere, I think since 2001 we've had about a 300 percent increase -- it might be even more than that. I mean, 300 percent I think for the Justice Department. For the FBI it might have been about 400 percent. So I think a really substantial increase over the course of the last 10 years or so.

And even with the flat budget that we essentially have for the Justice Department and its components, including the FBI, I think we have adequate amounts of money to keep the American people safe. And I will tell you that to the extent that I feel that is not the case, my voice will be heard. We have no greater responsibility than keeping the American people safe.

FEINSTEIN:

Good. Thank you very much. Thank you, Madam Chairman.

MIKULSKI:

Senator Feinstein, we look forward to working with you on that part of it.

Senator Alexander?

ALEXANDER:

Thanks, Madam Chairman. And General Holder, welcome. It's good -- good to see you. I was thinking about a conversation we had during your confirmation about Griffin Bell, for whom you worked. And I know you admired him. And I certainly admired him.

I was a law clerk on a court when he was judge. And one of the things he used to say, and which I've heard you say I think too, is that the attorney general is the lawyer for the United States, not just the lawyer for the president.

So following up Senator Graham's comment on the so-called recess appointments, I wanted to ask you a question as the lawyer for the United States. If the -- if the president called you up and said, "General Holder, I notice that the Senate's gone to -- gone into recess for lunch. I've got a Supreme Court nominee I want to appoint. Can we put him on the court without their advice and consent?" what would your answer be?

HOLDER:

Gone to lunch? That would not be a sufficient recess.

ALEXANDER:

Well, what if he said they're going to lunch -- they're going to recess for lunch and for dinner and they won't be back until tomorrow? Would that be a sufficient recess?

HOLDER:

Well, I mean, I think what we're getting at -- if you look at the OLC opinion, there would be...

ALEXANDER:

No, I'm asking in your opinion, Mr. Attorney General.

HOLDER:

Well, I associate myself with that OLC opinion.

ALEXANDER:

Does that mean you agree with it?

HOLDER:



With the OLC opinion? Yes.

ALEXANDER:

You do agree with it?

HOLDER:

Yes.

ALEXANDER:

Then -- then that means that the president, not the Senate, can decide when it's in session for purposes of a -- of advice and consent?

HOLDER:

Well, I think one has to look at the reality, the totality of the circumstances in determining whether or not the Senate is actually in session as that term has historically been used. And the determination made by OLC was that given the...

ALEXANDER:

Well, if we look at that, Mr. President, was your deputy solicitor wrong when he told the Supreme Court in a letter that -- two years ago -- that the Senate may act to foreclose recess appointments by declining to recess for more than two or three days at a time?

And was Senator Reid wrong in 2007 when he -- when he really devised the plan for pro forma three-day sessions because he said he heard that President Bush was about to make recess appointments?

Senator Reid said on July 28 -- well, November 16, 2007, "With the Thanksgiving break looming, the administration has informed me they want to make several recess appointments. As a result, I am keeping the Senate in pro forma to prevent recess appointments until we get back on track."

And the next year he said, "We don't need to vote on recess. We'll just be in pro forma session. We'll tell the house to do the same thing. President Bush didn't like it, but he respected it." So are you saying that the president, not the Senate, can decide when it's in session for purposes of a recess appointment?

HOLDER:

I think one -- what we have to do and what we have done in this OLC opinion is look at history, look at precedent, look at the law, use some common sense when it comes to the approach of whether or not the Senate is actually in session...

ALEXANDER:

Well, was Senator Reid wrong?

HOLDER:

Well, the determination that we made here was that with regard to those -- that 20 days in which those pro forma sessions were occurring, that those were in fact...

ALEXANDER:

The Senate had decided it was in a three-day session, according to the Reid formula. So was Reid wrong about that?

HOLDER:

Well, I have -- I'd have to look at exactly what occurred during that three-day period. But given what the facts that were presented to the -- to OLC in this instance I think that the determination that they made was -- was correct.

ALEXANDER:

So the president may not -- so I -- I don't see why the president couldn't look at the Senate and say I'm gonna send up a Supreme Court justice and I -- I'm gonna skip advice and consent.

I -- I -- I'm astonished by this really. And -- and I would think Democratic as well as Republican senators would honor the Reid formula that President Bush honored.

The Senate did the very same thing in January and the president nevertheless made four appointments during a time when constitutionally he shouldn't have, according to all the

JA686

precedent that I've seen.

HOLDER:

The only thing I'd -- I'd -- I'd correct is that the determination was not made by the president. The determination was made by the Office of Legal Counsel and then shared that information with the president and the president made the decision as to what he wanted to do...

ALEXANDER:

He made the decision not to -- not to respect the Senate's decision about when it's in session or when it's not, which to me is a blatant lack of regard for the constitutional checks and balances and something that we ought -- ought to avoid.

May I -- may I ask quickly a question? Last year the department found money to support the work against methamphetamine. And -- and I compliment the department for that and I know it's getting increasingly harder.

In our state we have the highest number of meth lab seizures in the nation. The money's running down; the state's increasing its funding.

Will the department again be able to try to help states that are working on this, as you were able to do last year?

HOLDER:

We are certainly going to try to do as -- as best we can. I know one of the things that we have certainly seen with regard to the cleanup of meth sites that there have been a number of these container activities.

And I think, as I believe, I think this is right that Tennessee's actually a leader in -- in -- in that effort.

ALEXANDER:

Yes.

HOLDER:

And there have been a number of states that have come up with things and instead of it costing, I don't know, \$300, \$400, \$500 to do that, it actually comes down to \$20 or -- or \$30 and I think the -- the experience that we have seen there is something that we have to extrapolate and use in other parts of the country as well.

ALEXANDER:

Thank you, General Holder.

Thank you, Madame Chairman.

MIKULSKI:

Senator Lautenberg?

LEAHY:

No, I think...

MIKULSKI:

Oh, I'm sorry, Leahy. A little rock and roll in here today, Senator -- first of all, Senator Leahy, the chair of the Judiciary Committee. Excuse me, and then Senator Lautenberg.

LEAHY:

Thank you, Madame Chair.

Attorney General Holder, good to have you here. I -- if I could just follow up a little bit on what my good friend from Tennessee, Senator Alexander, said on the recess appointments.

I -- there is an easy way out of all this but it will require a little cooperation on both sides. And I suggested this in the Judiciary Committee that the president resubmit the nominations and the Republicans agree to have an up or down vote, say, with a week or two weeks.

The president did this because even though he'd had -- and we knew there was more than 50 votes, which is normally what it takes to confirm somebody available.

**JA687**

My friends on the other side of the aisle were blocking having a vote. I understand the president's frustration. But I think the easy way out of this is simply if the Republican leadership would agree to an up or down vote, say, within a week or two weeks, whatever amount of time needed for debate and resubmit them as an up or down vote.

That takes care of all of the problem. I just would suggest that as an easy way out. It's not as -- it's not as much fun on the -- on the talk shows but it helps the government.

Now, Mr. Attorney General, the department, your department administers many crucial grant programs that help victims and law enforcement including ones that I've been very heavily involved with, Violence Against Women Act programs and, you know, Senator Crapo and I have a reauthorization bill on the -- the cops grants, the (inaudible) partnership program.

The Government Accounting Office has said that there is (inaudible) and duplications and inefficiencies in some of the grant programs.

Will your department work to make sure there are -- if there are any duplications that they be removed and that we -- we go forward? Because these are good programs but there's only so much money to go around.

HOLDER:

No, I mean, that's exactly the problem that we have. We have to make sure that as the limited amounts of money to go around and we have to make sure that there's not duplication.

Managers from OJP, from cops to Office of Violence Against Women regularly meet to coordinate their -- their programs, their activities. And I think that one thing that you should -- people should not assume is that because you see the word victim in a number of things that we do in the department that necessarily means that the money is being -- is being -- that we're duplicated efforts there.

They have very distinct responsibilities. But we are working to make sure that the -- the money that we have is being used in an efficient and appropriate way.

LEAHY:

And one of the -- one of the things I'm very proud of from my time here in the Senate is a bill that I wrote with then Senator Ben Nighthorse Campbell on bulletproof vests.

So much so that I walked down the street in Denver, Colorado, a year or so ago, a police officer came up and asked if I was, you know, who I am and I said yes. He just tapped his chest and said thank you.

But we've been told by the GAO that there's some funds that have not been obligated on the bulletproof vests partnership grant program, law enforcement, especially in the smaller communities where they do not have the budget to buy the bulletproof vests, which require \$600.

Can you check to make sure these -- these funds are de-obligated or are -- are obligated as quickly as possible?

HOLDER:

Yeah. I mean to the extent that funds were not drawn down, we are taking steps to allow jurisdictions to use those -- that unused funding and have the time period with which they could draw down extended so that we can get these bulletproof vests out to these officers.

LEAHY:

And I would reiterate what I had told you when we chatted earlier this week when I was in Vermont about your -- your speech earlier this week regarding drones and targeting of U.S. citizens.

I still want to see the Office of Legal Counsel memorandum. And I would urge you to keep working on that. I realize -- I realize it's a matter of some debate within the administration but...

HOLDER:

That would be true.

LEAHY:

Please keep my staff and me updated on the progress of the review of the NYPD surveillance of Muslim Americans.

JA688

HOLDER:

We will.

LEAHY:

And lastly, I wrote to you and the secretary of homeland security, Janet Napolitano, to encourage you to hold marriage-based immigration petitions for same-sex spouses in abeyance and why the administration's decision no longer depends, the Constitution now -- the Defense Against Marriage Act, part of it may be granted individual cases.

I hope you will reconsider the administration's position. We have a case I've written to you about, Frances Herbert (ph) and (inaudible) who were married in Vermont who (inaudible) number of states where same-sex marriages are legal.

But then they run up against the immigration problem so please review that.

HOLDER:

I will look at that case and we'll get back to you, Senator.

LEAHY:

Thank you.

Thank you, Madame Chair.

MIKULSKI:

Those were excellent points, Senator Leahy. Thank you very much.

Senator Lautenberg?

LAUTENBERG:

Thanks very much, Madame Chairman.

Welcome, General, Attorney General Holder. The job doesn't seem to be getting easier and I'm not blaming you. I'm just sympathizing and...

HOLDER:

Good observation.

LAUTENBERG:

Not so much that I -- I won't ask for more because we're doing with -- with less.

And we see it in my state of New Jersey, 246 gun murders in 2010, 12 percent more than the previous year. We've had layoffs galore and from cities that can't afford to maintain their police force structure.

So when I -- I look at things that we're -- we're doing, I worry about what it is that we can do to, from your department and from others, what can we do to help these communities?

State budget cuts have caused Newark, Camden and other cities in New Jersey to cut their police forces at an alarming rates; a third of the police force in Camden, over 100 terminations of police officers in Newark.

December, I wrote asking if you would provide federal resources, could provide federal resources to assist our ailing cities. And I am pleased, General, to see an increase in the budget for COPS grants. Is the Department of Justice planning other steps that we can use to help protect New Jerseyans from violent crime?

HOLDER:

Well, we're certainly making sure that in terms COPS grants, we do the best that we can there. I think we have a substantial amount of money in the -- in the budget. I know that -- I just spoke to the mayor of Camden. I was at a reception this -- saw her.

We have certainly, with Camden, I guess 20011, made available moneys to hire 14 officers, \$3.79 million; 2010, 19 officers, \$4.2 million. And we'll be looking at that kind of unique situation again this year. We certainly are putting into New Jersey, and in other places, task forces, so that a DEA, the ATF, the FBI are helping to the extent that we -- that we can as well.

**JA689**

There are a variety of ways in which the federal government can help, given the economic situation that many cities around the country are facing. And we want to be good partners in that way. But Camden is a place that I think is -- deserves special attention, given the unique problem that we see there.

LAUTENBERG:

Can I ask -- ask your view on whether or not you think we're doing enough between your department, the FBI, our state and local police -- police -- police people? Are we doing enough, based on what we see with the statistics? Do you think that we're doing enough to say honestly that we're protecting our people appropriately?

HOLDER:

Well, I mean, I think that we are -- you know. We have crime rates that are at historic lows, 40 and 50-year lows. And yet, I'm still troubled by the number of police officers, for instance, who have been killed in the line of duty in the last two years, where we have seen a 16, 20 percent increase there. And that, I think, is something that we have to work on.

I'm concerned about the fact that although the numbers of murders are -- are down, 67 percent of them occur by people who are using firearms. I think that's an issue that we have to deal with. Too many of the wrong people have access to guns. They use them in inappropriate ways.

And the targets of many of those people are law enforcement officers who are sworn to protect us. And we have to do everything that we can to try to protect them.

LAUTENBERG:

Well, the wrong people or wrong laws. The man who shot Congresswoman Giffords last year used a gun with a high capacity ammunition clip to kill six people, wound 13. It was only when he fired all 31 rounds in his clip that people were able to subdue him.

And these high-capacity magazines were banned by Congress until 2004. Last year you said that you thought reinstating this ban should be examined. What's the result of that examination?

HOLDER:

Well, we are still in the process of working our way through that. I mean, I think there are measures that we need to take. We need to be reasonable, understanding that there is a Second Amendment right with regard to firearms. But even the descent in Heller case indicated that reasonable restrictions can be placed on the use of weapons.

And I think what this administration has tried to do is to come up with ways in which we are respecting respecters of Second Amendment, and yet, come up with reasonable, appropriate firearms laws that will ultimately protect the American people.

LAUTENBERG:

Madam Chairman, your indulgence for one more question, please.

Over the past several years, the New York Police Department has been engaged in surveillance of New Jersey's communities and universities, searching for those who might be accused of terror. Governor Christie, New York Mayor Cory Booker, both -- each, apparently unaware of this large-scale investigation.

How can the law enforcement agencies spy on another state's residents without notifying the authorities, the governor, the mayor even knowing about it?

HOLDER:

I don't know. We have -- we're in the process of reviewing the letters that have come in expressing concerns about those matters are -- there are various components within the Justice Department that are actively looking at these matters.

I talked to Governor Christie, actually. I saw him at a reception I guess a couple days or so ago. And he expressed to me the concerns that he had. He's now publically expressed his concerns, as only he can. And I think at least what I've read publically, again, just what I've read in the newspapers, is disturbing. And these are things that are under review at the Justice Department.

LAUTENBERG:

Thank you, General Holder. Thank you, Madam Chairman. I assume the record will be kept open.

JA690

MIKULSKI:

The record will be kept open for questions. And we then ask the department to respond within 30 days. Senator may -- senators may submit additional questions. We ask the department to respond within 30 days.

Before I recess the committee, I'm going to conclude the hearing the way I began. As I listened to the questions, the answers, we looked at the budget, in the short time that we have to review, I want to end the hearing the way I began, which is to thank the men and women who work at the Justice Department.

I've been on this subcommittee a long time. It's been a great blessing, and a great honor. And when I think about it, the way the scope and complexity of what our citizens and our country face, and what our Justice Department faces, it's an amazing job; from community safety, to national safety, just the -- in the last decade, the expansion in the national security portfolio.

And the transformation of agencies, the FBI is not, you know, your J. Edgar Hoover's FBI anymore. So for everybody who works, everybody's out on the street, everybody's tracking sexual predators, everybody who's doing their job, prison guards, and all the wonderful support staff, that's the paralegals, secretarial staff, the admin staff, et cetera, we're just going to say thank you. I think our country's safer because of your work.

And we have to look out for our civil service, because we need an independent judiciary. We need a Justice Department that functions with absolute integrity. But we, who fund the appropriations, need to know that if we're going to have a Cracker Jack civil service, we have to also support that Cracker Jack civil service.

So thank you, and God bless you, and God bless America. The subcommittee stands in recess until March 15th, next Thursday, at 10 o'clock. We will take the testimony, the director of the FBI, in both an open, and then also a classified hearing. The committee is in recess.

HOLDER:

Thank you, Madam Chair.

CQ Transcriptions, March 8, 2012

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### List of Panel Members and Witnesses

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SEN. PATRICK J. LEAHY, D-VT.

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WITNESSES:

ATTORNEY GENERAL ERIC H. HOLDER JR.

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**JA692**

# **Exhibit 19**

## **to the Declaration of Colin Wicker**

**JA693**



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## TRANSCRIPT

### Senate Select Intelligence Committee Holds Hearing on Worldwide Threats

January 31, 2012

#### FEINSTEIN:

The Senate Select Committee on Intelligence meets today in open session for our annual worldwide threat hearing.

This hearing provides the intelligence community with an opportunity to present to the nation its views of the threats and challenges we face and for the committee to ask questions of our intelligence leaders in public.

Today is also an opportunity to take stock of what has happened in the last year and what we can expect for 2012.

Before looking ahead, I want to congratulate the leaders of the intelligence community before us today and the tens of thousands of civilian and military intelligence professionals they represent. Through their efforts, 2011 was a year of numerous major intelligence successes, including, first and foremost, the operation that located and killed Osama bin Laden.

This past year also saw the removal of top terrorist leaders, plotters and recruiters, including Anwar al-Awlaki in Yemen; Al Qaida's linchpin in Pakistan, Aiyah Abd al-Rahman; and numerous others, resulting in the disruption of specific terrorist plots and casting into disarray Al Qaida's senior leadership.

Closer to home, since our hearing last year, there were at least 20 individuals arrested in the United States on terrorism-related charges in 17 different investigations, which stopped them from carrying out or assisting in attacks on the homeland. In the interest of time, I will put a list that describes each of these arrests in the record.

Arrests like these are the product of coordination between the FBI, other intelligence agencies, the Department of Homeland Security, and state and local law enforcement units throughout the country.

Also, in 2011 the Drug Enforcement Administration, the DEA, the Federal Bureau of Investigation, the FBI, and the Central Intelligence Agency, the CIA, and others combined to identify and thwart an Iranian plot to kill the Saudi ambassador to the United States, a plot so unusual and amateurish that many initially doubted that Iran was responsible. Well, let me state for the record, I have no such a doubt.

Finally, the intelligence community supported countless United States national security and foreign policy actions, including the war in Afghanistan, the drawdown in Iraq, the NATO-led mission in Libya that removed dictator Moammar Gadhafi, the implementation of sanctions on Iran over its nuclear program, the interdictions of weapons of mass destruction shipments, and many, many others.

Despite the successes, the threats to our nation remain serious, and in many ways more difficult to understand and even address than in years past.

The intelligence community's statement for the record, which is posted on the committee's website and will be summarized by Director Clapper, describes these threats at length. Let me address just a few points.

Terrorism. We are all familiar with the continuing threats posed by Al Qaida affiliates in Yemen and Somalia, AQAP and al-Shabaab, as well as that from Al Qaida in Iraq, AQI, and all three of which aspired to conduct attacks outside of their borders.

I want to mention with special emphasis the threat posed by the Al Qaida affiliate in North Africa, which calls itself Al Qaida in the Lands of the Islamic Maghreb, or AQIM.

For the past few years, AQIM has been almost an afterthought when discussing the terrorist threat. This may be about to change. Recent public records point out that AQIM, which has traditionally operated in parts of Algeria and Mali, is well positioned to exploit instability and pockets of extremism in Libya and Nigeria, and to create new safe havens.

The reports also raised concerns about the tens of millions of dollars AQIM has received from ransom payments for hostages and other illicit activities.

I believe the intelligence community needs to move now to be prepared to address this possible growing threat.

Then there is Iran and North Korea. While the overall terrorist threat may be down, the threat from the proliferation of weapons of mass destruction from Iran and North Korea is growing. On January 9th, Iran announced that it started enriching uranium at its Fordow plant, near the city of Qom.

According to IAEA reports, Iran is enriching uranium to 20 percent, both there and at Natanz. IAEA inspectors arrived in Iran over the weekend, and I believe they must and should have complete access to all Iran nuclear facilities, and I ask that they make their findings public on a regular basis so the world will clearly understand what is happening there.

#### FEINSTEIN:

According to most timelines I've heard, 2012 will be a critical year for convincing or preventing Iran's development of a nuclear weapon.



FBI director Robert Mueller, National Intelligence director James Clapper, CIA director David Petraeus and DIA director Ronald Burgess testify before the Senate Select Committee on Intelligence in Washington, D.C. on Tuesday, Jan. 31, 2012. The directors answered questions pertaining to national security threats as outlined in the 2012 Worldwide Threat Assessment. Photo by DIA.

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JA694



In North Korea, there is now a 28-year-old dictator ruling over the country's cache of nuclear weapons and ballistic missiles, which should concern us deeply.

Recently this committee received an update from the intelligence community on the threat North Korea poses, and it was quite sobering. I won't go into any details because they're classified. But I strongly believe this will need to be an area where the intelligence community continues to focus its resources and attention.

I think we all know the threat from cyber. We all know the need to pass some legislation in this regard. And we know that the intrusions could be enormous -- take down a dam, take down our electric grid -- and United States companies have been -- have cost untold billions of dollars annually. China and Russia have both been named as aggressive and persistent cyber thieves.

In Afghanistan, the surge of U.S. forces that began '09 has produced meaningful gains. That said, I think we're all very concerned about what will happen in 2014 when we reduce our troop commitment and President Karzai's term is up.

Frankly, I don't see a viable strategy for continuing the level of security and stability that we are building after 2014. And I'm also concerned by what appears to be a disparity between the discussion of Afghanistan in Director Clapper's statement for the record and the bleaker description in the December 2011 NIE.

The director's statement notes modest improvements in the challenges that remain. While I'm unable to describe the NIE, as it remains a classified document, news reports of the NIE describe it as "sobering and dire." Those words in quotes, and include phrases like, quote, "mired in stalemate," end quote.

So I would like to ask the witnesses how they assess how stable Afghanistan will be in 2012 as well as 2014 and beyond.

I also want to note that last week I met with Zahir Ahmad Osmani (ph) -- Osmani, excuse me -- the Afghan minister of counternarcotics, and I was very impressed. I believe he's making good progress in Afghanistan and we should be supportive of his efforts to replicate the Helmand food zone in five other provinces to help farmers grow alternative crops instead of the heroin poppy.

Of course, Pakistan remains a huge problem, and I would very much appreciate your views on Pakistan's willingness to be a partner in our efforts against terrorists and in Afghanistan, as well as whether the civilian government can survive in light of other political controversies.

There are a couple of things I want to add, and I'm not sure this is a good place, but I'm going to do it anyway.

In this morning's edition of the Los Angeles Times there was an article asserting that CIA Director David Petraeus has been inaccessible and guarded in his interactions with Congress, and with the intelligence committees in particular, since being sworn in last September. As far as I'm concerned, nothing could be farther from the truth. And I believe the ranking member -- the vice chairman -- would agree with that.

I spoke to the reporter last Friday and made very clear to him that this has not been my experience, or to the best of my knowledge the members of this committee. If it had been, I would have heard.

Director Petraeus has appeared before us every month since becoming director, and the vice chairman and I have had several phone calls and other meetings with him. He has upheld his obligation to keep the committee fully and currently informed, and I regret that some people felt the need to engage in anonymous complaints.

I'd also like to say that once again this committee has been put in a difficult position of trying to avoid any mention of classified matters when various parts of the executive branch may be doing somewhat the opposite.

I ask members to be careful in their questions and statements and to remember that public discussion of some intelligence programs and assets can lead to them being compromised.

On the particular issue of drone strikes, I will only say that I was cleared to say in our joint hearing with the House Intelligence Committee last September, and there's no issue that receives more attention and oversight from this committee than the United States counterterrorism efforts going on along the Afghanistan-Pakistan border.

These efforts are extremely precise and carefully executed and are the most effective tools we have. Noncombatant casualties are kept to an absolute minimum.

So now, if I may, Mr. Vice Chairman, I want you to know it's been a great pleasure for me to work with you. I also want the public to know that together your side and our side have been able to pass three intelligence authorization bills by unanimous consent in both houses. And it's just been a great pleasure for me to work with you. And if you have some comments, if you would make them now, and then I'll introduce the speakers.

CHAMBLISS:

Very good. Thanks, Madame Chair. And let me just echo the same sentiment to you with respect to our working relationship. It has been pretty seamless, both at a personal level at the top as well as with our staff. And I thank you for the way that you have integrated me into the vice chairmanship over this past year, and I look forward to continuing to work in a very close way with you. And also I like your California wine, by the way.

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And I join the chairwoman in welcoming our guests today. And this is certainly the brain trust of the intelligence community. And there's an awful lot of experience here. There's also an awful lot of talent at the table. But I'll comment more on the brave men and women that work for you and the great job that they're doing.

The committee holds most all of our meetings in closed session, so this annual threat hearing is one of the only opportunities we have to discuss in public the threats that face our nation.

It's also one of the few opportunities we do get to extend our public thanks to the men and women of the intelligence community. Because of the hard work of the folks who work for each of you, 2011 was

JA695

a great year for the intelligence community, a year when we finally saw the realization of a decade of work to ensure that Osama bin Laden and Anwar Awlaki will never again threaten this nation.

I'm glad to say that we will no longer have an annual threat hearing where someone asks the question, Where is Osama bin Laden?

Last year's successes were no small achievement. They resulted from transformation and improvement in every I.C. agency.

In particular, I am impressed by the work being done by CIA's counterterrorism operators and analysts, working together to take down terrorists and their network. We have heard from these officers in countless briefings that core Al Qaida is essentially on the ropes, as long as we continue sustained, C.T. pressure on the group.

Director Clapper, this exact same sentiment is expressed in your written statement for the record for today's hearing.

I know I am not alone on this panel in believing that we must continue whatever level of pressure it takes to degrade core Al Qaida once and for all.

As we are seeing in Iraq, gains that took a decade to achieve can erode quickly if we do not do what it takes to protect them. I also hope we are learning from other lessons -- some other lessons from Iraq. I was dismayed by the administration's decision to hand over custody of Hezbollah operative Ali Mussa Daqduq to Iraq last year.

It is too late now to prevent what I believe will result in the ultimate release of a terrorist who killed five American soldiers in Iraq. But it is not too late to make sure that the same thing does not happen with the hundreds of terrorists still in detention in Afghanistan.

I hope our witnesses can discuss the range of likely threats posed by these detainees and the role of the community in providing intelligence and support of planning for any handover of detention facilities to Afghans.

I understand that this is going to be a challenge because the administration still lacks a long-term detention policy. But we just cannot keep letting dangerous detainees go free.

#### CHAMBLISS:

This brings me to my last point. Press reports have outlined the administration's plans to trade prisoners detained at Guantanamo Bay to the Taliban as a confidence-building measure.

It appears from these reports that in exchange for transferring detainees who has been determined to be too dangerous to transfer by the administration's own Guantanamo Review Task Force, we got little to nothing in return. Apparently, the Taliban will not have to stop fighting our troops, and won't even have to stop bombing them with IEDs.

I have also heard nothing from the IC that suggests that the assessments on the threat posed by these detainees have changed. I want to state publicly as strong as I can that we should not transfer these detainees from Guantanamo.

Moreover, I believe the community should declassify the intelligence assessments on these detainees so that we can have a full and open debate without the wisdom of this transfer before it takes place.

Let me conclude with two other comments. First of all, with respect to the LA Times article, Madam Chair, I did not see that this morning, but I want to, again, state in an unequivocal fashion that Director Petraeus has done an outstanding job in service to our country in many capacities, as his service in the military would indicate.

And during the time that he has been the director of the CIA, you're exactly right. He has stayed in constant communication with the two of us, and I know with our colleagues on the House side and -- and has been readily available to come to the committee on both a formal and an informal basis, as well as being available on -- at any time for -- for us to have a conversation with. And I'm surprised that there would be any question about that.

And as we all know, we have the utmost confidence in -- in his leadership, along with the leadership of the entire community. And there has been, again, a seamless transition from Director Panetta to Director Petraeus. And we're very confident of his leadership.

One other issue that I want to mention, following the event of September 11, as a member of the House Select Committee on Intelligence, Chairwoman -- excuse me -- Congresswoman Jane Harman and I chaired a committee -- a subcommittee on the Intel Committee that did a review of the facts leading up to the events of September 11.

And we issued the first detailed report on the deficiencies within the intelligence community that led up to September 11. And we were very critical of the community, in one respect particularly. And that was the lack of the sharing of information between our various agencies within the community.

Director Mueller, you and I have had extensive conversations, since you've been here longer than any of the rest of the members here, about that issue. And I just want to say that over the past decade, the stovepipes that we alluded to in that report have continued to fall. And I would have to say that today, without question, while we still have improvements to be made that the sharing of information between all of our agencies is at a superior level.

And Mr. Olsen, I had the privilege, as you know, visiting with your folks at NCTC recently. It was very impressive to not only see the -- the improvement from a technology standpoint, but just to see every member of the intelligence community sitting around a table virtually and discussing in real time the issues that face the community from a CT standpoint. It's very impressive. And I commend all of you for the great work you've done. It's not been easy.

And sometimes it's, I know, very difficult to put aside some of the previous relationships that might have existed. But boy, have you all ever done a good job breaking down those firewalls and really engaging with every member of the intelligence community to ensure that we disrupt and interrupt terrorist activity around the world that's directed at America, Americans, as well as other countries and allies around the world. So I commend you from that respect.

I thank you for being here today, and I look forward to your testimony. Thank you, Madam Chair.

FEINSTEIN:

Thank you very much, Mr. Vice Chairman. Now I'd like to introduce the distinguished panel before us

JA696

They are the director of National Intelligence, James Clapper, who will deliver an opening statement on behalf of the entire intelligence community, Director of the Central Intelligence Agency, David Petraeus, Director of the Defense Intelligence Agency, General Ronald Burgess, Director of the Federal Bureau of Investigation, Bob Mueller, Director of the National Counterterrorism Center, Matthew Olsen, Assistant Secretary of State for Intelligence and Research, Philip Goldberg, and Under Secretary for Intelligence and Analysis at the Department of Homeland Security, Caryn Wagner.

Thank you all very much for being here. We will now take your statement, Director Chambliss, and then go into a period of questions. What did I say? Excuse me, Director Clapper. And we will then go into 10-minute rounds based on the early bird rule.

Director Clapper, welcome.

CLAPPER:  
Well, I take that as a compliment, so thank you.

FEINSTEIN:  
Good.

CLAPPER:  
Thank you, Chairman Feinstein, Vice Chairman Chambliss, and distinguished members of the committee for inviting us to present the 2012 Worldwide Threat Assessment.

These remarks and our statement for the record reflect the collective insights of the extraordinary men and women of the United States intelligence community, whom it is our privilege and honor to lead.

And on their behalf, I would thank you both for your acknowledgment, recognition of the great work that these men and women do all over the world, day in and day out, in many cases at some hazard. I want to attempt to cover the full scope of the worldwide threats in these brief oral remarks, so I'd like to highlight just some of the issues we identified for the coming year.

Never has there been in my almost 49-year career in intelligence a more complex and interdependent array of challenges than that we face today. Capabilities, technologies, know-how, communications and environmental forces aren't confined by borders and can trigger transnational disruptions with astonishing speed, as we have seen.

Never before has the intelligence community been called upon to master such complexity on so many issues in such a resource-constrained environment. We're rising to the challenge by continuing to integrate the intelligence community, as you both alluded, taking advantage of new technologies, implementing new efficiencies, and as always, simply working hard.

But, candidly, maintaining the world's premier intelligence enterprise in the face of shrinking budgets will be difficult. We'll be accepting and managing risk more so than we've had to do in the last decade.

We begin our threat assessment, as we did last year, with the global issues of terrorism and proliferation. The intelligence community sees the next two or three years as a critical transition phase for the terrorist threat, particularly for Al Qaeda and like-minded groups.

With Osama Bin Laden's threat, the global jihadist movement lost its most iconic and inspirational leader. The new Al Qaeda commander is less charismatic, and the death or capture of prominent Al Qaeda figures has shrunk the group's top leadership layer.

However, even with its degraded capabilities and its focus on smaller, simpler plots, Al Qaeda remains a threat. As long as we sustain the pressure on it, we judge that core Al Qaeda will be of largely symbolic importance to the global jihadist movement, but regional affiliates, as the ones you mentioned, and to a lesser extent small cells and individuals, will drive the global jihad agenda.

Proliferation, that is, efforts to develop, acquire or spread weapons of mass destruction, is also a major global strategic threat. Among nation states, Iran's tactical advances, particularly in uranium enrichment, strengthen our assessment that Iran is well capable of producing enough highly-enriched uranium for a weapon if its political leaders, specifically the Supreme Leader himself, choose to do so.

North Korea's export of ballistic missiles and associated materials to several countries, including Iran and Syria, illustrate the reach of the North's proliferation activities. We don't expect Kim Jong Un, North Korea's new young leader, to change Pyongyang's policy of attempting to export most of its weapon systems.

CLAPPER:  
I would note that in this year's statement for the record, we elevated our discussion of cyber threats to follow terrorism and proliferation. The cyber threat is one of the most challenging ones we face, as you alluded. We foresee a cyber environment in which emerging technologies are developed and implemented before security responses can be put in place.

Among state actors, we're particularly concerned about any -- entities within China and Russia conducting intrusions in the U.S. computer networks and stealing U.S. data. In the growing role that non-state actors are playing in cyberspace is a great example of the easy access to potentially disruptive and even lethal technology and know how by such groups.

Two of our greatest strategic cyber challenges are first, definitive real time attribution of cyber attacks. That is, knowing who carried out such attacks and where these perpetrators are located. And second, managing the enormous vulnerabilities within the IC supply chain for U.S. networks. Briefly looking geographically around the world, in Afghanistan during the past year the Taliban lost some ground, but that was mainly in places where the International Security Assistance Forces or ISAF, are concentrated.

And the Taliban senior leaders continue to enjoy safe haven in Pakistan. ISAF's efforts to partner with Afghan National Security Forces are encouraging, but corruption and governance challenges continue to threaten the Afghan forces operational effectiveness. Most provinces have established basic governance structures, but they struggle to provide essential services. The ISAF and the support of Afghanistan's neighbors, notably and particularly Pakistan, will remain essential to sustain the gains that have been achieved.

And although there's broad international political support for the Afghan government, there are doubts in many capitals, particularly in Europe, about how to fund Afghan initiatives after 2014. In Iraq, violence and sporadic high profile attacks continue. Prime Minister al-Maliki's recent aggressive moves

JA697

against Sunni political leaders have heightened political tensions. But for now, the Sunni's continue to view the political process as the best venue to pursue change.

Eisewhere across the Mideast and North Africa, those pushing for change are confronting ruling elites, sectarian, ethnic and tribal divisions, lack of experience with democracy, stalled economic development, military and security force resistance and regional power initiatives. These are fluid political environments that offer openings for extremists to participate much more assertively in political life. States where authoritarian leaders have been toppled, like Tunisia, Egypt and Libya, have to reconstruct their political systems through complex negotiations among competing factions.

In Syria, regime intransigence and social divisions are prolonging internal struggles and could potentially turn domestic upheavals into regional crises. In Yemen, although a political transition is underway, the security situation continues to be marred by violence and fragmentation of the country is a real possibility. As the ancient Roman historian Tacitus once observed, the best day after a bad emperor is the first. After that, I would add, things get very problematic.

The intelligence community is also paying close attention to the developments across the African continent, throughout the Western Hemisphere, Europe and across Asia. Here too, few issues are self-contained. Virtually every region has a bearing on our key concerns of terrorism, proliferation, cybersecurity and instability. And throughout the globe wherever there are environmental stresses on water, food and natural resources, as well as health threats, economic crises and organized crime, we see ripple effects around the world and impacts on U.S. interests.

Amidst these extraordinary challenges, it's important to remind this distinguished body and the American people that in all of our work, the U.S. intelligence community strives to exemplify American values. We carry out our missions with respect for the rule of law and the protection of civil liberties and privacy. And that pledge leads me to a crucial recommendation on our highest legislative priority this year. And it requires the support of this committee and both houses of Congress.

The Foreign Intelligence Surveillance Act -- Amendment Act, or FAA is set to expire at the end of this year. Title-7 of FISA allows the intelligence community to collect vital information about international terrorists and other important targets overseas. The law authorizes surveillance of non U.S. persons located overseas who are of foreign intelligence importance, meaning they have a connection to, or information about threats such as terrorism or proliferation.

It also provides for comprehensive oversight by all three branches of government to protect the privacy and civil liberties of U.S. persons. The Department of Justice and my office conduct extensive oversight reviews of these activities and we report to Congress on implementation and compliance twice a year. Intelligence collection under FISA produces crucial intelligence that is vital to protect the nation against international terrorism and other threats. We're always considering whether there are changes that could be made to improve the law.

But our first priority is reauthorization of these authorities in their current form. We look forward to working with you to ensure the speedy enactment of legislation reauthorizing the FISA Amendments Act so that there's no interruption in our ability to use these authorities to protect the American people. So, I'll end this brief statement where I began. The fiscal environment we face as a nation and in our intelligence community will require careful identification and management of the challenges the IC focuses on, and the risk that we must mutually assume.

With that, I thank you and the members of this committee for your dedication to the security of our nation, your support for the men and women of the intelligence community and for your attention today. My colleagues and I look forward to your questions and our discussion. Thank you.

FEINSTEIN:

Thank you very much, Director Clapper. We will begin with 10 minutes and early-bird rule. As I mentioned in my opening statement, I think 2012 is going to be a critical year for convincing or preventing Iran from developing a nuclear weapon. In Sunday's New York Times magazine, Israeli Journalist, Ronen Bergman, wrote and I quote, "After speaking with many senior Israeli leaders and chiefs of the military, and the intelligence, I have come to believe that Israel will indeed strike Iran in 2012", how do -- end quote.

How do you assess that likelihood? And the response from Iran if that happens, that might be forthcoming?

CLAPPER:

Well, the -- our hope is that the sanctions, particularly those which have been recently implemented, would have the effect of inducing a change in the Iranian policy towards their apparent pursuit of a nuclear capability. Obviously this is a -- a very sensitive issue right now. We're doing a lot with the Israeli's, working together with them. And of course for them, this is -- as they have characterized is as an existential threat. But this is an area that we are very, very concerned about.

And would be pleased to -- because of the sensitivities -- would be pleased to discuss in greater detail in -- in closed session.

FEINSTEIN:

Well, the vice chairman and I have just met this past week with the Director of Mossad, so that is a classified meeting. But we do know that. I -- I think -- and let -- let me ask this of you, Director Petraeus, I think the world has to know what's happening. It's one of the reasons I believe that the IAEA when they go in -- well they're in Pakistan now, but when they go into Fordow, really must make transparent and public what they find there -- what they see there so that we know for sure what is happening.

I think the world is entitled to that. Particularly when you have a situation where one country views this as an existential threat. They believe it's their survival. They are determined not to let it happen. To really get the correct picture on what is happening, I think is important. Do you have a view on this?

PETRAEUS:

I do, Madam Chairman.

If I could up front, let me also echo -- echo Director Clapper's remarks about thanking you and the vice chairman for your kind words on the members of the intelligence Committee on the accomplishments of this past year. Some of which obviously were of enormous significance and thanks to both of you as well for your comments on the agency efforts to keep the committee fully and currently informed. We've worked very hard to be accessible to you. I have personally, my deputy and the staff, we think that the facts reflect that.

JA698

PETRAEUS:

We have worked hard also to shorten the time frame from event to notification when it comes to Congressional notifications. And we've also increased those over the last five months as well. Like you, I obviously met with the head of Mossad when he was here. That is part of an ongoing dialogue that has also included conversations that I've had with Prime Minister Netanyahu and with Minister Barack, the latter almost on a monthly basis in the nearly five months that I've been in the job.

I think it's very important to note, as the article did in the New York Times, the growing concerns that Israel has and that the countries in the region have -- and, indeed, all of us have -- about the continued activities by Iran along a path that could, if the decision is made, as Director Clapper noted in his opening statement, the decision is made to pursue the construction of a nuclear device.

As both of you noted, Israel does see this possibility as -- as an existential threat to their country. And I think it's very important to keep that perspective in mind as, indeed, analysis is carried out.

As you noted, the IAEA inspectors are in Iran right now. I believe their past report was a very accurate reflection of reality, of the situation on the ground. I think that is the authoritative document when it comes to informing the public of all the countries in the world of the situation there.

Iran is supposedly, reportedly trying to be more open this particular time, perhaps trying to reassure countries, as it feels the increased bite of the new sanctions, of the Central Bank of Iran sanction and the reduction in the purchase of oil from some of its key customers.

And so I look forward, as do others, obviously, to seeing what that public report will provide this time, believing, again, that it will be, again, the authoritative open-source document on the program that Iran is pursuing in the nuclear field.

FEINSTEIN:

Thank you very much, General Petraeus.

To many -- to me, Pakistan is a very puzzling country. We know that thousands of Pakistanis have been killed by terrorists, and we suspect that what Pakistan is doing is trying to essentially -- to use a vernacular -- walk both sides of the street.

I think I and most of us believe that having a positive relationship with Pakistan, as a nuclear power, a significant nuclear power, is very important. The question I have is, how do you assess this relationship, which certainly had its low in December, may or may not be improving -- improving, how do you assess it at this time?

CLAPPER:

Well, let me start, and I'll ask Director Petraeus to add in. Well, clearly, as you -- as you allude, Chairman Feinstein, this is a challenging relationship, but it's an important one for exactly the reason that you allude -- that you mention, which is Pakistan is a nuclear power.

Pakistan and our interests are all not always congruent. Their existential threat continues to be India. They have also paid a huge price because of the militants that they've had in their country and have suffered literally thousands of casualties in that context.

So sometimes our interests converge, and sometimes they -- they differ. But I -- as I would characterize the relationship, it's crucial that we have one and have a positive relationship, even though we've gone through some trying times.

PETRAEUS:

Well, again, relationship is very important, but the relationship right now is also quite strained. The most recent cause of that, of course, is the 26 November border incident between ISAF and Pakistani forces.

The Pakistani parliament, there is a committee that is determining recommendations to make for the government for the way forward with the -- in the relationship between the United States and Pakistan. I think there's an awareness there, as well, that this is a critically important relationship, that there are areas of considerable mutual concern, mutual objectives, while there are also those, as Director Clapper noted, are ones in which there are diverging interests.

Their -- the activities right now are also complicated, though, because of the difficulties in the domestic context there, where there's a bit of tension between the supreme court, between the army chief, and the ISI director, and the government, the president and the prime minister. That may be calming a bit. There have been signs of that in recent days.

It's worth noting, by the way, that the former Pakistani ambassador to the United States, Ambassador Haqqani, was allowed to leave, and he did arrive in the UAE this morning.

Nonetheless, the situation, I think as our British colleagues might say, is fraught, and it is going to take some time, it's going to take a lot of diplomacy, engagement, and so forth, to move forward in a relationship that's important to both our countries.

I should note that, as a general comment, we believe the relationship between the intelligence services is -- is generally still productive. There is certainly good communication going back and forth. And there have been some important, again, pursuit of important mutual objectives between the two services.

FEINSTEIN:

Thank you both very much.

Mr. Vice Chairman?

CHAMBLISS:

Thanks, Madame Chair.

Director Clapper, press reports -- and I emphasize that -- indicate that the United States is prepared to trade five Taliban members currently detained at Guantanamo as a confidence-building measure in negotiations with the Taliban.

Now, all five detainees that are named by the press were determined by the current administration to be, and I quote, "too dangerous to transfer" and are being held as enemy combatants. Now, as part of the task force, did the intelligence community concur in the determinations that these five detainees were too dangerous to transfer and should be held as enemy combatants?

CLAPPER:

Well, I believe in the original assessments, which NCTC Director Matt Olsen was involved, that -- that

**JA699**

was the case. I should say, though, that this proposed so-called trade has actually not been decided yet. There's continued consultation with the Congress. In fact, there will be a session this afternoon with the Senate leadership on -- on this issue.

And, of course, we are certainly mindful of the provisions in the National Defense Authorization Act and the requirement for any -- you know, certifications -- and I believe inherent in that is -- is continued consultation with the Congress on whether or not this would go forward.

That said, that -- I think the history has been, in -- in almost every case where we've had hostilities, that at some point in time there are negotiations. I don't think anyone in the administration harbors any illusions about the potential here. And, of course, part and parcel of -- of such a decision, if it were finally made, would be the actual determination of where these detainees might go and the conditions in which they would be controlled or -- or surveilled.

CHAMBLISS:

Director Olsen, as stated there, you did head the Guantanamo review task force that made the determination that these five reporter named individuals were too dangerous to transfer. Have you changed your view with respect to these detainees?

OLSEN:

Vice Chairman, I have not been involved in any reviews more recently of those detainees. As you point out, they were subject to the review we conducted in 2009 that determined that -- I believe those were among the 4B who were deemed too dangerous to release and who could not be prosecuted. But I've done no further review in my current capacity at NSA.

CHAMBLISS:

So it's -- what you're saying is that the administration has not asked you for any update of your opinion relative to these individuals?

OLSEN:

That's correct.

CLAPPER:

Well, sir, I need to inject here, though, that in the interagency deliberations, certainly the -- the IC has been asked, and we have provided, assessments of the five that are in question. So that has been a part of the discussion.

CHAMBLISS:

And has there been a change by the community from the categorizing of these individuals as too dangerous to transfer?

CLAPPER:

We haven't -- no, sir, I don't believe that -- under normal circumstance -- in other words, a repatriation to their point of origin or their country of origin. This is a little different. This is a different condition, though, in terms of the potential for negotiating some form of confidence-building measure with the Taliban. And this is very, very preliminary. And, again, no final decision's been made.

CHAMBLISS:

Let me ask you and Director Petraeus, who are very familiar with this, are you comfortable with transferring these individuals out of Guantanamo?

CLAPPER:

For me, the key would be where they would go, the intermediate country that they -- where they might be detained, and the degree to which they would be surveilled. And that would be the key determinate for me.

CHAMBLISS:

Director Petraeus?

PETRAEUS:

Very similar, Vice Chairman. In fact, our analysts did provide assessments of the five and the risks presented by various scenarios by which they could be sent somewhere -- not back to Afghanistan or Pakistan -- and then based on the various mitigating measures that could be implemented to ensure that they cannot return to militant activity.

CHAMBLISS:

The intelligence community assesses -- and, Director Clapper, your statement for the record underscores -- that the Taliban remains resilient and capable of challenging U.S. and international goals in Afghanistan. The community also assesses that Taliban senior leaders continue to enjoy safe havens in Pakistan, which enables them to provide strategic direction to the insurgency in Afghanistan without fear for their safety.

Does the community assess that Taliban reconciliation is likely to have a great deal of success, considering that the group is resilient, maintains the ability to challenge the United States, and continues to enjoy sanctuary in Pakistan and knows the time lines under which we plan to withdraw U.S. forces from Afghanistan?

CLAPPER:

(OFF-MIKE)

FEINSTEIN:

Your mike please?

CLAPPER:

Yeah, I think your -- our assessment is pretty much as you stated it, sir. The Taliban remains a resilient, determined adversary.

That said, again, I repeat that I don't think anybody harbors any illusions about it, but I think the position is to at least explore the potential for negotiating with them as a part of this overall resolution of the situation in Afghanistan.

CHAMBLISS:

Want to be careful how I ask this and hopefully you can respond in some way, with respect to our relationship with Pakistan. The safe havens that do exist have been pretty obvious and well-documented publicly.

JA700

How is our relationship with Pakistan at this point in time allowing us to address those safe havens and the cross-border activity that's taking place there from a Taliban standpoint?

CLAPPER:

Well, this is obviously part of the dialogue that -- and engagement that Director Petraeus and I have spoken of. And clearly this is a point of discussion with the Pakistanis and they are certainly aware of our concerns, but this is a case where historically sometimes our -- a good -- a good -- a good example where our mutual interests don't always converge.

CHAMBLISS:

Director Petraeus, anything you want to add to that?

PETRAEUS:

Well, I think again the record is obviously mixed. There has been progress against some of the extremist elements, in the border regions in particular. That would include, obviously, Al Qaida. When you get -- when number one, two and three are removed from the picture in a single year, needless to say that's a pretty significant accomplishment.

But beyond that it's important to note back in October of this past year, for example, four of the top 20 in a single week were either captured or killed. And, again, some of this has obviously been undertaken together.

There's been progress also by our Pakistani partners against the elements that have threatened their very existence. We should remember that a little over two and a half years ago it looked as if the Tehrik-i-Taliban Pakistani was going to continue to march right out of Swat Valley and perhaps into the suburbs of Islamabad. They reversed that. They fought very hard. They've taken very, very significant casualties. And in so doing they've also gone after some of the other elements allied with the TTP in the Federally Administered Tribal Areas.

On the other hand, obviously, there's been insufficient pressure on the Haqqani network, on some of the other elements, again, the allies of Al Qaida, such as the Commander Nazir (ph) group, the IMU, and some others. And then, needless to say, the Afghan Taliban has not been pressured sufficiently in the sanctuaries that it enjoys in Baluchistan and in other areas as well.

CHAMBLISS:

General Burgess, you've also been integrally involved in this issue relative to the cross-border activity. Anything you want to add to this?

BURGESS:

No, sir. I think, in fact, Director Petraeus kind of laid the line out very well in terms of where things are progressing.

CHAMBLISS:

OK.

Director Mueller, a month ago the president signed the National Defense Authorization Act and issued a signing statement in which he outlined his reservations about certain provisions. Regarding Section 1022, which mandates military detention for a limited type of non-U.S. citizen terrorist, the president stated that he would use his waiver authority for entire categories of cases and would design implementation procedures to provide maximum flexibility and clarity to our counterterrorism professionals.

Are you aware of any categories of terrorists for whom the president has used or intends to use his waiver authority, and if so, which ones, and how are the intelligence and law enforcement communities implementing Section 1022 of the NDA?

MUELLER:

Let me start, Mr. Vice Chairman, by saying that at the outset I had reservations in two areas. One, in terms of our continued authority to investigate terrorism cases in the United States; and that was resolved by the legislation.

The other part was what happens at the time of the arrest in the United States, and the statute provides for the administration to develop a set of procedures that'd be applicable to that particular situation.

Without getting into details, I can say that they're -- with the Justice Department and White House -- they're in the process of drafting those procedures. I think it'd be premature to talk about any of the specifics because it's on the drafting -- drafting stages. But my hope is that, as we go through and develop these procedures, that the remaining concerns that we have as to what happens at the time of arrest will be resolved.

CHAMBLISS:

I thank you for that and -- that comment -- and would just say that, as you know, we had extensive conversations between DOJ, the White House and Congress on this issue as it went through that drafting, and I would hope you would continue to dialogue with us with regard to the regulations that are ultimately implemented.

MUELLER:

Yes, sir.

CHAMBLISS:

Thanks, Madam Chair.

FEINSTEIN:

Thank you very much, Mr. Vice Chairman.

Senator Wyden?

WYDEN:

Thank you, Madam Chair. And let me commend you, Madam Chair, and the vice chair for the way in which you put the focus in this committee in a bipartisan way, and I commend you for it.

And to all at witness in the table, I thank you for your outstanding service. This has been extraordinary year

JA701



Let me start with you, if I might, Director Clapper, with respect to Iran. I've come to believe that Iran's leaders are not going to give up their push for a nuclear weapons capability unless they believe it's going to cost them their hold on power. Do you share that assessment?

CLAPPER:

Senator Wyden, actually that comports with the intelligence community assessment that this -- if the decision is made to press on with a nuclear weapon and there are certain things they have not done yet to eventuate that, that this would be based on a cost-benefit analysis, starting with the supreme leader's world view and the extent to which he thinks that would benefit the state of Iran or, conversely, not benefit.

So that's, I think, precisely where he is, and it will be done on a cost-benefit basis, and we don't believe he's made that decision yet.

WYDEN:

What could convince them, in your view, that their hold on power is being undermined by their nuclear effort?

CLAPPER:

Well, the -- I think, you know, a restive population, because of the economic extremis that the country of Iran is incurring.

If you look at the plunging value of the rial, if you look at the two indicators I think are important and the extremely high unemployment rate in Iran, this, I think, could give rise to resentment and discontent among the populace. And that's not to say there haven't been other examples of that elsewhere in the region.

WYDEN:

Now, on another subject, Mr. Director, you referenced a recent report that described how foreign spies, particularly those in China and Russia, are stealing our economic secrets. Can you give us some sense of what types of secrets these entities in China and Russia are most interested in stealing?

CLAPPER:

Well, the report you refer to is a national counterintelligence executive report that was issued this fall, which called out Russia and China for -- particularly China on their wholesale plundering, I guess if you will, of intellectual property. And of course they seem most interested in our technology. Obviously if they can save themselves the time and expense of doing R&D and their own and just steal it from us, that works to their benefit.

So to the extent that they can penetrate unprotected industry networks, which they've done unfortunately...

(CROSSTALK)

WYDEN:

Which -- which industry networks, Mr. Director, do you think are most vulnerable?

CLAPPER:

I think it's across the board. I think a lot of it is driven by what they can get access to. But I think it's pretty much carte blanche. Obviously the more high-tech for them, the better. And so this is a -- a serious, serious problem.

WYDEN:

Let me move to a third topic, Mr. Director. In your view, could the peaceful revolution in the Arab world have happened if repressive governments in the region had been successful in censoring Twitter, Facebook, Internet search engines and electronic communications?

CLAPPER:

Well, in some cases they tried to do that. I -- I am not sure the success of these upheavals, if you -- if you will were completely dependent on -- on -- on social media. I think the basic problems in this region, particularly economic repression of political freedoms and all that -- would -- would have bubbled up anyway. I think the social media simply helped fulminate and amplify that resentment when people understood it was a -- a large, collective.

So, I think the social media certainly facilitated it, but I don't think without it it would not have happened. Of course, some of the governments reacted to that by attempt -- their attempts to suppress such communications.

WYDEN:

I -- I won't continue this because I want to ask something of -- of Mr. Goldberg. But I don't know how the word would have gotten out. I mean if you look, for example at the way phones are tapped in the region and a variety of other, you know, approaches. I don't think the word would have gotten out. And that's why I'm going to ask you a question if I might, Mr. Goldberg. As you know, there is a discussion now in the Congress about whether or not Internet search engines should be involved in a censorship approach in terms of dealing with intellectual property specifically.

Are you concerned that if that is done here, this could be precedent which could make it harder for the State Department to go forward, for example with Secretary Clinton's Internet Freedom Initiative? I've come to feel at a minimum, it would be cited as a precedent. That if it's done here, you could have repressive governments around the world say, look at what goes on in the United States, they're supposed to be the leader in terms of freedom. Now we'll pick up on it. Are you concerned that this could possibly be a precedent?

GOLDBERG:

I think that we're always concerned with many conflicting strains when policy and legislation is being discussed about the Internet and about how to solve various problems with the distribution of information, as well as how to protect private property as is going on in the Congress at the moment. The Secretary of State, Secretary Clinton has made very clear that Internet freedom is very important principle and the overriding principle as we approach all of these issues.

And I think when we consider whatever precedent is being set, whatever legislation is being considered, that that's the primary interest that we need to consider. We also need to consider though, and the administration has spoken about online piracy and how to deal with that very serious issue. And that this can be done within the -- in a way that protects those freedoms, but also that is going to not change the architecture of the Internet.

JA702

WYDEN:

Let me wrap up with you, Director Clapper, on an issue that I'd asked about before, at this open hearing. General Petraeus knows about this. This is the question about the use of -- of force in a speech that was given by Mr. Koh -- Harold Koh, the State Department lawyer and let me note at the beginning, it's a matter of public record that the intelligence community sometimes takes direct action against terrorists and this direct action sometimes involves the use of lethal force.

And as you know, Director Koh gave a speech outlining -- outlining our policy with respect to various terrorist groups. He talked about detention. He talked about the use of unmanned drones and noted that under U.S. law, the use of force against terrorist groups is permitted by congressional authorization, while under international law, it is permitted by America's right to self defense. But in spite of having asked about this on a number of occasions and General Petraeus you know that I too share the chair's view with respect to your working with us here on this committee and your being forthright, I have not been able to get an answer to this specific, you know, question.

And I would like to know whether that speech that Mr. Koh gave contained unstated exceptions for intelligence agencies?

CLAPPER:

With respect to counter terrorism, it does not. So it -- it applies to all components of -- of the government involved in counter terrorism, be it military or non military.

WYDEN:

Are there other exceptions other than counter terrorist activities?

CLAPPER:

Well, I believe his speech dealt with counter terrorism.

WYDEN:

So you believe that his speech -- the text of the speech, because this would be important, applies to all agencies? It applies to the intelligence community? His entire speech, the overall thrust of the speech applies to all the intelligence community?

CLAPPER:

With respect to counter terrorism, yes.

WYDEN:

Thank you Madam Chair.

FEINSTEIN:

Thank you very much Senator Wyden. Senator Udall?

UDALL:

Thank you Madam Chairman. Good morning. Thanks to all of you for the important work you do. Let me start by commenting in a follow on way on the topic that Senator Chambliss mentioned, which was the detainee provisions in the NDAA. I want to thank all of you for weighing in, for sharing with the Armed Services Committee and the Senate at large, your concerns about the detainee provisions as they were proposed.

We had a spirited debate on the floor of the Senate for a number of days. Senator McCain was -- was very involved, as were a number of other Senators. I think it was a valuable debate. It was a worthwhile debate. I think it was the Senate at its best. I'm hopeful that the compromises that were put into the final product will work. I'm going to continue to monitor what's happening. I think the debate as to whether we ought to be prosecuting and delivering justice through the military system versus the Article 3 system is an important one.

Senator Feinstein and I and others have joined to introduce the Due Process Guarantee Act and I think at the heart of our concerns and -- and the center of our mission is to ensure that Americans will not be indefinitely detained. So again I just want to thank everybody for the engagement and -- and the passion they brought to that important debate. General Clapper, if I could focus on a particular topic, commercial imagery. I was glad to see your comments at CSIS last week that you're a big believer in commercial imagery.

You noted that it has the benefit of being unclassified, which is great for sharing among our war-fighters at all levels and with our coalition partners overseas as well as with non military users. In light of those comments, I've become concerned about what I've been hearing about the steep reductions in fiscal year '13 for the Enhanced View Commercial Imagery Program. I understand that the White House has requested a requirements review for commercial imagery consistent with a new defense strategy and that this review may well indicate the need for a shift away from the national technical means given that commercial providers can collect imagery at resolutions that meet virtually all of the military's needs.

So here's my question. Do -- do you believe that fiscal year '13 enhanced view budget will meet the war-fighters' needs for unclassified imagery? How will it affect the safety of our war-fighters and our capacity to work with our allies?

CLAPPER:

Senator, as you eluded, I -- I am a huge believer in commercial imagery, going back to when I served as then director of NIMA and later NGA in the immediate aftermath of 9/11 and we used a lot of commercial imagery then. It continues to be of great value for exactly the reasons you cited. It's unclassified, it can be shared in coalition contexts as well as in domestic disaster relief and the like.

That said, though, we are looking at some pretty steep budget cuts across the board in the intelligence community. And as a consequence, commercial imagery will be considered in that broader look at where we have to take -- where we may have to take reductions. And not going to single out commercial imagery as the only one.

It's my view that not only can we satisfy the military requirements, but all the other non-military requirements as well for commercial imagery at the contemplated level of funding.

I think it's incumbent on the industry to perhaps come up with some innovations and business practices and this sort of thing that will help us as we look at a more constrained fiscal environment.

UDALL:

I appreciate your attention to this matter. I know many of the other participants today on the panel depend on this kind of imagery. My concern, I think, and you share it, I hear you implying, is that if you

JA703

cut too far, you reduce the reach of the commercial sector, you may lose skill sets and experts that have played an important role and you create a downward spiral that may be hard to reverse if it goes too far.

CLAPPER:

Sir, this is a concern we have across the board, not just in the commercial imagery industry, but as we make reductions, particularly in intelligence, obviously that's going to have some impact on the industrial base across the board.

UDALL:

Let me turn to the Middle East and perhaps direct this question at General Petraeus and Director Clapper. And others on the panel please feel free to weigh in.

Syria. Do you assess that the fall of the al-Assad regime is inevitable at this point or is it still in question? If the regime should fall, how do you assess what a post-Assad Syria looks like, both near term and long term? And then what are your thoughts on how Hezbollah and Iran would be affected should the Assad regime fall?

CLAPPER:

(OFF-MIKE) I personally believe it's a question of time before Assad falls, but that's the issue. It could be a long time, given the protracted -- I think two factors here, is just the protraction of this, these demonstrations. The opposition continues to be fragmented. But I -- I do not see how he can sustain his rule of Syria.

And of course post-Assad is -- would be exactly the issue. I here is, you know, a question about who would emerge in a post-Assad situation.

As far as Iran and Hezbollah, what is transpiring in Syria is, of course, of great concern to them. It's why they are both expending great effort in terms of resources and advice and this sort of thing to try to prop up the Assad regime.

UDALL:

General Petraeus?

PETRAEUS:

Yeah, I generally subscribe to that as well.

The opposition is, obviously, showing a considerable amount of resilience and, indeed, is carrying out an increasing level of violence. The fact is that Damascus and Aleppo now, two previously relatively safe cities, the two biggest, are now seeing violence in their suburbs.

The initiation of offensive operations by the Bashar al-Assad's regime to try to push them out of the suburbs has met very stiff resistance, and I think it has shown indeed how substantial the opposition to the regime is and how it is in fact growing and how increasing areas are becoming beyond the reach of the regime security forces.

Post-Assad one would assume that there would be leadership by -- from the Sunni Arab community of the country, which is certainly the majority, as opposed to the Alawi minority that is the core of the regime, of the Bashar al-Assad regime. But that then begs the question of what happens to these other elements, to the minorities, to the Alawi, to the Druze, to the Kurdish minority...

UDALL:

The Christian -- Christian community as well.

PETRAEUS:

The Druze Christians and other Christian sects as well.

Clearly, the loss of Syria as a logistics platform, a line of communication into Lebanon to support Hezbollah would be a substantial setback for Iran in its efforts to use Hezbollah as a -- as a proxy. That is indeed why the Revolutionary Guards Corps, Quds Force, is so engaged in trying to prop up Bashar al-Assad right now.

UDALL:

Let me turn to another country in that region. General Petraeus, you know better than anyone how much we've invested in Iraq -- treasure, our reputation, and of course the lives of Americans from all over our country.

If you were to advise the policymakers sitting here and in the Senate and the Congress at large, what would you suggest we should be doing as Iraq struggles to find a democratic path forward?

PETRAEUS:

Well, I think essentially continuing what we are in fact doing, which is to engage Iraqi counterparts at various levels, all the way from the top through the diplomatic communities, intelligence and security services, to work hard to help them to resolve the ongoing political crisis. And there's no other word for that, although it has perhaps diminished it somewhat and it now appears as of the last 48 hours that the Sunni bloc of the political leadership is going to return to the government, albeit with still some hedging of bets.

Supporting them as they grapple with the security challenges that have emerged over the course of the past two months or so, where Al Qaida in Iraq has been a bit more active than it was for quite some period. Helping them to develop further their security forces and their intelligence services to combat a mutual enemy. We do not want to see the resurgence or the regeneration of Al Qaida in Iraq, and very much in the interests of both countries and indeed the region and the world to work together to combat it.

UDALL:

Thank you. Thank you, Madame Chair.

FEINSTEIN:

Thank you very much, Senator.

Senator Snowe?

SNOWE:

Thank you, Madame Chair.

And thank all of you for your contributions to our country.

JA704

I want to follow up on a couple of issues with respect to Iran. And, obviously, it's deeply troubling in terms of the direction that they're taking. And we predicate a lot, obviously, on the report that was issued by the IAEA.

And I know, General Petraeus, you indicate it's an authoritative document.

They list in page 8 of their report the number of activities that are relevant to the development of a nuclear explosive device, including, you know, procuring nuclear-related and dual-use equipment, materials, developed undeclared pathways, the acquisition of nuclear weapons development information and documentation, work on the development of indigenous design of nuclear weapon, including the testing of components.

I gather we agree with the fact that Iran has not made a decision to weaponize at this point. Director Clapper, do you agree on that?

CLAPPER:

Yes, but they are certainly moving on that path. But we -- we don't believe they've actually made the decision to go ahead with a nuclear weapon.

SNOWE:

Well, how will we decide that they have integrated all of these components in a decision to weaponize, at which point?

CLAPPER:

Well, certainly...

SNOWE:

What will be our red line (inaudible)?

CLAPPER:

Well, certainly a key indicator will be, without going into sensitive areas here, but a clear indicator would be enrichment of uranium to a 90 percent level would be a pretty good indicator of their seriousness.

There are some other things they would need to do, which I'd rather not go into in an open session, that we would also look for, as apart -- and apart part from whatever we could glean from across the -- across the community on an actual decision to go forward.

SNOWE:

General Petraeus, do you care to answer as well?

PETRAEUS:

No. I fully subscribe to that. Again, the various components, enrichment, weaponization, delivery. And the -- what we think we would be evident if there is a decision to enrich beyond the 20 percent that they are currently enriching to -- to the weapons grade would be very significant, and I think a tell-tale indicator.

There's no commercial use for that arguably -- in fact, not arguably. I think factually the amount of 20 percent enriched uranium that they have exceeds any requirement, for example, for the Tehran Research Reactor for the foreseeable future. So there are already concerns just with that.

SNOWE:

And the IAEA report said much of there is dispersed among a number of locations: So with the inspectors being there for however many days, several days, would they be able to discern or detect their ability to weaponize at what state they're in? What do we hope to glean from (Inaudible)?

(UNKNOWN)

Well, as Director Petraeus has alluded, the rule of IAEA is extremely important here. And of course, we do have to bear in mind that Iran is a signatory to the Nonproliferation Treaty. The facilities that they are now operating are safeguarded, meaning they are required to be inspected by the IAEA.

So their presence there, and in fact their extended stay there, and it's IAEA's intent, as they said before, to hopefully resolve these ambiguities about Iran's program and its intent. So what they have to say is crucial. And of course their continued access is crucial.

(UNKNOWN)

Well, and there's continuous monitoring also by other means that the IAEA has as well.

SNOWE:

General Burgess, Iran has issued various threats with respect to the Strait of Hormuz. Can you give us some analysis of the activities there and what we are doing, in addition to what capabilities does Iran have -- or doesn't have -- with respect to having potential to close the straits or affect it in any way in terms of international transit?

BURGESS:

Well, ma'am, what I have said in open discussions on this, a lot would have to be taken to a closed session, but clearly the Iranians have the capability, we assess, to temporarily close the Straits of Hormuz. The concern becomes then define temporarily and how long that would go, but they clearly have that capability. But if we go any further, I'd prefer to go to closed session, ma'am.

SNOWE:

Do we have a defined time in that respect, on temporary?

BURGESS:

Ma'am, I'd prefer to go to closed session.

SNOWE:

OK. Thank you.

Director Clapper, getting back to the issue of Pakistan, there was a senior administration official who was quoted recently in an article saying that developing a new normal in terms of relationship with Pakistan.

So much of what we're doing in Afghanistan is predicated on effectively addressing and rooting out the safe havens, obviously. And that is the predicate and template for the president's policy that he indicated in June, and that obviously we need to have that strong relationship with Pakistan.

JA705

How does our strategy going forward, how is that affected by what's developing in Pakistan, especially now with, as General Petraeus indicated, there is a review of our relationship that's underway within the Pakistan government, the parliament?

And then secondly, they're issuing threats about imposing taxes on the transit of our materials, both ours and NATO's, from their ports and roads to Afghanistan. So this is deeply troubling. And I don't know if this is a new normal, but how does that affect our, you know, our situation in Afghanistan, and how is it that ever changes the dynamic in Afghanistan?

CLAPPER:

Well, it obviously has a profound impact on -- on Afghanistan and prospects for successful resolution there. That's why -- and that is a way of emphasizing the importance of a positive relationship with the Pakistanis and -- this is getting into the policy realm now outside of intelligence, but it's crucial that our dialogue proceed and that we find some way of -- of converging on -- on that issue as well, particularly with respect to safe havens.

Pakistan is -- Pakistanis are very proud people, and they've felt their sovereignty was assaulted in the Abbottabad raid. And of course the regrettable incident in November with the killing of the Pakistani troops along the border sort of heightens that. That has caused them to collectively reassess the relationship.

But in the end, I believe they realize they need a positive partnership with us. And hopefully we'll work through these in such a way that we minimize the impact of these safe havens.

SNOWE:

General Petraeus, you're obviously in an interesting position, both in as being commander of the forces and being the architect of the counterinsurgency strategy in Afghanistan, and now being director of the Central Intelligence Agency.

Since you've assumed this position, do you view things any different in Afghanistan with respect to our strategy?

PETRAEUS:

No. I can't say that I do.

SNOWE:

Even with some of the reports that have been issued publicly regarding the assessments of Afghanistan and that it is very difficult to make the gains that are essential, precisely because what is happening with the safe havens in Pakistan?

Those issues are ever thus (ph). I mean, nothing's changed in the dynamic, unfortunately. Including the corruption, the government, and now of course the safe havens. These have sort of been, you know, the dynamics that have been there since the beginning.

PETRAEUS:

There is nothing easy about Afghanistan. As we used to say, it's all hard, all the time, but it's also all important, all the time. There's a reason we went there in the wake of 9/11. We have hugely important national security interests.

And it's very important to that country, to the region and the world that we do everything possibly to try to get that right and to ensure that Afghanistan is never again a launch pad for extremist attacks, as it was for the 9/11 attacks.

If I could, by the way, you know, you touched a little bit that alluded to the fact that I had a different viewpoint at various times than that of the intelligence community. And I was pretty clear I think in my confirmation hearing that that typically resulted from the fact that the intelligence community tends to stop, if you will, a clock, and then for six to eight weeks do the analysis, argue within the community itself on the ultimate position, and then actually provide the NIE or district assessment or whatever document is provided to policymakers.

And typically, in the four times that I have differed with the intelligence community on Iraq or Afghanistan, the reason for it has been that lag in a dynamic situation that we continued to make progress, or in a couple cases didn't.

Because in those four cases, twice I thought the assessment was too negative of -- by the intelligence community. And then once in Iraq, once in Afghanistan, two other times, I felt that the community was actually too positive and that we should be more guarded in our assessments.

SNOWE:

Yeah. I appreciate that. I well recall that. And I know there is that sort of, you know, difference. And in terms of the (inaudible) even, but also the lag time.

PETRAEUS:

Well, what I should note is that Director Clapper and all of us have discussed this. And what we want to do is dramatically reduce that amount of time from when you stop the clock for the analysis to start the writing, if you will, or to finalize the writing so that there is not such a large gap between the end of the data and the delivery of the product to the policymakers, to Congress, to the rest of the community.

SNOWE:

So that probably didn't happen this last NIE?

PETRAEUS:

Actually, I'm glad you asked that because I think that's worth clarifying.

First of all, the most recent NIE -- in an open session now -- addressed the post-2014 period. It was not on the past year or how are things going in general in Afghanistan. It was assessments by the intelligence community analysts about the various scenarios. In other words, if you make a certain set of assumptions about the level of support and a number of other factors in Afghanistan, what will the outcome likely be?

And there were a series of assumptions -- groups of assumptions about that. There was relatively little on the state of the insurgency. In fact it -- in open session, it basically said, "Yes, there has been continued progress," but also that the Taliban does remain resilient."

The military's concern in this case was that -- a view that there perhaps should have been an additional set or perhaps even sets of assumptions that could be analyzed, in particular some assumptions that

JA706

may have implied a greater level of assistance than was in those other sets. And that was really the issue.

So I think that -- that the accounts of this have not, in all cases, been completely well informed, shall we say.

SNOWE:  
I appreciate that. Thank you.

PETRAEUS:  
Thanks.

FEINSTEIN:  
Thank you very much, Senator Snowe.

Senator Rockefeller?

ROCKEFELLER:  
Thank you, Madam Chairman.

I -- I want to make a couple of comments. One is I was very pleased to hear that you want to proceed with the renewal of FISA. Actually, I think FISA's served two roles. One, it created a very valuable piece of legislation for us. It was not without controversy, but it was a right thing to do.

And secondly, I think it helped what some of us who've been here for some years should point out that I think it helped open up the dialogue between the intelligence community and this committee. This committee went through a long period of time when the I.C. community treated us very cavalierly. It was not interested in sharing. We could only -- I guess it was Pat Roberts at the time and myself. We switched one chair and then the other chair.

They would -- they would talk with the gang of four, the gang of eight, but never both committees. They would never share what they told us and there were certain circumstances where they could not share what they -- we could not share what they had told us because it was a specific request and for good reason.

But it was not a good relationship. It was not a good relationship. I mean, just as -- right after 9/11, the first thing that the Congress did was to pass a law saying it was OK for the Central Intelligence Agency and the FBI to communicate with each other, perhaps even shake hands and perhaps even start to work up a little intelligence on the FBI side. That was a long process. All of this is long and painful.

Now, I lead up to this by saying I cannot describe to you my own frustration and sense of wonderment how all of our DNI directors have come before these meetings and have, at least in the past, you referenced, Clapper -- Director Clapper, today that far and away the most important matter of national security is something called cybersecurity.

The president in his State of the Union actually used the word "cyber-threat," which I think is a better way of talking about it because it's more sort of stunning, alarming, less passive. We have made virtually no progress on that subject.

So on the one hand, the intelligence community is telling us that it's the number one national security threat, not, you know, taking three of the top five out or, you know, what's going on here or there. But on a sustained basis, national security depends upon our ability to allow a system -- to form a system wherein private companies, working with DHS and the government, can on their own decide how they want to protect themselves and get some help from DHS.

We do not overregulate -- some -- some have said that -- because we've made changes. Olympia Snowe and I came up with a bill three years ago -- three years ago. And it's wandered through Melissa Hathaway and Mr. Schmidt and nobody seems to get very excited about either it or the subject. And I'm very troubled by this, and I want to discuss this with you specifically.

You're in the I.C. community. Cybersecurity is not in -- in your general line of work, General Petraeus, but it's very much in Director Clapper's line of work and therefore all of your lines of work. I don't see particularly movement. There were some criticisms made of Olympia Snowe's and my bill, that it was too regulatory. We have interfaced with hundreds of -- of private stakeholders and companies over the years. And they're -- they're quite satisfied with an almost-completed bill, or a virtually completed bill that we have.

And so, our Democratic leader and -- and the president talked about we've got to do this. The president, as I say, did mention it in the State of the Union. That is important, but nothing has happened. And if it is a national security threat, if it is the national security threat, I don't understand why we can't get, working together on this, and get a bill done.

You know, FISA was hard, but this makes FISA look like a piece of cake and it's far more in the long term. No, not in the long term. It's probably equal in the long term in terms of its importance. But it's -- it's been a very -- very bad demonstration on the part of the Congress, the administration and the public, which really has no particular interest in cybersecurity because nobody's explaining it to them, because it's -- it's abstract. It's not pushed by any one group with particular emphasis, and therefore nobody's very excited about it.

We've worked out a way that the private sector companies basically take responsibility for their own cyber safety, cybersecurity. DHS helps them and they're held accountable for it. I grew so frustrated by the lack of action on the part of all of us -- the conclusive action that I went to Mary Schapiro at the Securities and Exchange Commission and said, "Look, I can't do legislation, evidently, right now. Would you please at least post on the SEC website where investors go all the time, obviously, to figure out if they're going to invest in private companies or not, and that private company would have to simply say if they had been hacked into, period." That's all they had to say; not what subject, but just that they had been hacked into.

Sort of a desperate measure, but it was a start. It's had some effect. People are talking about that effect in Washington. That doesn't interest me unless it's headed towards a bill.

So I would like to get your take, General Clapper and perhaps Director Mueller also and -- and anybody else who chooses to speak on the subject, how you can tell us that it's the principal national security threat and we have absolutely no bill. We do have a bill, but we have no sort of pervasive push to get this accomplished, not just a legislative matter.

JA707

CLAPPER:

Well, first of all, I don't think there's any question as to the potential here. And there is sort of, I think, two -- two dimensions to this. There's what goes on day-in and day-out in terms of our intellectual property being stolen from us. Then there is the -- which is a real -- is a real threat.

Then there is the potential, although I think it's less likely, of a massive attack, as some have described, that would basically paralyze the country or key segments thereof. The most likely proponents of that would be -- would be a nation-state, specifically China or -- or Russia. That's why I was pushed hard, we pushed hard to have that report published by the National Counterintelligence Executive unclassified, that called out that -- that threat.

I think that is an important responsibility of the intelligence community to advise all and sundry, whether it's administration officials, whether it's the Congress or the public, of the nature of that threat.

I do think the government has a responsibility to provide support and advice, as exemplified in my mind by the -- the defense industrial base pilot program that was championed by former Deputy Secretary Bill Lynn in the Department of Defense, which evolved I think a very workable formula whereby threat data is provided to key companies, particularly those involved in the defense or, for that matter, the intelligence business.

CLAPPER:

But the -- I think the bigger issue here is, you know, how do we protect the nation's cyber, and it's writ large, is an open question, and I don't -- I'm not sure that's completely the responsibility of the intelligence community. I don't -- I do not view it that way. I think there needs to be a government-private partnership. They have to participate and they have to be open about that as well.

As far as championing a bill, I personally have...

(CROSSTALK)

CLAPPER:

... sort of, deferred to the White House on -- on...

ROCKEFELLER:

Director Clapper, my time is about to run out. You cannot -- it's not your job to champion a bill.

But I just -- you know, at some point, you start asking, if you and your predecessors -- Mike McConnell and others -- have come up and -- and, you know, said this is our number one national security threat, and you're in the threat business, to say that I don't -- this is not necessarily what we do, frankly, I'm just using this forum to scream out, who is going to start paying attention to this?

CLAPPER:

Well, I think a lot of people are paying attention. And certainly, the president's mention of it -- there's a White House coordinator for it who's orchestrating this across the board. It involves the intelligence community. It involves the Department of Defense. It involves, clearly, the Department of Homeland Security.

And I think that the leadership for that has to be in the -- in the interagency. So I don't -- I don't know that it's fair to say that, you know, the administration doesn't care. It certainly does.

ROCKEFELLER:

I -- I'm just saying that we have made no progress. We have made no progress, and that is embarrassing in view of what you and your predecessors have said about the nature of the threat.

Director Mueller, do you have any comments?

MUELLER:

Yes, Senator. I think it's wrong to say we're excited -- or somebody should be excited about it. I can tell you that we are exceptionally concerned about that threat.

I do not think today it is necessarily the number one threat, but it will be tomorrow. Counterterrorism and stopping terrorist attacks, for the FBI, is a present number one priority.

But down the road, the cyber threat, which cuts across all programs, will be the number one threat to the country.

We look at it in three different perspectives. The first is, inside the FBI, we have to change our organizational structure. In the same way we changed to address terrorism, we have to change to address cyber crime. We have to recruit and hire and bring on the persons who are capable of doing it. We have to understand that our role is to investigate intrusions and to thwart further intrusions.

And secondly, in the same way, we had to share intelligence in the wake of September 11th. We have to share information and intelligence between the various entities who address this particular threat.

At the time of intrusion, you do not know whether it is a state actor, a Russia or a China. You don't know whether it's an O.C., organized crime entity or the high school student down the -- down the street.

And consequently, you can't allocate it to a particular agency, which is why we developed the national cyber investigative task force -- task force, with the FBI, CIA, DIA, NSA, Secret Service, all of those who have a role to address this kind of threat.

And so we have to build up the collective addressing of that threat, in the same way that we did so and broke down the walls in the wake of September 11th.

And lastly, in terms of legislation, we have pushed in the legislation two areas that are of concern to us. One is a national data -- data breach requirement. There are 47 states that have different requirements for reporting data breaches. There has to be a national data breach requirement for reporting, and we should be recipients of that reporting.

And secondly, there has to be, in the statute, in my mind, the ability to share the information indicative of a crime with the bureau and others who have that responsibility. But it is something that we as an organization are focusing on as the next substantial threat.

FEINSTEIN:

Thank you very much, Senator Rockefeller.

And I have a data breach law that's been pending for some time, so hopefully you'll include it.

JA708

Next is Senator Conrad.

CONRAD:

Thank you, Madam Chairman. Thank -- I want to thank you and the vice chair of this committee for conducting this committee in such a thoroughly professional way. I really have enjoyed my service on this committee and in no small measure because of the leadership of this committee. I think it's just -- it's a very good example for the rest of the Senate.

I also want to thank all those who are here testifying on behalf of the intelligence community. Let me just add my voice with respect to the press reports reflecting on Director Petraeus by these unseen, unnamed sources.

You know, as far as I am concerned, these people that work behind the cloak of anonymity attacking people are -- are cowards. If they have something to say about somebody, if they want it to have some credibility, they ought to have the courage to stand up and say it and put their name behind it.

And I'd say to the press they ought to quit printing anonymous attacks on people. It does not reflect well on them, either.

So with respect to Director Petraeus, as far as I'm concerned, he's a patriot. He's demonstrated that not only in his military career but on taking on this assignment.

That was, to me, an act of patriotism. It would have been very easy for him -- he didn't need to do this for his reputation or his career. So he deserves our praise, not these nameless, faceless attacks that frankly have no basis in fact, either.

And my -- my experience is I have been quite pleasantly surprised at how open the intelligence community has been with this committee, quite to the contrary of this report.

Director Mueller, thank you for agreeing to serve another couple of years. I think that, too, is an act of patriotism. It's very much appreciated. At this time of threat to our country, for you to agree to take on additional years of service deserves our public praise.

And we thank all of you. I can't neglect mentioning Mr. Olsen because his parents are from my home state. I know them well, couldn't have finer people. We're very, very fortunate to have people of that quality and character serving.

I'd like to ask each of you in turn, since this is an annual meeting, what is your assessment of whether or not we have made progress in our ability to handle the terrorist threat to this country?

Have we made progress? If so, how? Are we slipping?

What is your assessment of how we have done compared to where we were a year ago?

I'd start with Mr. Goldberg, go right down the line.

GOLDBERG:

I think, as it was said earlier, Senator Conrad, that progress has been made in various parts of the counterterrorism fight, especially against Al Qaida senior leadership. But there are many other challenges out there and it remains a very, very dangerous part of our -- of our work.

CONRAD:

Ms. Wagner?

WAGNER:

Senator, I would -- I think we have made a lot of progress, particularly in a couple of key areas. I think it was already mentioned, the extent to which many of the stovepipes have been broken down in terms of information-sharing between the elements of the community.

I think we have made huge progress in that realm, and in fact, we operate as a team. And I daily am interacting and operating particularly with my colleagues at the FBI and at NCTC, looking at the -- the terrorists that are abroad as it projects to the homeland and then dealing with the FBI on the issues that are inside the homeland.

In the second area, I would just say quickly that where we've made a lot of progress, I think, in my own department is in the ability to which we have been able to harness the intelligence from the intelligence community to -- to inform our instruments, if you will, to keep people out at our borders, to make sure that the wrong people are not getting on airplanes at last points of departure and to make sure that people who shouldn't get them are not receiving immigration benefits from the department.

So we've really tightened our ability to take what the community is producing and operationalize that in homeland security.

CONRAD:

Mr. Mueller?

MUELLER:

The removal of bin Laden and Awlaki was a huge benefit to the security of the United States -- my brothers and sisters in the other agencies.

By the same token, there are still leaders in both Yemen and Afghanistan-Pakistan border area that have the capability of launching attacks domestically.

MUELLER:

Most of the arrests that we've made over the last year, year and a half, had been lone wolves, those individuals who have been radicalized, trained on the Internet, have the capability of developing IEDs and other mechanisms on the Internet. And as we have been relatively successful in addressing these particular plots, nonetheless, the ability of persons to utilize the Internet, to be both individually radicalized, but also get the information they need to undertake attacks, has -- has increased.

CONRAD:

Director Clapper?

CLAPPER:

Sir, just to take perhaps a little longer perspective, this is my third job in the intelligence community in the last 12 years. I started at NIMA two days after 9/11. I think we've made tremendous progress.

The transformation of the FBI into an intelligence-driven organization is just one case in point. The maturation of Department of Homeland Security, the expansion of the intelligence community to

JA709



include both foreign and domestic aspects, the sharing with -- at the federal, state, local, tribal, private sector level, all of which have -- I think mean improvement, demonstrate improvement.

That's not to say we should rest on our laurels. We always have more issues to deal with. And this is not, particularly with respect to counterterrorism, it's not a threat that's going to go away.

CONRAD:  
Thank you

PETRAEUS:  
Senator, first of all, thanks for your words of support.

We have made considerable overall progress over the course of the last year. Any time the top three leaders of the most significant terrorist organization that faces us are taken out, that, needless to say, is really quite a banner year. And Al Qaida in the Arabian Peninsula, al-Shabaab, other organizations have sustained important losses as well.

Having said that, the threat of terrorism remains significant and we must sustain the campaign, we must maintain the pressure on Al Qaida and its affiliates and other violent extremist organizations wherever they may be.

Beyond that, I also concur with Director Clapper that there has been continued important progress in the organizational aspects of the war on terror.

The counterterrorist campaign has benefited enormously from the continued efforts to better integrate intelligence to -- for the various elements of the community to work together more effectively, and, frankly, even within individual agencies to further the progress in the integration of efforts between, say, the CIA operators as well as analysts in bringing together all of the different components of our organization and the rest of the intelligence community, say, in the counterterrorist center and some of the other centers that we have as well.

CONRAD:  
General Burgess?

BURGESS:  
Sir, I guess the phrase up here is I would like to identify myself with the remarks of those that have gone before me. As a plank holder in the director of national intelligence, as I look back, I agree with the way Director Mueller has put it and Director Clapper. We have made great strides in a lot of different areas.

Having said that, we still have work to do and we still have challenges remaining

CONRAD:  
All right Mr. Olsen?

OLSEN:  
Consistent with the other comments, the bottom line, I think, is that Al Qaida is weaker now than it has been in the past 10 years.

That said, we face a more diffuse and decentralized threat from Al Qaida's affiliates in Yemen, Somalia, as well as the threat from lone actors in the United States.

As Director Clapper said, I think from an organizational perspective, in answering your question, our ability to handle the threat, we are -- we are better positioned, and I think the operative word is it's a team approach. We're better positioned to share information, as the vice chairman commented at the beginning of the hearing, we do a better job of integrating that information, analyzing it.

At NCTC we've made improvements in watch listing, in providing situational awareness. And overall, again, it's a team effort among all of the agencies represented here.

CONRAD:  
Just in terms of summing this up, what I hear is significant progress, serious threats still remain to the United States, and that the teamwork in the intelligence community itself has dramatically improved. I'm hearing that quite consistently.

I think that's very important for the people that we represent here, that they understand, yes, we've made progress, in some ways very dramatic progress, especially against Al Qaida, but that significant threats remain and that we've got to continue to be vigilant, which means we've got to continue to put resources to these issues.

I thank the chair.

MIKULSKI:  
Good morning, everybody, though it's mostly heading into the afternoon.

I would like to thank each and every one of you for the wonderful work you do every day, in every way protecting our country.

So much progress has been made since 9/11 in reforming the intelligence community, making it more effective, making it an integrated unit. The fact that all of you are here at the table at the same time points to our successes. And probably one of our greatest has been what we have been able to do to dismember and decapitate Al Qaida.

But I'm going to pick up on the issue of -- that Senator Rockefeller raised about cyber. I've been kind of almost a Johnny of Janie one note on this issue in what I focus here.

I share Senator Rockefeller's frustration over a lack of urgency. I think it's partly due to the executive branch at the -- and also due to the Congress itself. My questions are going to go to Clapper, Mueller and Wagner.

First, just a comment about urgency. It's now been -- when we get to April, it will be five years since the attack on Estonia in which we thought we were going to trigger Article V of NATO for the first cyber war. So we've had five years of supposed to be on the edge of our chair on this issue.

So one was, how do we protect dot-mil and so on? But what we've now seen is the issues related to dot-gov and dot-com. In recent meetings with you, Director Mueller, because we -- our involvement to the Appropriations Committee, and with Ron Noble, Interpol and the Interpol team, it is the protection of the dot.com. And he spoke most eloquently about the counterfeit and fake drugs coming into European countries, to Canada, to ourselves.

JA710

In a meeting with Dr. Hamburg yesterday at FDA, when we were talking about a new regulatory framework to get drugs to the market fast and yet safe, one of her biggest challenges is protecting the secrets that she has of America's pharmaceutical, biomedical device community and the supply of the drug chain.

Right now, there is a bigger criminal penalty for a knockoff of a Louis Vuitton handbag than there is for fake heparin, which is a blood thinner that came into our country that could kill thousands of people.

So you get what I'm saying here. The growing issues around protecting dot-mil in our country, organized crime, Interpol says cyber is the growing crime and it affects state secrets, trade secrets, and then also this other stuff there.

The corruption, that where there is a weak government there is a strong organized crime element.

So we've got to really move on this. Rockefeller, Senator Rockefeller has spoken about his frustration with the executive branch. I'm frustrated with the legislative branch. We have turf battles, we dither and diddle over policies and so on. He has a great policy and so on. I hope we move on the (inaudible).

So let me get, though, because to me there are three issues -- urgency, foggy policy, particularly on governance, and the need for bipartisan camaraderie among ourselves to pass the bill.

So let me get to the governance issue and it goes to General -- to Director Clapper. And then Ms. Wagner, and then Director Mueller.

So the question is, who's in charge? We all diddle and dither over the governance issue. Article 10, article 50, homeland security, is it dot-mil, et cetera.

So let's take our president. He is at the Democratic convention and the lights go out in San Diego. (inaudible) said, "Oh, my god. He turns to Napolitano and says, "What is this?"

While he turns to Napolitano -- and the lights only go out for maybe three hours. The lights go out in Boston, et cetera. So he turns to Napolitano and says, "What the hell are we doing here and what can we do?"

MIKULSKI:

My question is, is Napolitano in charge? We know the president's in charge. OK, we know the president's in charge. But what is the president in charge of? And I need to know who would respond and so on, because I feel that it is the governance issue that are the number one issues and continue to diddle, dither and punt. So...

WAGNER:

I'm going to -- I'm just going to jump in here.

(CROSSTALK)

(LAUGHTER)

WAGNER:

You know, if the lights go off and we're talking an electrical power grid issue, then I would say that, you know, my secretary would be the logical person to turn to because we have a clear role.

(CROSSTALK)

WAGNER:

Well, if I could answer the question I didn't get to answer last time, and then I'll get to that. But the clear role that we have -- your first question about who's in charge is never -- there's never a simple answer to that question, especially in this town, because we all have pieces of the pie.

But I can tell you that where -- where we are -- where our responsibilities lie is in securing the dot-gov, and then securing the parts of the dot-com that are associated with -- with critical infrastructure and key resources, including, in your example, the power grid.

So we would hope that we would have been notified because of procedures that we would have already put in place, the relationships we would have built, the education we would have given, that they had detected some kind of issue or intrusion.

MIKULSKI:

Have you done this?

WAGNER:

Yes, we have. And we would then turn to our partners.

MIKULSKI:

Well, why don't they feel that?

WAGNER:

I think, ma'am, we still have a ways to go in terms of -- of educating and building up this network that we've been working on. And we are trying to bring a sense of urgency to that.

We then turn to our partners in the FBI and NSA because, as Director Mueller mentioned earlier, you never quite know what the genesis of these attacks are. It could be crime. It could be a state actor. It could be an accident. It could be a disgruntled former employee.

So we work this as a triad. We make sure that we're bringing to bear the appropriate technologies to bring things back on line as quickly as possible. And we ensure that we have an investigation going to try to determine the source and the attribution.

MIKULSKI:

Ms. Wagner, first of all, my job -- I don't want to harangue you, so just know that. But I don't believe this. I mean, I really have...

Director Mueller -- Director Clapper, what do you think here? So there you are. Is the president going to call you? You're the DNI.

MUELLER:

Well, the president calls us. I mean, the fact of the matter is this happens a fair amount now. DHS is responsible for the infrastructure. But when it comes to attribution, identifying the attribution of a particular domestic intrusion, it generally falls to us. And what we have -- what we currently do is we get ourselves and DHS at the table and we will put a team out.

JA711

As soon as we get the word, there would be a team. Generally, we would lead that team, but we'd have DHS there because of the infrastructure. And wherever the outages are, wherever the investigation leads us, we would have a team of ourselves, DHS, and if it goes overseas or if we need expertise, we'd have NSA and others from the community in there. And we -- we do this as a matter of course now when we get a substantial intrusion that needs immediate investigation.

MIKULSKI:  
Director Clapper?

CLAPPER:  
Well, I think what Director Mueller has described kind of captures the essence of what I believe the intelligence community's responsibility is, which is the detection and attribution of an attack writ large, whether foreign or domestic.

I just might mention that -- so -- it just so happens that the administration is sending a senior-level team to brief the entire Senate on cybersecurity tomorrow on the threat and what needs to be done about it. Secretary Napolitano, I'm told, will be there, my deputy, John Brennan from the White House, the deputy secretary...

(CROSSTALK)

MIKULSKI:  
There are 11 coming. There are 11 coming. So that means that there are 11. But I'll come back not only -- I mean, it's great that they're going to come and brief us. It's great that the National Security Council has come to this issue. But my question is still, going back to the Rockefeller and the sense of urgency, do you feel that the current authorities related to title 10 and title 50, and then the issues around homeland security -- we're not talking about the current situation, our proposed goal, or the way it ought to be when the repository of knowledge inside requires -- rests in a military agency at the National Security Agency.

CLAPPER:  
I would say that there probably could be more done to take advantage of that technical expertise that you recognize that resides in NSA. You know, the Department of Defense's response to that was to establish Cyber Command as a warfighting headquarters. But smartly, I think, dual -- having the director of NSA as the commander of Cyber Com for military application.

I think there is a debate, frankly, that, you know, maybe perhaps the responsibility of DOD is bigger than just to defend itself. That -- this would be a good topic to bring up at this session tomorrow.

(CROSSTALK)

MUELLER:  
If I may just interject, we have built up a substantial expertise in this arena over a period of time, not only domestically, but internationally. We have agents that are positioned overseas to work closely with, embedded with our counterparts in a number of countries. And so we have over a period of time built up an expertise.

That is not to say that NSA doesn't have a substantial expertise also, understanding where its located...

MIKULSKI:  
But it's a different kind.

MUELLER:  
Well, no, much of it is the same kind. Much is the same kind. In terms of power, I think NSA has more power in the sense of capabilities. In terms of expertise, I wouldn't -- I would not sell ourselves short.

MIKULSKI:  
We wouldn't sell you short either.

WAGNER:  
And ma'am, I would just -- I'd like to add that we're committed to leveraging NSA's expertise in technology to bring to bear for the sectors where we have responsibility. And we think we've made a lot of progress in that regard.

MIKULSKI:  
Well, my time is up, but I think, Senator Feinstein, this shows that some of the issues are here. We can -- we can't stop the threat. We can only stop ourselves. This is why I think we need to have a robust new legislative framework and we have to de-conflict these issues. And instead, we just remain foggy and keep punting.

FEINSTEIN:  
I thank you. You headed our Cyber Task Force.

I thank Senator Rockefeller for his interest. I think you both are absolutely correct. I think we need to get cracking on it. My own view is there's kind of one overwhelming issue where there's a difference of opinion, and that's whether the standards mean something or they're purely voluntary in the dot-com area. This needs to get resolved and we need to move.

So I thank you both for the work you've done. As chairman of Commerce and as our Task Force chairman, thank you very, very much.

MIKULSKI:  
Thank you.

FEINSTEIN:  
Let me move on. And let me give you the list as it remains, because it's going to take us close to one o'clock.

We have Senator Coats, Senator Risch, Senator Nelson and Senator Rubio. So it would be my intention, unless there's objection, not to do a second round, but to complete this round.

Senator Coats?

COATS:  
Madam Chairman, thank you. I'd like to pursue an issue that you brought up in your opening chairman, Madam Chairman, relative to the situation as it exists with Iran and its pursuit of nuclearization, and the potential Israeli response.

JA712

And I -- I think based on what was said early, if there's any dispute to the fact that sanctions to date have not brought about results that we would hope for. And I think, Director Clapper, you indicated in your statement "we hope that sanctions will prevent the necessity for an Israeli response."

I don't think -- I think the evidence is clear unless there's hard evidence to the contrary that we are not aware of, that sanctions to this point have not made any kind of difference with the regime in Iran. Is that -- does anybody dispute that?

CLAPPER:

No, sir, Senator Coats. That's -- that is precisely the intelligence community view or assessment that to this point, the sanctions as imposed so far have not caused them to change their behavior or their policy.

COATS:

And secondly, Director Clapper, you said, "We just Iran would likely choose missile delivery" -- no, I'm sorry -- "We judge Iran's nuclear decision-making is guided by a cost-benefit approach. Iranian leaders undoubtedly consider Iran's security, prestige and influence, as well as international political and security environment when making decisions about its nuclear program."

Is there any indication that sanctions to date have changed their view relative from a cost-benefit standpoint?

CLAPPER:

Well, I think it's fair to say, and we could go into this in more depth in a closed environment, that there is dissension and debate in the political hierarchy of Iran. So there is not unanimity about this. And I do think that the, to the extent that the international community is united on this, with U.S. leadership, I do think they pay attention to international opinion and what others think of them.

And certainly if there are impacts on their oil exports and to the extent that that would affect their financial situation, that could have I think a profound impact on their decision-making calculus in terms of, as we said, the cost-benefit.

COATS:

But -- but that's more of a hope and a wish than it is a hard reality, from what I understand.

CLAPPER:

As I said, to this point, the sanctions have not caused that -- that calculus to change, apparently. But with -- as the pressure ratchets up, there is the prospect that they could change.

COATS:

Would a dramatic decrease in oil prices have a bearing there? But what is the likelihood of that, given the world demand for oil energy sources?

CLAPPER:

Well, it could, and that's what we'll have to see how this plays out. And this, in turn, is dependent on -- on the willingness of the main customers of Iran to support that position.

COATS:

But to date, those main customers are not supporting these sanctions.

CLAPPER:

I wouldn't say that. Again, we can discuss this in closed session as to who is and who isn't.

COATS:

OK. We can discuss that in closed session.

I -- I don't see any public acknowledgement that China, India, some of the fast-growing Asian nations have joined us in -- in supporting -- rejecting any kind of export.

MUELLER (?):

If I could, Senator, actually publicly, it is well known that China reduced its imports of Iranian oil in the purchases. I mean, these are matters of public record. It remains to be seen whether that continues. It appears that Saudi Arabian production is ramping up and can fill some of the demand that might have been met by Iranian exports now that there are the sanctions on the Central Bank of Iran.

COATS:

Thank you, Director. But aren't we in a situation where the clock is ticking?

MUELLER (?):

Certainly.

COATS:

The clock is ticking on the side of the Iranian pursuit of nuclearization and perhaps weaponization of nuclear capability. And it has been for some -- some time.

My own view is that it's going to take tougher sanctions than currently exist in order to beat that clock that's ticking toward a nuclear Iran.

And so -- but also, we're -- you know, we see how difficult it is to ratchet up that next level of sanctions and get the world community's support. I mean, it took us a long time to get European support for the current level of sanctions. We don't have Chinese or Russian support for it. It's unlikely that we would, unless something changes that I'm not aware of.

And when you put that in the context of what the Israelis must be thinking -- and everybody acknowledges that it's an existential question for them, we've got a time factor here. And I just want to be realistic about the fact that the hope that sanctions -- it's been described as the hope that sanctions can bring about the desired results that we all want, both from the Iranian standpoint and from the Israeli standpoint.

I don't know if any -- you'd like to comment?

(UNKNOWN)

Well, sir, I think you've very accurately captured the gravity of the situation and what's at stake here and particularly for what's at stake for the Israelis.

COATS:

Would a naval blockade -- which I guess would be an act of war -- naval blockade achieve the kind of cost-benefit ratio that would give them real pause about changing their attitudes?

JA713

(UNKNOWN)

Well, I -- I don't know, sir. We'd have to take that one under advisement, but perhaps to air out the possibilities there in a closed session.

Certainly, that would have impact on their calculus. Whether it would move in the direction of a positive outcome or a negative outcome is hard to say.

COATS:

Well, of course, the outcome we want is trending very strongly toward a negative -- I mean, the outcome that seems to be taking place is trending strongly toward a negative outcome. And the outcome that we want seems to be diminishing.

And I hope I'm wrong on this, but it just seems to me that we've had years and years and years of sanctions. It's very difficult to ratchet those up and tighten them to the point where we see a decided change in the Iranian supreme leadership decisions on this. The recent movement of uranium to (inaudible) and the enrichment and the defiance in terms of public statements that come out of Iran all indicate that, so far -- I mean, maybe they're disputing this internally, but so far we have not seen positive results from that.

And when you're viewing it from the Israeli standpoint, it clearly, I think, reaches the level of perhaps the number one challenge of 2012, as the chairman has indicated.

General?

BURGESS:

Well, I do think it's...

COATS:

Excuse me -- Director -- Director General.

(LAUGHTER)

PETRAEUS:

The latest round of sanctions, of course, is really just being felt, and it will take a number of months. But as you note, there is a clock ticking during that time, and there is the inexorable progress, if you will, and the refinement of additional uranium to 3 percent, then 20 percent, and a variety of other activities that are ongoing.

And again, the IAEA has laid these out very accurately and effectively.

But the fact is that the Iranian currency has lost considerable value recently. There are runs on the bank in recent weeks that have been seen as the Iranian citizenry tries to get its money out of their own domestic currency and into anything that will hold its value better as inflation also takes off. Director Clapper talked about problems of unemployment as well.

But the overall situation is one in which the sanctions have been biting much, much more literally in recent weeks than they have until this time.

So I think what we have to see now is how does that play out and what is the level of popular discontent inside Iran? Does that influence the strategic decision-making of the Supreme Leader and the -- and the regime, keeping in mind that the regime's paramount goal in all that they do is their regime's survival.

COATS:

I have additional questions to pursue, particularly regarding the Israelis' perception of the impact of this, but I think that's better left for closed session.

Thank you, Madam Chairman.

FEINSTEIN:

Thanks, Senator (OFF-MIKE). Appreciate it. Senator Nelson?

NELSON:

Thank you, Madam Chairman. Senator Coats, in response, I think it's instructive to remember, on this, what the policy is, stated by the president is in the State of the Union.

And he said, quote, "America is determined to prevent Iran from getting a nuclear weapon, and I will take no options off the table to achieve that goal."

And then the secretary of defense, interview on "60 Minutes," said, "The U.S. and the president's made this clear. It does not want Iran to develop a nuclear weapon. That's a red line for us, and it's a red line, obviously, for the Israelis, so we share a common goal here. If we have to do it, we will do it."

Questioner: "What is 'it'?"

And this is the secretary: "If they proceed and we get intelligence that they're proceeding with developing a nuclear weapon, then we will take whatever steps are necessary to stop it."

Question: "Including military steps?"

Answer: "There are no options that are off the table."

COATS:

Would the senator yield just for...

NELSON:

Of course.

COATS:

... a quick response?

NELSON:

Of course.

COATS:

In a previous life, I served here and I heard much the same rhetoric regarding North Korea. And now we know that North Korea, despite all of our rhetoric, possesses nuclear weapons capability. And I just hope we don't have to talk ourselves into a situation where we're not able to back up what we see. We didn't do it before, and so it raises some skepticism on my part, by statements made by both

JA714

Republican and Democrat leadership relative to what you indicated and quoted. But we've been down this road before.

NELSON:  
Well, let's ask General Clapper. Is that the policy?

CLAPPER:  
I read it just as you do, sir. It's not policies as much as it's execution. And in the case of the North Koreans, our policy was just words, not action.

NELSON:  
Well, I believe -- this senator believes the stakes are so high that the policy will be executed.

What I wanted to do was I wanted to give an example from an earlier discussion of how we are meeting the terrorist threat. And I want to particularly congratulate you, Mr. FBI Director, because we just had a plot in Florida, in Tampa, to have several truck bombs go off downtown to kill a lot of people. And the FBI was all over this, in coordination with the U.S. attorney, in coordination, bringing in local law enforcement, the sheriff's office, the Tampa police department.

But what is also instructive is help with intelligence out of the Muslim community to identify the potential perpetrator and to stop him before he did the act.

And I think it's another example of how all of those different dovetails that weren't interacting before are beginning to. So I congratulate you.

MUELLER:  
Thank you, Senator. It was, as I want to use the word here, a team effort of particularly state and local law enforcement and the other federal authorities working together over a substantial period of time.

But I particularly want to single out the Muslim community for its recognizing a threat and bringing it to the authorities. And I will tell you, over a period of time, many of our cases -- most of our cases have come with individuals from the Muslim community or the neighborhood who have brought to our attention concerns about the potential threat in which we have run and ultimately have resulted in a disruption of a plot.

NELSON:  
Madam Chairman, thank you.

FEINSTEIN:  
And I thank you, Senator Nelson, for your patience.

Senator Rubio?

RUBIO:  
Thank you. Thank you all. For the panelists, I think this is, kind of, a general question. I don't know who will handle it. It has to do with Iran's intentions in the Western Hemisphere.

I think it's generally accepted; I think it's fact that Iran is willing to sponsor and use terrorism as a tool of its foreign policy and its statecraft around the world. And so it's with alarm that I view, having been on this committee only a year, but that I view a recent trip through Latin America, a four-nation trip, Ahmadinejad to Latin America -- now, part of it probably is just an effort, I think, to show that he's not isolated, that there are countries that will actually meet with him and talk to him, and part of it is that.

And I think mutually important, some of these leaders, particularly the one in Venezuela, have these weird illusions that he's some sort of global figure and that, and that on that stage, that he's actually a relevant individual.

But beyond that is -- is something else that I may be concerned about. And maybe, in this open source, you can comment, a little bit, about what else is behind there.

I mean, for a couple things that are concerning is, for example, the Venezuelan banking system is a significant banking system where billions of dollars flow through there. Could it not be used as a place to evade sanctions, for example?

We also know that I guess they opened up what is called Banco Internationale de (in)audible). I guess it's the International Bank of Development. And I think the largest stakeholder in that is a bank by the name of -- it's an Iranian bank -- Sadéral, if I'm not mistaken, which we know is used to funnel funds to Hezbollah and other groups like that.

So we're concerned about that. Obviously, the resources, uranium mining, et cetera, is an issue, and then, you know, any other kind of asymmetrical capabilities that that may be establishing in the region.

So, kind of, on a global -- kind of looking at that, how serious a threat is it? How focused are we on it?

Obviously, you know, relatively speaking, it's not what we confront in the Middle East yet, but what's the state of that? Because there's not a lot of conversations about Iran's intentions in this hemisphere.

CLAPPER:  
Well, we are -- we are concerned about it. We do follow it. And I think you're quite right to -- I appreciate your highlighting that, Senator Rubio, because, in this day and age, the Iranians are looking anywhere for a friendly hand.

Ahmadinejad's trip was not all that successful.

Obviously, very concerned about connection with Venezuela. And of course the most obvious manifestation of this outreach, if you'll call it, is of course the plot uncovered to assassinate the Saudi ambassador here in Washington, which was uncovered in Mexico -- with the cooperation, by the way, of the -- of the Mexican authorities.

So there is more to -- more to unfold here. I think they are consistent with their outreach elsewhere, they're trying as well to penetrate and engage in this hemisphere.

We'll have to -- I would like to research a little bit these financial banking, potential financial banking connections. I'm not current on that specifically. But I think that if -- if there is, that's indicative of their attempts to, again, evade sanctions, which they have worked very assiduously at, at the past.

RUBIO:  
Just as a follow-up to that, and I appreciate it, is -- and obviously we're limited in what we can talk about in this setting, nor would I ask you to opine on specific, you know, policy decisions that have to

JA715

be made -- but I would just encourage, whether privately or otherwise, for the administration and those in the intelligence/security community to think about -- I hate to use the word red lines, it's been discussed -- but certainly things we're not going to tolerate in the region.

Because I think there's potentially always the risk that some may think we're so distracted in other parts of the world that there are certain things they may be able to get away with in terms of capability building that we're (inaudible) not going to respond to.

So I don't think we should necessarily be out looking for conflicts, but I certainly there are things that we should not allow and that we should consider that as a matter of policy expressing that, privately or publicly, whatever, you know, fits the -- the needs of the community.

My last question is about Mexico and just your -- any assessment that we have with regards to drug violence in that country posing a threat to governance and to the government, particularly in such an important year where these key elections are going on in that country.

CLAPPER:

Director Petraeus just returned from a very successful trip to Mexico, so I'll ask him to address that.

PETRAEUS:

Well, thanks.

I did indeed just visit there. There's no question about the magnitude of the challenges there to the rule of law. In certain areas it does not exist.

But there's also no question about the determination of the government of Mexico and indeed the progress that they have made in a variety of different ways, both in terms of results in taking key leaders of the criminal gangs, the narcotic -- illegal narcotics gangs out of action, very substantial results in that in the last two or three years in particular, but also in their organizing for this effort and in the building of institutions.

Indeed, I think that the legacy of the current president will be the institutions that he has built during his time in terms of, for example, the national police, in coming to grips with some of the judicial challenges, the opening up of -- or soon to open, for example, more than five additional corrections institutes, and indeed the comprehensive approach that they are taking to this effort in truly a civil, military, law enforcement approach, because that is, obviously, what it takes to retrieve certain areas that have gotten away from the grip of the government and the writ of law, if you will.

That's the impression that I took away from this. And clearly the fact that this is going to be -- continue to be a very tough fight. But my sense that the government knows what needs to be done, has been building, again, these critical institutions that are necessary to carry out this comprehensive campaign that they recognize is necessary.

Needless to say, all of the different elements of the U.S. government are partnering with their respective elements of the Mexican structures. The integration of intelligence that we've tried to achieve here in the United States is something that they're also trying to achieve in Mexico and it's something with which we're involved in trying to support.

FEINSTEIN:

Thank you very much, Senator Rubio.

Senator Wyden has one last question.

Senator Wyden?

WYDEN:

Madam Chair, thank you for your courtesy. I'm going to be very, very brief.

Director Clapper, as you know, the Supreme Court ruled last week that it was unconstitutional for federal agents to attach a GPS tracking device to an individual's car and monitor their movements 24/7 without a warrant. Because the chair is being very gracious, I want to just do this briefly.

Can you tell me, as of now, what you believe this means for the intelligence community, number one? And two, would you be willing to commit this morning to giving me an unclassified response with respect to what you believe the law authorizes?

This goes to the point that you and I have talked, sir, about...

CLAPPER:

Yes, sir.

WYDEN:

... in the past, the question of secret law, as you know, I strongly feel that laws and their interpretations must be public and that of course the important work that all of you are doing we very often have to keep that classified in order to protect secrets and the well being of your capable staff.

So just two parts. One, what you think the law means as of now. And will you commit to giving me an unclassified answer on the point of what you believe the law actually authorizes.

CLAPPER:

Sir, what it -- the law -- the judgment rendered was, as you stated, was in a law enforcement context. We are now examining, and the lawyers are, what are the potential implications for intelligence, you know, foreign or domestic. So that's -- that reading is of great interest to us and I am sure we can share it with you.

Bob, would you want to add anything?

One more point I need to make, though. In all of this, we will -- we have and will continue to abide by the Fourth Amendment.

WYDEN:

OK. Thank you, Madam Chair.

FEINSTEIN:

Thank you very much.

And I'd like to end this by thanking all of you. I think it's been a positive year, as much as one can say anything is a positive year in this area.

JA716

I just was looking at the list of the 20 plots that had been prevented this past year, and it's really consequential, the work that has been done to protect the homeland, as well as the work that's been done abroad.

So I think we really have a very important intelligence team together, and I think it's really progressing. And I know on behalf of the vice chairman and myself we are very grateful to you, and I know that includes the whole committee as well.

So thank you very much for your dedication, for your talent, and for your extraordinary service.

This hearing will be adjourned.

CQ Transcriptions, Jan. 31, 2012

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List of Panel Members and Witnesses

PANEL MEMBERS:

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SEN. RON WYDEN, D-ORE.  
SEN. BARBARA A. MIKULSKI, D-MD.  
SEN. BILL NELSON, D-FLA.  
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SEN. MARCO RUBIO, R-FLA.  
SEN. MITCH MCCONNELL, R-KY. EX OFFICIO  
SEN. JOHN MCCAIN, R-ARIZ. EX OFFICIO

WITNESSES:

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CIA DIRECTOR DAVID PETRAEUS  
FBI DIRECTOR ROBERT MUELLER  
LIEUTENANT GENERAL RONALD L. BURGESS JR. (USA), DIRECTOR, DEFENSE INTELLIGENCE AGENCY  
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**JA717**