



February 11, 2013

Mark Langer, Clerk
United States Court of Appeals for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Ave., N.W.
Washington, DC 20001

Re: ACLU v. CIA, No. 11-5320 (argued Sept. 20, 2012)

Dear Mr. Langer:

Pursuant to FRAP Rule 28(j), Plaintiffs attach the transcript of the February 7, 2013 confirmation hearing of the President's nominee for Director of the Central Intelligence Agency before the Senate Select Committee on Intelligence. At the hearing, the nominee—currently the President's "principal policy adviser on homeland security and counterterrorism," Tr. at 10—and the members of the committee extensively discussed various aspects of the CIA's targeted-killing program, including the "role" of the "CIA director in [the] approval process" for targeted killings abroad, *id.* at 16 (question of Sen. Feinstein). *See, e.g.*, Hearing Tr. at 2–3, 12, 16, 18–19, 22, 25–26, 33–37, 59, 74–77, 82–84, 84–87, 95–97.

Plaintiffs also attach a transcript of a February 10, 2013 interview on CBS News' "Face the Nation," in which Rep. Mike Rogers, Chairman of the House Select Committee on Intelligence, discusses his committee's "[m]onthly" oversight of the CIA's targeted-killing program and refers to the targeted killing of Anwar Al-Aulaqi. *See* CBS Tr. at 7.

Respectfully submitted,

/s/ Jameel Jaffer
Jameel Jaffer

cc: Catherine Y. Hancock
Beth S. Brinkmann
Douglas N. Letter
Matthew M. Collette
Stuart F. Delery
Ronald C. Machen, Jr.
U.S. Department of Justice
950 Pennsylvania Ave., NW—Room 7236
Washington, D.C. 20530

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
NATIONAL OFFICE
125 BROAD STREET,
18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2500
F/212.549.2651
WWW.ACLU.ORG

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

CQ CONGRESSIONAL TRANSCRIPTS
Congressional Hearings
Feb. 7, 2013

Senate Select Intelligence Committee
Holds Confirmation Hearing
on the Nomination of John O. Brennan to be CIA Director

FEINSTEIN:

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

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

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

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

This is the first opportunity also to welcome our new members, Senator Heinrich who is on my right, Senator King who is due any moment, Senator Collins who is on my left and Senator Coburn who is not here at the moment but will be, who is returning to the committee.

We have a new Ex Officio member, Senator Inhofe, so welcome to all of you.

The director of the CIA is among the most critical national security positions in the United States government, both because of the role the CIA plays in collecting and analyzing intelligence relevant to every national security challenge we face. And because of the added importance of having steady leadership at an organization that conducts most of its business outside of the public arena.

Intelligence is critical to the successful draw down in Afghanistan to the brutal war going on within Syria's borders, across North Africa where the attacks in Benghazi and hostage situation in Algeria threaten to spread into the next front against Al Qaeda and its affiliated groups, for counterterrorism operations around the world.

In the efforts by the United States and others, to prevent the gain and spread of weapons of mass destruction, in Iran, North Korea and other states and in addressing emerging threats in space, cyberspace and elsewhere around the globe.

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

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

People who have worked closely with him regularly cite his work ethic, his integrity and his determination.

In nominating John Brennan, President Obama spoke of his, quote, "commitment to the values that define us as Americans." (Inaudible) in a letter of support noted his impeccable integrity and his dedication to country is second to none.

FEINSTEIN:

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

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

His responses to the committee's questions are available on the committee's Web site at www.intelligence.senate.gov.

Of course, the committee must conduct its due diligence on such an important nominee, so members are going to have questions in a range of topics, including his plans for directing the agency, major national security challenges we face, positions and actions he has taken in his current and past jobs.

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

While the disclosure earlier this week of a 16 page unclassified white paper on the government's legal analysis of the use of targeted force against a United States citizen, who was a senior operational leader of Al Qaeda. There is finally more information available to the public.

I have been calling and others have been calling the rank -- the vice chairman and I on the use of target -- for increased transparency on the use of targeted force for over a year, including the circumstances in which such force is directed against U.S. citizens and noncitizens alike.

I've also been attempting to speak publicly about the very low number of civilian casualties that result from such strikes. I have been limited in my ability to do so. But for the past several years, this committee has done significant oversight of the government's conduct of targeted strikes and the figures we have obtained from the executive branch which we have done our utmost to verify, confirm that the number of civilian casualties that have resulted from such strikes each year has typically been in the single digits.

When I asked to give out the actual numbers, I'm told, "you can't", and I say, "why not?" "Because it's classified. It's a covert program. For the public, it doesn't exist." Well, I think rationale, Mr. Brennan, is long gone

and I'm going to talk to you and my questions a little bit about that because I think it's very important that we share this data with people.

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

I also intend to review proposals for regulation, for -- excuse me -- legislation to ensure that drone strikes are carried out in a manner consistent with our values and the proposal to create an analogue of the Foreign Intelligence Surveillance Court to review the conduct of such strikes.

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

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

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

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

Mr. Vice Chairman, please proceed.

CHAMBLISS:

Thank you very much Madam Chair.

And Mr. Brennan, I join the chair in congratulating you on your nomination welcoming you to the committee today and I don't have to remind you, because you are a career individual, of the importance of your nomination to head the Central Intelligence Agency.

I also want to welcome your family and thank them for their support of you during your years of commitment to our government.

CHAMBLISS:

Also, I want to just say as the chairman did, that how much we appreciate Mike Morell. And I'm very pleased to see that in your prepared statement, you mention Mike and -- and his contribution to the Central

Intelligence Agency and that you intend to keep Mike in place. He is a very valued public servant and a guy who has stepped in to a very difficult situation now twice and has led with great commitment, and has provided the kind of leadership the agency has needed.

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

Just in the past few months, terrorist attacks in Algeria and Benghazi have claimed American lives. So it is clear that our vigilance must not waver. At the same time, our attention focused beyond the threats posed by al Qaeda and other terrorist organizations, from Iran to North Korea, to Venezuela, from nuclear proliferation, to cyber intrusions, to counterintelligence, the challenges are constant and immense, and the CIA is at the point of the spear.

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

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

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

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

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

Mr. Brennan, I thank you once again for your dedication and your service to our country. And we look forward to your testimony, and from -- to your response to questions submitted by the committee. Thanks, Madam Chair.

FEINSTEIN:

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

WARNER:

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

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

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

These same qualities -- dedication, selflessness, intelligence, and patriotism -- are well represented in John Brennan, whom the men and women of the CIA will find a dedicated leader in public service, should he be confirmed.

While I've not had the opportunity to work with Mr. Brennan as much as some of the other members, I've enjoyed our -- our meeting together. And as the chairman has already indicated, John Brennan's long career of public service and his record have prepared him to be director of the CIA.

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

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

As the president said, the imperative to secure the nation must not come at the sacrifice of our laws or ideals.

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

So Chairman has already gone through other parts of your background. I again want to congratulate you on this nomination, the service you've provided to our nation so far, and in the aftermath of this hearing, hopefully the service that you'll provide on a going-forward basis. With that, Madam Chairman, I'll come back to the dais, and look forward to my chance to ask the nominee questions as well.

FEINSTEIN:

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

"I John Brennan do solemnly swear..."

BRENNAN:

(OFF-MIKE) I John Breen do solemnly swear..."

FEINSTEIN:

... "that I will give this committee the truth, the full truth, and nothing but the truth, so help me God."

BRENNAN:

(OFF-MIKE) ..."that I will give this committee the truth, the full truth, and nothing but the truth, so help me God."

FEINSTEIN:

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

BRENNAN:

Chairman Feinstein, Vice Chairman Chambliss, members of the committee, I am honored to appear before you today as the president's nominee...

PROTESTER:

(Inaudible).

FEINSTEIN:

Would you hold, please? We'll ask the police to please remove this woman. Thank you very much.

PROTESTER:

(Inaudible).

FEINSTEIN:

Please remove...

PROTESTER:

(Inaudible).

FEINSTEIN:

I'm going to say once again that we welcome everyone here, that we expect no clapping. We expect no hissing. We expect no demonstration in this room. This is a very serious hearing. I will stop the hearing, and I will ask the room to be cleared. So know that. Please continue, Mr. Brennan.

BRENNAN:

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

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

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

PROTESTER:

(Inaudible).

BRENNAN:

... has made numerous sacrifices over the years.

FEINSTEIN:

Would you -- would you pause, Mr. Brennan? If you would remove that individual, please, as quickly as you can. Thank you.

PROTESTER:

(Inaudible).

FEINSTEIN:

Mr. Brennan, please proceed.

BRENNAN:

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

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

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

PROTESTER:

I speak for the mothers (inaudible) killed in the drone strikes in Yemen, Pakistan, Somalia (inaudible) The CIA and the Obama administration refuse (inaudible).

FEINSTEIN:

All right. We will stop again.

PROTESTER:

... in Yemen, Pakistan, Somalia, and who else (inaudible).

FEINSTEIN:

Please remove that woman.

PROTESTER:

The CIA and the Obama Administration refuse to even tell Congress. They won't even tell Congress what countries we are killing children in.

FEINSTEIN:

Please.

PROTESTER:

Senator Feinstein.

FEINSTEIN:

If you could please expedite the removal.

PROTESTER:

Are your (ph) children more important than the children of Pakistan and Yemen? Are they more important? Do your job. World peace depends on it. We're making more enemies.

FEINSTEIN:

Please proceed. Mr. Brennan, the next time we're going to clear the chamber and bring people back in one by one.

This witness is entitled to be heard, ladies and gentlemen. So please give him that opportunity.

BRENNAN:

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

PROTESTER:

And Mr. Brennan, if you don't know who they are, I have a list. I have a list of all the names and the ages...

FEINSTEIN:

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

(APPLAUSE)

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

(RECESS)

FEINSTEIN:

OK, we will reconvene the hearing. If the press would please take their places.

Mr. Brennan, please proceed.

BRENNAN:

Thank you, Chairman Feinstein.

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

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

I want to express my admiration for my close friend and colleague, Michael Morell, who has twice guided the CIA as acting director with a steady hand, integrity and exceptional skill.

If confirmed, it would be a distinct privilege for me to work side by side with Michael, my friend and the epitome of an intelligent professional, in the months and years ahead.

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

As the president's principal intelligence advisor and the head of the intelligence community, Jim is a person of longstanding and deep experience and integrity. He and I share identical views on the role of intelligence and the importance of giving current and future generations of intelligence professionals the support they need and that they so richly deserve.

It would be the greatest honor of my professional life to lead the women and men of the Central Intelligence Agency, the Agency where I started my career nearly 33 years ago and where I served for a quarter century.

A 24-year-old fresh out of graduate school, I arrived at Langley in August 1980 as a GS-9 career trainee, determined to do my part for national security as one of this nation's intelligence officers.

When I joined the CIA in August 1980, world events were unsettled. Our embassy in Tehran had been overrun the year before and 52 Americans were still being held hostage by a radical new government in Iran.

The Soviet invasion of Afghanistan was less than a year old, and the next decade would witness the slow but steady crumbling of the Soviet Union.

Nuclear proliferation and the spread of weapons of mass destruction were a constant concern. And U.S. officials were hard at work around the globe trying to prevent regional tensions and animosities from turning into full-scale wars.

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

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

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

BRENNAN:

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

Or a technical expert, who seeks new and creative ways to find nuggets of intelligence in tremendous volumes of data, provides secure and even stealthy intelligence collection and communication systems and countered the latest technological threats to our nation, or a support officer or manager with the responsibility to ensure that the core missions of the agency -- collecting intelligence, providing all source analysis and, when directed by the president, conducting covert action are carried out with the requisite skill, speed, agility and proficiency.

From the Middle East to the central Caucasus, from sub-Saharan Africa to Central and South America, from the vast expanses of Asia to the great cities of Europe and all countries and regions in between, CIA officers were there, sometimes in force and sometimes virtually standing alone.

And for those 25 years, it was a great honor for me to be a CIA officer, as I knew that the agency's contributions to this country's security were as invaluable as they were innumerable.

Following my retirement from the CIA in 2005, I had the good fortune to experience other professional opportunities. For three years, I served as president and chief executive officer of a private-sector company, where I learned firsthand some very important lessons about fiduciary responsibility and sound business practices.

And for the past four years I've had the privilege to serve as the president's principal policy adviser on homeland security and counterterrorism.

In that role, I have had the opportunity to work daily with some of the finest Americans I have ever met in the intelligence, military, homeland security, law enforcement and diplomatic communities, who have dedicated their lives to the safety and security of their fellow Americans.

It is because of the work of those Americans serving domestically, and especially those serving in dangerous places abroad, that we are able to experience the freedom and security that are the hallmarks of our nation.

I believe my CIA background and my other professional experiences have prepared me well for the challenge of leading the world's premier intelligence agency at this moment in history, which is as dynamic and consequential as any in recent decades and will continue to be in the years ahead.

Simply stated, the need for accurate intelligence and prescient analysis from CIA has never been greater than it is in 2013 or than it will be in the coming years.

Historic political, economic and social transformations continue to sweep through the Middle East and North Africa with major implications for our interests, Israel's security, our Arab partners and the prospects for peace and stability throughout the region.

We remain at war with al Qaida and its associated forces, which, despite the substantial progress we have made against them, still seek to carry out deadly strikes against our homeland and our citizens, and against our friends and allies.

U.S. computer networks and databases are under daily cyber-attack by nation states, international criminal organizations, sub-national groups and individual hackers.

And the regimes in Tehran and Pyongyang remain bent on pursuing nuclear weapons and intercontinental ballistic missile delivery systems rather than fulfilling their international obligations or even meeting the basic needs of their people.

Yes, the CIA's mission is as important to our nation's security today as at our -- as at any time in our nation's history.

In carrying out their mission, the men and women of the CIA are frequently asked to undertake challenging, perilous and, yes, controversial actions on behalf of the American people.

The CIA is not immune from the -- from scrutiny of these efforts, and I welcome a discussion of CIA's past and present activities.

If I am confirmed, one of my highest priorities would be the committee's lengthy report on the CIA's former rendition, detention and interrogation program that involved now-banned interrogation techniques.

I have read the findings and executive summary of the 6,000-page report, which raises a number of very serious issues.

Given the gravity and importance of this subject, I would look forward to further dialogue with members of the committee on the report and its findings if I am confirmed.

In addition, some of our government's current counterterrorism policies and operations have sparked widespread debate, domestically, internationally, and in this room.

I have publicly acknowledged that our fight against al Qaida and associated forces have sometimes involved the use of lethal force outside the hot battlefield of Afghanistan.

Accordingly, it is understandable that there is great interest in the legal basis as well as the thresholds, criteria, processes, procedures, approvals and reviews of such actions.

I have strongly promoted such public discussions with the Congress and with the American people, as I believe that our system of government and our commitment to transparency demands nothing less.

As the elected representatives of the American people and as members of this committee, you have the obligation to oversee the activities of the CIA and the other elements of the intelligence community to ensure that they are being carried out effectively, lawfully, successfully and without regard to partisanship.

If confirmed, I would endeavor to keep this committee fully and currently informed, not only because it is required by law, but because you can neither perform your oversight function nor support the mission of the CIA if you are kept in the dark.

And I know that irrespective of the fullness of that dialogue, there will be occasions when we disagree, just as you disagree among yourselves at times on aspects of past, current and future activities of the CIA. Such disagreement is healthy and is a necessary part of our democratic process.

But such disagreements should never prevent us from carrying out our national security and intelligence responsibilities, as a failure to do so could have devastating consequences for the safety and security of all Americans.

During my courtesy calls with many of you, I also heard repeated references to the a trust deficit that has at times existed between this committee and the CIA.

If I am confirmed, a trust deficit between the committee and the CIA would be wholly unacceptable to me, and I would make it my goal on day one of my tenure and every day thereafter to strengthen the trust between us.

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

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

If confirmed, I would make it my mission in partnership with the Congress to ensure that the men and women have the training, tradecraft, linguistic skills, technical tools, guidance, supervision and leadership they need to do their jobs.

They also need assurance that we will do all we can to protect our nation's secrets and prevent leaks of classified information. These leaks damage our national security, sometimes gravely, putting these CIA employees at risk and making their missions much more difficult.

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

Chairman, Vice Chairman and members of the committee, as you well know, when you arrive at CIA headquarters in Langley and enter the main lobby, you immediately see the marble memorial wall. On it are stars, each one representing a member of the CIA family who has -- who gave his or her life in the service of this nation. Today, there are 103 stars in that wall.

To me and everyone in the CIA, they are not simply stars, nor are they -- are they only visible remembrances of dearly departed colleagues and friends.

The stars represent heroic and unsung patriots, Americans who lived their lives loving this country, and who died protecting it.

That memorial wall means something very special to me and to every other American who has proudly served at the agency.

I want all CIA employees always to be proud of the organization to which they belong and to be proud of its activities.

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

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

FEINSTEIN:

Thank you very much, Mr. Brennan.

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

Do you agree to appear before the committee from the CIA -- excuse me -- do you agree to appear before the committee here or in other venues when invited?

BRENNAN:

Yes.

FEINSTEIN:

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

BRENNAN:

Yes.

FEINSTEIN:

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

BRENNAN:

Yes, all documents that come under my authority as director of CIA, I absolutely will.

FEINSTEIN:

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

BRENNAN:

(OFF-MIKE)

FEINSTEIN:

Will you ensure that the CIA and its officials provide such material to the committee when requested?

BRENNAN:

Yes.

FEINSTEIN:

Do you agree to inform and fully brief to the fullest extent possible all members of this committee of intelligence activities and covert actions, rather than only the chairman and vice chairman?

BRENNAN:

Yes, I will endeavor to do that.

FEINSTEIN:

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

I wanted to talk about, just for a moment, the provision of documents. Senator Wyden and others have had much to do about this. But our job is to provide oversight to try to see that the CIA and intelligence communities operate legally.

In order to do that, it is really necessary to understand what the legal -- the official legal interpretation is. So the Office of Legal Counsel opinions becomes very important.

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

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

BRENNAN:

(inaudible) Chairman, the National Security Act, as amended, requires that the heads of intelligence agencies provide the committee with the appropriate legal documentation to support covert actions. I would certainly be an advocate of making sure that this committee has the documentation it needs in order to perform its oversight functions.

I have been an advocate of that position. I will continue to be.

FEINSTEIN:

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

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

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

BRENNAN:

(inaudible) Chairman, I understand fully your interest in having your staff have access to this documentation -- fully understandable. The reason for providing information just to committee members at times is to ensure that it is kept on a limited basis. It is rather exceptional, as I think you know, that the Office of Legal Counsel opinion -- or advice would be shared directly with you.

(CROSSTALK)

BRENNAN:

And this, I think, is -- was determined because of the rather exceptional nature of the issue and in a genuine effort to try to meet the committee's requirements.

I -- I understand your interest in having the staff access to it...

(CROSSTALK)

FEINSTEIN:

If you would relay the request...

BRENNAN:

Absolutely.

FEINSTEIN:

... officially, we'd appreciate it very much.

BRENNAN:

Absolutely, I will.

FEINSTEIN:

Second thing. When -- when I spoke with you in my office we talked about our report on detention and interrogation, the 6,000-page report you mentioned.

I asked you if you would please read it. You said you would. You said you would for sure read the 300-page summary. Have you done so?

BRENNAN:

Yes, Chairman, I have read the first (inaudible), which is 300 pages.

FEINSTEIN:

Then, let me ask you this question. Were the EIT's key to the takedown of Osama bin Laden?

BRENNAN:

Chairman, the report right now still remains classified. And the report has been provided to the agency and executive branch for comments.

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

The talked about mismanagement of the program, misrepresentation (inaudible) information, providing inaccurate information. And it was rather damning in a lot of its language as far as the nature of those activities that were carried out.

I am eager to see the agency's response to that report.

I read those 300 pages. I look forward, if confirmed, to reading the entire 6000-page volume, because it is of such gravity and importance.

But, Chairman, I don't not yet -- I do not yet have and nor has the CIA finished its review of this information. That committee's report was done, obviously, with -- over an extended period of time. A tremendous amount of work that's gone into it. Based on the review of the documentary (inaudible) information that was available, the documents. There were not interviews conducted with CIA officers. I very much look forward to hearing from the CIA on that and then coming back to this committee and giving you my full and honest views.

FEINSTEIN:

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

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

BRENNAN:

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

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

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

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

FEINSTEIN:

Thank you.

Mr. Vice Chairman (OFF-MIKE)

CHAMBLISS:

Thanks very much, Madam Chair.

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

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

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

BRENNAN:

I had conversation with George Tenet at the time. But I must point out -- out, Senator, that every single CIA manager -- George Tenet, his deputy, the head of the director of operations at the time, and other individuals, the chief of the counterterrorism center -- argued against that operation, as well, because it was not well-rounded in intelligence, and its chance of success were minimal -- minimal. And it was likely that other individuals were going to be killed.

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

CHAMBLISS:

So I'm taking it that your answer to my question is you did advise against -- in favor of the cancellation of that operation?

BRENNAN:

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

CHAMBLISS:

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

BRENNAN:

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

CHAMBLISS:

As deputy executive director, you receive the daily updates from the time of Abu Zubaida's capture throughout his interrogation, including the analysis of the lawfulness of the techniques, putting you in a position to express any concerns you had about the program, before any of the most controversial techniques, including waterboarding were ever used. Now we found a minimum of 50 memos in the documents within the 6,000 pages that -- on which you were copied.

What -- what steps did you take to stop the CIA from moving to these techniques you now say you found objectionable at the time?

BRENNAN:

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

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

CHAMBLISS:

Now you say you expressed your objection to other colleagues. Did you ever expressed any concern to Director Tenet, to John McLaughlin, the executive director -- Director Kronguard, or any other of the CIA leaders?

BRENNAN:

I had a number of conversations with my agency colleagues on a broad range of issues during that period of time. Not just on this program, other ones. We would have personal conversations on that.

CHAMBLISS:

My reason for naming those individuals, Mr. Brennan, is that they are those directly above you. Mr. McLaughlin (ph) has been quoted in the press saying he never heard from you. He doesn't doubt that you did this, but he says he never heard from you. We just have not seen anybody who has come forward and said they ever heard any objections from you with respect to these programs.

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

BRENNAN:

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

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

CHAMBLISS:

That being the case, why would you be the recipient of a minimum of 50 e-mails, Mr. Brennan, on the progress of the interrogation of Abu Subadez (ph) including the techniques used in that interrogation?

BRENNAN:

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

CHAMBLISS:

Executive Director Mr. Krongard is said to have been an advocate of using siri (ph) techniques. Did he discuss with you a proposal to move to siri (ph) techniques with Abu Subadez (ph)?

And if so, did you raise any objection?

BRENNAN:

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

CHAMBLISS:

When you reviewed the intelligence the CIA was getting on Abu Subadez (ph) after the use of EITs, did you think the information was valuable?

BRENNAN:

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

CHAMBLISS:

November -- in a November, 2007 interview, you said that information from the interrogation techniques, quote, "Saved the lives," close quote. But you also say that CIA should be out of the detention business. The main benefit that I saw in CIA's program was the ability to hold and question individuals about whom there was significant intelligence that they were terrorists, but not necessarily evidence that could be used in the court of law.

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

Can you explain the logic in that argument?

BRENNAN:

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

I clearly had the impression, as you say, when I was quoted in 2007 that there was valuable intelligence that came out of those interrogation sessions. That's why I did say that they save lives. I must tell you, Senator, that

reading this report from the committee raises questions about the information that I was given at the time, the impression I had at the time.

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

CHAMBLISS:

How many high value targets have been captured during your service with the administration?

BRENNAN:

There have been a number of individuals who have been captured, arrested, detained, interrogated, debriefed, and put away by our partners overseas. Which is -- we have given them the capacity now, we have provided them the intelligence. And unlike in the immediate aftermath of 9/11, when a lot of these countries were both unwilling and unable to do it, we have given them that opportunity. And so that's where we're working with our partners.

CHAMBLISS:

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

BRENNAN:

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

CHAMBLISS:

I submit to you the answer to that is one. And it's Wasame (ph), who was put on a ship for 60 days and interrogated.

Thank you.

FEINSTEIN:

Thank -- thank you very much, Mr. Vice Chairman.

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

Senator Rockefeller?

ROCKEFELLER:

Thank you, Madam Chair.

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

I want to go to the EITC -- sorry, that's earned income tax credit, to the enhanced interrogation techniques. Well I'm for both.

FEINSTEIN:

No you're not.

ROCKEFELLER:

Not for the second, but the for the first.

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

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

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

Staff were a part of nothing. You have to understand that you're surrounded by people who work with you and fill you in. People who are experts. We are, too. But they got to be part of this. They got to be of -- of when the OLC is -- is -- comes, it should come to them also. I strongly support the Chairwoman's view on that.

ROCKEFELLER:

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

(Inaudible) to speak for the CIA and its workforce on this issue, and I think it does all a great disservice. In my office, you and I discussed the committee's landmark report on this program. You do understand that this took six years to write, not just 6,000 pages, but six years to write, perhaps longer, 23,000, 30,000 footnotes.

Why did we do this? We did this because we heard nothing from the intelligence agency. We had no way of being briefed. They would not tell us what was going on. So we had to do our own investigation, and we're pretty good at it.

And when you read those first 350 pages, you told me that you were shocked at some of what you read. You did not know that. And that, to me, is shocking, but not to condemn anybody, simply says that has to be fixed and changed forever.

There never can be that kind of situation again where there is -- we have to tell you what's going wrong in your agency, and thus, demoralizing some of the people in your agency who want to be relieved of the burden and the taint of bad techniques in interrogation. They suffer from that.

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

I'm also very aware that this is all crucial to the president's authority, not just on the more modern question of the day about drones. But, you know, that determination is made by one person, and one person alone.

And if there is a breakdown in protocol, if there is a breakdown in line of command, in reacting, therefore, into something which is not good, where there's too much collateral damage, I think for the most part, I would agree with the chairwoman. I believe she said this, that the work of the drone had been fairly -- fairly safe.

However, any collateral damage is unacceptable. And that has to be the purpose of the agency. And therefore, this detention interrogation program, I've got to say it was -- the people who ran it were ignorant of the topic, executed by personnel without relevant experience, managed incompetently by senior officials who did not pay attention to crucial details, and corrupted by personnel and pecuniary conflicts of interest.

It was sold to the policymakers and lawyers of the White House, the Department of Justice, and Congress, with grossly-inflated claims of professionalism and effectiveness, so-called lives saved.

It was a low point in our history. And this document, this book should change that forever. I would hope very much that you would, if you are confirmed, which I hope you will be, that you will make parts of this at your discretion, required reading for your senior personnel, so they can go through the same experience that you went through.

Are you willing to do that?

BRENNAN:

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

ROCKEFELLER:

How do you cross-reference? And tell me when I'm out of time.

FEINSTEIN:

Eight seconds. No, a minute and...

ROCKEFELLER:

A minute and eight seconds.

FEINSTEIN:

Right. Long time.

ROCKEFELLER:

The cross-referencing of the EIT disaster, and the future of the drone, and the decisions that -- that only the president, of course, can authorize that, but the decision sometimes is passed down, and has to be passed down at a very accurate manner.

And there have to be a protocol which is exact, more exact even than the interrogation techniques, because I think that's probably been put to bed just a bit. It's beginning to get straightened out.

But the drones are going to grow. There's going to be more and more of that warfare, not just by us, but by other countries, including perhaps by people from within our own country.

So the protocol of that, insofar as it would refer to a particular agency, is going to have to be exact, and directed, and of particular excellence and exactitude. How will that happen?

BRENNAN:

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

Because there are covert action -- activities that are taking place, you know, today under the direction of management of the CIA. And I would have the obligation to make sure I could say to this committee that all of those covert-action programs are being run effectively, they're being well managed, they're being overseen, and

that the measures of effectiveness, the results of those programs are an accurate and fair representation of what actually is happening.

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

ROCKEFELLER:

I thank you. Thank you, Chair.

FEINSTEIN:

Thank you, Senator Rockefeller. Senator Burr?

BURR:

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

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

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

BRENNAN:

On the face of that question, yes. My answer would be yes. However, I would have to take a look at the issues it involved, in terms of, you know, what are we talking about, in terms of access to that analytic product. Is it all staff, all committee members, whatever.

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

BURR:

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

BRENNAN:

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

BURR:

Do you agree that it's a function of this committee's oversight, that occasionally we would need to look at it?

BRENNAN:

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

BURR:

Mr. Brennan, as you know, the committee's conducting a thorough inquiry into the attacks in Benghazi, Libya. In the course of this investigation, the CIA is repeatedly delayed, and in some cases, flatly refused to provide documents to this committee.

If confirmed, will you assure this committee that this refusal will never happen again?

BRENNAN:

I can commit to you, Senator, that I would do everything in my ability and my authority to be able to reach an accommodation with this committee that requests documents, because an impasse between the executive branch and the legislative branch on issues of such importance is not in the interest of the United States government.

And so it would be my objective to see if we could meet those -- those interests. At the same time, our founding fathers did sort of separate the branches of government; judicial, legislative, and executive. And so I want to be mindful of that separation, but at the same time, meet your -- your legitimate interests.

BURR:

They also gave us the power of the purse.

BRENNAN:

They certainly did, Senator. Fully aware of that.

BURR:

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

BRENNAN:

Yes.

BURR:

Do you think that there's any situation where it's legal to disclose to the media or the public these tales of covert-action programs?

BRENNAN:

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

BURR:

Let me -- let me clarify. I didn't ask for classified information. I specifically said "cover-action programs."

BRENNAN:

By definition, cover-action programs are classified, Senator.

BURR:

I realize that.

BRENNAN:

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

BURR:

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

BRENNAN:

I was -- I would (ph) never provided classified information to reporters. I engaged in discussions with reporters about classified issues that they might have had access to because of unfortunate leaks of classified information.

And I frequently work with reporters, if not editors of newspapers, to keep out of the public domain some of this country's most important secrets.

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

BURR:

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

BRENNAN:

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

BURR:

Have you specifically asked for them not to be recorded?

BRENNAN:

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

BURR:

You said in your response to some (ph) pre-hearing questions that in exceptional circumstances, it may be necessary to acknowledge classified information to a member of the media. Did you tell media commentators that the United States had, and I quote, "inside control" or "inside information" on the AQAP bomb plot in May of last year?

BRENNAN:

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

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

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

BURR:

Did you think that that comment actually exposed sources or methods?

BRENNAN:

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

BURR:

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

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

BRENNAN:

No, I did not, Senator.

BURR:

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

BRENNAN:

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

BURR:

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

Well, let me just say, I hope that you take the opportunity, if you haven't already, to send back to the administration, it is absolutely essential that the documents this committee has requested on Benghazi be supplied before the confirmation moves forward.

I realize -- I'm not saying that you were part of it. But it is absolutely essential that we get those documents before we begin a new administration at the CIA. And I hope you will deliver that message. I thank you.

BURR:

Thank you, Senator.

FEINSTEIN:

Thank you very much, Senator.

Senator Wyden?

WYDEN:

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

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

Taking the fight to Al Qaeda is something every member of this committee feels strongly about. It's the idea of giving any president unfettered power to kill an American without checks and balances that's so troubling.

Every American has the right to know when their government believes it's allowed to kill them. And ensuring that the Congress has the documents and information it needs to conduct robust oversight is central to our democracy.

In fact, the Committee was actually created, in large part, in response to lax oversight of programs that involved targeted killings.

So it was encouraging last night when the president called and indicated that, effective immediately, he would release the documents necessary for Senators to understand the full legal analysis of the president's authority to conduct the targeted killing of an American.

What the president said is a good first step towards ensuring the openness and accountability that's important, and you heard that reaffirmed in the Chair's strong words right now.

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

And moreover, on this point, with respect to lawyers, I think what the concern is is there's a double standard. As the national security advisor, you volunteered to your credit you weren't a lawyer, you asked your lawyers and your experts to help you.

And we're trying to figure out how to wade through all these documents. And one of the reasons why I'm concerned that it's not yet clear that what the president committed to do has actually been provided.

And finally, on this point, the Committee's been just stonewalled on several other requests, particularly with respect to secret law (ph).

And I'm going to leave this point simply by saying I hope you'll go back to the White House and convey to them the message that the Justice Department is not yet following through on the president's commitment.

Will you convey that message?

BRENNAN:

Yes, I will, Senator.

WYDEN:

Very good.

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

And I want to start with the drone issue. In a speech last year, the president instructed you to be more open with the public about the use of drones to conduct targeted killings of Al Qaeda members.

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

BRENNAN:

Well, I think this hearing is one of the things that can be done because I think this type of discourse between the executive and the legislative branch is critically important.

I believe that there need to be continued speeches that are going to be given by the executive branch to explain our counterterrorism programs. I think there is a misimpression on the part of some of American people who believe that we take strikes to punish terrorists for past transgressions. Nothing could be further from the truth.

We only take such actions as a last resort to save lives when there's no other alternative to taking an action that's going to mitigate that threat.

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

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

WYDEN:

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

Let me ask you several other questions with respect to the president's authority to kill Americans. I've asked you how much evidence the president needs to decide that a particular American can be lawfully killed -- killed and whether the administration believes that the president can use this authority inside the United States .

In my judgment, both the Congress and the public need to understand the answers to these kind of fundamental questions. What do you think needs to be done to ensure that members of the public understand more about when the government thinks it's allowed to kill them, particularly with respect to those two issues: the question of evidence and the authority to use this power within the United States?

BRENNAN:

I have been a strong proponent of trying to be as open as possible with these programs as far as our explaining what we're doing.

What we need to do is optimize transparency on these issues, but at the same time optimize secrecy and the protection of our national security. I don't think that it's one or the other. It's trying to optimize both of them.

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

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

WYDEN:

One other point with respect to (inaudible) public oversight. If the executive branch makes a mistake and kills the wrong person or a group of the wrong people, how should the government acknowledge that?

BRENNAN:

I believe we need to acknowledge that. I need -- we need to it knowledge it to our foreign partners. We need to acknowledge it publicly.

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

WYDEN:

And acknowledge it publicly?

BRENNAN:

That is -- that would be ideal and that would be the objective of the program.

WYDEN:

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

If confirmed, would you provide the full list of countries to the members of this committee and our (inaudible) staff?

BRENNAN:

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

WYDEN:

Well, I'm gonna wrap up just one sentence on this point, Chair Feinstein.

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

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

BRENNAN:

You're talking about a historical list, are you not, Senator Wyden? As far as anytime, anywhere that the CIA was involved in such a lethal (inaudible)

WYDEN:

Yes.

BRENNAN:

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

WYDEN:

That's a good start.

BRENNAN:

Thank you...

(CROSSTALK)

FEINSTEIN:

Thank you very much, Senator Wyden.

Senator Risch?

RISCH:

Thank you. Madam Chairman.

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

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

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

BRENNAN:

Absolutely, Senator.

RISCH:

OK.

Well, I want to talk to you about a person who I believe, and I think you acknowledge as one of the most dangerous people on the planet; and that's Ibrahim al-Asiri. And the conversation that you had with Senator Burr was referring to the interview that you gave that talked about the plot that was uncovered that involved him. Do you recall that conversation with Senator Burr?

BRENNAN:

Yes, I do, Senator.

RISCH:

OK.

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

BRENNAN:

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

RISCH:

Well, this particular one is the one that (inaudible) as far as the leak itself and how we got to where we are on this.

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

Is that an accurate statement?

BRENNAN:

That is an accurate statement, Senator, yes.

RISCH:

And can you tell me, who was involved in that conversation. Who was involved in that interview?

BRENNAN:

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

RISCH:

Any others you (inaudible)?

BRENNAN:

I -- I do not remember the others.

RISCH:

Do you have notes from that conversation?

BRENNAN:

There are notes, yes, that people took at that, yes.

RISCH:

Have those been turned over to the Justice Department?

BRENNAN:

The Justice Department -- as I said, I have voluntarily and eagerly engaged in that investigation...

(CROSSTALK)

RISCH:

That wasn't the question.

(CROSSTALK)

BRENNAN:

They have -- everything that was available on that has been turned over to the Department of Justice, absolutely, Senator.

RISCH:

Did you turn those notes over?

BRENNAN:

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

RISCH:

Who took those notes?

BRENNAN:

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

RISCH:

And who were the people that were involved in that conversation?

BRENNAN:

Aside from the -- the reporters? There was somebody from the White House press office and someone from the counterterrorism directorate.

RISCH:

You don't know the people's names?

BRENNAN:

I do. They were Nick Rasmussen and Caitlin Hayden.

RISCH:

And those are the two people from the White House that were involved...

BRENNAN:

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

RISCH:

May 7th was the date that the incident occurred, is that correct?

BRENNAN:

The date of the conversation with those reports?

RISCH:

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

BRENNAN:

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

RISCH:

Correct.

BRENNAN:

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

RISCH:

And can you tell me why you felt compelled to release that information to these people on May 7th...

(CROSSTALK)

BRENNAN:

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

(CROSSTALK)

RISCH:

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

BRENNAN:

I thought it was, Senator. But go ahead.

RISCH:

No, the question was, why did you feel compelled to hold this press conference and divulge that information at that time on that day?

BRENNAN:

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

RISCH:

And they were gonna go on TV that evening to discuss this event?

BRENNAN:

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

RISCH:

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

Is that an accurate statement?

BRENNAN:

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

RISCH:

OK.

So based on that, one would know that we had something inside. Is that a fair statement?

BRENNAN:

It's -- it's -- from that statement it is known that that IED at the time was not a threat to the traveling public, because we had said publicly there was no active plot the time of the bin Laden anniversary...

(CROSSTALK)

RISCH:

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

BRENNAN:

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

(CROSSTALK)

RISCH:

Well, how can you say that?

BRENNAN:

Because I -- I -- what I'm saying is that we were explaining to the American public why that IED was not in fact a threat at the time that it was in the control of individuals. When -- when we say positive control, inside control, that means that we (inaudible) that operation either environmentally or any number of ways. It did not in any way reveal any type of classified information. And I told those individuals and there are, you know, transcripts that are available of that conversation, "I cannot talk to you about the operational details of this whatsoever."

RISCH:

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

BRENNAN:

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

RISCH:

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

BRENNAN:

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

RISCH:

And you're in agreement with that, that this was a serious flaw in what should have happened. Is that correct?

BRENNAN:

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

RISCH:

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

BRENNAN:

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

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

RISCH:

I have more. My time is up.

Thank you, Madam Chairman.

FEINSTEIN:

Thank you, Senator Risch.

Senator Mikulski?

Before you start, Senator, a vote is due to start at four. It's five after four. Senator Chambliss went to vote. As soon as he returns, I will go. We will just keep this going, so members be guided by that.

(CROSSTALK)

FEINSTEIN:

The vote just started. You please go ahead.

MIKULSKI:

Mr. Brennan, first of all, welcome to the committee. And in the short time I have, you mentioned your wife, Kathy. Could you introduce (inaudible)?

BRENNAN:

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

MIKULSKI:

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

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

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

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

BRENNAN:

Thank you, Senator, and thank you...

MIKULSKI:

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

BRENNAN:

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

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

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

And the CIA should not be doing traditional military activities and operations.

MIKULSKI:

Well, I appreciate that and look forward to working with you to really identify what's (inaudible) with the CIA and to DOD, which then takes me to the issue of cyber threat.

Both Secretary Panetta, both General Dempsey and so on have all -- and we, in your role, your current role at the White House, have talked about the cyber threat.

You were a big help in trying to help us get the cyber legislation passed. Now, tell us what you think is the role of the CIA in dealing with the cyber threat in the area of human intelligence or -- or -- I mean, with the CIA? You have a unique insight in it.

We know what NSA does. We know what Homeland Security is supposed to do. Tell us where you see the CIA in this.

BRENNAN:

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

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

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

Then, in addition, the analysts at CIA can take that information, working with the rest of the community to make sure that policy makers have a good sense of the nature of the threat and some potential mitigation strategies.

And then, working with NSA, Department of Homeland Security and others, put together that structure that's going to make this country resistant and resilient to those attacks.

MIKULSKI:

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

I consider this one of the greatest threats and one of the greatest vulnerabilities, because we failed to pass the legislation ourselves.

We can't stop what foreign predators want to do. I mean, we can divert, identify an attack. But we are making ourselves vulnerable.

Now, I want to get to the job of the CIA director. I'm going to be blunt -- and this would be no surprise to you, sir.

But I've been on this committee for more than 10 years. And with the exception of Mr. Panetta, I feel I've been jerked around by every CIA director.

I've either been misled, misrepresented, had to pull information out, often at the most minimal kind of way, from Tenet, with his little aluminum rods to tell us that we had weapons of mass destruction in Iraq to Porter Goss, not worth coming.

You know the problems we've had with torture. The chair has spoken eloquently about it all the way.

And, quite frankly, during those questions, they were evaded, they were distorted, et cetera.

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

BRENNAN:

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

Honesty is the best policy. None of us are perfect beings. I'm far from perfect. But, Senator, I would commit that I would be honest with this committee and do everything possible to meet your -- your legitimate needs and requirements.

And as I think I've told you before, I know that you are a very proud senator of one of the -- the jewels in the intelligence community, NSA, which resides in -- in Maryland.

But it would be my objective to make CIA your favorite intelligence agency and push Keith Alexander aside.

(LAUGHTER)

MIKULSKI:

Well, I think you're pushing your luck now (inaudible).

Thank you very much.

CHAMBLISS:

Senator Levin?

LEVIN:

Thank you.

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

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

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

BRENNAN:

The attorney general has referred to waterboarding as torture. Many people have referred to it as torture. The attorney general, premiers (ph) of law enforcement officer and lawyer of this country.

And as you well know and as we've had the discussion, Senator, the term "torture" has a lot of legal and political implications.

It is something that should have been banned long ago. It never should have taken place in my view. And, therefore, it is -- if I were to go to CIA, it would never, in fact, be brought back.

LEVIN:

Do you have -- do you have a personal opinion as to whether waterboarding is torture?

BRENNAN:

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

LEVIN:

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

BRENNAN:

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

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

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

LEVIN:

Is waterboarding banned by the Geneva Conventions?

BRENNAN:

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

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

LEVIN:

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

He said that he knew of -- and these are his words -- "I know that many of these procedures were applied to our own servicemen. Tens of thousands of U.S. soldiers had gone through this," close quote.

Now, as we investigated at Senate Armed Services Committee in our 2008 report, these so-called survival, evasion, resistance and escape, or SEER techniques referred to by Mr. Rodriguez were used to train members of our military. They were never intended to be used by U.S. interrogators.

These techniques were based on Chinese Communist interrogation techniques used during the Korean War to elicit confessions, were developed to expose U.S. -- and the use of or the training of U.S. personnel and

exposing of them for a few moments to these techniques which helped to -- was meant to help them survive in the event they were captured and the event they were subjected to these techniques.

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

BRENNAN:

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

LEVIN:

Now, the chairman and I issued a report on -- or made a statement on April 27th, 2012. This also began with the statement of Mr. Rodriguez.

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

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

Now my question to you is, are you aware of any intelligence information that supports Mr. Rodriguez' (ph) claim that the lead information came from KSM and Alibi (ph)?

BRENNAN:

I haven't reviewed the intelligence thoroughly, but I'm unaware of any.

LEVIN:

Next, Michael Hayden on May 3rd, 2011, former CIA director, said that, quote, "What we got, the original lead information, began with information from CIA detainees at black sites." The chairman -- the chairman and I issued in the same statement the following that isn't -- that the statement of the former attorney general, Michael Mukasey was wrong.

Do you have any information to disagree with our statement?

BRENNAN:

I do not.

LEVIN:

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

BRENNAN:

Yeah, I do not know.

I'm -- I'm unaware.

LEVIN:

You don't have any information to the contrary?

BRENNAN:

Right.

LEVIN:

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

Our statement, that of the chairman and myself, is that, that statement is wrong.

Do you have any information of the contrary?

BRENNAN:

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

LEVIN:

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

BRENNAN:

Right.

LEVIN:

Do you have any basis to disagree with us?

BRENNAN:

I -- I do not.

LEVIN:

Will you, when you become the CIA director, assuming you're confirmed, take the statement that we have issued, and tell us whether or not you disagree about any of these statements that we have made about those statements of those three men?

Will you do that if you're confirmed?

BRENNAN:

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

LEVIN:

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

BRENNAN:

I would be happy to.

LEVIN:

Now, there's one final point, and that has to do with a very famous document. My -- my time is not quite yet up. And that has to do with a -- a cable that came in that relates to the so called "Atta" matter. Are you familiar with that issue?

BRENNAN:

Yes I am, Senator.

LEVIN:

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

The cable that came in has been classified by the CIA even though the report of -- this is what the CIA did to the cable. Now, will you check with the checks for the source of this cable and see if they have any objection to the release of this cable relative to the report of that meeting?

BRENNAN:

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

LEVIN:

Well, the report of the CIA, by the way -- excuse me -- the unclassified report of the intelligence committee, which was not classified, it was not redacted by the CIA, it made at least four references to the check intelligence service providing the CIA with reporting based on a single source about this alleged meeting which never took place.

LEVIN:

We knew it never took place. And yet repeatedly, particularly the vice president, made reference to there was a report of a meeting between these two.

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

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

BRENNAN:

Absolutely, Senator, I will.

LEVIN:

Thank you. My time is up.

(UNKNOWN)

Senator Coats?

COATS:

Thank you, Mr. Chairman.

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

You and I when we talked earlier in a private talk talked about the relationship that you want to have with this committee, not just with the chairman and the vice chairman, but with all the committee members. And I appreciate your answers on that, and you addressed it again today in terms of potential trust deficit or -- you said that that's "wholly unacceptable." You would give straight answers and be blunt and candid.

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

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

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

So I wanted to say that.

I'd like to follow up a little bit more on the leaks question because I have a few more questions. I was going to delve into that in more detail, but it's already been discussed, Senator Risch and others. But let me just ask a couple of other questions to clear some things up in my mind. My understanding is that the Associated Press had information relative to the intercept of a planned operation that perhaps had something to do with airlines and

explosive devices. That apparently they had that for a few days and then either were about or had gone ahead and released it.

I'm assuming that your answer -- your then calling the conference call was in response to what they had just released. Is that correct?

BRENNAN:

Yes. A number of news networks have put our information about this. Yes.

COATS:

And what -- and you expressly called this teleconference -- arranged this teleconference, so for what exact purpose?

BRENNAN:

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

COATS:

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

BRENNAN:

No, I -- what I said was "inside control of the plot and that the device was never a threat to..."

COATS:

OK, "insider control."

BRENNAN:

No, I said "inside control," not "insider."

COATS:

OK, "inside control." Based on what the Associated Press -- the Associated Press never made any mention about inside control. Why was it necessary, then, to add that? Why couldn't you have just simply said, "We've intercepted a plot; it's been a successful interception"? Because the word "inside control" got out, then all the speculation -- and correct -- was that that inside control was interpreted as meaning "we've got somebody inside." And the result of that was the covert action operation had to be dissolved because the control agent, the inside person, was -- was -- well, essentially the plot was exposed and therefore the whole operation had to be dissolved.

BRENNAN:

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

Again, what I said was that there was inside control, because what I needed to do and what I -- what I said to the American public in open networks the following morning is that during the anniversary period of the bin Laden take-down when we said to the American public there was no active plots, no threat to the American public that we were aware of that was specific and credible, well why was not this IED that we had intercepted -- why wasn't that a threat?

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

COATS:

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

BRENNAN:

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

COATS:

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

BRENNAN:

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

COATS:

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

BRENNAN:

Senator, frequently if there is some type of event -- if there's a disrupted terrorist attack, whether it's some, you know, underwear bomber or a disrupted IED or (inaudible) bomb or whatever else, we will engage with the American public. We'll engage with the press. We'll engage with individuals who are experienced professional counterterrorism experts who will go out and talk to the American public.

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

COATS:

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

BRENNAN:

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

COATS:

And this in no way fell into that category?

BRENNAN:

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

COATS:

We do -- there is a provision in the -- last year's Intelligence Authorization bill that requires report to this committee of any authorized leak. So you are aware that...

BRENNAN:

I'm aware of the provision. Yes, there's -- been put forward.

COATS:

There's no -- no report has come forward. So I assume there haven't been any authorized leaks in the past year?

BRENNAN:

I think, you know, what we want to do is to make sure if there's going to be any disclosures of classified information, that this committee is going to be informed about that. So we are -- we will adhere to the provision that was in that intel authorization.

COATS:

Thank you. Mr. Chairman, my time is expired.

CHAMBLISS:

Senator Udall?

UDALL:

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

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

BRENNAN:

I have no plans to run against Governor Christie.

UDALL:

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

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

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

So when we, on the committee, and we as members of Congress, push hard for access to the legal analysis justifying the authority of the executive branch, to lethally target Americans using drones, for instance, it erodes the government's credibility of the American people.

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

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

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

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

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

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

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

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

And the committee will take up the matter of this report's declassification separately. But there's an important role I think the CIA can play in the interim. CIA has a responsibility to correct any inaccurate information that was provided to the previous White House, Department of Justice, Congress and the public regarding the detention-interrogation program.

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

BRENNAN:

Yes, Senator.

UDALL:

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

BRENNAN:

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

UDALL:

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

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

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

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

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

BRENNAN:

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

UDALL:

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

And I want to quote Howard Baker, who I think we all admire, in this room. He spoke about the Church Committee, which he, you know, was an important effort on the part of this Congress. And there was much broader criticism of the CIA in that Church Committee process. And the CIA came out of that stronger and more poised to do what it's supposed to do.

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

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

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

BRENNAN:

Thank you, Senator.

FEINSTEIN:

Thank you, Senator Udall. Senator Rubio?

RUBIO:

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

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

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

BRENNAN:

Absolutely agree.

RUBIO:

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

BRENNAN:

I agree.

RUBIO:

So who should be?

BRENNAN:

Well, there are a number of options: U.S. military, which maintains an active interrogation program, detention program; the FBI, as part of its efforts on counterterrorism; and our international partners, and working with them.

And that's where, in fact, most of the interrogations are taking place of terrorists who have been taken off of the battlefields in many different countries.

RUBIO:

So there are active interrogations occurring?

BRENNAN:

Absolutely. Everyday.

RUBIO:

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

BRENNAN:

Yes, on a regular basis.

RUBIO:

And they've indicated -- would it surprise you to know that some of them have indicated to us repeatedly, over the last couple of years that I've been here, that the information we get directly is much better than anything we get from our foreign partners on some of these issues?

BRENNAN:

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

RUBIO:

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

BRENNAN:

Yes, he was taken into custody by the Tunisians.

RUBIO:

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

BRENNAN:

Yes, and the Tunisians did not have a basis in their law to hold him.

RUBIO:

So they released him?

BRENNAN:

They did.

RUBIO:

Where is he? We don't know.

BRENNAN:

He's still in Tunisia.

RUBIO:

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

BRENNAN:

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

RUBIO:

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

BRENNAN:

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

RUBIO:

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

BRENNAN:

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

RUBIO:

What role -- what role should the CIA play in interrogations?

BRENNAN:

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

RUBIO:

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

BRENNAN:

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

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

RUBIO:

OK. So you think that's the best setting is the naval vessel?

BRENNAN:

No, I think...

RUBIO:

... From our perspective, leaving aside the foreign partners for a second, for us.

BRENNAN:

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

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

RUBIO:

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

BRENNAN:

Without a doubt.

RUBIO:

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

BRENNAN:

Well, I think, you know, you want to take the person off the battlefield. You also want to get as much intelligence as possible. You don't just want to get the information from somebody and then send them off. You need to be able to do something with them.

And we've put people away for 99 years, for life, so that, in fact, they're not able to hurt Americans ever again.

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

RUBIO:

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

BRENNAN:

Absolutely right.

(CROSS-TALK)

RUBIO:

So we can act correctly (ph).

BRENNAN:

Absolutely right.

RUBIO:

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

BRENNAN:

Right. It's not an either-or, but I agree with you (inaudible).

RUBIO:

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

BRENNAN:

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

RUBIO:

So where would we -- but why is it a bad idea to have a place that we can take them to?

BRENNAN:

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

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

RUBIO:

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

BRENNAN:

I'm very proud of our system of laws here and the Article III process. And we're -- our track record is exceptionally strong over the past dozen years, couple dozen years. That (ph) so many terrorists have been, in fact, successfully prosecuted and will not...

RUBIO:

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

BRENNAN:

... Absolutely, the FBI does a great job.

RUBIO:

But an Article III setting is not the most conducive to that.

BRENNAN:

I would disagree with that.

RUBIO:

Well, they're (ph) immediately advised about not cooperating and turning over information that would incriminate them.

BRENNAN:

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

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

RUBIO:

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

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

BRENNAN:

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

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

RUBIO:

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

BRENNAN:

Well, that's right.

RUBIO:

Based on what? Which law are we talking about?

BRENNAN:

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

RUBIO:

Right.

BRENNAN:

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

RUBIO:

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

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

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

BRENNAN:

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

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

RUBIO:

OK, thank you, (inaudible).

FEINSTEIN:

Thank you, Senator Rubio.

Senator Warner?

WARNER:

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

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

And particularly to a -- we've questioned you today about a number of key sensitive programs. The nature of the Agency's work is that a lot of these programs are disparate, varied.

And there needs to be some ability to measure objectively the success of these programs, not simply by those individuals that are implementing the programs.

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

BRENNAN:

Yes, that's an excellent point, Senator, one that I'm very concerned about.

In order to have objective measures of effectiveness, the metrics that you want to be able to evaluate the worth of a program, you cannot have the individuals who are responsible for carrying it out. As hard as they might try, they cannot help, I think, view the program and the results in a certain way. They become witting or unwitting advocates for it.

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

WARNER:

Again, the nature of so many programs, all very sensitive in nature. You have to have almost, as we discussed, probably not an IG type vehicle, something that is more run out of the director's office, but you gotta have some kind of red team that's gonna be able to check -- check this information out to make sure you've-- so that you hear colleagues here press on what -- what you have done or could have done, or should have done, or if -- if you had that oversight, you gotta have that objective information to start with.

BRENNAN:

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

WARNER:

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

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

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

BRENNAN:

In a fiscally constrained environment we have to make sure, more than ever, that every single dollar that's dedicated to intelligence is going to be optimized. And, in fact, if sequestration kicks in, what I wouldn't want to do as CIA director is do the salami slicing which is, you know, 5 percent off the top of gross, all programs, because all the programs are not...

WARNER:

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

BRENNAN:

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

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

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

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

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

WARNER:

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

Let me -- I know my time is running down. Your background and most of your expertise has been on the CT side. Clearly, the challenge we've got is we seeing emerging threats in parts of the world that we're not on the

front line as we see disruptions through the -- particularly through the Middle East where, perhaps in retrospect, we didn't have the right kind of coverage on social media and on to the streets.

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

If you could address that.

BRENNAN:

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

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

There were things that were happening -- happening in a -- on a populist -- in a populist way, that, you know, having somebody, you know, well positioned somewhere who can provide us information is not going to give us that insight, social media, other types of things. So I want to see if we can expand beyond the sodestra (ph) collection capabilities that have served us very well, and see what else we need to do in order to take into account the changing nature of the global environment right now, the changing nature of the communication systems that exist worldwide.

WARNER:

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

Thank you, Madam Chair.

FEINSTEIN:

Thank you very much, Senator.

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

I hope that is OK with you.

BRENNAN:

Absolutely...

FEINSTEIN:

Thank you. Thank you.

Senator Collins.

COLLINS:

Thank you.

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

In a recent speech that you gave at the Wilson Center, you said, quote, "Our unqualified preference is to only undertake lethal force when we believe that capturing the individual is not feasible." Yet a study by The New American Foundation as well as numerous press reports indicate that in if first two years of President Obama's administration there were four times the number of targeted killings than in eight years of President Bush's administration.

Is your testimony today that the huge increase in number of lethal strikes has no connection to the change in the Obama administration's detention policy? Because, obviously, if we're capturing a terrorist we have the opportunity to interrogate that individual, and perhaps learn about ongoing plots. But if the strike is done that opportunity is lost. Are you saying today, that it is totally unconnected to the Obama administration's shift in its detainee policy?

BRENNAN:

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

Now, I will say that if you look out at the last four years what happened in a number of places, such as Yemen and other areas, where there was, in fact, a growth of Al Qaida, quite unfortunately. And so, what we were trying to do, in this administration, is to take every measure possible to protect the lives of American citizens

whether it be abroad or in the United States, as well as a maturation of capabilities and insight into those intelligence plots as a result of the investment that was made in the previous administration that allowed us, in this administration, to take appropriate actions.

COLLINS:

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

We have heard both former CIA director Michael Hayden, in an interview on CNN, and a General McChrystal say that it is now changed, and that the impact of those strikes is creating a backlash. For example, General McChrystal said, "The resentment created by American use of unmanned strikes is much greater than the average American appreciates. They are hated on a visceral level, even by people who have never seen one or seen the effects of one.

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

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

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

BRENNAN:

I think that is something that we have to be very mindful of in terms of what the reaction is to any type of U.S. counterterrorism activities that involve the dropping of ordnance anywhere in the world, absolutely.

Whether it's a remotely piloted aircraft or whether it's a manned aircraft, I think we have to take that into account.

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

COLLINS:

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

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

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

BRENNAN:

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

COLLINS:

Well...

BRENNAN:

a lawyer, I've become...

COLLINS:

Well, one -- one was released within four months...

BRENNAN:

Right.

COLLINS:

... of the Obama administration taking office.

BRENNAN:

Right.

COLLINS:

The other had been requested for a very long -- much longer time.

BRENNAN:

Right.

COLLINS:

And released only today.

BRENNAN:

I'm not a lawyer. I've come to learn the term, (inaudible) term, sui generis, which means that, you know, it is obviously unique circumstances surrounding it.

The OLC memos that released shortly after the president came into office, they were released because the program was terminated. It was not longer in existence. OLC, Office of Legal Counsel, opinions that deal with ongoing activities, ongoing programs, it's a different animal.

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

COLLINS:

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

Finally, the Intelligence Reform Act and Terrorism Prevention Act of 2004 (sic), with which you're very familiar and of which I was a co-author, requires the director of national intelligence to recommend who the CIA director should be to the president of the United States.

I'm aware of General Clapper's, the DNI's letter, endorsing your -- your nomination, but that's different from his actually recommending to the president that you be chosen.

To your knowledge, did General Clapper recommend to the president that you be nominated for this position?

BRENNAN:

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

COLLINS:

Thank you.

FEINSTEIN:

Senator Heinrich?

HEINRICH:

Thank you, Madam Chair.

Mr. Brennan, let me joining my colleagues in thanking you for your service to your country and welcoming you to the -- the committee.

And should you be confirmed, I'd like to start by just inviting you to visit to New Mexico at some point and in particular Sandia and Los Alamos National Labs, because while they -- you often don't hear about the contributions that they make to our intelligence community, I can assure you that that support is -- is vital to keeping our -- our nation safe.

I've got a few questions, and please forgive me if some of these return to some of the things you've heard from other senators.

I want to start with your November 2007 interview with CBS News, where you said, and I quote, "There have been a lot of information that has come out of these interrogation procedures that the agency has in fact used against the real hard-core terrorists. It has saved lives," unquote.

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

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

BRENNAN:

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

HEINRICH:

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

BRENNAN:

Senator, I would give such a request for declassification every due consideration. There is a lot of information, material, in those volumes with a lot of potential consequences as far as its public release.

And at the same time that we have a commitment to transparency, we also, though, have a tremendous commitment to making sure that we keep this country safe by protecting its secrets.

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

HEINRICH:

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

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

BRENNAN:

Yes, Senator, it is very

HEINRICH:

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

BRENNAN:

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

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

HEINRICH:

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

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

BRENNAN:

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

I know when I've sat in the White House Situation Room and when I've looked to the intelligence briefer, that if they were to advocate in any way a policy preference, it really calls into question the independence, subjectivity and basis of that intelligence.

I want them to give me the facts as it is, irrespective of what their policy leanings or preferences might be, because policymakers need to do that.

BRENNAN:

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

HEINRICH:

Thank you.

One last question. I believe it was during that same online discussion with Washington Post you said, quote, "I think that there is an effort underway to get the CIA to adapt to the new realities of the intelligence community. The CIA has resisted many of these changes, which has been a problem. It's time to move forward." What exactly did you mean? And has the CIA made progress in that -- in that direction?

BRENNAN:

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

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

But given the changes in the environment, given the changes in the nature of our government, the CIA needs to be -- play a part in this larger role. And so now the head of the CIA does not sit on top of the intelligence community. It is part of a larger intelligence community that is led by the director of national intelligence.

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

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

HEINRICH:

That's very helpful. Thank you very much.

I yield back, Madam Chair.

FEINSTEIN:

Thank you very much, Senator.

Senator King?

(CROSSTALK)

FEINSTEIN:

Do you want to turn on your mike?

KING:

Thank you for your testimony and your stamina today.

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

Secondly, and this isn't really a question, but it's -- it's incredibly important for the CIA to be as open, to be totally open with this committee. The reason is that there's no one else watching. Typically in this -- in this -- in our country, we have the public is involved. The press is involved. There are a lot of people that have access to information of what the Department of Commerce is doing or the Department of State.

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

BRENNAN:

Absolutely I do, Senator.

KING:

Just briefly, and I think Senator Warner touched on this, going forward, there needs to be some serious discussion with the Department of Defense about where -- where the CIA ends and the Department of Defense starts in terms of counterterrorism activities operations. And I don't want to -- I don't need to pursue that, but I think that's -- I think Senator Warner raised an important point because in this day and age, we just can't be duplicating a whole set of -- of capabilities and priorities and officers and procedures and everything else.

I take it you subscribe to that.

BRENNAN:

I do agree, Senator, and I look forward in a closed session to talking to you about some specific areas where I really do believe that Defense-CIA relationship and integration of effort is critically important to the safety of this -- and security of this nation. So again, redundant -- mindful of not having any type of redundant capabilities or waste resources, we need to make sure that we can -- we can leverage the capabilities that exist in both organizations for the good of this country.

KING:

And the area I want to spend a little bit of time on is the drone policy, and particularly as it relates to American citizens. There's a lot of law and history involved in our system of checks and balances. James Madison famously in the 51st Federalist said, "If men and women -- if people were angels, we wouldn't need a government, and if the government was run by angels, we wouldn't need checks and balances." He concluded that angels were in as short supply then as they are today. And therefore, we need these kinds of checks and balances.

The Fifth Amendment is pretty clear: no deprivation of life, liberty or property without due process of law. And we're depriving American citizens of their life when we target them with a drone attack. Now, I understand that it's under -- I understand that it's under military circumstances. These are enemy combatants and all of those kinds of things.

But I would like to suggest to you that you consider, and Madam Chairman, I'd like to suggest to the committee that we consider a FISA-type process -- a FISA court-type process where an American citizen is going to be targeted for a lethal strike. And I understand you can't have co-commanders in chief, but having the executive being the -- the prosecutor, the judge, the jury and the executioner all in one is very contrary to the traditions and the laws of this country.

And particularly in a situation where there's time. If -- a soldier on a battlefield doesn't have time to go to court, but if you're planning a strike over a matter of days, weeks or months, there is an opportunity to at least go to some outside of the executive branch body like the FISA court in a confidential and top-secret way, make the case that this American citizen is an enemy combatant, and at least that would be -- that would be some check on the activities of the executive.

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

How do you react to this suggestion?

BRENNAN:

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

The decisions that are made are to take action so that we prevent a future action, so we protect American lives. That is an inherently executive branch function to determine, and the commander in chief and the chief executive has the responsibility to protect the welfare, well being of American citizens.

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

KING:

It's analogous to going to a court for a warrant -- probable cause...

(CROSSTALK)

BRENNAN:

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

KING:

I completely agree with you, and I understand the dilemma. And I'm not trying to suggest anything that would limit our ability to take action on behalf of American citizens. I would just feel more comfortable if somebody other than a member of the executive said, "Yes, we agree that the evidence is so strong," et cetera, as you stated it. In the Handley (ph) decision, Sandra Day O'Connor had a wonderful statement: "A state of war is not a blank check for the president when it comes to the rights of the nation's citizens."

BRENNAN:

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

So I think this is a very worthwhile discussion. I look forward to talking to the committee and others about it. What's that appropriate balance between executive, legislative and judicial branch responsibilities in this area?

KING:

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

Madam Chairman, I yield back my time.

FEINSTEIN:

Thank you very much, Senator.

We'll do another quick round. I think one of the problems is now that the drone program is so public and one American citizen is caught up, people don't know much about this one American citizen, so-called. They don't know what he's been doing. They don't know what he's connected to. They don't know the incitement that he has stirred up.

And I wonder if you could tell us a little bit about Mr. Awlaki and what he had been doing.

BRENNAN:

Well, Senator, I'm not going to talk about any particular operation or responsibility on the part of the U.S. government for anything whatever.

FEINSTEIN:

See, that's the problem. That's the problem. I think when people hear "American citizen," they -- they think somebody who's upstanding, and this man was not upstanding by a longshot. And now maybe you cannot discuss it here, but I've read enough to know that he was a real problem...

BRENNAN:

Well I can talk about Mr. Alaqwi (ph).

FEINSTEIN:

... and if you were in jeopardy -- that's right.

BRENNAN:

Yes, and before he died he was intimately involved in activities that were designed to kill innocent men, women, and children, and mostly Americans. He was determined to do that. He was not just a propagandist. He was, in fact, part of the operational effort that is known as Al Qaida in the Arabian Peninsula and had key responsibilities in that regard.

FEINSTEIN:

Can I ask you some questions about him?

BRENNAN:

You're the chairman.

FEINSTEIN:

You don't have to answer.

Did he have a connection to Umar Faruq Abdul Muttalab (ph) who attempted to explode a device on one of our planes over Detroit?

BRENNAN:

Yes, he did.

FEINSTEIN:

Could you tell us what condition it was?

BRENNAN:

I would prefer not to at this time, Senator. I'm not prepared to.

FEINSTEIN:

OK, did he have a connection to the Fort Hood attack?

BRENNAN:

That is a -- Al Qaida in the Arabian Peninsula has -- as a variety of means of communicating and inciting individuals, whether that be websites, or e-mails, or other types of things. And so there are a number of occasions

where individuals, including Mr. Alaqwi (ph), has been in touch with -- with individuals. And so, Senator, again I'm not prepared to address the specifics of these, but suffice it to say...

FEINSTEIN:

I'll just ask you a couple questions. Did Faizel Shazzad (ph), who pled guilty to the 2010 Times Square car bombing attempt, tell interrogators in 2010 that he was inspired by Al Alaqwi (ph)?

BRENNAN:

I believe that's correct, yes.

FEINSTEIN:

Last October, Alaqwi (ph), did he have a direct role in supervising and directing AQAP's failed attempt -- well, to bring down two United States cargo aircraft by detonating explosives concealed inside two packages, as a matter of fact, inside a computer printer cartridge?

BRENNAN:

Mr. Alaqwi (ph) was involved in overseeing a number of these activities. Yes, there was a relationship there.

FEINSTEIN:

And was it true that they were so concealed that the first attempt to find and did not reveal them? It took an asset coming back with -- to say, "Go again, look at this," to find it?

BRENNAN:

Yes the concealment method that was used in that was one of the best we had ever encountered.

FEINSTEIN:

So Mr. Alaqwi (ph) is not, by far, an American citizen of whom anyone in America would be proud?

BRENNAN:

Mr. Alaqwi (ph) was part of Al Qaida, and we're at war with Al Qaida, and it was his strong determination to kill Americans on behalf of Al Qaida.

FEINSTEIN:

Thank you.

Is it true that, in the last four years, the FBI has arrested 100 people, either planning, conspiring, or trying to commit a terrorist attack on this nation?

BRENNAN:

I don't know the exact number, Chairman, but yes, they have arrested a lot of people.

FEINSTEIN:

It's over 100, but they have arrested a lot of people, and that's because of good -- of good, sound intelligence.

I -- I think, and -- and this is just me -- what people forget is that they will kill us if they can, and it's extraordinarily difficult if you can't get in to where they were hiding. Would it have been possible to have arrested ha Mr. Alaqwi (ph) where he was in the Yemen?

BRENNAN:

It -- it is -- there are parts of Yemen that are ungoverned and beyond the reach of the Yemeni government security, intelligence, and services. And we work very closely with Yemenis to see if we can arrest, detain individuals. Whenever we can, we want to do that, because it's very valuable for us.

Any actions that are taken in concert with the Yemeni government are done in terms of any type of strikes that we might engage there with them, are done only because we do not have the ability to bring those individuals into custody.

FEINSTEIN:

Thank you. My time is up.

Senator Chambliss?

CHAMBLISS:

Thanks, Madam Chair.

In 2002 what was your knowledge of interrogation videotapes about Abu Zubaydah, and did you seek any information about an office of general council review of them in 2002?

BRENNAN:

I have -- I don't have a recollection of that, Senator.

CHAMBLISS:

Of the tapes, or that request?

BRENNAN:

At the time, in 2002, I do not know what my involvement or knowledge was at the time of the tapes. I believe that they -- I was aware of the Abu Zubaydah debriefings and interrogation sessions being taped.

CHAMBLISS:

OK, it should be no surprise that many members have been dissatisfied with the administration's cooperation on the Benghazi inquiries.

For example, Senator Graham asked Director Clapper, in a hearing, if he was aware of the series attacks in Benghazi, in the summer of 2012, and asked if he had informed the president about those attacks. Now that seemed like a reasonable -- a perfectly reasonable questions (sic), and the DNI said he would get us an answer.

When we got an answers back from the DNI's office there was a notation next to this particular question that Senator Graham asked, and here's what it said, and I quote, "Per NSS," that's the National Security Staff, "no response required."

Mr. Brennan, that's your shop. Do you have any knowledge about why Senator Graham's question was not to be answered?

BRENNAN:

Senator, I think there's a longstanding tradition understanding of respecting the executive privilege that exists in the office of the presidency and in terms of what information is provided to the president or advice, counsel, to him -- to him. So it's -- I would suspect then that that question gets into this issue of the executive privilege, which I think again has been a long standing tradition.

CHAMBLISS:

Are you sure that's the answer, or you think that's probably what it was?

BRENNAN:

I -- I don't know firsthand, because that would not been a request coming to me.

CHAMBLISS:

And I understand that, so my direction to you - I ask of you is, that you go back and review that. We'll get you notation if necessary. And if you could just give us a written response to that if possible.

BRENNAN:

You deserve a response, certainly.

CHAMBLISS:

This weekend, Secretary Panetta confirmed that information that led to Bin Laden came from detainees and the CIA's EIT program. His account comports with information we were provided immediately after the raid, and in months to follow from the CIA analyst who actually tracked down Bin Laden. These analysts told us it was detainee information that was key to them finding the courier and ultimately Bin Laden.

Now, were you briefed by any of the analysts who track down Bin Laden?

BRENNAN:

Before the -- the operation?

CHAMBLISS:

Yes.

BRENNAN:

Oh, absolutely, I was engaged with them.

CHAMBLISS:

OK, and is that the information that was given to you, that it came from interrogation of detainees on whom EIT's had been used?

BRENNAN:

I don't recall if I was given that information specifically. They talked about the -- the chain of -- of sort of collection that took place that was related to some of the information coming from the detainees. Yes, so there was some there.

CHAMBLISS:

Do you agree with Secretary Panetta's comments?

BRENNAN:

That there some information that came out from there?

CHAMBLISS:

Yes, that led to the courier.

BRENNAN:

Senator, I now again looking at this -- this document from SSCI, this report, I don't know what the -- the facts are, or the truth is. So I really need to look at that carefully and see what CIA's response is, because the SSCI report calls into question whether or not any of the information was unique and led to it.

CHAMBLISS:

Fair enough.

Suffice it to say, Secretary Panetta's comments are in direct conflict with the report that came out of this committee recently.

And you know I have serious concerns about that interrogation study that was voted out by committee. Now you told me, a couple of days ago, when we met that the study, and I quote, "Was not objective," and it was, quote, "A prosecutor's brief. Written with an eye toward finding problems." And you went on to say that you're withholding judgment on the merits and action until you read the response.

And my understanding is, from what you've said, that's what you're going to do. Suppose the CIA takes the position the study's finding and conclusions are wrong?

I think I know John Brennan well enough to know that you're gonna stand up and say whatever's on your mind, and whatever you conclude. And I'm not gonna ask you for a response to that, but I know you'll review it with an open mind, and give us your thoughts and your opinions about the CIA's response to it, and how we move forward with this.

BRENNAN:

I assure you, Senator, I will do that.

CHAMBLISS:

Thank you very much.

FEINSTEIN:

Thank you very much, Senator.

Senator Wyden.

WYDEN:

Thank you. Thank...

FEINSTEIN:

Oh, excuse me. (inaudible).

Senator Rockefeller?

ROCKEFELLER:

Thank you, Madam Chair.

The -- I was just making a comment to the chair, Mr. Brennan, that I've been through a whole lot of confirmation hearings in 28 years here, and including quite a few CIA directors.

And I quite honestly do not recall anybody who was more forthright, more direct, more accommodating without violating who you are, more open to the possibility of working with this committee in a way that will do two things. One, that will give the folks at CIA, who probably constantly worry about what is the next awful thing that we're on to say about them, but that's not our intention because we're into the business of problem solving, and if we have to write a 6,000-page thing, it isn't fun for us; we're trying to solve a problem.

I have a feeling you understand that. I have a feeling that -- that you feel that the CIA, if they felt that they were working in -- in -- you know, with some contention with the oversight committee in the Senate, but, nevertheless, that the Senate was involved, was informed, was interested, that this would be something that they would welcome. That there are a lot of people who've been at the CIA for quite awhile, who may be sort of stuck in that mid-rank crisis, et cetera, who are looking for an open, fresh, strong leader.

I happen to think you are that leader. I've felt that since our conversation. I felt that from before our conversation. And we haven't had our secret meeting yet, so I always -- but I'm not going to -- I'm sure I'm not going to change my mind.

I just think you've done an extraordinary job of -- of patience, of courtesy, of wisdom, of being able to -- the only question that you couldn't answer that I'm aware of was who was it that took notes on some meeting that you had, teleconference that you had 20 years ago. But I find it in my heart to forgive you for that.

So, to me, I think you're a terrific leader, and I'll look forward to Tuesday. But I thank you're the guy for the job, and the only guy for the job.

BRENNAN:

Thank you, Senator, for this very kind words. And I haven't lived up to them yet. And if I were to go to CIA, as I think some people have said, some senators have said, you want to hear not just words, but you want to actually see the actions.

It's a daunting task to go over to CIA. I want every member of this committee to be an ardent advocate, proponent, and defender of the men and women of the Central Intelligence Agency.

And I see it as my obligation to represent them to you on their behalf, so that when times get tough and when people are going to be criticizing and complaining about the CIA, I have all of you to say you knew about what the CIA was doing, you supported it, and you will defend it.

FEINSTEIN:

Senator Burr?

BURR:

Thank you, Chairman.

And I'm gonna try to be brief, because I've noticed you're on your fourth glass of water, and I don't want to be accused of waterboarding you.

(LAUGHTER)

Mr. Brennan, with the exception of our request for the presidential daily briefs around the time of Benghazi, which there was executive privilege claimed, do you know of any other claim of executive privilege on any of the documents that this committee's waiting on right now?

BRENNAN:

Senator, I know that there are requests for some e-mails that might have taken place between the intelligence community and the White House, whatever, and so there are a number of sort of elements that I think people are looking at. So...

BURR:

But none that executive privilege have been claimed on. Correct?

BRENNAN:

Well, I -- I am not in a position to say that, Senator, and I would defer to those individuals, the White House counsel and others, to make those determinations about what they want to...

BURR:

Well, let me say it from this end. They have not claimed -- they have not justified not producing those documents based upon executive privilege. So I -- I assume if they're going to claim it, then they need to claim it quick.

On January 13th of this year, president -- the president signed into law the 2013 Intelligence Authorization Act, which requires congressional notification of any authorized disclosure of national intelligence.

Now, we've not received any notifications of authorized disclosures. Have there been any authorized disclosures, to your knowledge?

BRENNAN:

I would like to say that since you haven't received any notifications, there haven't been.

BURR:

Would you consider the information reported in the press about the counterterrorism playbook an authorized disclosure?

BRENNAN:

I don't know which piece you're talking about. There's been a lot of -- of discussion out there in the - in the media and in the newspapers about this.

And so, I don't know specifically about any classified information. The fact that the administration may be going through a process to try to institutionalize, codify, make as rigorous as possible, our -- our processes and procedures in and of itself is not a classified issue.

So those details that are classified, I don't know of any that came out in some of those reports.

BURR:

Well, if -- if there are classified information that's out there, and it was not authorized, was there a crime report filed relative to the playbook?

BRENNAN:

Presumably there was, Senator. Those decisions, as far as initiating criminal investigations, are done by those departments and agencies that have stewardship of that classified information and in discussions with the Department of Justice to make a determination whether or not in light of the fact that maybe so many people have access to it, how they can proceed with some type of criminal investigations.

BURR:

As we prepare for the closed hearing on Monday, this is not a question -- on Tuesday, excuse me -- I'll ask you today that you be prepared to provide for the committee any specific discussions that you had where you were authorized to reveal classified information or to talk about information on covert action.

Again, not something I'd like to do today. The answer may be zero. If there are things, Tuesday would be an opportunity for you to provide. That was a question from -- a pre-hearing question from the committee that was unanswered.

My last question is this, I'm still not clear on whether you think the information from CIA interrogations saved lives. Have you ever made a representation to a court, including the FISA court, about the type and importance of information learned from detainees, including detainees in the CIA detention and interrogation program?

BRENNAN:

First of all, on the first part of your question, that you're not sure whether or not I believe that there has been misinformation (ph), I don't know...

BURR:

I said I wasn't clear whether I understood, whether I was clear.

BRENNAN:

And I'm not clear at this time either, because I've read a report that calls into question a lot of the information that I was provided earlier on, my impressions.

There -- when I was in the government as the head of National Counter- Terrorism Center, I know that I had signed out a number of affirmations related to the continuation of certain programs based on the analysis and intelligence that was available to analysts. And I don't know exactly what it was at the time, but we can look at that.

BURR:

But -- but the committee can assume that you had faith -- if you make that claim to a court or -- including the FISA court, you had faith in the documents and in the information that was supplied you to make that declaration?

BRENNAN:

Absolutely. At the time when I -- if I made any such affirmation, I would have had faith that the information I was provided was an accurate representation.

BURR:

Thank you very much, Madam Chairman.

(OFF-MIKE)

FEINSTEIN:

Senator Wyden?

WYDEN:

Thank you, Madam Chair.

We have talked for several hours now about the question of targeted killings of Americans, and you've heard it from a number of senators.

And I'd like to get your reaction on one point in particular. And that is this question, particularly in the context that you've given, that you've tried to focus in areas where the evidence is substantial, the threat is imminent, where there is a particularly persuasive case that the targeted killing of an American is warranted.

In that kind of case, do you believe that the president should provide an individual American with the opportunity to surrender before killing them?

BRENNAN:

Senator, I haven't spoken about any specific operations...

(CROSSTALK)

WYDEN:

I'm talking about -- I'm talking about the concept...

BRENNAN:

Right.

WYDEN:

... because you talk about the concept.

BRENNAN:

Right. Absolutely.

WYDEN:

You said imminent threats, serious evidence, grave concern. And certainly words that strike a cord with me. And that's why I'd be interested in your thoughts on whether in those kind of instances, the president ought to give -- should give an individual American the opportunity to surrender.

BRENNAN:

Right. I think in those instances, and right now let's use the example of Al Qaida, because if an American were to join Al Qaida, we have routinely said openly, publicly, repeatedly that we're at war with Al Qaida. We repeated have said that Al Qaida is in fact trying to kill Americans and that we are going to do everything possible to protect the lives of American citizens from these murderous attacks from Al Qaida.

We have signaled this worldwide. We repeatedly have said it openly and publicly. Any American who joins Al Qaida will know full well that they have joined an organization that is at war with the United States and that has killed thousands upon thousands of individuals, many, many of them who are Americans.

So I think any American who did that should know well that they in fact are part of an enemy against us and that the United States will do everything possible to destroy that enemy to save American lives.

WYDEN:

And I certainly, and I said this at the very beginning, I certainly want to be part of that effort to fight Al Qaida on all of these key fronts. I just want to have some answers, and I'll give you another chance, whether you think the president should give an individual American the opportunity to surrender?

I think that Senator King, for example, talked about the idea of a new court, and there are going to be colleagues that are going to talk about a whole host of ideas. And I commend you for saying that you're open to hearing about that.

This is something that can be set in motion I think in a straightforward way as a general principle. We're not talking about any one individual. And I think you've answered the question and -- and I won't -- I won't go any further unless you want to add anything to it.

The only other point I'd -- I'd say is we've covered a lot of ground today. And as far as I'm concerned, we've got a lot of ground still to cover. I've made it clear that we've got to see all -- any and all of those legal opinions, the ones that the bipartisan group of senators asked for, before the vote. And to your credit, you said you'd take the message back to the White House.

Because what it really goes to, Mr. Brennan, is this question of checks and balances. And we probably didn't use that word enough this afternoon because I think that's really what this is all about. Our Constitution fortunately gives the president significant power to protect our country in dangerous times.

But it is not unfettered power. It's power that is balanced through this special system that ensures congressional oversight and public oversight. And so that's why these questions that I and others have been trying to get at in terms of congressional oversight, being able to get all of the opinions that are relevant to the legal analysis for targeting Americans, and then to learn more about how you're going to bring the public into the discussion.

And certainly you've been patient this afternoon, and I want you to know I think we've covered a lot of ground, but I think we've got a lot -- lot to go. And I'd be happy to give you the last -- last word. I've got a little more time if you want it.

BRENNAN:

Thank you, Senator.

First of all, any member of Al Qaida, whether they be a U.S. citizen or non-U.S. citizen, needs to know that they have the ability to surrender -- right to surrender anytime, anywhere throughout the world. And they can do so before the organization is destroyed. We will destroy that organization. And again, out there in Al Qaida, U.S. citizens and others, they can surrender anytime, turn themselves in.

WYDEN:

Just -- just on that point, I don't take a backseat to anybody in terms of fighting Al Qaida. That was why I came out with it right at the outset. But I asked you a different question, and on the question of what kind of evidence ought to be applied, whether there ought to be geographic limits, the question of whether an individual should be allowed to surrender. For -- for example, there is I think also a question whether the obligation changes if, you know, a valid target has not been publicly reported.

So there are issues, you know, here. And I think we're going to have to continue those -- those discussions.

And Madam Chair, I thank you for this extra round.

FEINSTEIN:

Thank you.

Senator Coats?

COATS:

Thank you, Madam Chairman.

John, I want to just say, and I'm not going to go into it here; I think maybe better held for further discussion next week in classified room. But this -- this whole idea of leaks, nothing upsets me more on this committee than - - and we've had a raft of these in the last couple of years -- to see something that was discussed in -- in classified area written up the next day in the newspapers or on the part of the media. It drives some of us crazy. It does me, anyway.

And so maybe I'm a little paranoid about all this and so forth. I just can't totally get my hands around this AQAP situation which we discussed earlier. But I'm going to defer that until Tuesday so we can discuss it in more detail.

Let me just ask you one question here. You said -- I don't have the date -- "Al Qaida -- the Al Qaida core has been decimated in the FATA." And we're aware of the significant efforts we've made and the progress we've made in that regard. But we see this thing metastasizing now across northern Africa and other parts.

What's your, you know, latest assessment of Al Qaida in terms of its control and operation of these smaller efforts that are popping up like a whack-a-mole machine in different parts of the Middle East and north Africa?

BRENNAN:

Well, Senator, you used the exact right term when you said Al Qaida's been metastasizing in different parts of the world. We have the Al Qaida core that in the past I think exerted quite a bit of orchestration of order over a number of these franchises that have developed.

Now, as a result of the decimation of the core and our ability to interrupt a lot of the interaction and communication between them, a lot of these different elements like Al Qaida in the Arabian Peninsula, Al Qaida in the Islamic Maghreb, other elements have grown up and developed as a result of the domestic and local sort of environment.

And so they're all sort of, you know, unique unto themselves. They have different features and characteristics. We need to make sure that we're able to work with the governments and the intelligence and security services in the area so that we can put as much pressure on them as possible.

A number of them have, you know, local agendas. Some of them have local agendas as well as international agendas. Al Qaida in the Arabian Peninsula in Yemen has a very determined insurgency effort underway in side of Yemen to try to, you know, bring that government down. And the government has done a great job, you know, fighting back.

There are other elements -- Al Qaida is Islamic Maghreb. You know, they're counter-narcotics (sic). They're narcotics smugglers. They're human traffickers. They -- they involve quite a bit in kidnapping and ransoms, and also involved in tourist attacks.

So what we need to do is to take into account what the environment is, who we can work with, how we're going to put pressure on them. But any element that is associated with Al Qaida has as part of its agenda death and destruction. And so I fully agree what we need to do is be mindful of the metastasization of the Al Qaida cancer.

COATS:

But in relationship to some kind of centralized control over all these things, having said that the core is decimated.

BRENNAN:

It really varies, you know. We do see Al Qaida core trying to exert some control over some of these elements. There's a lot of independence of effort, you know, autonomous efforts that are underway. And I'd be happy to be able to talk in, you know, closed session about the particular relationships that exist between Al Qaida and some of these other elements.

COATS:

Very good. Thank you.

Thank you, Madam Chairman.

FEINSTEIN:

Thank you very much, Senator.

Senator Collins?

COLLINS:

Thank you.

FEINSTEIN:

Last, but far from least.

COLLINS:

Thank you, Madam Chairman.

Mr. Brennan, I want to follow up on the point that Senator Coats just raised with you, because if you looked at a map back in 2001, you would see that Al Qaida was mainly in Afghanistan and Pakistan. And if you look at a map today, you would see Al Qaida in all sorts of countries.

That's not to say that there weren't cells in other countries back in 2001, but it raises the question in my mind of whether, even though we've been successful in taking out some of the core of Al Qaida and some high-level leaders, whether -- whether our strategy is working. If the cancer of Al Qaida is metastasizing, do we need a new treatment?

BRENNAN:

What we've tried to do, Senator, over the past decade and longer is to be able to treat this real cancer in a number of ways. Sometimes it takes lethal force, sometimes it takes military might, sometimes it takes working with our partners in a variety of ways, sometimes it takes addressing some of the -- the infrastructural institutional and other deficiencies that exist in these countries that Al Qaida takes advantage of.

If you look at the geographic map, you know, in the area from South Asia over to the Middle East and North Africa, there has been tremendous political turbulence in that area over the past decade, and particularly in the last couple years. There are a lot of spaces -- ungoverned spaces that Al Qaida has taken advantage of. We've been able to make some significant progress in certain areas.

Somalia is, in fact, a good example of a place where we have worked with neighboring countries, we've worked with the local government, we've worked with AMASOM (ph) a multilateral element within Africa, to try to suppress the efforts of Al Shabaab and Al Qaida in East Africa. Good progress we made there, because it has to be comprehensive. It's not just a kinetic solution to this by any means.

Now, as we look at the Sahel, and -- and to the area in Mali and other areas, these are tremendous expanses of territory where Al Qaida can put down roots beyond the reach of local governments. And so they've been able to put down roots and they've been -- it's been unattended, because of the difficulties that these countries have even feeding their people, much less putting in place a system of laws and the intelligence and security capability.

So, is it a different strategy, it has to be a comprehensive one, but Al Qaida and this -- you know, the forces of Islamic extremists that -- that have really corrupted and perverted Islam are -- are making some progress in areas that give me real concern. That's why I look at a place like Syria right now, and what is going on in that country, we cannot allow vast areas to be exploited by Al Qaida and these extremists forces, because it will be to our -- our peril.

COLLINS:

I certainly agree with you on that, and in our classified or closed hearing next week I'm gonna be asking you about Syria and also the Iranian threat. But I don't think those are appropriate in open session.

Just two final questions. One has to do with priorities that you would set as director if you are confirmed. In recent years paramilitary operations, obviously had consumed a lot of resources, expertise, time, energy, and effort at the CIA.

Do you believe this has been at the expense of traditional CIA responsibilities: Collection, analysis, all source?

BRENNAN:

Well certainly there have been opportunity costs because of the dedication of those resources. What I would need to do is, if I were to go to CIA, is to inventory exactly how our resources are being dedicated against the wide variety of strategic priorities to protect our country.

In terms of operational collection activities worldwide, in terms of the all source analysis being done, what are we doing in these other areas? Cyber, you know, weapons proliferation, political turbulence, there are so many different areas. Counterterrorism is an important one. There is also an intersection between counterterrorism and a lot of these other areas, counter-proliferation, international organized crime, other things.

So we really want to optimize those resources so that we can in fact leverage the capabilities we have to deal with these very challenging issues across a very large globe.

COLLINS:

Mr. Brennan, you have devoted a great deal of your life to public service, for which I thank you. And you obviously understand the worlds of intelligence in a way that few people do. You've been an intelligence professional for much of your -- your professional life.

In the last four years, you have held a political position at the White House. And I have been talking to people at the CIA, whom I respect, and one intelligence official told me that a key question for the men and women of the CIA is which John Brennan are they going to get. Are they going to get John Brennan who's been the right-hand adviser of President Obama in a political White House and, by the nature of the position, I don't say that critically. That's -- that's the position. Or, are they going to get John Brennan, who was a career CIA officer, who worked his way up in the ranks?

And the concern is that they want to hear that you are going to be the CIA's representative to the White House, not the White House's representative to the CIA. And I just want to give you the opportunity today to respond to that concern.

I would note that I also heard very good comments from people with whom I talked, and -- but I think it's important when someone's coming from a political role to make clear that you're going to be the leader of the agency and not the White House's agent within the agency.

BRENNAN:

Thank you, Senator.

I think if I were to be fortunate, privileged, and honored to go out to CIA, the CIA would get the John Brennan who is neither a Democrat nor Republican, nor has ever been. a John Brennan who has a deep appreciation, and respect, and the intelligence profession, one who has been fortunate to have lived it for 25 years.

A John Brennan who has had the great fortune to be in the White House the past four years watching and understanding how intelligence is used in support of our national security. CIA would get a John Brennan who has been working national security issues for my life.

They would get a John Brennan who really understands that the value of intelligence, the importance of this intelligence is not to tell the president what he wants to hear, not to tell this committee what it wants to hear, but to tell the policy makers, the Congressional overseers what they need to hear. What the intelligence committee, with all its great capability and expertise, has been able to uncover and understand about world events that fundamentally affect the lives of not just this generation of Americans, but of future generations of Americans.

And so, if I had the great privilege to lead the men and women of the CIA, it would be the biggest honor of my life, and I would understand just how important and weighty that would be. And if I ever dishonored that responsibility, I couldn't look myself in the mirror. I couldn't look my parents, my family in the mirror. I couldn't look you in the face, and I -- is something that is very important to me.

So I guess the -- the proof will be in the pudding -- tasting of the pudding, and if I do have that opportunity, it would be my intention to make sure I did everything possible to live up to the trust, confidence, that this Congress, this Senate, and this president might place in -- in me.

COLLINS:

Thank you very much.

Thank you, Madam Chairman.

FEINSTEIN:

That you very much.

If there are no further questions, John, I would like to associate myself with what Senator Rockefeller said. I sat through a number of these hearings. I don't think I've ever heard anyone more forthright or more honest or more direct. You really didn't hedge. You said what you thought. And I want you to know that, that's very much appreciated. And I actually think you are going to be a fine and strong leader for the CIA.

And, you know, I can't help but say I am really fully supportive of -- of this and will do everything I can possibly can to see that our committee works with you, closely and honestly.

We will have a classified hearing. I am specifically going to just warn you that I would like to talk -- or have you respond in detail to what I perceive as a difficult, evolving situation in North Africa, now with Tunisia, with Libya, with all these countries, and certainly with Mali, and what you plan to -- how you plan to direct the agency to deal with this evolving momentum that's taking place in Northern Africa.

So that will be for Tuesday, and at the request of Senator Levin, I ask unanimous consent to enter into the record a joint statement that he and I made, on April 27th, 2012.

And, secondly, in order to have Mr. Brennan's answers to questions for the record by the time he returns before us in closed session, I ask members to the right questions for the record by 5:00 P.M. tomorrow. That's Friday, February the 8th, so we have them for you as soon as possible so that you can respond to them Tuesday.

I want to thank you and your family for being here. And I wish you well.

Thank you, and the hearing is adjourned.

BRENNAN:

Thank you, Chairman.

CQ Transcriptions, Feb. 7, 2013

List of Panel Members and Witnesses

PANEL MEMBERS:

SEN. DIANNE FEINSTEIN, D-CALIF. CHAIRMAN

SEN. JAY ROCKEFELLER, D-W.VA.

SEN. RON WYDEN, D-ORE.

SEN. BARBARA A. MIKULSKI, D-MD.

SEN. MARK WARNER, D-VA.

SEN. MARTIN HEINRICH, D-N.M.

SEN. MARK UDALL, D-COLO.

SEN. HARRY REID, D-NEV. EX OFFICIO

SEN. CARL LEVIN, D-MICH. EX OFFICIO

SEN. ANGUS KING, I-MAINE

SEN. SAXBY CHAMBLISS, R-GA. VICE CHAIRMAN

SEN. RICHARD M. BURR, R-N.C.

SEN. JIM RISCH, R-IDAHO

SEN. DAN COATS, R-IND.

SEN. MARCO RUBIO, R-FLA.

SEN. SUSAN COLLINS, R-MAINE

SEN. TOM COBURN, R-OKLA.

SEN. MITCH MCCONNELL, R-KY. EX OFFICIO

SEN. JAMES M. INHOFE, R-OKLA. EX OFFICIO

WITNESSES:

JOHN BRENNAN, NOMINATED TO BE DIRECTOR OF THE CIA

Face the Nation transcripts February 10, 2013: Graham, Reed and Rogers

(CBS News) Below is a transcript of "Face the Nation" on February 10, 2013, hosted by CBS News' Bob Schieffer. Guests include Sens. Lindsey Graham, R-S.C., and Jack Reed, D-R.I., Rep. Mike Rogers, R-Mich., Woodrow Wilson Center's Jane Harman, CSIS senior fellow James Lewis and CBS News' Bob Orr; plus, a political roundtable with David Leonhardt and Kevin Merida.

SCHIEFFER: Today on Face the Nation, blizzards, drones, and cyberattacks, and yes, there's more. Still recovering from super storm Sandy, the heavily populated northeast was pounded by a monster blizzard that stretched from New Jersey to Canada. Massachusetts Governor Deval Patrick, whose state was among the hardest hit, will give us the latest from there. And as the northeast is digging out, Republicans are digging in: demanding more information on what the president knew about the terrorist attack on Benghazi that left four Americans dead.

(BEGIN VIDEO CLIP)

GRAHAM: Are you surprised that the president of the United States never called you, Secretary Panetta, and say how's it going?

(END VIDEO CLIP)

SCHIEFFER: Republican Senator Lindsey Graham is with us this morning and he is prepared to take new steps unless he gets some answers. With Washington awash with controversies over the president's nominees to run the Pentagon and the CIA new reports of computer hacking, and the threat of cyberattacks. We'll also hear from Mike Rogers, chairman of the House intelligence committee, Senator Jack Reed of the armed services committee, former Democratic congresswoman Jane Harman, now with the Woodrow Wilson Center, James Lewis of the Center for Strategic and International Studies, and our own Justice Department correspondent Bob Orr. For analysis, we'll talk with Kevin Merida, a managing editor of the Washington Post, and David Leonhardt, a Washington bureau chief of the New York Times. It's cold outside, but getting warmer inside because this is Face the Nation.

ANNOUNCER: From CBS News in Washington, Face the Nation with Bob Schieffer.

SCHIEFFER: And good morning again. Well, the blizzard of 2013 may have set records in some areas for snowfall. Five states received over two and a half feet of snow. 40 million people in the region have been affected, over 350,000 are still without power in the northeast. And so far, eight deaths have been attributed to the storm. It is bound to get worse as weather forecasters tell us another storm is on the way. Massachusetts is among the states who were hardest hit. And we're joined now by the Massachusetts governor, Deval Patrick. Good morning, governor. I know you're in Plymouth this morning, but it looks like you're somewhere in the Swiss Alps. How did the state come through the night?

PATRICK: We came through pretty well. We are holding our own. We have about 240,000 customers without power. That's down from a high of around 400,000 yesterday. About 1,000 people in shelters, some coastal damage. But considering the severity of the storm, the amount of snow, and the wind, we've come through this pretty well.

SCHIEFFER: How about flooding?

PATRICK: We've had some coastal flooding with high tide yesterday around 10:00. There is some structural damage, which we're still assessing now that we can get out and get eyes on things. But no serious injuries from those -- from the flooding, which is a blessing.

SCHIEFFER: What do you -- at this point, what is the major challenge you have?

PATRICK: It's cleaning up, getting the power back on. We're trying to make sure that public transit is fully functioning in time for tomorrow's commute, tomorrow morning's commute. We've had the MBTA, our transit system, in suspended operations really since Friday and that will continue through the day. I think we'll be able to get the subways going and the commuter rail. It's a challenge to get the buses going because some of the secondary roads still need to be cleared, but we're working on that today.

SCHIEFFER: What do you need from the federal government?

PATRICK: Well, support and encouragement. They've been great. Our fellow governors in neighboring states have sent equipment and people to help as well, which is most welcomed and appreciated. We have really, really terrific coordination by our own state emergency management, with all of the state agencies local agencies, and the federal government. So I think it's too soon to say exactly what we need from the federal government, but they continue to check in and have routinely to make sure that we have what we need as we go along.

SCHIEFFER: There are reports that there's another big storm coming. Are you ready for that?

PATRICK: I don't even have to think about it, to tell you the truth. I've heard that we may get a Valentine's Day storm. I'll tell you what's more concerning in the shorter run is that we may get rain tomorrow. Warmer temperatures, which will be great, but rain on top of snow that is so far pretty light on flat roofs and so forth can be a hazard. So we are encouraging people as they can do so safely to use snow rakes and so forth to start to move the snow off of their roofs.

SCHIEFFER: Well, governor, we want to thank you very much and all the best to you.

PATRICK: Thank you so much, Bob, all the best to you.

SCHIEFFER: And joining us two key members of the senate armed services committee, Republican Lindsey Graham is in Miami this morning where the weather is a little better, and Democrat Jack Reed is here with us in the studio, far away from the snow this morning in his home state of Rhode Island. How is your state doing, senator?

SEN. JACK REED, (D) RHODE ISLAND: We took a very major blow, but the state's responding very well. We have about 70,000 people still without power. That's a key issue because power and boilers operate together, typically. The governor, our adjunct general, general McBride, our state police commander Colonel O'Donnell did a superb job preparing, and the utilities are doing

USCA Case #11-5329 Document #1419812 Filed 02/11/2013 Page 3 of 16

SCHIEFFER: All right, Senator Graham, I want to talk to you about indoor activities because it's gotten warmer here on Capitol Hill last week during all those confirmation hearings. It was pretty obvious during those hearings, senator, that you are still not satisfied with the administration's version of what happened on that night when four Americans died in Benghazi. You brought it up during the hearings that the president was briefed on all of that about 5:00 in the afternoon and then had no other contact with the secretary of defense, with the joint chiefs chairman, or with Secretary of State Clinton. We also understand that on that night, the State Department, or the government, chartered an airplane in Tripoli, and flew some security agents in to Benghazi. But it's my understanding, they were held up at the airport. Tell us what you found out about that.

GRAHAM: Well, there's a six-person rescue team left Tripoli to reinforce the annex in Benghazi. They left at 1:30 -- excuse me, they arrived at 1:30 in the morning Libyan time. And it was not until 5:00 that they could get to the annex. They were held up for three and a half hours at the airport, had problems with the militias releasing them and a lot of bureaucratic snafus. Here's my question -- did the president ever pick up the phone and call the Libyan government and say, "let them get out of the airport. They need to get to the annex to protect our people under siege?" Did the president at any time during the eight-hour attack pick up the phone and call anybody in Libya to get help for these folks? Secretary Clinton said she was screaming on the phone at Libyan officials. There's no voice in the world like that of the president of the United States. And I do believe if he had picked up the phone and called the Libyan government, these folks could have gotten out of the airport to the annex and the last two guys may very well be alive. And if he did call the Libyan officials and they sort of blew him off, that would affect whether or not I would give foreign aid in the future to Libya. But if he failed to call on behalf of those people under siege, and I think that's a massive failure of leadership by our commander in chief.

SCHIEFFER: Well, have you tried to find out if he did call?

GRAHAM: I've tried. We know he had a 15-minute briefing by Secretary Panetta and the chairman of the joint chiefs right after the attack happened. It was a preplanned meeting. It just happened that Benghazi came up at the meeting. I don't know what the president did that evening. I don't know if he ever called anyone. I know he never talked to the secretary of defense. I know that he never talked to the chairman of the joint chiefs. And they never talked to anybody at the White House. I know the secretary of state never talked to the secretary of defense. This was incredibly mismanaged. And what we know now, it seems to be a very disengaged president. Again, if he had lent his voice to this cause, I think it would have made a big difference. And I'm not going to stop until we get an accounting. I've pushed back against the Bush administration when they said Iraq was just a few dead ends. We know nothing about what the president did on the night of September 11 during a time of national crisis, and the American people need to know what their commander in chief did, if anything, during this eight-hour attack.

SCHIEFFER: What can you really do about it? You can ask them what the president was doing. If they don't give you an answer what, can you do?

GRAHAM: I don't think we should allow Brennan to go forward the CIA directorship, Hagel to be confirmed for secretary of defense, until the White House gives us an accounting. Did the

LIBYA Case #11-5326 Document #1419812 Filed 02/11/2013 Page 4 of 16

president ever pick up the phone and call anyone in the Libyan government to help these folks? What did the president do? We know he talked to the Israeli prime minister from 8:00 to 9:00 on September 11 about a dust-up of a Democratic platform and the fact he didn't meet the prime minister of Israel when he came to New York to visit the UN. But that's not related to Libya. What did he do that night? That's not unfair. The families need to know. The American people need to know. SCHIEFFER: But let me -- I'm not sure I understand. What do you plan to do if they don't give you an answer? Are you going to put a hold on these two nominations?

GRAHAM: Yes. Yes. Yes. I'm going to ask my colleagues, just like they did with John Bolton. Joe Biden said no confirmation without information. No confirmation without information. You know, when Secretary Clinton said she had a clear-eyed assessment of the threats in Libya, that proved, after this hearing, not to be true. The Department of Defense knew about the cable coming from our Libyan ambassador saying he couldn't defend the consulate. This was on August 15th. They knew about the deteriorating security situation. But the secretary of state didn't know any of this. So she was blind. The president was disengaged. And the Department of Defense never launched one airplane to help these folks for seven and a half hours. This is a complete system failure. And I'm going to get to the bottom of it. I don't think it's unfair to ask these questions. Quite frankly, how could they say, after Panetta and Dempsey said they knew it was a terrorist attack that night, how could the president say for two weeks after the attack it was the result of a video? How could Susan Rice come on to your show and say there's no evidence of a terrorist attack when our secretary of defense and chairman of the Joint Chiefs said they knew that night? I think that was a misleading narrative three weeks before our election.

SCHIEFFER: Let me just make sure, because you're about to make some news mere, I think. You are saying that you are going to block the nominations -- you're going to block them from coming to a vote until you get an answer to this?

GRAHAM: Yes.

SCHIEFFER: Now, John McCain has already said he doesn't think the Republicans ought to filibuster this. What will you do?

GRAHAM: I'm not...

SCHIEFFER: You're just going to put a hold on it?

GRAHAM: I'm not...

SCHIEFFER: And what...

GRAHAM: Yeah, I'm not filibustering.

(CROSSTALK)

SCHIEFFER: What would they have to do then to bring this to a vote?

GRAHAM: I want to know who changed the talking points. Who took the references to Al Qaida out of the talking points given to Susan Rice? We still don't know. Richard Burr and Saxby Chambliss have found e-mails discussing changing the talking points. So I think her story, after what we found out at this hearing, was incredibly misleading. I want to know what our president

did. What did he do as commander in chief? Did he ever pick up the phone and call anybody? I think this is stuff that the country needs to know. We pushed back against Bush. We asked for Rumsfeld to resign when Iraq went into shambles. This is a national security failure of monumental proportions and I'm not going to stop until we get to the bottom of it. If it hadn't been for this investigation...

SCHIEFFER: All right.

GRAHAM: ... and these hearings and your show, we would still think this was a video that caused a riot and the president was hands- on.

SCHIEFFER: All right. Senator Reed, I've got to ask you, can Senator Graham do this?

REED: This is unprecedented and unwarranted to stop or attempt to try to stop the nomination of a secretary of defense and a CIA director. We need the men and women -- the men and women of the Department of Defense need a secretary of defense. Chuck Hagel is eminently qualified to be that secretary of defense. He has been supported by Bob Gates, by Brent Scowcroft, by Bill Perry, by Madeleine Albright, by a host of individuals that are knowledgeable of national security and patriots who served both Republicans and Democrats; the same way with Mr. Brennan in the Central Intelligence Agency. I think that the issues of Benghazi are important. The report that Ambassador Pickering and Admiral Mullen did, quite thorough, indicated the situation, the confusion. And I think something else that has to be recognized is that, almost simultaneous to the situation in Benghazi, there was attacks on our embassies in Cairo. In fact, mobs were storming the gates. There was threats throughout the region. So the idea that the president was not engaged is, I think, completely wrong. He directed the secretary of defense, as Secretary Panetta testified, to begin moving assets into the region to provide any response. Ambassador Pickering, Admiral Mullen concluded that a military response would have been difficult if not impossible because of simply time and space.

SCHIEFFER: Well, explain to us. Because a lot of people don't know the rules of the Senate in all that. Senator Graham says he's simply going to put a hold on these nominations.

REED: Well, what...

SCHIEFFER: You say that's unwarranted. But what will happen next if he does that?

REED: Well, I would hope that we would have, in regular order, a hearing and a vote on Senator Hagel and -- and Brennan that then we would bring it to the floor. I can't recall a secretary of defense that has not at least had an opportunity to have their nomination brought to the floor of the Senate. The last example was Senator Tower. It was brought to the floor. It was defeated. But it received an up-or-down vote. These are critical offices. The secretary of defense, at a time when we're looking at sequester, looking forward -- we're looking at crises across the globe, to dwell on a tragic incident and use that to block people is not appropriate. To try to find information, to ask legitimate questions, as Senator Graham is doing, is completely appropriate. But then to turn around and say, "I'm going to disrupt, essentially, the nomination of two key members of the president's Cabinet," I don't think that's appropriate. I don't think it's warranted. I think it is an overreaction that is not going to serve the best interests of going forward, of the national security of the United States.

SCHIEFFER: All right, Senator Graham, short -- I'll give you a short response. I'll give you the

GRAHAM: Jack's a very dear friend. We're going to get to the bottom of Benghazi. The administration has been stonewalling before the election and after. They've been misleading. They've been deceptive. And they have been delaying, and they haven't been forthcoming. In a constitutional democracy, we need to know what our commander in chief was doing at a time of great crisis, and this White House has been stonewalling the Congress. And I'm going to do everything I can to get to the bottom of this so we'll learn from our mistakes and hold this president accountable for what I think is tremendous disengagement at a time of national security crisis.

SCHIEFFER: All right, we have to end it right there. I want to thank both of you.

GRAHAM: Thank you, Bob.

SCHIEFFER: We'll be hearing more about this, and we'll be back in just a minute with the chairman of the House Intelligence Committee, Mike Rogers.

(COMMERCIAL BREAK)

SCHIEFFER: Back now with Michigan Republican Congressman Mike Rogers. He chairs the House Intelligence Committee. Mr. Chairman, you just heard what Lindsey Graham and Jack Reed were talking about there. Of course, people in the House don't vote on the confirmation. That's the Senate's business. But Senator Graham sounds pretty -- set that he's going to do everything he can to block this unless he gets some answers.

ROGERS: Well, I do think answers are appropriate. There was catastrophic failure in the decisions from -- on the security perspective from the State Department on keeping the ambassador and the employees in Benghazi safe. That, to me, is clear. We've done our intelligence investigation in the House, some 4,000 cables and documents. It was clear that the threat stream was very real, which is why I think the -- Secretary of Defense Panetta said, yes, they knew that night, and the joint chiefs said in testimony, yes, they knew that night it was a terrorist attack, just by the sheer volume. So the question here is what happened? Why did the State Department fail those people that were in the field in Benghazi? That is not clear yet, and I think the American people deserve at least to understand what failures happened and how we're going to prevent that moving forward.

SCHIEFFER: Let me ask you about something that former Vice President Dick Cheney said last night. Dick Cheney has had that heart transplant. He seems to be up and running and going full steam. He told a group of Republicans last night, talking about the nominees that the president has put forward so far -- he said, "The performance now" -- this is a direct quote. "The performance now of Barack Obama as he staffs up the national security team for the second term is dismal. Frankly, what he has appointed are second-rate people." What would you say about that?

ROGERS: Well, I know one thing. We have first-rate problems. When you look at the disintegration of security in northern Africa, the growing and metastasizing of Al Qaida in the northern Maghreb area...

SCHIEFFER: But, I mean, do you think these people are up to the job? Do you think Mr. Cheney

ROGERS: It may be a little beyond where I'm going. I do believe that the policy formation that we're walking into here, when it comes to Syria, which is -- by the way, there is now no good solution in Syria today. It is -- the best thing we can hope for is the best worst option moving forward. We need very quickly to turn the tide in Syria. And I don't mean to win it. I mean just to get us in a position where we can mitigate what bad things are going to happen in Syria in the months ahead. Same with northern Africa. We have got huge, dangerous challenges approaching the United States, and I don't believe we've configured ourselves, our resources or our policy to confront them in a way that will make an impact.

SCHIEFFER: I want to ask you this whole situation about drones, when we should use them, how we should use them. First off, has the administration been straight with Congress in sharing information on what the rules are about using these weapons?

ROGERS: I think they have. Listen, for months -- there's a change in 2008 in July under the previous administration, George Bush, that changed the way we could use air strikes to target belligerents or al Qaeda, who are planning to kill Americans. That changed in July of '08. And it ramped up. And that was taken over when Barack Obama became president. And as the chairman of the House Intelligence Committee, even as a member, was aware and part of those discussions. And now as chairman, even before they conducted that first air strike that took Awlaki -- and remember, this is the guy that was trying to kill some -- a whole bunch of U.S. citizens over Detroit on Christmas Day. This guy was a bad guy. So our options were limited. This was a tool that we could use to stop further terrorist attacks against Americans. I supported it then. Monthly, I have my committee go to the CIA to review them. I as chairman review every single air strike that we use in the war on terror, both from the civilian and the military side when it comes to terrorist strikes. There is plenty of oversight here. There's not an American list somewhere overseas for targeting. That does not exist. And I think there has been some sensationalism, Bob. This is a serious matter, but I do think that the oversight rules have been, I think, consistent...

SCHIEFFER: It is an extremely complicated matter. But what about the argument that civil liberties groups make that if a person is a U.S. citizen, even if he's a bad guy, he has certain rights under the Constitution. And you can't just say, OK, we're going to kill him.

ROGERS: In the United States, that's true. If you join forces with the enemy, we have a long-standing tradition in this country that, that in and of itself, you lose your constitutional protections. You are engaged in belligerent activities against the United States. And this happened in World War I, in World War II, where Americans would join forces with people who were in -- at war with the United States, and when you do that, you sacrifice your rights. So this is someone who had sworn off his citizenship, had been actively planning terrorist attacks against the United States, the most notable was the one over Detroit on Christmas Day. And but for a quarter of an inch of an injector, that would have gone off and killed hundreds on the plane, and if not thousands on the ground. This was a -- he was a serious al Qaeda player. He picked his team. This is not an American citizen of the United States. Does not apply, none of this. This is only enemy belligerence, joined forces with the enemy overseas. SCHIEFFER: We're going to ask you to stick around for "Page Two," because we're going to talk about this whole idea of, is the United States vulnerable to a cyber attacks and how much of a problem that is. I know you have some thoughts about that. So we'll be interested to hear what you have to say. You'll be with us with a

panel of experts on "Page Two." Mr. Chairman, until then, thanks. I'll be back in a moment now with some personal thoughts.

(COMMERCIAL BREAK)

SCHIEFFER: Those of us in journalism spend a lot of times worrying about the wrong things, such as whether newspapers and books of the future will be printed on paper. It's an important question, but one over which we have little control. The truth is, technology will decide how we get the news. What we need to be thinking about is not the delivery systems but the information being delivered, all of which was underlined this week by the inexcusable hacking of the Bush family's personal email accounts. In the past, when journalists got personal information about public figures, we normally didn't publish it, unless we determined it was, first, true, and, second, was in the public's interest to know. Did it show the person was dishonest? Did his private life impact on his public responsibility? Publishing the Pentagon Papers revealed a government making public statements about the Vietnam War that it knew to be false. The Watergate revelations revealed a cancer of government corruption. Making public personal phone numbers and family conversations about the health of an ill father are no one's business but the family. For the most part, the mainstream media handled the Bush email hacking with restraint. We reported the hacking. That is news, but little else. Still, the episode is a less-than-gentle reminder of how technology is redefining our culture, the whole idea of privacy, and, yes, the respect or lack of it that honest citizens should have for each other. These are the things that all of us, not just journalists, may want to think about. How the news is delivered will take care of itself. Back in minute.

(COMMERCIAL BREAK)

SCHIEFFER: Some of our stations are leaving us now but for most of you we'll be right back with a lot more of FACE THE NATION.

(COMMERCIAL BREAK)

SCHIEFFER: Well, welcome back to FACE THE NATION "Page Two." The House Intelligence Committee chairman, Mike Rogers, has stuck around for some more. He is joined by his former colleague on that committee, California Democrat Jane Harman, now the head of the Woodrow Wilson Center here in Washington. Also with us, James Lewis, senior fellow at the Center for Strategic and International Studies. And our own CBS News justice and homeland security correspondent Bob Orr. Jim Lewis, I want to start with you, because when I was trying to get myself read in and studied up about what the questions I ought to ask before the presidential debate, I went to see you, and we talked for a while. And I asked you how serious was threat of a cyber attack on the United States? And I asked you what kind of defense we have. And I will never forget what you said.

JIM LEWIS, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES: That we had a faith-based defense. And a lot of it is like asking people...

SCHIEFFER: Basically we pray that it will never happen.

LEWIS: Yeah, it's like asking people, "hey, are you a good driver?" And of course everyone says yes. And when we test them, well, you live in Washington. And that's where we are. In fact, it's gotten worse since we talked, because since then the Iranians have picked up the pace.

USCA Case #11-5336 Document #1419912 Filed 02/11/2013 Page 9 of 16
SCHIEFFER: And you said, I think at the time that everything we can do in cyber, the Russians can, and the Chinese can.

LEWIS: Yeah, it's good to think of them as near peers if not peers in this space. And they've done the reconnaissance. They've thought about how to use it. We're really not in a good place.

SCHIEFFER: Mr. Chairman, how do you see all this? How serious is the threat of an attack and when we talk about an attack, what are we talking about?

ROGERS: Well, there's really two different things happening here. One, we're getting robbed every single day. We have, as the U.S. government, set up lawn chairs, told the burglars where the silver is in the bottom drawer, and opened the case of beer and watched them do it. And it means everything from personal identities, to Social Security numbers to money from banks, to intellectual property. The blueprints for jobs in the next generation with nation states like China. And it has gotten exponentially worse, even since the presidential debates. It is unbelievable and breathtaking. The second part of that is the attack part which is what we're talking about that we're so vulnerable for, is actually shutting down our financial services or finding other ways to destroy material in companies that won't allow them to function on a day-to-day basis. And that is very, very concerning. We've seen that recently with Iran.

SCHIEFFER: Jane, what-- are we being attacked now?

JANE HARMAN, WOODROW WILSON CENTER: Yes. Keith Alexander, who is the head of cyber command and the head of the National Security Agency says that there have been -- I forget now, 19 or 20 really substantial cyber attack in the last several years, more to come. I think we're much more vulnerable to a catastrophic cyber attack than a catastrophic terrorist attack in the homeland. We have done a better job of decapitating al Qaeda. even though it's metastasized around it's not capable, I don't think any more of mounting the kind of attack we on 9/11. But in the cyber business, it's different. But something else to put on the table, Bob, is that congress has not acted. There have been several bills introduced, including one by my colleague and friend, Mike, but they haven't moved. And now the White House is mounting an executive order, which will not do enough. But it's not that the government is sleeping through this exactly, it's that the government has so far proved incapable of protecting all of us. And one last point-- I think everyone has read about the hacking of the Bush family's e-mails and so forth, just in the last days. It's not only our .mil space, our defense space and our .gov space, what the government does, but it's our .com space, what private individuals do, and it is really a serious -- if you want to think about it, incursion on individual privacy in this country at this point. And we have to act.

SCHIEFFER: And Bob, companies are not all that keen on telling us when they are attacked. And in fact, American businesses are being attacked.

BOB ORR, CBS NEWS CORRESPONDENT: Well, in big terms. Chairman Rogers said I think in the past this is a great pillaging of wealth. It's hard to put a number on it. Some estimates \$250 billion a year, up to I think Chairman Rogers bill said \$400 billion a year. The reason this goes on, Bob, is because let's say you're company A, you have to report to stock holders. You have constituents, you have competitors, you don't want to come out full face and say, look, my systems were attacked because it suggests you might be vulnerable. So to protect a competitive edge, these companies I'm afraid to say are kind of writing off these losses as the cost of doing business.

SCHIEFFER: Well, what are some of the things that they do to these companies when they attack them?

ORR: Well, for example a major manufacturer here lost paint formulas, some schematics for military hardware have been stolen. I mean, the Chinese basically are replicating these products about as fast as they can. And we're not doing very much about it. This is the first stage of what could be a very, very big problem if they turn this pillaging of wealth into attacking key systems.

ROGERS: Two things, one, they're stealing the next generation of jobs. They're taking blueprints back, not just military documents, but civilian innovation that companies are going to use to create production lines to build things. They're stealing that, repurposing it back in nations like China, and competing in the international market. And to be fair, however, there was a bill that passed, bipartisan, my ranking member Dutch Ruppersberger and I wrote a bill, passed the House of Representatives, it did languish in the Democrat-controlled Senate. We're going to try that again as a matter of fact as early as this week. And it's very simple -- share information, share cyber threat information. The senior leadership in the intelligence said they think we can stop 90 percent of our problems by just sharing classified cyber threat...

SCHIEFFER: Let me ask you, Jim, let's just say somebody decided they wanted to attack the United States. I mean, somebody that wished us ill. What would they do?

LEWIS: You have a whole range of things you could do. If you just wanted fun, you could have all the traffic lights turn green at the same time here in Washington during rush hour. But...

SCHIEFFER: Turn all the traffic lights would turn green.

LEWIS: Of course so many of us would say who would notice. The real target is the electrical grid and it would be really easy to cause a blackout. We saw this in 2003, that was an accident. But you could destroy electrical generating capability through cyber attack and people say that as the target. The financial system, and the wave of Iranian attacks against the leading banks, not that successful, but the Iranians haven't brought their A game to that. So, electrical grid, financial system, maybe a couple of other places. You could really disrupt things here if you want to.

HARMAN: But there is a legislative issue. There was a competing bill last year by Susan Collins, a Republican, and Joe Lieberman, an independent, in the senate. And their bill did two things differently. It started out by saying the private sector has to cooperate on a mandatory basis, and some feel that's only way the whole private sector will cooperate, because they'll be tipped off first about these incursions. And the second thing it did was it gave the Department of Homeland Security jurisdiction over the .com space. It can't all be in the Pentagon. And that was different from this bill. And so...

ROGERS: The problem is, it couldn't get out of committee, and couldn't get passed on the floor. We have one bipartisan solution. My argument is let's start with what we know, given all the threats. And by the way, if you want to see what else could happen on an individual company basis, Iran attacked a Saudi oil company, the state-owned Aramco, and did something fairly remarkable-- they destroyed 30,000 machines, computers, manipulated data, and made it so they couldn't reconstruct the data. Now, if you apply that to businesses around the country, think of the economic chaos that that would cause. So what you saw with the banks -- this is interesting -- Iranians doing a probing action trying to look for vulnerabilities, and what we know

USCA Case #11-5520 Document #11-9812 Filed: 02/11/2013 Page 11 of 16
is now they have this other capability that's laying on the table. That's concerning. And so we've admired this problem long enough. It is time it take action and do something about it.

SCHIEFFER: Well, let me ask you this, is part of our defense, should part of our defense be we have an offense? And in fact don't we already have an offense? And haven't we launched attacks on, for example, the Iranian nuclear facility?

ROGERS: You know, I have a life lesson that if you want to go punch your neighbor in the face, Bob, you ought to hit the weight room for a few months, first. We are not prepared for what happens with a robust offensive capability. 95 percent of our network here's in the United States, private-sector networks, are incredibly vulnerable, most of which are penetrated already.

HARMAN: But you raise something, Bob, and it's the whole subject of remote-control warfare. Drones are part of this, too. Congress needs to enact a legislative framework around all these activities. I think it's past due. Oversight by congress is essential, but I also think court review in the way that the courts review the FISA, the intelligence...

SCHIEFFER: Wiretapping, things of that nature.

HARMAN: Correct. And that can be the whole plan on the front end, and then an after-action report, not all the individual targeting decisions. But I think that this idea that surfaced in congress is a valid idea and FISA is the right model for both of these.

SCHIEFFER: Jim.

LEWIS: The thing to watch in the upcoming weeks, probably before the end of the month, is the White House will probably put out an executive order that will try and do some of the things that were in the bill, information sharing, protecting critical infrastructure. And until we see that executive order we won't know what the entire legislative agenda will have to look like. Your bill is great, but we have to say what else do you need? And that's what the executive order will tackle.

ORR: There's great resistance to this, though. Because -- I mean, Congresswoman Harman mentioned the Lieberman bill. It started out as a mandatory sharing of information about attacks?

ORR: That was then softened, I believe, to a voluntary sharing of information. And even that couldn't get through because the business community kicked back on, this is our business, this is a privacy issue.

SCHIEFFER: Too much government regulation.

ORR: Well, I mean, it's a real problem in trying to find a solution that everyone will accept.

ROGERS: But -- and you have to understand this problem, if done correctly, you're sharing information in real time. This moves at the speed of light. Name one government regulation that moves at the speed of a Stanley Steamer in 1908. This is 100 million times per second. And so you're -- these are zeros and ones that make up As, Bs, and Cs on the computer, moving at light speed, hundreds of million times a second. If you are going to do this right, you can't set up these arbitrary standards so that companies manage to a standard that the government has dictated. What they'll tell you is, too slow, too cumbersome. By the time you get them inked in law, they

USCA Case #1:15-cv-00113-DWM Document 1-1 Filed 02/11/13 Page 12 of 16

HARMAN: But if they don't play, it's only as strong as the weakest link. And if some companies don't cooperate, then you have the vulnerability that we already have. And that was the problem last year, and a lot of serious people, including Keith Alexander, thought we needed the mandatory...

(CROSSTALK)

SCHIEFFER: I guess...

UNIDENTIFIED MALE: That's not true.

SCHIEFFER: ... one of the things that we can be thankful for, if that is the word, is that nobody, with the possible exception of us, has a greater interest in the success of the American economy than the Chinese do, because they're so heavily invested here. But it seems to me the danger is not China or Russia. It's some private actor or one of these terrorist states that get this access, and as yet they do not seem to have the capabilities of the big powers. LEWIS: One of the things that has changed the story since August when the legislation failed is the Iranian activities. And I think the Iranians -- you know, the Chinese -- some Chinese officials once said to me, you don't have to worry about us disrupting Wall Street because, you know, we own it, so why would we do that? Fair point. Same for the Russians. But the Iranians are a little crazier. And I think you're seeing a shift in industry as they think about we're facing a much more dynamic opponent. There has been another development, too, which is both NSA, the National Security Agency, and their Australian counterparts have identified some basic measures that really reduce risk. So we can now say, here's what you need to do to make us safer. The question is, how do you get companies to go along? And that's going to be a debate.

SCHIEFFER: Let's just go around the table here, starting with you, Jane. What do we need to do?

HARMAN: On cyber? I think the Collins-Lieberman bill was the place to start. And I think we should restart it looking at new threats. And I also think we need a legislative framework around drones.

ROGERS: Go for what we can pass in a bipartisan way. There is only one vehicle that can do that. And by the way, those same senior intelligence officials say, you pass this bill, a bipartisan bill, solves 90 percent of our problem. That's a good first step. Then I would go and try to tackle these regulatory standard issues later in the year.

LEWIS: Get the executive order out. Make critical infrastructure. Do what they need to do. And, also, think about how you engage the Chinese at a senior level, and tell them, you know there has got to be a limit and we haven't done that enough.

ORR: The other thing is, everyone has to take this seriously. I mean, for too long, cyber has been the subject where eyes glaze over. People have to come to table and realize, this is real. It's serious. It's imminent. And we need to pay the same kind of attention to this, Bob, as we do to terrorism.

SCHIEFFER: All right. Well, thank you all very much for a very good discussion. We'll be back

(COMMERCIAL BREAK)

SCHIEFFER: And we're here now with David Leonhardt, The New York Times Washington bureau chief. Welcome to Washington. This is a new assignment for you. And Kevin Merida, our old friend all the way back to The Dallas News when I first knew Kevin. He is now the -- I guess, the number two guy at The Washington Post, managing editor and so forth.

KEVIN MERIDA, MANAGING EDITOR, THE WASHINGTON POST: Thanks a lot, Bob.

SCHIEFFER: Glad to have both of you here. Well, we've had quite a discussion this morning, starting with Lindsey Graham saying he is going to try to block the nominations of both Chuck Hagel and John Brennan, unless he gets some answers. Is he being serious here, David?

DAVID LEONHARDT, WASHINGTON BUREAU CHIEF, THE NEW YORK TIMES: Well, I think we don't know. I think, clearly, Republicans have sent signals that they're really worried, particularly about the Hagel nomination. And obviously the Senate is a place where a single senator can often really hold things up. It is true both that there are serious questions about what went on in Benghazi and also that this would be a deeply unusual thing to do. There were often serious questions about foreign policy between the parties. And the idea of holding up a nomination for a secretary of defense...

SCHIEFFER: Two of them.

LEONHARDT: Two of them, would be deeply unusual.

MERIDA: These are very big appointments. This kind of things happens all the time with smaller nominations and often we don't even find out who the senator is who is holding up the nomination. But this is, obviously, a very public play by the part of Senator Graham and I suspect that there will be a lot of negotiations behind the scenes to make sure that doesn't happen.

SCHIEFFER: Do you think the Republicans will back him on this? John McCain has already said he does not favor filibustering Chuck Hagel. He says that he may vote against him. But he doesn't favor a filibuster. I wonder if Graham will have the backing for this. Of course, I mean, one senator can hold it up. And I guess, clear me up on Senate procedures. They'd have to have 60 votes, wouldn't they, to break that hold?

LEONHARDT: Oh, and I think a hold actually can even sometimes keep away a vote of any number. I think that what Republicans are torn about here is the fact that on the one hand, they do think they have serious questions to raise about Benghazi and that the American people have serious questions. On the other hand, when you get involved in Libya, there are always going to be things that go wrong. And I think Republicans are worried about polling that have shown that voters in general see them as the party that has been more obstructionist. And so I think one of the reasons you -- we have seen them compromise more since the election is they want to -- they want to sort of sand off the rough edges of their image. And so my guess is they're really torn here between continuing to push this Benghazi, for both substantive and political reasons, and also not wanting to seem like "the party of no," which they know that they do to many Americans.

MERIDA: And maybe it's just a question of trying to get some answers from the administration that they feel like they haven't gotten, and there could be some negotiation. But I would be surprised if the nominations don't go forward.

SCHIEFFER: We have the president's State of the Union message coming up this week. It seems to me the partisan divide is about as wide and about as deep as it was before this election. What's your take? Is anything going to happen here this year?

MERIDA: Well, it's a tremendous divide but there are a lot of big subjects that have been thrown on the table. I mean, certainly the social issues like immigration reform, also guns in America and whether or not gun violence can be curbed. But there is the larger question I think of just the state of the economy going forward. And that gets into the haves and have-nots, and can you have a debate about income inequality in the country without it descending into class warfare? I think that's one of the big questions facing the country.

LEONHARDT: I think one of the really key things to look at going forward from the State of the Union is this, my colleague, Ashley Parker, has called them the "hope yes, vote no" caucus of Republicans in the House. And this gets to what I was just saying about Republicans worried about their image here. And so there are a pretty substantial number of Republicans in the House who, because of the politics back home, want to vote against bills, but because of the party's national standing, want them to pass. And I think immigration -- less so guns. I think guns have -- we have less chance of a really sweeping gun bill. But immigration I think, it's going to be really interesting to see, can Obama move a substantial immigration bill through? And in fact, Republicans, including some who vote against it, actually want that to go through.

SCHIEFFER: Both of your organizations have had your email hacked. We saw this inexcusable hacking of the Bush family's private emails, inexcusable certainly in my view. I thought the way both of your organizations handled it reflected well on you. I mean...

LEONHARDT: Thank you.

SCHIEFFER: ... you reported the hacking, but you didn't go ahead and use the results of it. Well, what went into those decisions, David?

LEONHARDT: Well, with any of these issues, whether it's the national security issues or whether it's these issues of privacy, you have got to balance a lot of things. We're not just in the business of reporting everything, right? We don't report everything about crime victims and so you often have to balance these things. In the case of the hacking against us, we did what we do with stories involving other people. First, we tried to put in place tougher security measures. There is suggestive evidence that official people in China were involved in the hacking and that it followed our reporting on senior leaders' families. And we put those measures in place and we went and can reported the story and essentially laid bare what we found out.

SCHIEFFER: Kevin, why didn't you print the pictures and all of that from the Bush family...

MERIDA: I think we felt like we needed to report the fact that it happened, but wanted to be very discreet about the information that we put out for the public. And we thought that, you know, the idea that it was being investigated, this is a criminal investigation, that was important for people to know. But we didn't need to invade the privacy. There was nothing at stake national security-wise, or anything else related to the Bush administration.

SCHIEFFER: Generally, as I was growing up, the rules we all followed when we came upon personal information, if we thought it impacted on the person's public responsibilities or if it showed him to be someone other than he pictured himself to be, then that was -- it was fair and the public needed to know about that, but there's a difference in what is in the public interest and what is just in someone's self-interest who is just trying to get back at somebody for doing something. Is that still pretty much the rules you all follow?

LEONHARDT: I think clearly the rules have shifted, right? I mean, when people talk about what we know about president's personally versus what we knew about JFK and LBJ when they were in office. And I don't there are easy answers, right. Was it better then not to know about some of these personal behavior or is it better now? But I think the standard you lay out in the general sense is the standard we should continue to follow. We shouldn't report things for the sake of reporting it, just because it's public. We should think about does it have news value to make the judgments.

MERIDA: And what we call the media culture, as you know, Bob, has shifted so dramatically. I mean, we have sites like Deadspin in sports and, you know, Smoking Gun, and TMZ. And I just think that there is a broader range of people operating out there.

SCHIEFFER: All right. Well, listen, I want to thank both of you, these are questions that we all talk about when we're not on television just as reporters and we all try to grapple with it. And they are questions that we still have to deal with every day. Thank you. Thank you both. We'll be back in a moment. We'll have a final update on the monster blizzard. So stay with us.

(COMMERCIAL BREAK)

SCHIEFFER: Back now. We want to take one last check on that massive blizzard that hit the northeast. Our CBS News correspondent Terrell Brown is in Boston. Terrell, what do you know?

TERRELL BROWN, CBS NEWS CORRESPONDENT: Bob, good morning to you. Crews will work today to clear roadways and try to restore power to about 345,000 customers that are still in the dark this morning. And it was a tough night if you do not have any heat. We're talking temperatures here in the Boston area, really all across the northeast, down into the teens and single digits and power officials are saying it may be Monday or Tuesday before power is restored. Nine deaths are now being blamed on the storm including an 11-year-old boy overcome by carbon monoxide as he sat in a car while his father shoveled snow off that vehicle. Transportation slowly crawling back to normal here. We're seeing planes taking off and landing at Boston's Logan Airport. Amtrak restoring partial service to the northeast corridor, and mass transit will likely be back up and running in the Massachusetts area, the Boston area tomorrow. And while all of this is happening, there are hints in the forecast of more wintry weather, maybe another winter storm, coming up later this week for the northeast, Bob.

SCHIEFFER: OK, thank you, Terrell. Hang in there and we'll be back in a moment.

(COMMERCIAL BREAK)

SCHIEFFER: ...we'll be talking to Charlie Rose on CBS This Morning at 7:00. Then at 9:00 p.m., I'll be joining Scott Pelley and the rest of the CBS News team for live coverage of President Obama's State of Union Address. Be sure to join us for both of those. And we'll see you right here next Sunday on Face the Nation.

