HEARING TO RECEIVE TESTIMONY ON THE CURRENT AND FUTURE WORLDWIDE THREATS TO THE NATIONAL SECURITY OF THE UNITED STATES

Wednesday, February 27, 2008

U.S. SENATE
COMMITTEE ON ARMED SERVICES
Washington, DC.

The committee met, pursuant to notice, at 9:34 a.m. in Room SD–106, Dirksen Senate Office Building, Hon. Carl Levin, chairman of the committee, presiding.

Committee Members Present: Levin [presiding], Reed, E. Benjamin Nelson, Inhofe, Sessions, Graham, Thune, and Martinez.

Committee staff members present: Richard D. DeBobes, Staff Director, and Leah C. Brewer, Nominations and Hearings Clerk.

Majority staff members present: Madelyn R. Creedon, Counsel, Evelyn N. Farkas, Professional Staff Member, Richard W. Fieldhouse, Professional Staff Member, Michael J. Kuiken, Professional Staff Member, Gerald J. Leeling, Counsel, Thomas K. McConnell, Professional Staff Member, Michael J. McCord, Professional Staff Member, William G.P. Monahan, Counsel, and Michael J. Noblet, Professional Staff Member.

Minority staff members present: Michael V. Kostiw, Republican Staff Director, William M. Caniano, Professional Staff Member, David G. Collins, Research assistant, and Lynn F. Rusten, Professional Staff Member.

Staff assistants present: Kevin A. Cronin, Jessica L. Kingston, and Benjamin L. Rubin.

Committee members' assistants present: James Tuite, assistant to Senator Byrd, Andrew R. Vanlandingham, assistant to Senator Ben Nelson, Jon Davey, assistant to Senator Bayh, Gordon I. Peterson, assistant to Senator Webb, Nathan Reese, assistant to Senator Inhofe, Todd Stiefler, assistant to Senator Sessions, Jason Van Beek, assistant to Senator Thune, Brian W. Walsh, assistant to Senator Martinez, and Erskine W. Wells, III, assistant to Senator Wicker.

OPENING STATEMENT OF HON. CARL LEVIN, U.S. SENATOR FROM MICHIGAN

Chairman LEVIN. Good morning, everybody. Before we begin, let me just give you a quick report. I talked to Senator Warner a few minutes ago. He sounds great. He's going to be released from the hospital today. Our thoughts, of course, are also with Senator Byrd,

and hope for a very quick recovery for our other colleague on this Mr. Chairman.

On behalf of the whole committee, let me welcome our witnesses to today's hearing on current and longer term threats and the intelligence challenges around the world. We're glad to have Director of National Intelligence Mike McConnell and DIA Director General Maples appearing here today. This committee has a special responsibility to the men and women of our armed forces to be vigilant on intelligence programs because decisions on whether or not to use military force and the planning for military operations depend so heavily on intelligence.

For instance, we face a growing threat in Afghanistan, with the President painting a rosy picture of the situation there for the American people. Recently he said that in Afghanistan the Taliban, Al Qaeda, and their allies are on the run. But on the other hand, recent independent reports by the Afghanistan Study Group and the Atlantic Council provide a very different assessment. Among the findings of these Afghanistan reports are the following. Efforts to stabilize Afghanistan are faltering. The Afghanistan Study Group reports that since 2002 "violence, insecurity and opium production have risen dramatically, as Afghan confidence in their government and its international partners falls."

The Atlantic Council report states: "Make no mistake, NATO is not winning in Afghanistan. Instead, the security situation is a strategic stalemate," in their words, "with NATO and Afghan forces able to win any head to head confrontation with the Taliban, but not being able to eliminate the insurgency so long as the Taliban enjoys a safe haven across the border with Pakistan."

The anti-government insurgency threatening Afghanistan has grown considerably over the last 2 years, according to the Afghanistan Study Group. Last year was the deadliest since 2001 for U.S. and international forces there. The Taliban are relying entirely increasingly on terrorism and ambushes, including over 140 suicide bombings in 2007.

The Afghanistan Study Group report also finds that the Taliban have been able to infiltrate many areas throughout the country, intimidating and coercing the local Afghan people. The Atlantic Council report concludes: "In summary, despite efforts of the Afghan government and the international community, Afghanistan remains a failing state. It could become a failed state."

What a contrast to the President's statement to the American public that the Taliban, Al Qaeda, and their allies are on the run in Afghanistan.

The situation in Afghanistan is intimately connected to events in Pakistan. The elections held in the wake of the Bhutto assassination appear to have been relatively free of manipulation and the army may be pulling back from its domination of Pakistani politics. Some assessments of the election indicate that popular support for extremist elements is marginal. Director McConnell and Secretary Gates testified recently that they believe that Pakistan's political leaders now perceive that the lawlessness prevailing in the Northwest Frontier Province, the federally Administered Tribal Area, and parts of Baluchistan represents a potentially mortal threat to Pakistan.

We need to understand from our witnesses how these developments might be translated into concrete gains against extremist elements in Pakistan and eliminating the sanctuary for the Taliban and Al Qaeda along the Afghan border.

Secretary Gates recently testified that Pakistan's preoccupation with preparing for traditional warfare against India leaves Pakistan's army ill-equipped and ill- trained for irregular warfare in those tribal regions along the Afghan border. What are the prospects for Pakistan adjusting its security priorities and capabilities to confront tribal and religious militants? Can Pakistan's newly victorious parties overcome their historic fragility and animosity to forge a lasting turn to stable parliamentary democracy that can adopt and enforce difficult policies?

In his prepared statement for today's hearing, Director McConnell states that Al Qaeda's central leadership, based in the Afghan-Pakistan border region, is "its most dangerous component." He also states that the intelligence community sees indications that Al Qaeda's global image is beginning to lose some of its luster. It's important to be clear about whether the Director believes that this trend is likely to be lasting and how it relates to the Taliban's strength in Afghanistan and Al Qaeda's growing strength in northern and eastern Africa.

Regarding Iraq, we need to understand the prospects for political reconciliation. The concern remains that, while the intensity of the violence has subsided, reconciliation, which was the purpose of the surge, is still halting and unsteady. That means that we may be merely postponing a resurgence of violence while training combatants for that resurgence.

As Director McConnell's prepared statement indicates, the political gaps between Iraqi communities remain deep. Sunnis now cooperating with U.S. forces remain hostile towards the Shia and the Shiites still look on the Sunni groups working with the U.S. forces against Al Qaeda as "thinly disguised insurgents," in Director McConnell's words, who remain committed to overthrowing the Shiite majority.

On the Shiite side, we need to know what the intelligence community's understanding is of the Shiite militias' intentions and plans and the degree of penetration by and dependence on Iran and its agents in Iraq, how many Quds Force personnel or other Iranian personnel are operating in Iraq and what are they doing?

Director McConnell's prepared statement indicates that, despite pledges by senior Iranian officials, Iran continues to provide weapons, funding, and training to Iraqi Shiite militias.

The Iraqi parliament approved a de-Baathification law, but its likely effects remain unclear. There have been reports, for example, that the law may actually lead to fresh rounds of purges of Sunnis from government posts. Fundamental hydrocarbon legislation remains stalled. A provincial elections law that must be passed before the critically needed elections in the provinces can be held has not been adopted. Amendments to the constitution have not even been proposed.

Turning to Iran's nuclear activities, the recent national intelligence estimate concluded that Iran several years ago ceased work on warhead design and weaponization. More recently, in Senate

testimony Director McConnell said the wording of the NIE led to the misperception that Iran has abandoned its efforts to acquire nuclear weapons. He emphasized that the other two critical elements of a weapons program, uranium enrichment and a ballistic missile delivery capability, continue and continue openly.

Director McConnell further testified that the prospects for Security Council support for additional sanctions on Iran are good. We need to explore this issue carefully today, along with the director's assessment of the meaning and significance of the IAEA's new report on Iran's nuclear activities.

I'm going to put the balance of my statement, particularly as it relates to North Korea and the Balkan region, in the record at this point. [The prepared statement of Senator Levin follows:] [COMMITTEE INSERT]

Chairman LEVIN. Before turning to Senator Inhofe for his opening remarks and to our witnesses for their testimony, I would remind our colleagues that we have arranged for a closed session in S–407 following this open session if that is necessary.

Senator Inhofe?

STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM OKLAHOMA

Senator Inhofe: Thank you, Mr. Chairman. Let me join you in welcoming our witnesses this morning. I'm an admirer of each one of them. Your efforts and all of those of the intelligence services are essential to our homeland defense, to the security of our National interests, and to the men and women of the armed forces who are deploying around the globe.

Our Nation is currently making great demands on the intelligence system. I'm reminded, and you might remember this, Mr. Chairman, that when I came from the House to the Senate in 1994 my predecessor was David Boren. He was the chairman of the Senate Select Intelligence Committee. I always remember, he called me up after I was elected to replace him and said that he had one big failure in his life and that was that they've really—this proliferated type of intelligence system that we have, where one group doesn't want the other group to compete with them and all of this.

We've come a long way since then, but I keep talking to him with some regularity and he says that things are improving, but it was a problem. I can actually remember once when I was down becoming familiar with the NSA and what they're doing. They had some kind of a device that would go through maybe three feet of concrete. I said, that's exactly what the FBI needs, and they implied: No, this is ours.

So we've come a long ways since then, and I'm sure that David is impressed with some of the changes.

I think the lessons we learned from the intelligence failures before 9–11 lead to improvements in intelligence collections, the analysis, and the coordination, the information sharing. These improvements were required to provide our policymakers, our armed forces, and law enforcement officials with better tools with which to respond to a complex array of challenges.

The reforms enacted since 9–11 to strengthen our intelligence community have made significant improvements. However, con-

stantly evolving threats and technologies require continuous vigilance. I have seen the unclassified reports of some of the successes we've had of some of the terrorist threats that have been out there that our improved intelligence has been able to avoid. In fact, I read a list of those on the floor of the Senate yesterday. I think maybe it would be better for the classified version. I think the American people need to know that we've had a lot of successes, and nobody seems to talk about them. It's always a little awkward when someone, whether it's the President or anyone else, says we haven't had an attack since 9–11. Well, that's true. Would there have been attacks? I think we all understand that there would have been, and I think we need to be talking about it.

We have a little bit of a problem this morning, Mr. Chairman. I am the ranking member on Environment and Public Works, which starts at 10:00 o'clock. I have a required attendance, so I'll be in and out of this hearing. But there are certain areas that I want to stay for the first round, kind of some interests that I have, and I'd like to have them addressed.

Thank you.

Chairman LEVIN. Thank you so much, Senator Inhofe.

Director McConnell?

STATEMENT OF HON. JOHN M. McCONNELL, DIRECTOR, NATIONAL INTELLIGENCE; ACCOMPANIED BY TIM LANGFORD, CUBA- BENEZUELA MISSION MANAGER, DNI; BENJAMIN POWELL, GENERAL COUNSEL, DNI; ALAN PINO, NATIONAL INTELLIGENCE OFFICER FOR MIDDLE EAST, DNI; AND THOMAS FINGAR, DEPUTY DIRECTOR FOR ANALYSIS, DNI

Mr. McConnell: Thank you, Mr. Chairman, ranking member Inhofe, members of the committee. Delighted to be here. I'm pleased to be accompanied, of course, by Lieutenant General Mike Maples, the Director of the Defense Intelligence Agency. I submitted a longer classified, as you've mentioned, and unclassified statement, and that will of course cover more topics than I can in these brief remarks.

Chairman LEVIN. Your statement will be made part of the record.

Mr. McConnell: Thank you, sir.

In discussing the threats facing our country, let me say that the judgments that I will offer are based on the efforts of thousands of patriotic, highly skilled professionals, many of whom serve in harm's way. My sincere hope is that the Congress and the American people see these men and women as the skilled professionals that they are, with the highest respect for our laws and values and dedicated to serving the Nation, with courage to seek and to speak the truth to the best of our abilities.

Let me start with terrorism. I would like to highlight a few of the top counterterrorism successes of the last year, first to point out that there was no major attack, as has been noted, against the United States; also, against most of our European, Latin American, and East Asian allies throughout 2007. That was not an accident, as has been noted.

In concert with Federal, State, and local law enforcement, our community helped disrupt cells plotting violent attacks. For example, last summer we and our allies unraveled terrorist plots linked

to Al Qaeda and its associates in both Denmark and in Germany. We were successful because we were able to identify key personalities in the planning, we worked with the European partners to monitor the plotters and disrupt their activities. I would note that one of the intended targets was a U.S. facility in Europe.

In addition, our partners throughout the Middle East and elsewhere continue to attack aggressively terrorist networks involved in recruiting, training, and planning to strike American interests.

Al Qaeda in Iraq suffered major setbacks last year. Hundreds of Al Qaeda's leadership, operational, media, financial, logistics, weapons, and foreign fighter facilitator cadre have been neutralized. In addition, the brutal attacks unleashed by Al Qaeda in Iraq and other Al Qaeda affiliates against Muslim civilians have tarnished Al Qaeda's self-styled image of the extremist vanguard.

Are we at a tipping point? Have we witnessed the decline in this radical behavior? We don't know the answer to that question, but because of some of the recent setbacks suffered by Al Qaeda we're watching this question very closely.

Nonetheless, Al Qaeda remains the preeminent terrorist threat to the United States at home and abroad. Despite our successes, the group has retained or regenerated key elements of its capability, including top leadership, operational, middle level lieutenants, and de facto safe haven in Pakistan's border area with Afghanistan, known as the federally Administered Tribal Areas, or the FATA.

Al Qaeda's current efforts are to recruit and train operatives for terrorist operations spread from the Middle East to Europe and to the United States.

Pakistani authorities who are our partners in this fight have helped us more than any other nation in counterterrorism operations, increasingly are determined in their counterterrorism performance, even during a period of heightened domestic transition exacerbated by the December assassination of Benazir Bhutto and the formation of a new government that will result from the elections on the 18th of February.

In 2007, at least 865 Pakistani security forces and civilians were killed by suicide bombers. In addition, almost 500 security forces and civilians were killed in armed clashes, for a total of over 1300 people killed in Pakistan in 2007. The losses in Pakistan in 2007 exceeded the cumulative total for all years between 2001 and 2006.

Al Qaeda's affiliates also pose a significant threat. Al Qaeda in Iraq remains Al Qaeda central's most capable affiliate. We are increasingly concerned that, even as coalition forces inflict significant damage on Al Qaeda inside Iraq, they could deploy resources outside Iraq, and of course they remain capable of attacks inside the country such as suicide bombings that kill scores of people.

Al Qaeda's North African affiliate, Al Qaeda in the Land of Islamic Magreb, based in Algeria, is active in North Africa and is expanding its target set to include U.S. and western interests. Other Al Qaeda regional affiliates in the Levant, in the Gulf, Africa and Southeast Asia maintained a lower profile in 2007, but they also remain capable of conducting strikes against U.S. interests.

Let me turn to weapons of mass destruction proliferation. The ongoing efforts of nation states and terrorist groups to develop and

acquire dangerous weapons and delivery systems constitute the second major physical threat to our country. After conducting missile tests and its first nuclear detonation in 2006, North Korea returned to the negotiating table last year. Pyongyang has reaffirmed its September 2005 commitment to full denuclearization. They shut down the nuclear facilities at Yongbyon and they're in the process of disabling those facilities.

But the North missed its 31 December deadline for a full declaration of its nuclear programs. Although Pyongyang continues to deny uranium enrichment programs and proliferation activities, we believe North Korea engages in both. We remain uncertain about Kim Jong Il's commitment to full denuclearizations, as promised in the Six Party Framework.

I want to be very clear in addressing Iran's nuclear capability, as you alluded to, Mr. Chairman. First, there are three parts, as you noted, to an effective nuclear capability: fissile material, a method for delivery—ballistic missiles—and then the technical design and weaponization of the warhead itself. As you noted, we assess in our recent national intelligence estimate that Iran's technical design and weapons, warhead weaponization work, was halted in 2003 along with a covert military effort for the production of fissile material. However, the declared uranium enrichment effort that will enable the production of fissile material continues.

Production of fissile material is the most difficult challenge in a nuclear weapons program. Also, as in the past, Iran continues its effort to perfect ballistic missiles that can reach as far as North Africa and into Europe. The earliest possible date that Iran could technically be capable of producing enough fissile material for a weapon is late 2009, although we consider that unlikely. As the estimate makes clear, Tehran halted its nuclear weapons design-related activities in response to international pressure, but is keeping open the option to develop nuclear weapons.

If Iran's nuclear weapons design program, one of the three parts of the overall program, has already been reactivated or will be reactivated, it will be a closely guarded state secret in an attempt to keep us from being aware of its true status. The Iranians have never admitted the secret nuclear weapons design work which they halted in 2003.

Iran also remains a threat to regional stability and to U.S. interests in the Middle East. This is because of the continued support for violent terrorist groups, such as Hamas and Hezbollah, and its efforts to undercut western actors, such as in Lebanon. Iran is pursuing policy intended to raise the political, economic, and human costs for any arrangement that would allow the United States to maintain presence and influence in the Middle East region.

Let me turn now to a threat that hasn't been discussed much before this committee, the cyber threat. The United States information infrastructure, including telecommunications and computer networks and systems and, most importantly, the data that reside on these systems, is critical to virtually every aspect of our modern life. Threats to our intelligence infrastructure are an important focus of this community. We assess that nation states, which include of course Russia and China, long have had the technical capability to target U.S. information systems for intelligence collec-

tion. Think of it as data exploitation. Today those countries and others could target our information infrastructure for data degradation or data destruction. Data destruction, as opposed to data exploitation, is of increasing concern because of the potential impact on U.S. and the global economy should such perpetrators be successful.

At the President's direction, last spring an inter- agency group was established to review the cyber threat to the United States. It was also tasked to identify options for countering the threats. The tasking was fulfilled with the issuance of the President's planning directive earlier this year. A program and budget has been submitted to the Congress and this subject will be addressed in this budget cycle as we go throughout this year.

Let me turn now to Iraq. The security situation in Iraq continues to show signs of improvement. Security incidents countrywide have declined significantly, to their lowest level since February 2006, 2 years ago. Monthly civilian fatalities nationwide have fallen over by half in the past year.

However, despite these gains, a number of internal factors continue to undermine Iraqi security. Sectarian distrust is strong throughout the Iraqi society. Al Qaeda in Iraq remains capable of conducting destabilizing operations and spectacular attacks, such as we have seen recently, despite disruptions to their network. Intercommunal violence, especially in southern Iraq, has spread beyond clashes between rival militia factions. While improving significantly over the past year, the ability of the Iraqi security force to conduct effective independent combat operations, independent of coalition operations, remains limited in the present time frame.

Bridging differences between the competing communities and providing effective governance are critical to achieving a successful state. While slow, progress is being made. We have seen some economic gains and quality of life improvements for the Iraqis, but improvements in security, in governance, and the economy are not ends in themselves. Rather, they're a means for building Iraqi confidence in the central government and easing the sectarian distrust.

Let me just touch on Afghanistan. In 2007 the number of attacks in Afghanistan's Taliban-dominated insurgency exceeded that of the previous year, in part because NATO and Afghan forces undertook many more combat operations. Efforts to improve governance and extend economic development, similar to Iraq, were hampered by a lack of security in some areas in Afghanistan and limitations on government capacity.

Ultimately, defeating the insurgency will depend heavily upon the government's ability to improve security, deliver with effective government, and expand development for economic opportunity. The drug trade, as was mentioned, is one of Afghanistan's greatest long-term challenges. The insidious effects of drug-related criminality continue to undercut the abilities of the government to assert its authority, develop strong rule of law-based systems for governance, and build the economy. The Taliban, operating in poppy-growing regions of the country, gain at least some financial support through their ties to the local opium traffickers.

Let me touch briefly on China and Russia. Increasing in defense spending have enabled the Russians to begin to reverse the deep deterioration in their capabilities that began before the collapse of the Soviet Union. However, the Russian military still faces significant challenges, for example in demographic trends and in health problems. In addition, conscription deferments erode available manpower and Russia's defense industry suffers from a lack of skilled personnel.

China's military modernization program is shaped in part by the perception that a competent, modern military force is an essential element of great power status. Improvements in Chinese theater-range missile capabilities will put U.S. forces at greater risk from conventional weapons. In addition, Beijing seeks to modernize China's strategic nuclear forces to address concerns about the survivability of those systems.

If present trends in the global development of counter-space capabilities continue, both Russia and China will have increasing ability to target U.S. and intelligence satellites, as well as our command and control systems.

Let me touch on Venezuela and Cuba. The referendum on constitutional reform in Venezuela last December was a stunning setback for President Chavez. The loss may slow Chavez's movement toward authoritarian rule. The referendum's outcome has given a psychological boost to his opponents. However, high oil prices probably will enable Chavez to retain the support of his constituents, continue coopting the economic elite, and stave off the consequences of his financial mismanagement. Without question, however, Chavez's policies and politics, those that he's pursuing, have Venezuela on a path for economic ruin.

The determination of the Cuban leadership to ignore outside pressure for reform is reinforced by the more than $1 billion net annual subsidy that Cuba receives from Venezuela. We assess the political situation probably will remain stable in Cuba during at least the initial months following—now that Fidel Castro has handed off power to his brother Raoul. However, policy missteps or the mishandling of a crisis by the Cuban leadership could spark instability in Cuba, raising the risk of mass migration.

In conclusion, Mr. Chairman, issues I touched on and covered much more extensively in my statement for the record will confront us for the foreseeable future. The intelligence community is fully committed to arming the policymakers, the warfighters, law enforcement officials, and the Congress with the best intelligence that we can possibly provide.

Thank you for the opportunity to speak this morning. [The prepared statement of Mr. McConnell follows:]

Chairman LEVIN. Thank you, Director.

General Maples?

STATEMENT OF LIEUTENANT GENERAL MICHAEL D. MAPLES, U.S. ARMY, DIRECTOR, DEFENSE INTELLIGENCE AGENCY

General Maples: Thank you, Mr. Chairman, Senator Inhofe, members of the committee. I too appreciate the opportunity to be here today and to present the information that has been developed by our defense intelligence professionals. I too have submitted an

unclassified statement for the record, as requested by the committee, and I will focus my oral remarks on key military operations and capabilities, beginning with global military trends of concern.

Among them: the availability of the knowledge and technology needed to produce and employ weapons of mass destruction. Longer range ballistic missiles that are growing more mobile accurate, and harder to find. Ballistic missiles are increasingly being designed or employed to penetrate advanced air defense systems. Improvised devices and suicide weapons as weapons of choice. The growing ability to target and attack space- based communications, intelligence, surveillance, and reconnaissance assets. The proliferation of precision conventional anti-tank, anti-ship, and anti-aircraft missiles, including to non-state criminal or terrorist networks. The sophisticated ability of select nations and non-state groups to exploit and perhaps target for attack our computer networks. Lastly, efforts by potential adversaries to conceal and protect their military leadership and special weapons programs deep underground, which makes them increasingly difficult to locate and, if directed, to attack.

Turning now to ongoing operations in countries and regions of special interest. In Iraq, an improved security situation has resulted from coalition and Iraqi operations, tribal security initiatives, concerned local citizen groups, and the Jaish al-Mahdi freeze order. The trends are encouraging, but they are not yet irreversible.

Al Qaeda in Iraq has been damaged, but is still attempting to reignite sectarian violence and remains able to conduct high profile attacks. It has moved into the north, into what it hopes to be more permissive areas. It also remains committed to planning and supporting attacks against the West beyond Iraq's borders.

We have seen a decline of the movement of foreign terrorists into Iraq. The Islamic Revolutionary Guards Corps Quds Force continues to provide training, weapons, and support to groups that attack Iraqi security forces and coalition forces in Iraq. And DIA has not yet seen evidence that Iran has ended this assistance.

Iraqi security forces, while reliant on coalition combat service support, have improved their overall capabilities and are increasingly leading counterinsurgency operations.

Turkey has launched a limited ground incursion with supporting artillery and air strikes against the Kurdish People's Congress, or the KGK, in northern Iraq. Sustained operations could jeopardize stability in northern Iraq.

In Afghanistan, the United States and ISAF successes have inflicted losses on Taliban leadership and prevented the Taliban from conducting sustained conventional operations. Despite their losses, the Taliban maintain access to local Pashtun and some foreign fighters and is employing suicide bombings, improvised explosive devices, and small arms to increase attack levels. While the insurgency remains concentrated in the Pashtun-dominated south and east, it has expanded to some western areas.

The Afghan army has fielded 11 of 14 infantry brigades. More than one-third of Afghanistan's combat arms battalions are assessed as capable of leading operations with coalition support.

In addition to the Taliban, the central government is challenged by corruption and strong narcotics trade. NATO member nations continue to debate how best to achieve counterinsurgency goals in Afghanistan. There are differences on many levels on approaches to reconciliation, reconstruction, and the use of direct combat power.

Iran continues efforts to strengthen its influence in Afghanistan using humanitarian aid, commercial trade, and some arms shipments. We believe that Al Qaeda has expanded its support to the Afghan insurgency. At the same time, Al Qaeda presents an increased threat to Pakistan while it continues to plan, support, and direct transnational attacks from its de facto safe haven in Pakistan's largely ungoverned Frontier Provinces. Al Qaeda has extended its operational reach through partnerships and mergers with compatible regional terrorist groups, including a continued effort to expand into Africa. Al Qaeda maintains its desire to possess weapons of mass destruction and, despite the death or capture of senior operatives, Al Qaeda remains a threat to the domestic United States and our allies and interests overseas.

We know that Al Qaeda is interested in recruiting operatives who can travel easily and without drawing scrutiny from security services. As such, Europe could be used as a platform from which to launch attacks against the United States.

Pakistani military operations in the federally Administrated Tribal Areas have had limited effect on Al Qaeda. Pakistan recognizes the threat and realizes the need to develop more effective counterinsurgency and counterterrorism capabilities to complement their conventional forces. Pakistan has adopted a military, political, administrative, and economic strategy focused on the FATA. At present we have confidence in Pakistan's ability to safeguard its nuclear weapons.

Iran's military is designed principally to defend against external threats and threats posed by internal opponents. However, Iran could conduct limited offensive operations with its ballistic missiles and naval forces. Iran is investing heavily in asymmetric naval capabilities, modern air defense missile systems, and ballistic missiles. New capabilities include missile patrol boats, anti-ship cruise missiles, surface to air missile systems, and an extended range variant of the Shahab–3 ballistic missile. Iran is close to acquiring long-range SA–20 SAMs and is developing a new Ashur medium-range ballistic missile. Teheran still supports terrorist proxies, including Lebanese Hezbollah, with weapons, training, and money.

North Korea maintains large forward-positioned land forces that are, however, lacking in training and equipment. Robust artillery and mobile ballistic missiles are being sustained. The development of the Taepodong–2 continues, as does work on an intermediate range ballistic missile, a variant of which has reportedly been sold to Iran.

North Korea may have several nuclear weapons stockpiled from plutonium produced at Yongbyon. We do not know the conditions under which North Korea would fully relinquish its nuclear weapons program.

China is fielding sophisticated foreign-built and indigenously produced weapons systems and is testing new doctrines that it be-

lieves will strengthen its ability to prevail in regional conflicts and counter traditional U.S. military advantages. Military modernization includes anti- ship, cruise and ballistic missiles, submarines, a cruise missile-capable bomber, and modern surface to air missile systems. China's missile development includes the road- mobile DF–31 Alpha ICBM. Future ICBMs could include the JL–2 submarine-launched ballistic missile and some ICBMs with multiple independently-targeted reentry vehicles.

China successfully tested an anti-satellite missile in January of 2007 and is developing counter-space jammers and directed energy weapons. China seeks to replace its historical reliance on mass conscription in favor of a more professional force, one capable of successfully engaging in modern warfare.

Russia is trying to reestablish a degree of military power that it believes is commensurate with its renewed economic strength and political confidence. Russia's widely publicized strategic missile launches, long-range aviation flights, and carrier strike group deployment are designed to demonstrate its global reach and relevance. Development, production, and deployment of advanced strategic weapons continue, including the road-mobile SS–27 ICBM and the Bulova–30 submarine-launched ballistic missile.

While Russia is making some improvements in its high readiness permanently ready conventional forces, elsewhere it is finding it difficult to improve the quality of conventional training, modernize its equipment, and recruit and retain high quality volunteers and noncommissioned officers.

In 2007 Russia signed more than $10 billion in arms sales, the second consecutive year of such high sales activities. Moscow is selling advanced fighters, surface to air missiles, submarines, frigates, main battle tanks, and armored personnel carriers.

The Levant remains tense with the potential for renewed conflict. Syria is investing heavily in advanced Russian anti-tank guided missiles, based in large part on Hezbollah's success with this weapon in the summer of 2006. And continued attacks on Israel from Gaza increase the chances of Israeli military action there.

To our south, Colombia's counterinsurgency operations are achieving success against the FARC. Venezuela's neighbors express concern about its desire to buy submarines, transport aircraft, and an air defense system, in addition to the advanced fighters, attack helicopters, and assault rifles it has already purchased.

In summary, the United States is operating within an unusually complex environment, marked by an accelerating operational pace and a broad spectrum of potential threats. That threat spectrum is bounded on the one side by traditional nation states with significant military inventories and on the other by non-state terrorist or criminal networks that exploit the gaps and seams between nations, cultures, laws, and belief systems.

With the support of Congress, we continue to strengthen our ability to collect and analyze the military intelligence that policymakers and our commanders need in order to be successful.

In conclusion, thank you for this opportunity to share with you the collective work of our defense intelligence professionals, who work shoulder to shoulder with our National intelligence, homeland security, and law enforcement counterparts. They are honored to

serve our Nation. On their behalf, thank you for this committee's support and your continued confidence. [The prepared statement of General Maples follows:]

Chairman LEVIN. Thank you, General Maples.

We're going to have a first round of 8 minutes. Because of Senator Inhofe's responsibilities as ranking member on another committee, I'm going to yield first to him.

Senator Inhofe: Thank you, Mr. Chairman. I won't use the full 8 minutes.

First of all, nothing was said in the opening statements by either of you talking about the FISA reform that we're in the process of right now. I assume that's because in my opinion we did our job in the Senate, but it's now over there on the House side.

I'd like to have either one or both of you kind of give us a sense of urgency as to why this is needed, if it is needed, to go ahead and get it done on the House side.

Mr. McConnell: Senator, there is a sense of urgency. When the law expired, several things put us in a situation of uncertainty for the future. One, part of the law that was passed last August gave us the ability to compel the private sector to assist us. The main thing to understand about that is we can no longer do this mission and be effective without the assistance of the private sector.

So now the question is can we compel. Now, there is a portion of that legislation that has expired that said as we put things in the system with appropriate authorization they would run for a year in the future. That's true. But what it doesn't account for are changes, new knowledge, new personalities, a new service, that sort of thing.

The other question that we're wrestling with is the issue of retroactive liability for the private sector because they cooperated with us in the past. The question was how do we deal with liability protection. In the bill that passed last August, it provided prospective, future protection, but it did not address retroactive, and that's the question.

Senator Inhofe: The immunity issue.

Mr. McConnell: Yes, sir, and that's the question, because what they're faced with is they have a fiduciary responsibility, as you're aware, with the bill that passed this house with regard to their responsibility of protecting shareholder value, and some of these suits are in the billion dollar range. So that's the dilemma they face.

Senator Inhofe: Do you pretty much agree with that, General Maples?

General Maples: Yes, sir, I do.

Senator Inhofe: In your opening remarks, Director McConnell, you talked about the Al Qaeda presence in north central Africa. We didn't say much about in East Africa. I've had occasion to spend quite a bit of time there, Uganda, Somalia, Ethiopia. How do you see that? I was pleased with the cooperation we got from Ethiopia in going into Somalia. Where is that now, in an unclassified form, in terms of the Al Qaeda threat in that part of the northeastern Africa?

Mr. McConnell: Let me start and I'll hand off to General Maples for a follow-up. They were establishing—a year, 18 months ago, Al Qaeda was establishing a footprint in Somalia that had the pros-

pects of being formidable. When the Ethiopians came in, of course, that was disrupted. For the most part, we've been able to keep it tamped down or on the run. We've traced personalities. One recently escaped into Sudan and, with cooperation there, we were able to detain him.

So the effort in East Africa was on a growth vector. It is now at best sustaining or going down, but it's not growing like it was. So it has been a success.

Senator Inhofe: Good, good.

General Maples: Sir, the presence is still there. We have had tremendous cooperation in that region, particularly with Ethiopia. There still of course is a concern and we have security interests there that we need to continue to follow. The military continues to engage with our partners in that region.

Senator Inhofe: I think Prime Minister Meles has done a good job and he certainly has that commitment and talks about it.

Lastly, and this is something you might want to do for the record, I was disturbed back in the 90s when we were downgrading our military. During that decade the procurement in China—and I believe this is accurate—increased by 1,000 percent, just totally changed where we were in 1990 as to where we are today.

I think you covered it pretty well, but when you talk about there is a nuclear problem, but I'm more concerned, quite frankly, which is the conventional buildup that they have right now. I can remember when they bought a fleet, and this was unclassified, a few years ago of the Su–27s. At that time that was better in some ways than our best strike vehicles were.

So what I'd like to have you do for the record, not to do it now, is kind of give us an assessment as to our relative strength in both the nuclear and in conventional warfare between the two countries between about 1990 and today, for the record.

Mr. Chairman, thank you very much for allowing me to go first. [The information referred to follows:] [COMMITTEE INSERT]

Chairman LEVIN. Thank you, Senator Inhofe.

Director McConnell, the Afghanistan Study Group found that the year 2007 was the deadliest for American and international troops in Afghanistan since '01, and that the anti-government insurgency has grown considerably over the past 2 years. The Atlantic Council report issued last month stated bluntly: "Make no mistake, NATO is not winning in Afghanistan," and called the situation on the ground a "strategic stalemate."

Do you agree with the Afghan Study Group's assessment that overall the insurgency in Afghanistan has grown considerably over the last 2 years?

Mr. McConnell: Sir, we've seen the numbers increase over the last 2 years. We've attempted to do a baseline assessment so we could capture that, whatever that number is, and then compare it. We did a review recently to try to get a better understanding of territory that's controlled. Just to give you a number so you've got a frame of reference, Taliban was able to control the population and the area, about 10 to 11 percent of the country. The government, on the other hand, the Federal Government, had about 30, 31 percent, and then the rest of it was local control.

I would say one of the reasons the violence has gone up so significantly is because of the more aggressive action on the part of U.S. and NATO, not all of NATO but much of it. So therefore the incidence of contact has gone up. What we've observed the Taliban to do, because many of their leaders have been killed or captured, is they've resorted then to the kinds of tactics used by Al Qaeda in Iraq, which is a suicide bomb or roadside device. That's one of the reasons we've seen the incidents and the casualties go up.

Chairman LEVIN. So would you say overall that the Taliban and their allies are on the run in Afghanistan overall?

Mr. McConnell: I would say that they've suffered significant degradation in their leadership. The way they choose to engage, Senator, is if it's a face-off with U.S. or NATO forces, they lose. So how they choose to engage is they'll fill in in an area when we withdraw or they will influence a village or a region of our presence is not there.

So the question becomes—the part I try to make clear in my remarks, opening statement: The issue becomes, security has to be provided, but then it's also governance and opportunity.

Chairman LEVIN. Overall, has the anti-government insurgency been contained overall, would you say?

Mr. McConnell: No, sir, I wouldn't say it's contained. It's been sustained in the south. It's grown a bit in the east and we've seen elements of it spread to the west and the north. Now, that's not to say control by the Taliban. It's just presence by the Taliban.

The key, you said it in your opening remarks, Mr. Chairman. The key here, in this observer's view, is the opportunity for safe haven in Pakistan. If they can operate beyond reach in a de facto safe haven in Pakistan, it gives them the ability to train, recruit, rest, and recuperate, and then come back into Afghanistan to engage.

Chairman LEVIN. Directors, were the recent elections in Pakistan fair and transparent in your judgment?

Mr. McConnell: Yes, sir. All the reporting I saw is they were reasonably, by Pakistani standards, they were reasonable and fair, and the numbers of people voting were a little higher than we anticipated, a little higher than average for Pakistan. It was over 40 percent.

Chairman LEVIN. Would you assess that the elections represent a repudiation of Islamic extremism?

Mr. McConnell: What I would highlight is those Islamic extremists that had been serving in the assembly were defeated in this election. So at that level, the parties that won are more secular. So there is some level of repudiating extremism.

Chairman LEVIN. But is there some element of repudiation of army rule in the outcome?

Mr. McConnell: I would agree with that. We're watching very closely now to see how the coalition is formed, who the members will be, who the prime minister might be. Of the two parties, the two largest winners, they will probably form a coalition. They've already announced that they would, the PPP and former Prime Minister Sharif's party. Sharif has an agenda to impeach President Musharraf. Both those two parties do not have the votes to do that,

but if they had independents join them they could possibly have the votes.

Chairman LEVIN. Senator Inhofe raised the FISA issue and I want to just get some facts straight on this. As I understand it, last Friday night the last of the private sector partners, the telecom partners, agreed to cooperate with us. Was that true?

Mr. McConnell: We've negotiated for 6 days and came to closure on Friday night, yes, sir.

Chairman LEVIN. So is it true then that as of last Friday night they agreed to cooperate with us?

Mr. McConnell: They did, sir.

Chairman LEVIN. On a voluntary basis?

Mr. McConnell: For the subject matter as a part of the debate. The question is the uncertainty going forward, will they do it again.

Chairman LEVIN. But as to what we were asking them to do, they agreed to do it?

Mr. McConnell: Yes, sir.

Chairman LEVIN. Did you notify the White House of that agreement?

Mr. McConnell: As soon as we had the information, we did two things: We notified the Congress, the White House; and issued a press statement.

Chairman LEVIN. So that would have been what, Friday night?

Mr. McConnell: I think it was late Friday night, yes, sir. I don't think we had the press statement out until early Saturday morning.

Chairman LEVIN. Do you remember when you notified the White House?

Mr. McConnell: I'd have to get that time for you, sir.

Chairman LEVIN. Would you do that.

If we extended the law, would that be valuable to you, the Protect America Act? If we extended that law, would it be valuable?

Mr. McConnell: It would do several things for us. It wouldn't answer a critical question. What it would do for us is it would put the opportunity, the possibility of compelling the private sector to help, back in; and it would answer the question of prospective liability protection. Of course, what it leaves unanswered is the question of retroactive liability protection.

Chairman LEVIN. But for that issue, would it be valuable?

Mr. McConnell: Yes, sir, it would be valuable. What we were concerned about, of course, is as we engage the carriers and they're subjected to this potential huge financial loss, would their cooperation be assured in the future? So that's the issue that we've been—

Chairman LEVIN. But actually, that extension would compel their cooperation, wouldn't it?

Mr. McConnell: It could compel their cooperation. But, sir, let me make this very clear.

Chairman LEVIN. You say could. It does compel.

Mr. McConnell: Yes, but let me make clear. Compelling cooperation for a specific activity is one thing. Having a partner to engage with you in an activity that's dynamic and fast-moving and global is another set of conditions. We need their participation and partnership in the broader context, not just compelling a specific act.

Chairman LEVIN. But as a matter of fact, when you say the issue is whether we can compel—that's what you just here a few minutes ago—we can compel their cooperation, can't we?

Mr. McConnell: Not today, no, sir.

Chairman LEVIN. If we extended the bill?

Mr. McConnell: If we extend the bill, yes, sir.

Chairman LEVIN. We can compel?

Mr. McConnell: We can compel. That's what's in the bill.

Chairman LEVIN. Do you favor compelling? I know you favor—

Mr. McConnell: Yes, sir.

Chairman LEVIN. I know you favor a broader approach. But do you favor a bill extending this law so we can compel their cooperation?

Mr. McConnell: I'm sorry. You're working me into a corner.

Chairman LEVIN. I'm doing my best.

Mr. McConnell: Yes, sir, I know you are.

Let me be very clear.

Chairman LEVIN. But I think you have to also give us straight answers here.

Mr. McConnell: I'm giving you as straight as I can, sir.

Chairman LEVIN. Is it valuable that we compel their cooperation?

Mr. McConnell: The Congress has a disagreement with the administration and I'm trying to give a straight answer. So just let me do that, if I may.

A law that compels is in the interests of this community. A law that provides prospective liability protection is in the interests of this community to do our job. I would add: It's also absolutely essential in this observer's point of view that we have the retroactive liability protection, for the same reason: We have to have partners that willingly cooperate with us.

Chairman LEVIN. So it's valuable to have it, that retroactive? In your judgment it's valuable.

Mr. McConnell: Yes, sir.

Chairman LEVIN. And if in order to achieve that we indemnified the companies against liability, would that be valuable?

Mr. McConnell: I'd have to understand what "indemnity" means here. If you mean substitution or—there are some issues with that, as we've discussed.

Chairman LEVIN. But would that be valuable?

Mr. McConnell: Liability protection would be valuable. Now, sir, you're a lawyer and I'm not. If you use a term I don't understand I may give you the wrong answer.

Chairman LEVIN. Well, if you don't understand it then I won't pursue it. If you don't understand "indemnification"—

Mr. McConnell: Well, I know what "indemnification" is, but you're accomplished at this as a lawyer; I am not. So what I'm saying is I need liability protection.

Chairman LEVIN. That's fine. Thank you.

I think we're back to the regular order, but on this side there is no one present. So who is next on the Republican side? I think Senator Martinez was next.

Senator Martinez: Mr. Chairman, thank you very much.

I'm not accustomed to being this far up the lineup.

Chairman LEVIN. I caught you by surprise. I apologize.

Senator Martinez: You did indeed, but I'll recover.

I presume that if it was anything else beyond what you said in your opening statement regarding FISA, that you said in the questioning, I should invite you to clarify further now if you didn't fully. You continue to believe that it is vital for you to have the types of protections that were in the Senate-passed bill?

Mr. McConnell: Yes, sir, that's correct.

Senator Martinez: Which includes retroactive immunity?

Mr. McConnell: Yes, sir, that's correct. If I could take just a second to answer your question, this may be helpful. For me this is a fairly simple proposition. What's the purpose of this law? Why do we even have this law? When the Congress wrestled with it in the late 70s, the purpose was to allow our community to do foreign intelligence collection and to protect Americans.

The bill this body passed not only allows us to do foreign intelligence, regardless of where we do the intercept of the activity—and that was the key because the old law said if you obtained it in this country you had to have a warrant, and we couldn't keep up with that. So it gives us the ability to do foreign intelligence and it provides warranted protection for a U.S. person anywhere on the globe.

So if you strip everything else out of it, why do we have this law? Let us do foreign intelligence, let us protect U.S. persons. That's where we are and that's what we need to do.

Now, the mechanics of that is we can't do it without the private sector and they're in a difficult situation right now because they're being sued for assisting us. That's why I'm very strongly in favor of liability protection retroactively.

Senator Martinez: Which is assistance that they provided in good faith, at the request of the government, when they were told that in fact the government desperately needed their cooperation and that it was legal for them to do so.

Mr. McConnell: Yes, sir. The words you use are "good faith" and those are exactly the right words in my view. And the Senate Intelligence Committee worked with us for months to go through every detail, to look at all the records and so on. Their conclusion in the report they issued was that, one, we can't do it without the private sector help; and two, they cooperated in good faith. "Good faith" are the words in the Senate report.

So I think they captured the right description.

Senator Martinez: Let me take you to the Middle East and the situation in Israel. You discussed it during your testimony, and it is clear that the continuing violence against Israel—did I understand you correctly to say that in your opinion and in your view the cooperation of Iran with terrorist organizations like Hezbollah has continued and continues and is a—

Mr. McConnell: Yes, sir. The support from Iran to Hezbollah, one of the principal threats to Israel, financially, weapons, training, is significant from Iran to Hezbollah. In addition, what I would highlight is Hezbollah has gone to Iran for training, set up training camps, and they've taken some of the Shia militia in Iraq out of Iraq, over to Iran, trained them, and then with Hezbollah supervision come back into Iraq to attack coalition forces.

So Iran's behavior here is not only directed against Israel, it's also directed against U.S. and coalition forces.

Senator Martinez: And in your estimation that is undiminished?

Mr. McConnell: There has been some rhetoric about they would reduce it. We have made—we are currently making a very concerted effort to determine can we prove that there's any reduction, and this is the dilemma we have. Their calendar year starts next month. When they date weapons, rockets and so on, they put a date on it. Right now we have 2006, 2007, mint condition, but we don't yet have one with a 2008 date. Does that mean they haven't done it in the last few months or they're waiting to start dating it 2008 in March? So that's a question we're trying to sort out right now.

Senator Martinez: If we can go to Latin America, and I know you discussed the situation in Colombia and the FARC. Some time in the recent days President Chavez of Venezuela indicated that the FARC was not a terrorist organization. Would you agree with me that that is a huge misstatement?

Mr. McConnell: A huge mistake, yes, sir. He's doing that for political advantage and rhetoric. Nothing could be further from the truth.

Senator Martinez: General—

General Maples: Absolutely agree.

Senator Martinez: I wanted to continue on that vein. You did suggest that in his setback with the referendum, which would have made him essentially president for life, I guess—

Mr. McConnell: Yes, sir.

Senator Martinez:—that his move towards authoritarian rule may have slowed. I've not seen any evidence of that. Obviously, to the extent that he did take a huge defeat politically and the people spoke clearly, that was a setback. But he continues to be an authoritarian ruler and increasingly more so every day; is that correct?

Mr. McConnell: Yes, sir. What we're hopeful of is that the opposition that was generated by that vote would generate itself in a more forceful way. So his rhetoric is not appealing as broadly as it did. So has the tide turned? We don't know. We'll stay engaged.

Senator Martinez: His buildup of military forces, equipment, particularly assault rifles, in my estimation goes beyond the needs of what Venezuela would need for its internal defense.

Mr. McConnell: Yes, sir, probably three or four times more than what he would need.

Senator Martinez: Does that suggest to you that perhaps his intentions are to destabilize neighboring governments, particularly Colombia, and to assist the FARC?

Mr. McConnell: It could very well be.

General Maples: Sir, I would say on that, though, that for the rifles he has been in receipt of, we haven't seen a distribution in that direction. We have seen them go into armories, and we do hear discussion within Venezuela about using asymmetric kinds of capabilities and tactics and empowering the population in some way, in a home guard sense.

Mr. McConnell: So it's really forming—one of the thoughts is forming an internal militia to enforce his authoritarian rule.

Senator Martinez: Within the country?

Mr. McConnell: Within the country, yes, sir.

Senator Martinez: The recent succession in Cuba of Raoul Castro to power, I was disappointed in the fact that it seemed to be the same old faces in rearranged position, particularly folks who present no new ideas or any real indication of change. My understanding is that there's been great disappointment in the Cuban people, who had hoped for maybe a little breathing room.

My concern now arises, for the first time in some time, that we may be viewing an increase in migration in the Florida Straits. Have you seen anything regarding that or is there any information you can share with us on that?

Mr. McConnell: We're alert to it. We're concerned about it. But nothing we've seen yet. Sir, the way I would characterize it is in essence what we're seeing in Cuba is not unlike what we witnessed in Russia to some extent, with the older generation hanging on, hanging on. The key in my view is going to be fourth generation, and we've seen in some of our collection efforts and understanding the fourth generation, they're thinking new thoughts and they're asking hard questions. So how do you get from the first generation of the revolution to the fourth generation, that's going to be the question. What my concern is is there's going to be some instability in that process.

Senator Martinez: But with the current leadership there is really no change?

Mr. McConnell: No change, none.

Senator Martinez: In policy and attitudes or anything else. My information is that there's been also an uptick in repression internally. I don't know whether you've seen that as well.

Mr. McConnell: Similar, and the person that Raoul brought in as his number two is someone older than he is, that was an original participant in the revolution. So no change is the objective.

Senator Martinez: A real hard-liner.

Mr. McConnell: Yes, sir.

General Maples: Sir, I think that that is something we need to watch over over the next 6 or 7 months, because I think there may be an expectation on the part of the population to see where a new presidency will go, and a failure to deliver could increase concerns. Something we have to be attuned to, as Director McConnell mentioned, is looking for any indicators that the dissatisfaction is going to reach a level where a migration from the island might take place. We're going to be very attuned to looking for those indicators.

Senator Martinez: There's no question that that is a real possibility. My continued interest is in the fact that what the goal of our policy towards Cuba would be to see a democratic change, and the only concern we have vis a vis that you should not just be the fear of a mass migration, although that is a direct threat to our security and we should view it as such. The fact is I think also that there is a tremendous potential for there to be political, dramatic political change in the future.

But thank you very much, both of you.

Chairman LEVIN. Thank you, Senator Martinez.

Senator Sessions?

Senator Sessions: Thank you.

Thank you, Senator Martinez. I think we need not to forget the Western Hemisphere. You've been very articulate and valuable and constructive in your comments about that, and I think we should all of us not allow Europe or the Middle East to just dominate everything we do, because our neighbors and friends are in this hemisphere and we need to have strong ties.

General Maples, you mentioned perhaps arming in Venezuela militias as a strategy of Chavez. It's something like perhaps the groups that took over Germany? Are you talking about creating a grassroots force that's armed, to be an extension of the Chavez regime and are able therefore to intimidate and oppress and suppress any opposition that might occur? Is that a concern you have?

General Maples: Sir, I haven't seen it go that far to this point, but certainly with the availability and the number of small arms weapons in Venezuela, and we are seeing indications of a desire to create some kind of a home guard that could be taken in one sense as an asymmetric defensive capability for a nation, but on the other hand could be going down the road, as you mention, of arming supporters to a leader within a nation. The opportunity is there. We haven't seen it move in that direction yet. We've seen arms actually go into armories. So the arming has not occurred yet, but the potential is there.

Senator Sessions: Well, he is not a leader that seeks to promote democracy. He is an authoritarian leader and apparently he's prepared to do anything, including making himself a lifetime leader, to maintain his power. I do think it's a very serious question.

You noted Colombia was making some progress against the FARC. 2 years ago Senator Specter and I were there. Colombia is the longest, I believe, serving democracy in South America. It's got strong economic growth, very strong ties to the United States and trade relations with the United States. Could you give a little more detail about how President Uribe is progressing in his efforts against the terrorist FARC group?

General Maples: Sir, Colombia has been very aggressive in engaging the FARC. They have not allowed the FARC to have secure areas, secure territory. They've taken the fight into the FARC's territory. As a result of their aggressive actions by their military, very professional military engagement, we're seeing increased desertions within the FARC, in addition to the losses that they are taking as a result of the military engagements that are going on.

So I think there's a very aggressive attitude that is backed up by the employment of a professional military.

Senator Sessions: Well, thank you. I know that Colombia for years tried to work in a negotiating fashion with the FARC, probably wrongly, but at least it demonstrated their commitment to try to reach a peaceful solution. Finally, when it became quite clear that couldn't happen, I'm glad the leaders of Colombia took the strong action that they took, and hopefully that progress will continue.

Do either one of you desire to comment on the impact that could occur if the United States does not enact the trade agreement with Colombia, our ally, a very, very strong trading partner? There appears to be some unease among members of Congress, which I find

baffling, utterly baffling, that we presumably don't think that Colombia is perfect in everything that they've done, but they really seem to be making progress and are a legitimate democracy. Any thoughts about that, Admiral McConnell?

Mr. McConnell: Sir, let me introduce Tim Langford. The reason I ask him to step up is he is our mission manager for Cuba and Venezuela and he just finished a tour in Colombia. So he'll have firsthand insight to answer your questions. Let me ask him to comment.

Mr. Langford: Yes, good morning, Senator. In fact, I was in Colombia when you and Senator Specter visited. I was running the Intelligence Fusion Center assisting the Colombian government.

To your point, absolutely General Maples is right on target. The success that they have had under President Uribe has been tremendous. When I first arrived in Colombia in 2002 and to see where they are now, controlling areas where the FARC was, previously had control; taking down high value targets; putting the FARC on the run; having tremendous success in fighting both terrorists and narcotics trafficking. It really is a testament, I think, to the joint work that Colombia and the U.S. Government has done, with great assistance from both the intelligence communities and armed forces. It really couldn't have been done without them. And all the testament to President Uribe as an outstanding leader.

The point of the free trade agreement—I departed Colombia in August and at that time President Uribe, when he would have visiting security officials, one of the key points that he would always make to them is that one of the most important things that could be done to codify security in Colombia was to approve the free trade agreement because of the jobs and others that it would produce there. So he was very much linking the economic security with the domestic security and fighting terrorism.

Just to speak very briefly on Venezuela, on your point about Chavez and arming the populace. He has organized these militias. Again, it's very much unclear how structured and how organized they are, bringing folks in for kind of Saturday training. We have yet—as the General noted, we haven't yet seen these weapons going out to these, to these really kind of ill-structured units yet. We're looking for that.

But again, any time you create a parallel military structure it has some implications for your existing military structure, which heretofore, as you know, up until the late 1990s was one of the most adept in Latin America and worked very closely with our U.S. military.

I would akin actually the structure of what he's trying to create more to probably what Senator Martinez knows, and that's the Committees for the Defense of the Revolution in Cuba. I think that's the paradigm that we have there.

Senator Sessions: Do you consider that a dangerous, possibly dangerous move and direction?

Mr. Langford: I think it's something that we need to monitor very closely, if we actually see these weapons going out to them. Again, one of the things that we're looking at very closely in Venezuela is the economic policies that are being pursued are causing some significant social problems. There are food shortages in Ven-

ezuela. It's a very wealthy country that actually has food shortages. Why? It's because of the economic policies and getting the pricing wrong. So that's something that we're very much watching to see, how President Chavez is able to resolve that, as well as get the food to the people, because again food shortages are a potential for unrest.

Senator Sessions: Admiral McConnell, just to mention the concerns, I think legitimate concerns, of our telecommunications industries. According to a column in the Washington Post a few days ago, 66 trial lawyers representing plaintiffs in these telecom suits have contributed $1.5 million to Democratic Senators and House members. So this is really—I mean, they're facing—people think, well, this is just some little lawsuit, but apparently they're facing a host of lawsuits with a host of aggressive attorneys, and I don't think we should treat lightly their concerns.

I'm glad you were able to negotiate something so you can continue that. But I think they legitimately deserve to be given assurance they won't be sued when they are simply following the written request of the Attorney General of the United States of America, authorized by the President, to assist the United States Government in a time of need, and having been certified that it was done legally.

So my time is up, but I thank you for working on this and taking the time to explain the importance of it. I'm glad the Senate did pass that reform that we needed and will fix this problem, and I'm amazed that the House continues to be recalcitrant and failing to act.

And I thank you, and would offer for the record the letter you and Attorney General Mukasey wrote to Chairman Reyes in the House explaining why it's "critical to our National security that Congress act as soon as possible to pass the Senate bill." And you go six pages, I believe, of detailing with great specificity the problems you face.

Thank you. [The material referred to follows:] [COMMITTEE INSERT]

Chairman LEVIN. Thank you, Senator Sessions.

Senator Graham?

Senator Graham: Thank you, Mr. Chairman.

A practical application of FISA in Iraq I think has been discussed in the past. I think we had—some time last year there was a kidnapping of three American soldiers. Are you familiar with this case?

Mr. McConnell: Yes, sir, last June.

Senator Graham: Can you walk me through very briefly what happened in that case and what can we learn from the problems that we found?

Mr. McConnell: Yes, sir. The kidnapping took place and everything, tactical, local—separate, if you would, two kinds of communications, wireless and wire. If wireless, walkie-talkie or whatever, we're doing everything possible, so we're collecting. Some of those that we believe to be responsible engage in communications activity that uses wire. Think laptop, connection to the Internet, and so on. It's not uncommon, because of the configuration of the globe now, it moves the path of least resistance, the least cost, the fastest

speed—so it wouldn't be uncommon for someone in Baghdad talking to somebody else in Baghdad for it to go through the United States, because it's fiber optics, moves fast.

Senator Graham: Now, what kind of equipment are they using to talk with each other?

Mr. McConnell: Just standard laptop, anything. Even it could be a cell phone.

So now as we worked this problem and we got into it, we had an opportunity to get more and better, to have better collection and understanding of who the perpetrators are, who are they working for, how does the larger group operate. So the issue is some of the communications passed through a wire in the United States, and at that point in time the law said you must have a warrant. So we have to stop and now produce about a two-page—two-inch document.

Senator Graham: Let's slow down a bit. We've got a conversation going on using wire, a wire technology, right?

Mr. McConnell: Yes, sir, that's correct.

Senator Graham: Between two people in Iraq?

Mr. McConnell: Multiple people.

Senator Graham: Multiple people in Iraq.

Mr. McConnell: Yes, sir.

Senator Graham: We believe to be non-U.S. citizens.

Mr. McConnell: They are non-U.S. citizens, yes, sir.

Senator Graham: That we believe to be involved in kidnapping three American soldiers.

Mr. McConnell: Yes, sir.

Senator Graham: And because of the modern world some of these connections pass through the United States.

Mr. McConnell: That's correct.

Senator Graham: So at that point in time we had to stop the battlefield intervention to go get a warrant?

Mr. McConnell: Yes, sir. Now, there's a situation here called emergency procedures. But the key for us, the thing that's hard for people to understand, is if you're going to do a wiretap in that circumstance the law says, wire in the United States, you have to have a warrant. Therefore the requirement is probable cause, and in your background you know exactly what that is.

Senator Graham: Right.

Mr. McConnell: A tough standard. Now, some say, well, just go faster; it's an emergency, you can go anyway. You still have to—you still have to provide probable cause standards. So first of all somebody has to write it down and justify it and do the research and so on. Then it goes to their leadership for signature. It comes to me for signature. I send it to the Attorney General for signature.

Senator Graham: How long did this take?

Mr. McConnell: It probably took us the better part of a half day on emergency procedures.

Senator Graham: Okay. Now, so for that half-day period we were able to—we were unable to listen and track; is that correct?

Mr. McConnell: Well, you can actually extend it a little beyond that. Once we realized it, the issue then becomes what is it we need to do. So if you factor all the time in it's a little longer than a half day. But yes, sir, that's correct.

Senator Graham: Have we fixed that in the Senate bill?

Mr. McConnell: Yes, sir.

Senator Graham: Okay. That's a good thing.

Mr. McConnell: The Protect America Act bill that passed last August corrected it.

Senator Graham: Okay.

Mr. McConnell: And then expired.

Senator Graham: Right.

Mr. McConnell: But the Senate bill fixed that.

And let me add one other thing, sir. It's very important, and this is very important to the American people to understand. And the Senate bill extended warranted, court-provided protection to any U.S. person anywhere on the globe, period. So we protect a U.S. person, we do foreign intelligence. The foreign intelligence is the issue. That's what we're trying to do, unimpeded by the fact we have to stop and work through a court.

Senator Graham: From this kidnapping episode, we learned a very hard lesson, because no telling what we missed, but we learned that lesson. Congress came together and passed legislation to fix that problem. It's expired. Now we're hung up again.

This no man's land that we're in, how has it affected our ability as a Nation to defend ourselves?

Mr. McConnell: Well, for the past week after it expired we were in negotiation with the private sector to add additional information. Once you—I don't want to be too specific here because now the bad guys are listening. But if you're going to pull information out of the global infrastructure you have to do it surgically. You can't—it's lots of stuff, so you want to know how to pull it out.

So once you have a method for doing that, you have to have the cooperation of the private sector to enable. The answer initially was, wait a minute, this law has expired, you can't compel, we're not sure we're going to do any more than we're doing exactly right now.

So our question was, we've got more to add, we have the authority, but we have more to add. And they said: Not so fast. So we negotiated, and we thought we were going to lose it, and as of Friday we issued a statement to try to tell everybody what was going on. And then Friday night, last Friday night, they said: All right, we're going to add in what you've asked us.

Now, so at the moment we're okay. But the question is what happens the next time, or what happens if it's a new communications method? Remember, this stuff morphs all the time. So the authorities that we have now are for a set of capabilities. If there's a new capability there's no authority.

Senator Graham: So the agreement doesn't get you where you need to go in an ever-changing battlefield?

Mr. McConnell: No, sir. The issue, sir, is we can't keep up. This is dynamic. It moves in seconds and minutes, and there's no way we can keep up if we have to keep going back to the court authorization.

Senator Graham: Well, let's talk about the enemy called Al Qaeda in Iraq. Why do you think Al Qaeda operatives were sent to Iraq you senior Iraqi Al Qaeda leaders outside of Iraq? We know they're doing that. There are foreign Al Qaeda operatives going into

Iraq. Bin Laden says "Go to the land of the two rivers"—Iraq—"this is the great battle."

Why are they going to Iraq? What compels Al Qaeda to feel the need to go to Iraq and fight us?

Mr. McConnell: Primarily it was to stimulate sectarian violence between the Sunnis and the Shias, and that's what they did for most of the—

Senator Graham: But why are they doing that?

Mr. McConnell: Ultimately what they would like to see in my view is the Sunnis prevail in Iraq, and then that potentially provides a base of operations for—if Al Qaeda prevails, a place for Al Qaeda to operate from.

Senator Graham: Were they threatened by this concept called moderation that was being tried in Iraq? Do you believe that would undermine the Al Qaeda agenda, if Iraq became a stable, functioning government where Sunnis, Shias, and Kurds could live together under the rule of law, a woman could have a say about her children? Do they lose if that happens?

Mr. McConnell: They lose, sir.

Senator Graham: Do you think they know they lose if that happens?

Mr. McConnell: Oh, yes, sir, they know that. I mean, this is totally contrary to their point of view, so they lose.

Senator Graham: Do you believe Iraq is a battle in an overall global struggle or is it an isolated event, uninvolved with the war on terror generally?

Mr. McConnell: It is not isolated. There's lots of debates about cause and effect and so on, but stability in the Middle East is absolutely essential in the interests of this country for the next 30, 50 years.

Senator Graham: What would be the payoffs in the region if Iraq became a stable, functioning government based upon the rule of law, that rejected extremism, denied Al Qaeda a safe haven, lived at peace with its neighbors, and aligned themselves with us in the greater fight? What would be the payoff to America in terms of our National security?

Mr. McConnell: Stability in the region, a check on Iran's expansionism, a reliable supply of oil to flow to customers around the world, potential spread of democratic values in the region to its neighbors. So I see nothing—if Iraq evolved the way you just explained it, to me that would be the ideal for moderation in the Middle East.

Senator Graham: Thank you.

Chairman LEVIN. Thank you, Senator Graham.

Director McConnell, Senator Graham went through a particular problem that you said was fixed by the Senate bill, is that correct?

Mr. McConnell: Yes, sir.

Chairman LEVIN. That problem that he described would also have been fixed by the House bill, would it not?

Mr. McConnell: No, sir, it would not.

Chairman LEVIN. Why wouldn't the House bill, if the only thing it was short of was retroactive immunity?

Mr. McConnell: The House bill has many shortcomings, sir. I'll give you an example—

Chairman LEVIN. I'm not talking about shortcomings. I'm talking about that specific problem of the new technology that was described. I think everybody wants to give you the power to use that new technology. Was that not also provided for in the House bill?

Mr. McConnell: I don't think so, and I'll give you an exact answer because I asked my General Counsel to be here to answer your question, anticipating it.

Chairman LEVIN. I'm talking about that specific problem.

Mr. McConnell: And I'll get you an answer on that specific one. Ben Powell.

Can I take—can I wait for a second, because he just got called out, and I'll answer that specific question. I know—

Chairman LEVIN. That's the question I want to ask you, is whether or not that specific issue that Senator Graham talked about, which was fixed in the Senate bill and I think we all want to fix, I believe was also fixed in the House bill, and I want you to tell me whether or not I'm right on that. Okay?

Mr. McConnell: I will tell you that as soon as I know for sure.

Chairman LEVIN. Right, I understand.

Mr. McConnell: But I don't know absolutely for certain.

Chairman LEVIN. Now, you've also indicated that there was some intelligence that was missed or may have been missed during a 5 or 6-day period after the expiration of the Protect America Act—

Mr. McConnell: That's correct.

Chairman LEVIN.—until there was an agreement with the telecoms last Friday night; is that correct?

Mr. McConnell: The private sector partners, yes, sir.

Chairman LEVIN. If the Protect America Act had been extended and there was no gap, would that 5 or 6 days of lost or possibly lost information have occurred?

Mr. McConnell: Probably not.

Chairman LEVIN. Why—okay. I just want to be real clear on this because there have been some suggestions that there was 5 or 6 days lost information, that was lost because there was some failure on the part of either the House or the Senate to act in time, where as a matter of fact there was a willingness—and I think you're aware of this—to extend the Protect America Act so that there wouldn't have been that gap. You are aware of that willingness, are you not?

Mr. McConnell: Yes, I am. [Pause.]

Chairman LEVIN. When the President's statement last Saturday was made that we were unable to get cooperation from private companies—and he put that in the present tense, that the House's refusal to act "is undermining our ability to get cooperation from the private companies"—as a matter of fact that cooperation had been obtained the night before, had it not?

Mr. McConnell: I don't know what the President—you're talking about what he said on Saturday morning?

Chairman LEVIN. Yes.

Mr. McConnell: I don't know his verb tense on Saturday.

Chairman LEVIN. I'll read it to you: "The House's refusal to act is undermining our ability to get cooperation from private companies."

My question to you: As a matter of fact, that cooperation had been obtained the previous night, had it not?

Mr. McConnell: The cooperation—I can get you the exact time, but it was, my understanding, it was late Friday night.

Can I ask a question of you? The statement you're reading from, is that the President's radio address?

Chairman LEVIN. Yes.

Mr. McConnell: The radio address is normally taped on Friday morning.

Chairman LEVIN. That's correct.

Mr. McConnell: So I suspect that if there's a disconnect that's probably the source of it. But I don't know.

Chairman LEVIN. You said that the White House before was notified Friday night, and yet they still played that address on Saturday morning.

Mr. McConnell: I'm just highlighting it's taped on Friday morning.

Chairman LEVIN. I understand.

Mr. McConnell: So whether it's—I don't know what it said, but—

Chairman LEVIN. Well, I'm reading to you what it said.

Mr. McConnell:—that may be the disconnect.

Chairman LEVIN. I'm reading to you what it said. I read it to you. In other words, "The House's refusal to act is undermining our ability."

Mr. McConnell: Well, then, sir, I would agree with what—the words you just said. It is. For that period of time—

Chairman LEVIN. To get cooperation from private companies? It had already been obtained on Friday night. You just told us.

Mr. McConnell: Well, that's a point of view, and I'll give you my point of view.

Chairman LEVIN. No, no, no. That's not a point of view. You just said a minute ago—

Mr. McConnell: It is, sir. It is. It is today, it is for the future, and it'll get worse over time. That's the point I'm trying to highlight.

Chairman LEVIN. No, but I'm trying to ask you, did we get cooperation from private companies on Friday night? That's my question. That's my question.

Mr. McConnell: We did.

Chairman LEVIN. All right.

Mr. McConnell: But I can also in answering the question say the way you phrased—you're taking issue with the verb tense and the point I'm attempting to observe for you is the failure to get this new bill passed is having an impact on our operations. It is causing detriment and it will get worse in time.

Chairman LEVIN. I'm talking about cooperation from the private companies.

Mr. McConnell: That's what I'm talking about, sir.

Chairman LEVIN. So you're saying that—

Mr. McConnell: It will get worse in time.

Chairman LEVIN.—that we're not going to get the cooperation?

Mr. McConnell: If we don't have a bill that does three things: compel, prospective, and retroactive liability.

Chairman LEVIN. Okay, and we've got the compel in both bills; we've got the prospective in both bills; is that correct?

Mr. McConnell: That's correct.

Chairman LEVIN. And the issue is whether or not there's retroactive liability.

Mr. McConnell: Retroactive liability.

Chairman LEVIN. As to whether or not, you point out, whether or not there's liability protection.

Mr. McConnell: Liability protection.

Chairman LEVIN. Which is what you want.

Mr. McConnell: Forward and backward.

Chairman LEVIN. Forward and backward.

Mr. McConnell: That's correct.

Chairman LEVIN. And that there was an effort to provide that liability protection in the Senate bill.

Mr. McConnell: The Senate bill, yes, sir.

Chairman LEVIN. There was an effort made.

Mr. McConnell: The Senate bill.

Chairman LEVIN. Yes.

Mr. McConnell: Yes.

Chairman LEVIN. And there was an effort made to do it other than wiping out claims of plaintiffs, was there not? Are you aware of that fact?

Mr. McConnell: I am aware of that, sir, and you and I took a sidebar to discuss why that wouldn't work from our point of view.

Chairman LEVIN. I understand.

Mr. McConnell: Because what it does—

Chairman LEVIN. I understand. But on the indemnification issue, you've not yet taken a position on that because that was never offered; is that correct?

Mr. McConnell: I don't mean—I don't yet understand—

Chairman LEVIN. All right.

Mr. McConnell:—what you mean by "indemnification," sir.

Chairman LEVIN. We won't go into that. Let me go on to—let me, since you don't know what "indemnification" means, let me ask you a different question.

I'll ask General Maples about this. It has to do with the waterboarding issue, General. Director McConnell's already commented on that in a different forum. General, do you believe that waterboarding is consistent with Common Article 3 of the Geneva Conventions?

General Maples: No, sir, I don't.

Chairman LEVIN. Do you believe it's humane?

General Maples: No, sir. I think it would go beyond that, that bound.

Chairman LEVIN. You testified recently that the approaches that are in the Army Field Manual give us the tools that are necessary for the purpose under which we're conducting interrogations.

General Maples: Sir, that's correct.

Chairman LEVIN. Do the approaches in the Army Field Manual give you the tools you need for conducting intelligence operations?

General Maples: Sir, they do, and we have recently confirmed that with those who are using those tools on operations, just to reaffirm that fact.

Chairman LEVIN. Director, relative to the question of Iran, do you believe that the Russians would be concerned about nuclear weapons in the possession of Iran?

Mr. McConnell: Yes, sir, very much so.

Chairman LEVIN. Why are they providing plutonium—excuse me. Why are they providing uranium to the Iranians?

Mr. McConnell: The issue is for activating a reactor for generation of electric power, and the negotiation was absolute certainty and agreement between the Russians and the Iranians that what is delivered is accounted for and used for its intended purpose and what is generated in terms of plutonium and so on is accounted for and then exported out of Iran, back to Russia. So that it was a very concerted effort on the part of the Russians to have certainty that what they provided to the Iranians could not be turned into fissile material for weapons.

Chairman LEVIN. But that is not satisfactory to us in terms of certainty, I gather; is that correct?

Mr. McConnell: It causes me to worry, out of observation or control. But that was the Russian rationale for how they did what they did and the assurances they received. Recall they stopped it at one point and—

Chairman LEVIN. Is that—I'm sorry.

Mr. McConnell: And negotiated back and forth over getting the certainty that would satisfy the Russians for providing the nuclear material.

Chairman LEVIN. But we're still concerned, despite that agreement; is that fair to say?

Mr. McConnell: Well, certainly I would be concerned. If it's something you don't control you would be concerned about it, yes, sir.

Chairman LEVIN. Thank you.

Senator Thune?

Senator Thune: Thank you, Mr. Chairman.

Admiral, General, thank you for appearing before us today. It sounds like you have exhausted the FISA issue and some of the other issues that I had perhaps wanted to ask some questions on. But I do have a question I'd like to ask regarding the Iraqi security forces, because, General Maples in your prepared testimony you discuss the ISF and their overall improved capabilities in 2007, but you also stated in your prepared testimony that the ISF still suffers from a lack of trained, qualified leaders at the tactical level, and you go on to say that this fosters a climate in which individuals remain vulnerable to improper political and criminal influence.

Do you have any kind of an estimate at all on when it's likely that the ISF will be able to stand on its own and, as you have said, win popular recognition as a legitimate guarantor of Iraqis' security?

General Maples: Sir, first of all, I think the Iraqi security forces have made great strides, and particularly over the course of the last year. The army has grown by 55,000 in that time.

We have also seen that, with an effort to provide additional soldiers into the force, that many of the units now are well over 100 percent strength in their organizations. That, however, does not give the true picture because they are still lacking, particularly in

the middle grades. They are lacking in their NCO corps, they're lacking in their noncommissioned officer corps, the kind of professional leadership that really does enable a force.

I know that that's a great effort right now on the part of our forces who are providing training and equipping to the Iraqi armed forces. The greatest concern with the Iraqi armed forces, of course, is the logistics support, the combat service support, and the combat support capabilities that they would require to stand on their own. There are a number of initiatives that are under way right now to try to improve the logistics support to the Iraqi armed forces that are short-term processes. I believe that over the course of the next year and a half the Iraqis have projected that they will be functionally sufficient to be able to support themselves.

The longer term issue I think for the Iraqi armed forces is when they will reach the capability at a higher end, when they'll have a full complement of capability in order to defend their borders. For that purpose, they've laid out a 10-year plan in order to purchase the arms and equipment that will enable them to operate at that level.

Nevertheless, with the divisions that they currently have, 11 on the books going to 12, and the strength that they have in those units, plus how they have been able, if they are able to take advantage of the Sons of Iraq, the Concerned Local Citizens groups, and incorporate them in some way into the Iraqi security forces, I would say that over the course of the next 2 to 3 years they're going to have a greater capability to sustain themselves on operations.

They're increasingly able to now certainly take the lead, particularly on counterinsurgency operations. The issue is how they sustain the force for the longer term.

Senator Thune: Just in terms of the culture that the military—and you mention in your testimony this susceptibility or vulnerability to improper political and criminal influence. Assuming, say for example, that, as you have suggested, that their capability continues to grow, the numbers continue to grow. If they are left on their own, is this going to be an issue that is going to really weaken their ability, absent U.S. support, to protect the Iraqi people to provide security for the country?

General Maples: I still think it has to be an Iraqi solution to this, and therefore we've got to grow the quality noncommissioned officers and officers that they need in the force.

There is some belief that the passage of the de- Baathification law may help us in this regard if in fact it will enable us to enable members, former members of the Iraqi military who have experience in leadership roles, particularly from among the Sunni population, and to bring them back into the military as noncommissioned officers and midgrade officers into the force structure. I think that that will help alleviate the problem that I allude to or that I state in my statement for the record.

Senator Thune: Admiral McConnell, much has been written about the growing capability of cyber space threats. What type of cyber space threats do you view as the most dangerous and do you think that we're currently prepared to deal with these threats on both civil and military sides?

Mr. McConnell: Sir, we're not prepared to deal with it. That's the reason for the initiative. Let me separate the threat in terms of exploitation of data, which countries like Russia and China and so on will try to capture information and take it out of this country. One estimate I've seen is that that volume was something in the terabytes, 20 terabytes is what I recall, of data that was taken out of Department of Defense, Department of State, universities, companies, the Congress, and so on. So that's one level of threat.

The threat that also concerns us a great deal and maybe even more so is if someone has the ability to enter information systems they can destroy data, and the destroying data could be something like money supply, electric power distribution, transportation sequencing, and that sort of thing. So our worry right now is the military is probably the best protected, the Federal Government is not well protected, and the private sector is not well protected.

So the question is how do we take some of the things that we've developed for the military side, scale them across the Federal Government, and then the key question will be how do we interact with the private sector. That's the process we're trying to work through right now.

Senator Thune: Do you see non-state actors becoming credible threats?

Mr. McConnell: Yes, sir. The issue here is—think of it as one global net and the cost of entry is low. You need a few people that are gifted in this computer science and electrical engineering and that sort of skill set, and some computers. So you can remotely at some location, if you are good enough, enter into a data stream and get access. In terms of exploitation, usually if you're in that business you want to be able to take something, information, and leave no fingerprints. That's pretty challenging. If your objective is strictly to break in and destroy, that's less of a challenge.

So while we haven't seen terrorist groups exhibit this kind of behavior as of yet, it's a tool set that's available to them. They're talking about it and I suspect at some point they will try to have that capability.

Senator Thune: I want to ask you one other question. I guess I want to direct this to General Maples. But it has to do with the Chinese anti-satellite test that last year I think surprised quite a few people. Do you see anti-satellite weapons as a mature threat, and if not when do you expect them to be a serious threat? Then as a follow-on, are these types of systems being proliferated?

General Maples: Sir, of course the launch last year, in January of last year, was a direct ascent SE–19 by the Chinese. In some—clearly it was effective in the launch that was taken, and we can see continued development on the direct ascent kind of capability. I don't necessarily see a proliferation of that particular direct ascent kind of capability, but there are other kinds of capabilities that are anti-satellite capabilities that we do see a proliferation of, some of which are kinetic and belong to nations today, some of which are non-kinetic kinds of capabilities that would provide either jamming or blinding kinds of capabilities, that would threaten our communications and our satellite systems.

Senator Thune: It's also been recently requested that China is selling up to 24 J–10 advanced fighter aircraft to Iran. Do you see

this as an isolated incident or a more troubling trend of the proliferation of advanced fighter aircraft?

General Maples: I think it is a greater trend, and there are more nations that are seeking advanced fighter aircraft. And Chinese export of weapons is also a concern to us.

Senator Thune: Thank you, Mr. Chairman.

Thank you very much.

Chairman LEVIN. Thank you, Senator Thune.

Senator Martinez?

Senator Martinez: Thank you, Mr. Chairman.

General, Admiral, I see that your General Counsel has returned and I would be pleased to give you a moment to answer the chairman's question if you're prepared now.

Mr. McConnell: Yes, sir. Thank you very much.

Mr. Chairman, if I could ask Ben Powell, our General Counsel, to answer your specific question.

Mr. Powell: As I understand it, the question was what would be the effect of the Restore Act—

Chairman LEVIN. No, that wasn't the question.

Mr. Powell: Okay.

Chairman LEVIN. The question is whether or not that specific fact situation which Senator Graham laid out and which the Director said was fixed, was fixed by the Senate bill, would that have been fixed by the House bill? That's the question.

Mr. Powell: I think the answer to that is no And the specifics of that: First, what the House bill does is have us go to the FISA Court for a court order to authorize our initiation of surveillance. So first we would be in a situation where we're going to the court.

There are emergency provisions, to be fair, in the House bill that would provide that the AG, the Attorney General, and the Director of National Intelligence could do things on an emergency basis. That's similar to the emergency provisions of FISA, which we did in fact use in the case that Senator Graham laid out. But we would have a baseline requirement to go with the court order or to go with some type of emergency authorization.

A second issue would be that the House bill contains a significant purpose test, which says that if a significant purpose of our reason for doing the surveillance is to acquire the communications with a U.S. person, we would have to go and get a FISA Court order for that.

That presents us with the issue of—we would certainly be very interested to know if somebody who had kidnappped an Iraqi soldier was communicating with somebody here in the United States. So could I certify under oath to a court that a significant purpose of acquiring that communication is not to determine whether they're communicating with a U.S. person? In fact we would be very interested in that.

The Senate bill says that if "the purpose" is to get a U.S. person communication, then in fact you have to get a FISA order, but if it's just one of the significant purposes that would present some difficulty to us, particularly the up front going to the court.

As an example of that, under the Protect America Act we were required to submit our foreign targeting procedures to the FISA Court. We did that with our initial authorization in August. Those

were approved in January. So the court is very diligent. They have numerous questions. They want to make sure that they are doing a full and fair review and job.

So if we have that up front review before we can initiate surveillance or the DNI and the Attorney General need to make certain findings before they can authorize it on an emergency basis, it makes it very difficult for us to act with that kind of speed that we have acted under the Protect America Act while the court was reviewing our procedures, which they ultimately approved.

Chairman LEVIN. So the procedures are not the ones that need to be approved; it's the specific intercept, you're saying, under the House bill?

Mr. Powell: Under the House bill, they have kind of a more broader approval, not necessarily on specific surveillances. It's on groups and targets. So it would depend on what this group was, did we have an existing authorization that already covered this group already approved by the court in place. If we did, perhaps we could go up on them, or we'd have to look at an emergency type of procedure.

Chairman LEVIN. So is the answer it depends on the group, then?

Mr. Powell: In that case, it would depend whether we had already gone to the court under those procedures up front to get them, yes.

Chairman LEVIN. So is the answer may be to the question that I asked is "it depends"?

Mr. Powell: Well, it is a complex area and, unfortunately, that's—what we're trying to clear up—

Chairman LEVIN. I understand. I'm just asking you whether the answer to you question is then it depends?

Mr. Powell: It depends. I would have great concern about the significant purpose test, though, because—

Chairman LEVIN. Except for the significant purpose test.

Mr. Powell: The significant purpose test would present—

Chairman LEVIN. Other than that, it depends on whether the group was already covered?

Mr. Powell: Yes, I would—yes.

Senator Martinez: Mr. Chairman, I didn't mean to donate my time.

Chairman LEVIN. I know you didn't.

Senator Martinez: But I know this is important.

Chairman LEVIN. I appreciate your leniency on that.

Senator Martinez: May I have your leniency on my time?

Chairman LEVIN. Please. Oh, no; absolutely. You've got more than my leniency; you've got my time. I will yield you my next round if you need it.

Senator Martinez: I know it was an important series of questions and I know the General Counsel wanted to provide the answer.

This is for Admiral McConnell and General Maples both, on the issue of Kosovo, which has been so much in the news of late, their assertion of independence, declaration of independence, which the United States has supported, and the violence that has occurred thereafter. I wonder if you can give us your assessment of the situation in Kosovo, as well as NATO's Kosovo force and their ability

to respond to the violence, and are they sufficient to meet the need that is there.

Mr. McConnell: Sir, the leadership in Serbia, the prime minister, is determined to roll this back if at all possible. So the question is is he going to be able to prevail, and some level of violence is probably going to ensue. We have good information that when the U.S. embassy and the British embassy and others were attacked a decision was taken by the government of Serbia actually to pull the police back and allow them to be attacked and burn the embassy and conduct the violence that they conducted.

The forces that are there now can contain a low level of violence. If it was extended, it would probably be beyond their control. So the question is how determined is the leadership in Serbia and will they incite violence at a much higher level than we've observed to date.

Let me invite General Maples for additional comment.

General Maples: Sir, within Kosovo today we're seeing low levels of violence within the Serb enclaves, particularly in the southern part of Kosovo, clearly within the ability of the Kosovo force to provide a secure environment. The greater concern is in the area of Mitrovica to the north and the area of the Ibar River, where you have the largest Serb enclave in the northern part of Kosovo. To the north of the Ibar, where you have a large Serb population, you have a very different approach to and reaction to the situation that we have right now.

Across the bridge itself that separates the community in Mitrovica and to the south, KFOR very involved. In fact, just recently some of the population to the north tried to block access into the northern part of the city, across the bridge, used barriers and dumpsters to try to do that. KFOR removed those to enable access.

So clearly, at the level that we are at in Kosovo today the force is able to still provide a safe and secure environment.

Senator Martinez: What about Russia's role in this? Are they being helpful or are they being a helpful agent in the violence or are they being a contributor to the violence?

Mr. McConnell: They could be much more helpful than they are. They're attempting to maintain a strong relationship with Serbia and they're attempting to pull Serbia into their orbit, into their sphere of influence.

The leadership in Serbia, the prime minister, wants to contribute to that progress to be more closely aligned with Russia. The president, however, has a different point of view. President Tadic is convinced that integration with the European Union and Europe and what's referred to as a European Atlantic Alliance is a better course of action.

So there's disagreement within the government of Serbia as to what the future course of action is for Serbia and of course for Kosovo.

Kosovo will , given that they established their independence, then sustained it, they will align in my view with Europe, not with Russia.

Senator Martinez: In Russia, the upcoming leader, Medvedev, do you view him in any way independent of Putin, or do you presume

what has been reported is pretty much as it will be, that he will be someone pretty well guided by Putin?

Mr. McConnell: Sir, I think conventional wisdom is that Mr. Putin will have significant influence. But, interestingly, what we took an excursion on is just to look at Medvedev's background and what he's saying. If you took at face value what he's saying, it's certainly encouraging: rule of law, independence of citizens, a right to free speech, business entrepreneurship, private sector growth.

So all the words sound right. Now we're going to find out here when the election happens how much independence there is between Medvedev and Putin.

Senator Martinez: Returning to Latin America, recently Venezuela in a dispute with Exxon over the expropriation and lack of adequate compensation filed a lawsuit, and as a result of that action President Chavez threatened to cut off oil supplies to the United States. My understanding is they provide somewhere in the neighborhood of 12 percent of our consumption.

A twofold question. One, the impact of that to us; and the impact to Venezuela if we were to choose not to purchase oil from Venezuela?

Mr. McConnell: Quite frankly, Senator, my view would be a greater impact on Venezuela. We've got an expert here who can add a little bit to this.

Senator Martinez: Bring him up.

Mr. McConnell: Yes, sir. But the oil, as you know, the oil that comes out of there is very, very—

Senator Martinez: High in sulfur?

Mr. McConnell: Yes, high in sulfur, dense, thick. As I understand it, the refineries that can handle that are in the United States. There may be one in the Caribbean. So at one level, doing this is cutting off your nose to spite your face on the part of Venezuela.

Senator Martinez: He backed off a couple of days later.

Mr. McConnell: Yes, sir.

Senator Martinez: But I just wondered if that's a real threat to us in fact.

Mr. McConnell: Well, it has some impact, but oil is fungible and right now in Nigeria the production level is down about 500,000 barrels a day just because of the internal strife. So there is a potential area you could start to make it up.

We've done an analysis recently to find out how much oil is in surplus and what's the impact of $100 oil per barrel. Quite frankly, it hasn't stimulated investment and created a surplus that you would think it would create. Therefore we're a little bit concerned that this 10, 12 percent could have some level of impact. So we're watching it closely.

Tim?

Mr. Langford: Just to elaborate on what the director said, Senator, absolutely right. The initial statement— again, this is not the first time he has made that statement. In fact, he subsequently, President Chavez, subsequently qualified that to say that he would cut it off if we invaded Venezuela.

So what we see is even all the oil that goes to Exxon Mobil, some of that is still flowing. That hasn't been fully cut off either. There's a variety of reasons why it makes economic sense for them to con-

tinue to sell to us. As the director said, the refineries are in the United States. If you were going to sell in other parts of the world, they would have to sell at a greater discount because of the transportation costs and the like.

So the assessment is that cutting off oil would definitely have a greater impact on the Venezuelan economy than ours, I think would be our assessment.

Senator Martinez: Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Martinez.

Senator Reed?

Senator Reed: Thank you very much.

Thank you, gentlemen, for your testimony today and for your service to the Nation over many years.

There are many fault lines in Iraq. One of them is the legislation that is passed, but is somewhat nebulous, that depends upon implementation. So I wonder, do you have a sense of whether the legislation that was passed with respect to reconciliation and oil distribution, etcetera, will have any real effect going down the road. Admiral McConnell first and then General Maples?

Mr. McConnell: Yes, sir. Well, the belief of the analytical community, if the laws are passed and are effective it's going to have a very positive impact. I did a little quick check this morning just to see where are those laws. De-Baathification has passed. Amnesty has passed. The budget has passed. Then the one that we were most worried about was the Provincial Powers Act, which now allows elections and local government and that sort of thing. We have a report that at the last minute—as you know, the assembly passes a bill, they have 10 days and you have three choices: agree to it, veto it, or abstain and then it's law. On the last—at the last hour, it's our understanding that Abdul Mahte, one of the members of the presidency council, vetoed it.

Now, if that's in fact the case that's going to be somewhat of a setback. There's also another complication. When they passed the amnesty, budget, and the provincial powers, they lumped them together. Now, his intent was to veto provincial powers, but does that action actually impact the others?

So de-Baathification's passed. That's positive. Hydrocarbon revenue sharing has not passed. That's critical to be passed. That said, production of oil is up about 500,000 barrels a day. They are selling it and there is some level of sharing going on. But they need that legislation to codify it.

So to answer your question, I would say it's essential to have those bills passed for reconciliation, and one's passed, one hasn't, and there are three that we're trying to understand this morning.

Senator Reed: I think it goes to the point you made, though, about effective implementation.

Mr. McConnell: Yes, sir.

Senator Reed: When I was in Iraq a few weeks ago Ambassador Crocker and General Petraeus pointed out that there is some ambiguity with respect to the reconciliation legislation. Does it mean simply fire people and give them a pension and that's the reconciliation? Does it mean actually bringing them back into the ministries of finance and interior?

Have your analysts formed an opinion about the probability of effective implementation?

Mr. McConnell: Sir, there's someone behind me that probably has a better answer to your question. What we're wrestling with is the 7,000 Baathists that were not included—

Senator Reed: Yes.

Mr. McConnell: I think that's probably what Ambassador Crocker was making reference to. Alan Pino, who's our expert for that area, probably has a little better answer for you than I do.

Mr. Pino: Senator, on the de-Baathification law, right now they are looking at amendments to ensure that Baathists who have already been functioning effectively in the government are not fired because of the law. So those should be ready soon, but they are not implementing the law until they have those amendments completed.

Senator Reed: So I mean, there is a sense that there's some legislative progress, but still we have not turned the corner in terms of fully integrating and fully welcoming in this case Baathists, and I presume Sunni Baathists, into the government.

Mr. McConnell: Sunnis, that's the key. I would agree that full implementation is when it's effective, and that's in process.

Senator Reed: General Maples, do you have a comment?

General Maples: Sir, the only addition—I made a comment earlier about what we're looking at in terms of the Iraq security forces and in particular the army today and the issue that we have in the noncommissioned officer corps and middle grade officers, and the potential to enable a return of Sunni officers and noncommissioned officers to the armed forces, which would make a tremendous difference for us.

So we're not there yet, but hopefully that would enable us.

Senator Reed: Let me raise another, related issue. We have—you don't have to arm folks in Iraq, but we have organized these local security forces, the Sunnis principally. My latest information, there's approximately 60,000 of these individuals who are being paid by the United States and not yet accepted by the Shia government as integrated either into their security forces or elsewhere.

Both you gentlemen, if we can't—if they can't effectively integrate 60,000 armed and organized militia forces, that could be a very difficult challenge to the government and it could present a force in waiting for civil conflict. So again first with General Maples, your comments about, can that be done, will that be done? What's the indication? Are they doing it?

General Maples: Sir, I think it's a real key point. The Concerned Local Citizens groups, the Sons of Iraq, really have made a difference locally, and there is a great effort right now to try to integrate them into the Iraq security forces. Of course, a big part of that is where the payment is coming from. Right now from the United States, but ultimately from the government of Iraq.

We have seen inconclusive trends, I would say. That is, there is some acceptance and movement in a positive direction, but we aren't at the point where that has been done. I think it's one of those matters that is critical for us to be inclusive, particularly with the Sunni population, and to bring them on board, because not doing so has an extremely negative effect.

Mr. McConnell: Sir, I'd just add a couple things. The prime minister was pretty negative on this in the beginning. What's happened is the Concerned Local Citizens groups have been effective in tamping down insurgency and Al Qaeda in Iraq and so on. So I think the number you quoted is 60,000. It's probably closer to 70,000.

The current thinking is 20 percent will be integrated in the government. I think that's been agreed. And then the government will attempt to find jobs for the remaining forces, so they're not armed groups any more.

Senator Reed: My understanding from my recent visit was it was a roughly 80,000 total, 20,000 effectively, but in Anbar Province, which is much easier because it's a Sunni Province—in fact, I visited several of our military policemen who are training the Iraqi highway patrol. They seem to be part of this group that was integrated.

But south of Baghdad, in these critical mixed areas where these groups are located, the integration is not going well.

Let me quickly change because my time will come to an end. Admiral McConnell—and correct me if I'm misstating this—but the last NIE that spoke about the status of Al Qaeda in Pakistan suggested strongly that they have reconstituted themselves in many respects, that they have been able to recruit individuals who are culturally assimilated to the United States and Europe, which makes their ability to conduct operations here more credible, their capacity has increased.

Do you find it troubling, 5 years after 9–11, that in fact their capacity seems to be growing and their capacity and their capability to attack us seems to be enhanced over these last several months and years?

Mr. McConnell: Sir, I only would modify a bit of how you described it. The three things that they have—de facto safe haven, leadership, and the middle management— I agree with. They're attempting to recruit those that could assimilate and so on. They've been successful at some level, but to be determined if they're going to ultimately be successful.

So you're asking in my view exactly the right question: What is it we do about this? The big question for us right now is what does the new government in Pakistan do about it? At one level, they are talking about at least that at the military level, being much more aggressive with regard to going into the FATA to address this issue.

At another level, at the political level, they're having dialogue about it's time to open dialogue and negotiate. So that becomes the question: What's the right course of action to actually be effective in reducing a threat.

Senator Reed: My time has expired, unless, General Maples, you have any additional comment?

General Maples: No, sir.

Senator Reed: Can I for the record at least ask the question, which is, do you have, you feel, sufficient HUMINT and ISR capabilities included in this budget that's been proposed and what you've asked for that is adequate to the threats that you see across the globe?

Mr. McConnell: Sir, the budget—

Chairman LEVIN. If it's a short answer why don't you give it now. If not, for the record.

Mr. McConnell: It's a short answer. The budget's adequate, but doing the things you just highlighted are difficult, because now you've got to recruit, penetrate, all those kind of things. So it's a series of actions in progress. We have been successful. I'd have to take you to a closed session to give you a better understanding.

Senator Reed: Thank you, Mr. Chairman.

Thank you, gentlemen.

Chairman LEVIN. Thank you very much, Senator Reed.

Senator Sessions?

Senator Sessions: Let me take a few questions in random order briefly. Admiral McConnell, the Senate bill, the Protect America Act, passed with more than a two-thirds vote in the Senate. It came out of the Intelligence Committee 13 to 2, a bipartisan, strong bipartisan piece of legislation. And you have made it clear today and in your letter to the House chairman that this impacts and places at risk our intelligence-gathering capability.

I don't think there's any dispute about that. I am very disappointed that the House spent a great deal of time in trying to issue a contempt order against the White House and didn't have time to pass this legislation. So I think the American people need to be concerned about it, and there's just no—we've been in this. We've heard. We know the details, some of which is secure, some of which is public. Enough is certainly public to make a good decision. I believe we need to keep moving and get this thing done soon.

I'm sure you generally agree that sooner is better than later.

Mr. McConnell: Yes, sir. The more time that we wait, the more uncertainty that's created. The phrase I'm using, that I think is accurate, is our capabilities will atrophy as we go forward.

Senator Sessions: I think it's very critical.

General Maples, with regard to Senator Reed's questions about these militia that have been such a positive force, the Awakening groups, the Sons of Iraq, the citizens groups, that have really taken it upon themselves to say, we're tired of this violence, we're tired of Al Qaeda, let's get this country moving in the right direction, seems to me their fundamental view. And we have supported them.

I guess my question to you is, there has been some concern that that could create sectarian violence. Have you seen any of that to date? I'm sure there's always some possibility some of these groups might be hostile to one another. But to date, how is that going?

General Maples: Sir, we have not seen them turning to sectarian violence. In fact, quite the opposite. There is, I believe, a change in psychology among those Sunni groups and they really are trying to integrate into the processes and the future of their country.

Now, that said, we are starting to see some of those groups which you've talked to, particularly the Awakening movement, start to move from simply a gathering and a concern over security, to move into the political process and having their political interests run into the political interests of other Sunni groups. So you start to see some friction within the groups.

We also see a difference as we start—

Senator Sessions: It's a probably with democracy, isn't it?

General Maples: Yes, sir.

But we also see this, in the areas where that has been successful. That may not be the same model that may be applicable in other parts of the country. So as we move further to the north, through Diyalah and Minowa, you start to see a different type of structure, less of the family, tribal basis to operate from. So you'll have to have different structures, different models, in order to bring about the same kind of security.

Senator Sessions: I couldn't agree more. Every area of Iraq, just like every area of the United States, is somewhat different, and the thought that we can run everything from Baghdad through this parliament is wrong. I think the grassroots positive progress is a model for success.

I see General Petraeus has noted that Mosul represents the last strongest area of Al Qaeda. There's an article in the Washington Times today that's with the military in Sharqat, that shows that the population there is reevaluating. Captain Sam Cook, the commander there, noted: "They don't want occupation, but they don't like the insurgency's foreign links. They don't like Al Qaeda's thuggery and foreign support, and they're totally against Iraqis killing innocent Iraqis." He goes on to talk about in that northern area in the Sunni city of Sharqat that had been a very big problem they were seeing about a 60 percent drop in high profile attacks.

So I guess our hope is that the plan, continuing to focus on the northern area, can lead to good results.

General Maples: Sir, can I just comment too and add to that? Because we've talked about the Sunni groups, but there's a whole other part of the country that we need to be concerned about and that is in the south. In fact, as we move towards the prospect of provincial elections in the October time frame, particularly if the bills can be passed and we can start to move towards elections, there will be increased competition between the Shia groups in the south as they move for position.

As that is going on, there have been a number of Shia groups that have started down the Awakening line also and trying to do the same sorts of things in terms of assimilation into the country. And there has been resistance to that. In fact, many of those groups have been taken on by special groups supported by Iran to keep them from moving forward in a positive way. So we still need to be concerned on the Shia side as well.

Senator Sessions: I have no doubt of that. This is a delicate thing.

With regard to waterboarding, I think we've now had an official statement that it was used three times, never, General Maples, by the Department of Defense; is that correct?

General Maples: Sir, that's correct.

Senator Sessions: And only three times, against high- value targets, after legal review had been conducted, and, I would note, before the case Hamdan involving Common Article 3, that said that Common Article 3 applied in these circumstances, and since that date there has been none. It's been suspended. The Attorney General said none will be approved.

I think it's important for us to realize that where we did use some of these tactics, they were only used in a limited number of circumstances, against the highest targets, before the Common Article 3 case came out.

General McConnell—I mean, Admiral McConnell, let me ask you this. Put on your hat. We pay you to think at that high position you have. Kosovo, Somalia, Haiti, Afghanistan, Iraq, all those I think tell us that culture is important in creating effective governments, and it's a bit arrogant to think that we have the ability to virtually overnight in historical terms create perfectly stable entities.

Is that a valid concept? Give us your thoughts on how we should think in the future about our capacity to bring dramatic change to cultures and civilizations that are not used to it?

Mr. McConnell: Sir, there will be no dramatic change or rapid change. As you highlight, it's generational. So addressing the cultural issues, understanding the cultural issues, addressing it through a cultural point of view, is essential for us to be successful. So I think we have to respect those, understand and respect those local cultures, if we're going to hope to achieve change, particularly with regard to democratic institutions. Democracy's hard. It's really, really hard.

So if you think about it at one level, you're attempting to take cultures who normally resort to violence when they have a disagreement, to have them resort to dialogue to resolve their disagreements. And that sometimes is generational for change.

Senator Sessions: I think that's correct, and we have to understand that before we undertake military operations, and we understand that if we do undertake them what the difficulties we're facing, and the fact that we're going to have to be patient and seek progress one step at a time. It's just not possible.

I would just conclude, Admiral McConnell, I remember Mr. McLaughlin, who was Acting Director of CIA, before our committee told us when we created the DNI the real question is who will brief the President and who will be responsible if it's wrong. At that point I think it was the CIA director. Now you're the Director of DNI and CIA is under you, and we have an Iran intelligence estimate by some committee that somebody appoints, that ends up a couple of State Department people who have a political agenda involved in writing this report, you attest to it, and it becomes a matter of great national and international significance.

I want basically your opinion, General Hayden's opinion. I'm not so interested in some group here making a report within the entities. You've indicated some concern about the Iran estimate after it's over, and certainly the IAEA, the International Atomic Energy Commission, has also. Would you give any thoughts about how we as Congress and the President can be assured we're getting the absolute decision of the top person in an agency on these kind of issues?

Mr. McConnell: Well, first of all, Senator, I do brief the President 6 days a week and I'm responsible for the output, and I can assure you he holds me personally responsible for the output.

With regard to how we close out an NIE, I chair that board. There are 16 agencies that participate. General Hayden is sitting

right to my right or left because of his seniority. We went through that process. What I would highlight for you is we got ourselves trapped a bit. We created an expectation here in the Congress that if we did an NIE it would be unclassified key judgments.

Now, if you look back at our history, whatever the number is, 200, 300, 400 NIEs, we had never done unclassified key judgments, except in the debate surrounding Iraq and the homeland threat to—the terrorist threat to the homeland. So it was about three NIEs that all of a sudden created a normative expectation: If we're going to produce an NIE, we're going to have unclassified key judgments.

So what I negotiated with my committees and the Executive Branch is, let's get back to let this community do what we're paid to do, which is to collect and analyze foreign intelligence, we do it in a classified manner, and we provide the results that are classified to our leadership on the Executive Branch and to our overseers in the Congress.

We got that agreed. It took me several months to negotiate that. We agreed in October.

Let me fast forward to end of November. We now had an NIE that had a significant change. Now, I think the press mischaracterized that change. I tried to put some of that in my comments today. There are three parts to a nuclear weapons program. You've got to have fissile material; that's the biggest challenge. You've got to have some way to deliver it; and you've got to have a technical design or weapon.

What that NIE says, if you read it closely, is what they interrupted, what they halted, was the design specifics of the weapon. They're still doing ballistic missiles and they're still doing fissile material.

So the situation we found ourselves in is we brought that group in that you want to hold accountable together, we argued and debated for most of the afternoon, and agreed, here are the facts that we're going to report to the President. And we did that on a Tuesday, which was the 27th of November, and the next morning we reported to the President.

The President had an issue: There's a change here that is contrary to what you, Mike McConnell, testified from in public to the Congress. I said: Yes, sir, I understand that and I'm worried about it, because if we don't make this public we withheld or we lied. So we had a dilemma. What is it? We went into this all the time planning to not have unclassified key judgments, so when we presented it to the leadership, because of the dilemma, it was concluded—it became my decision, but because of the dilemma the only thing we could do was to have unclassified key judgments and they had to be exactly consistent with the classified data.

Now, at that moment in time we had a real rush on our hands, because it's written, there's always a worry about a leak. We had not yet notified the Congress, we had not yet notified our key allies. So we were in a race against time.

If I had had the foresight to know I was going to be forced to do unclassified key judgments because of the circumstances, I would have been—I would have caused the key judgments to be very clear about what was stopped and what continued.

So I'll take responsibility. That's an error in judgment on my part. I wasn't clairvoyant or smart or just it happened in a way that I couldn't get ahead of it. So that's my responsibility.

Lesson learned for us in my view is the appropriate policy for this community is we do not do unclassified key judgments of our classified work. I think that in a couple of mentions: one, if it's unclassified it enters a political dialogue. I'd rather give you the classified information and you have it, the Congress has it, the President has it, the Executive Branch has it, and you can argue in the appropriate channels.

The other thing I worry about is the young analyst who's there writing it. We all have a political orientation and if you know now that this is going to be written for release to the public, does that impact the way you would frame it? I don't know the answer to that question. I just, I worry about it.

So I think the appropriate place for us is let's not as a normal practice produce unclassified key judgments, and if I had it to do over again I would be very specific in how I described what was cancelled and what continued.

Chairman LEVIN. Thank you, Senator Sessions.

Let me clarify one point with Mr. Powell about the FISA. You made reference to the difference between "a significant purpose" and "the significant purpose" in the Senate or House bill; is that correct?

Mr. Powell: In the Senate bill I believe it says "the purpose" is to target, is to acquire the communications of a U.S. person, not "a significant purpose" or "the significant purpose."

Chairman LEVIN. And in the House bill?

Mr. Powell: In the House bill I believe it says— well, I'll pull it right here: "A significant purpose of an acquisition is to acquire the communications of a specific U.S. person."

Chairman LEVIN. In any event, it relates to the purpose being to acquire conversations of U.S. persons; is that correct?

Mr. Powell: Correct.

Chairman LEVIN. Now, in Senator Graham's statement this had to do with adversaries in Iraq talking to adversaries in Iraq; is that correct? Senator Graham's—

Mr. Powell: In the Iraq soldier situation, yes, I believe that's how he referred to it, yes, Senator.

Chairman LEVIN. In that circumstance it's our Iraqi adversaries talking to Iraqi adversaries; is that not correct?

Mr. Powell: Correct, but if they're talking to a— certainly it would be one of our significant purposes would be to find out if they're contacting a U.S. person, which would not just be a specific U.S. person in terms of a human being, but also of course that includes companies and others also.

Chairman LEVIN. In other words, you think that he was referring to communications that were targeting U.S. persons? That's what you understood from his description?

Mr. Powell: No, Senator, not at all. The question would be is when we go up on somebody overseas and surveil them in this case of Iraqi insurgents—

Chairman LEVIN. Iraqi insurgent to Iraqi insurgent.

Mr. Powell: Well, we don't know who they're going to talk to when we go up on them. That's the problem.

Chairman LEVIN. That was his hypothetical.

Mr. Powell: Well, I could just say when we went up on —when we cover our adversaries we don't know who they're going to call, and that's of course one of the key problems and why the director has talked about we can only kind of do one end. And "foreign to foreign," sometimes we use that phrase, but we don't know. It's foreign to someplace. A high percentage of the time it's foreign to foreign, but at times it may touch a U.S. person or contact a U.S. person.

Mr. McConnell: The reason that we, in working with the committee, we agreed to "the significant purpose," that makes it very clear. Our purpose is foreigners, but if it's "a significant purpose" you could interpret that to say if the foreigner possibly called in to the United States, and I would submit that may be the most important call we got that day, but it's not the purpose, but it could be a purpose.

Chairman LEVIN. And you understood from Senator Graham's fact situation that that was a significant purpose?

Mr. McConnell: Well, Senator Graham's situation was pre-Protect America Act. We were operating under FISA.

Chairman LEVIN. I understand, but you understand that his description, the factual description?

Mr. McConnell: I don't think Senator Graham made any reference to "significant purpose" at all. In this case the way we discussed it, it was all about Iraqis, foreigners, in Iraq, and the issue was—

Chairman LEVIN. Talking to foreigners in Iraq.

Mr. McConnell: Yes, sir.

Chairman LEVIN. You understood that?

Mr. McConnell: Yes, but—

Chairman LEVIN. And you understand that's—

Mr. McConnell: But their communications passed through the United States. That's the issue.

Chairman LEVIN. Of course, of course, and everyone wants to cover them, by the way. There's no dispute on that.

But you understood that, Mr. Powell, also? When you got into the "significant purpose" test, you understood that in his hypothetical that it was Iraqi persons talking to Iraqi persons? You understood that when you gave me that answer about "significant purpose"? Did you understand that?

Mr. Powell: I didn't see it as limited to that situation. I was thinking of it as what would we do presented with that situation under the House bill and could I certify, because I wouldn't know who they're talking to. And there's a lot of baggage with the "significant purpose" test that goes back to the pre–2001 amendments to FISA.

Mr. McConnell: Mr. Chairman, in fairness now— you're very good at this, as you know.

Chairman LEVIN. No, I don't know. Well, I must— I'm not at all satisfied with the way you handled that question.

Mr. McConnell: Well, let me try to—

Chairman LEVIN. That's fair enough, but it was very clear about that was the factual situation which was laid out for you, whether or not—

Mr. McConnell: But what's important for me to make the point is, we talked about June, which is FISA. You're asking questions about Protect America Act, which came later, and you're putting it in the context of the Senate bill, which hasn't been made law yet. So when you ask your questions I think those of us listening have to know which point in time are you talking about, which law are you talking about, and then we can answer.

Chairman LEVIN. My question was absolutely specific, director. It was whether or not the Senate version fixed that problem.

Mr. McConnell: It does.

Chairman LEVIN. It does. And then I asked you, does the House version do it.

Mr. McConnell: It does not.

Chairman LEVIN. No, it depends. Your counsel says it depends.

Mr. McConnell: Well, I believe it sets up a situation where it would not in all cases.

Chairman LEVIN. It might or might not. Well, that's what your counsel says. You call in your counsel, he finally acknowledges it depends on something.

Mr. McConnell: My worry is it sets up a situation where we're debating it. So if we're debating it we're not collecting it, that's the point.

Chairman LEVIN. I understand, I understand. We all want to collect it. That's not the difference between anybody. There's only one difference that remains that's significant, and that has to do with whether or not there's going to be retroactive immunity given to telephone companies who allegedly have violated the privacy rights of Americans. That's the only issue that really remains.

But you have here, it seemed to me, attempted to make another—

Mr. McConnell: I was making no other point. I would agree with what you just said.

Chairman LEVIN. All right.

On North Korea's nuclear program—let me switch subjects, and I know it's kind of a lot to ask to move from issues to issues the way we do. The intelligence community agencies have made a conclusion here that North Korea could have produced up to 50 kilograms of plutonium, enough for at least half a dozen nuclear weapons. Nuclear experts outside of the government have concluded that North Korea could have up to 12 weapons.

I'm wondering whether your assessment, which says at least six weapons, is consistent with, possibly consistent with, the outside assessors that they have 12 weapons. Is there any inconsistency?

Mr. McConnell: There's no inconsistency, sir. If you're good at it and you've got 50 kilograms, that's enough for 12 if you know how to do it. The estimate is they're not very good at it, therefore they would take more of it, so the better guess is 12, but it could be 12—the better guess is 6, but it could be 12.

Chairman LEVIN. But your reference is it's at least six?

Mr. McConnell: Yes, sir.

Chairman LEVIN. Okay. Could be 12.

Have you taken a look at the conversation that took place between a senior North Korean official who's their vice minister of foreign affairs, between—when he said allegedly something on October 4, 2002, about the existence of a North Korean HEU, a highly enriched uranium program? You may remember that there was some—

Mr. McConnell: I do.

Chairman LEVIN. Okay. There's some question as to whether or not he unambiguously acknowledged that program or whether there was some ambiguity in there. Have you concluded as to whether it was unambiguous?

Mr. McConnell: The lack of ambiguity is more an assessment on our part of the evidence surrounding what was going on at that time.

Chairman LEVIN. The lack of ambiguity?

Mr. McConnell: There is—we have high confidence that they had a highly enriched uranium program, and there's no ambiguity about that in our estimation, based on the evidence that we had at hand. The person you're making reference to was searching for negotiating ground and presented a hypothetical. Some interpreted that to be an admission and some said, well, not necessarily an admission. So that's the reason there was confusion around what he said.

One thing I've discovered about North Koreans is they have no idea, the idea of truth. It's not in their makeup. So when you're having a discussion it's always how am I getting advantage and so on.

Now, our estimate on highly enriched uranium program has changed from high confidence in 2002 at the time you're making reference to today we only make medium confidence, with the exception of DIA. And the reason for that is the evidence that we saw—and when you have a situation like this you have shreds and pieces and some level of data— is not as consistent today as it was when we made the original estimate. So we have dropped our confidence level from high confidence previously to only medium confidence today.

Chairman LEVIN. Have you looked at the notes of that conversation where you say some have interpreted it as being an acknowledgment and some have said it's ambiguous? Have you reached a conclusion as to whether it was an acknowledgment or it was not? No, not you. I'm talking about has the intelligence community, you as head of it; have you reached that conclusion—

Mr. McConnell: I can get you that answer, sir.

Chairman LEVIN. —one way or another?

Mr. McConnell: I will get you that answer. I just don't recall. I'm familiar with it and I read some of the transcript data, but I don't know exactly. I just don't remember. [The information referred to follows:] [COMMITTEE INSERT]

Chairman LEVIN. If you could do that for the record it would be great.

Does the intelligence community—I want to now switch to the ICBM, the North Korean ICBM program. They attempted to launch a Taepodong 2 in July '06, which failed apparently. Do you know whether that Taepodong 2 was a space launch vehicle like

the Taepodong 1 satellite launch attempt in '98, or was it an intercontinental ballistic missile? Have you reached a conclusion on that?

Mr. McConnell: I think the community has a position. I don't remember what it is. I just don't recall.

Chairman LEVIN. That's fine. We're shifting around here pretty quickly, so it's impossible to remember all these things. We understand that.

Mr. Fingar: There's the inherent capability. If you can launch a satellite, it can be a ballistic missile. There are all kinds of reentry problems to it. On the one, the first one launched, they claimed it was a space launch vehicle. On the one that failed, I don't believe there was a claim and there wasn't a separate assessment other than the inherent capability to be a ballistic missile.

Chairman LEVIN. All right, so there was no—Senator Sessions.

Senator Sessions: I may be the only person in the room that's ever gotten a wiretap based on probable cause. I was a United States Attorney 12 years and I think we had two, only two. And they're very difficult to obtain.

Mr. McConnell: I was going to ask you, sir: Explain the process to get a probable cause warrant? That is a significant undertaking.

Senator Sessions: The both that we used I think had at least 100 pages. You have to take it to some judicial authority. They have to examine it and review it, and they have their staff review it to make sure there's probable cause before the judge will sign off on it.

Then you have to have a team of agents 24 hours a day involved in monitoring the calls, and if you clearly have a wife calling about a personal matter you have to turn off the machine and not listen to that. But even then, Admiral McConnell—and Senator Levin, I think this is important —even then, you don't—if a call is made to someone you never expected to call, that call is recorded, because that's the purpose of the wiretap.

I mean, the purpose of the wiretap is to find out who this person is calling, to gather evidence that they may be involved in a crime, and you have to have substantial—so to put that kind of burden—now, your counsel here, but it's a simple thing historically and remains so today: You do not have to have probable cause to get a wiretap on a foreign, non-American citizen outside the United States. Isn't that correct, for intelligence purposes?

Mr. McConnell: We're back now to the situation, if it's not already in the books for Protect America Act, we're back to a situation where we would have to get, produce a probable cause standard to get a warrant if it's a foreigner in a foreign country talking to a foreigner, if the place of the intercept is in the United States on a wire.

Senator Sessions: Well, that's what the Patriot Act had to fix. I admit that's because of the possibility it went through the United States.

But the simple question is, you are not required by law to get, have to have probable cause to participate in intelligence gathering of foreign people outside the United States?

Mr. McConnell: If I intercept it in a foreign country.

Senator Sessions: Right.

Mr. McConnell: If I intercept it here—

Senator Sessions: That's the historic principle and it's not been changed.

Mr. McConnell: That's correct.

Senator Sessions: And that's the way. And so we have the technical problem of a call might be routing through the United States and that causes a technical problem. But I'm trying to focus just on the simple principle, because I think we need to understand we're not overreaching here.

So if you have a wiretap on a drug dealer in the United States or a Mafia person and they call someone to discuss that you never heard of, some other American citizen in the United States, of course you listen to it. That's what the wiretap is for, who is he talking to.

Now, if you've got a legal right to tap a terrorist in Iraq and they call to the United States, I think it's plain to me that you have a right to tap that phone. I mean, you've established a legal authority to tap that phone. So then it comes up, well, what if you know that person in Waziristan or Baghdad periodically calls different people in the United States? And one of your purposes is to listen to that call because it might be the message to blow up some building and kill Americans. You want to know that call. Then I think, isn't that the reason you have—you couldn't accept the "a purpose" of the call, "a purpose"—

Mr. McConnell: Yes, sir.

Senator Sessions: —because one of your purposes would be hopefully to pick up a call that might help identify a terrorist cell in the United States?

Mr. McConnell: Yes, sir, that's correct. And I would add that the bill that was passed on the Senate side, and it's actually included in the Protect America Act, is if we were targeting someone inside the United States for foreign intelligence purposes, we get a warrant. So if it's strictly foreign and he happens to call in, I have a situation where I must—I can use the information if it's of intelligence value. I can report it. I camouflage the identity of the U.S. person, but I can report it. And if it is no intelligence value, then I have to minimize it.

So the situation was accommodated in either case to ensure the protection of the civil liberties of Americans.

Senator Sessions: So I think a significant purpose of the intercepting of a terrorist phone call in Iraq, listening in on those numbers, may get you by, although that might sometimes cause you a problem. But any purpose of it, I think every time you're listening in on a terrorist who may be leading an organization one of your purposes would be to hear if they make calls in to the United States.

Mr. McConnell: The purpose would be to collect information on the foreign target. A purpose could be if he is activating a cell. That's why we were very specific —

Senator Sessions: Well, I think you were correct to make that clear and be firm on that. I'm glad we agreed in the Senate by more than a two-thirds vote and we passed it. It's time for the House to get busy and work this thing out and move us forward and make these rules permanent so you can have confidence.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you.

Just to clarify that, if there's a call being made by a terrorist that you believe is a terrorist, not through this new technology, just a direct call to somebody in the United States on a regular pay phone, you need to get a warrant for that?

Mr. McConnell: It depends on where I intercept it, sir. It depends on where I intercept it.

Chairman LEVIN. In the United States.

Mr. McConnell: If I got it in the United States and it's not already pre-loaded, I would have to have a warrant.

Chairman LEVIN. You do?

Mr. McConnell: Under today's rules.

Chairman LEVIN. Well, no. Even under the Senate bill.

Mr. McConnell: Under the Senate bill, if it originated in a foreign country and it's a foreigner I do not have to have a warrant.

Chairman LEVIN. If it comes into the United States on a regular pay phone?

Mr. McConnell: What do you mean, "regular pay phone"?

Chairman LEVIN. A regular phone, not—it's not routed to—

Mr. McConnell: A regular phone wouldn't be any different from any other phone.

Chairman LEVIN. Okay, it's not routed to somebody outside of the United States. It's a call made to somebody —

Mr. McConnell: To a pay phone here in the United States?

Chairman LEVIN. To a phone here in the United States.

Mr. McConnell: I would not have to have a warrant under the Senate bill.

Chairman LEVIN. How about under the House bill?

Mr. McConnell: Under the House bill, it depends.

Chairman LEVIN. Okay.

Mr. McConnell: Can I give you an example?

Chairman LEVIN. So the new routing issue, this new technology where it's being routed through the United States to a foreign person or a foreign—to a foreign point, that's not just the issue here, then? In other words, the argument has been that there's new technology, and it's been described publicly, where a foreign call is routed through the United States.

Mr. McConnell: Foreign to foreign, yes, sir.

Chairman LEVIN. Foreign to foreign.

Mr. McConnell: Right.

Chairman LEVIN. And that if it were foreign to foreign without being routed, you wouldn't need a warrant under old law.

Mr. McConnell: Under Protect America Act.

Chairman LEVIN. Under old law, if it was not routed through the United States.

Mr. McConnell: No warrant.

Chairman LEVIN. You don't need a warrant.

Mr. McConnell: Even under old FISA.

Chairman LEVIN. Under old FISA.

Mr. McConnell: Agreed.

Chairman LEVIN. Because there's a new technology where it's routed through the United States—

Mr. McConnell: Under old FISA, warrant; under Protect America, no warrant.

Chairman LEVIN. Exactly right. And I think everybody wants to correct that problem. That is not the issue and it shouldn't be made the issue.

So now you have not this new technology under my next question. You have old technology being used. Is there any change you need relative to old technology being used?

Mr. McConnell: The change—the way it's described in the Senate bill—

Chairman LEVIN. You need a change in law on that.

Mr. McConnell: In the Senate bill—well, it depends. Let's go back to old FISA. If I'm intercepting it overseas, no warrant. If I'm intercepting it in the United States, warrant.

Under Protect America Act, because I'm targeting overseas, no warrant. Under the Senate bill, no warrant, because my purpose is foreign.

Chairman LEVIN. All right, even though it comes into the United States.

Mr. McConnell: That's correct.

Chairman LEVIN. All right. And if a purpose, if a purpose is to overhear a conversation to an American, it's foreign to American and that's your purpose, do you need a warrant? The answer would be yes under the House bill.

Mr. McConnell: House bill. No under the Senate bill.

Chairman LEVIN. If that is a purpose.

Mr. McConnell: A purpose. The purpose, okay.

Chairman LEVIN. That's correct. If a purpose, however, is to intercept a phone call coming from overseas to an American citizen, if a purpose, under the House bill you then have to go and get a warrant?

Mr. McConnell: That's correct. The way you're describing it here, the "a" in this case could be a hypothetical. So what that introduces, uncertainty, and now you're in a debate about it. So that's why we tried to hold the line on "the purpose."

Chairman LEVIN. Right.

General, just one last question for you. I wrote you on December 21, '07, requesting that you declassify two DIA documents. You're still waiting on the CIA to complete its part of the review before you can get me the material. A great deal of similar material has already been reviewed and declassified, so this is not new ground.

Do you know why the CIA has not completed this straightforward review for more than 2 months?

General Maples: Sir, I'm not aware specifically of their reason. We are in direct contact with them and with your staff right now to try to facilitate a response to you. I did get a response back from them that they anticipate having something to me in the near term, and I mean within about a week, and which we'll immediately respond and turn your response back to you.

Chairman LEVIN. I want to go back to this probable cause issue as well, just to clarify that. Under the Senate bill, if the purpose is to intercept a conversation to an American here and the intercept takes place here—

Mr. McConnell: If the purpose, I have to have a warrant.

Chairman LEVIN. And you have to establish probable cause.

Mr. McConnell: Yes, sir, probable cause and a warrant if the purpose.

Chairman LEVIN. And a warrant, and a warrant.

Mr. McConnell: And a warrant.

Chairman LEVIN. And the same difficulties of establishing probable cause exist.

Mr. McConnell: Sure, and appropriately so.

Chairman LEVIN. I think we all agree that it's appropriate. So I just want to make clear that under either bill, under different tests, that if it's the purpose one time then you've got to get probable cause; if it's a purpose, under the House bill you have to establish probable cause. But in either event, there are circumstances in both bills where, even though it's a call coming in from a terrorist to the United States, intercepted in the United States, you must establish probable cause.

There are circumstances in either bill—I'm not saying it's the same circumstances.

Mr. McConnell: There's a nuance here you need to appreciate, sir. You can only target one or the other. If I'm targeting foreign, no warrant.

Chairman LEVIN. Got you.

Mr. McConnell: Now, if I target in this country I have to have a warrant. Now—

Chairman LEVIN. That's true, that's true under both bills.

Mr. McConnell: That would be any time I target a U.S. person I have to have a warrant.

Chairman LEVIN. Even though the call comes from a foreign terrorist?

Mr. McConnell: But sir, you can't target—you can't —that's the part of the technology you're not—

Chairman LEVIN. I'm not talking about the new technology.

Mr. McConnell: Well, any technology. Remember, I can only—think of it takes two telephones to talk. I can only target one or the other. So I'm targeting foreign; I don't know who he's going to call. He could call a foreigner, he could call an American, he could call wherever.

Chairman LEVIN. I understand, I understand that. But I'm saying if the call is coming in—

Mr. McConnell: Coming in.

Chairman LEVIN. —from a foreign source that is a terrorist source—

Mr. McConnell: No warrant because I'm targeting a foreign source, because I can only do one. I can only target one end. I can't control who he calls.

Chairman LEVIN. Okay.

Mr. McConnell: Now, if I am targeting inside, that's my target, that's the phone number I'm going to go after, I've got to have a warrant.

Chairman LEVIN. And if the significant purpose of targeting that foreign source is an American, is an American—

Mr. McConnell: If it's the purpose—

Chairman LEVIN. If it's the purpose.

Mr. McConnell: —got to have a warrant.

Chairman LEVIN. Then you've got to go and get a warrant.

Mr. McConnell: That's correct.

Chairman LEVIN. If that's the purpose.

So all I'm saying is under either bill there are circumstances where you must establish probable cause and go to a FISA court.

Mr. McConnell: There are—in either bill, I must do probable cause if I'm targeting a U.S. person.

Chairman LEVIN. Under either bill.

Mr. McConnell: Yes, sir.

Chairman LEVIN. And the probable cause difficulty is the same always? Probable cause is probable cause.

Mr. McConnell: And we should be required to do probable cause any time we target—

Chairman LEVIN. I hope everybody would agree on that.

Mr. McConnell: Yes, sir.

Chairman LEVIN. I think everybody would agree.

Mr. McConnell: But we're arguing as hard as we can that we shouldn't be going to a probable cause standard to target a foreigner in a foreign country.

Chairman LEVIN. We got it.

I won't ask if there's any other questions because I'd be asking myself. We thank you both. It's been a long hearing and I hope a useful hearing. We appreciate your attendance and your patience, and we will stand adjourned.

[Whereupon, at 12:14 p.m., the hearing was adjourned.]