

July 23, 2010

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

The Honorable Christopher S. Bond
Vice Chairman
Select Committee on Intelligence
United States Senate
Washington, DC 20510

Dear Madam Chairman and Vice Chairman Bond:

Enclosed please find the completed unclassified responses to the Post Hearing Questions in support of the nomination of Mr. James R. Clapper, Jr. to be the Director of National Intelligence.

If you have any questions on this matter, please contact me on (703) 275-2473.

Sincerely,

A handwritten signature in black ink that reads "Kathleen Turner". The signature is written in a cursive style with a large initial "K" and a long, sweeping underline.

Kathleen Turner
Director of Legislative Affairs

Enclosure

POST HEARING QUESTIONS FOR JAMES R. CLAPPER

July 21, 2010

Questions for the Record from Senator Feingold

Success in the area of counterterrorism requires that the Intelligence Community and the Department of Defense coordinate their activities, and that congressional oversight not be fragmented. One example is Section 1208 of U.S.C. Title 10, which authorizes assistance to foreign forces, irregular forces, groups, or individuals supporting U.S. counterterrorism military operations. The Senate Armed Services Committee has expressed concern that U.S. Special Operations Command may be leveraging this authority for long-term engagement with partner nations, rather than exclusively to support operations, particularly in countries other than Iraq and Afghanistan. Information about the use of Section 1208 is therefore critical if the Intelligence Committee is to conduct oversight of how the U.S. government as a whole is fighting terrorism around the world.

- **Will you ensure that this information is provided to the Committee?**

Section 1208 of the FY 2005 National Defense Authorization Act, PL 108-375, requires the Secretary of Defense to submit an annual report "to the congressional defense committees on support provided to foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating ongoing military operations by United States special operations forces to combat terrorism."

If confirmed as the DNI I would not view the provision of DoD clandestine military operational information to the SSCI as being within my authority or responsibility; however, I would fully support an arrangement agreed to by the affected oversight committees for the submission of information to Congress concerning this matter.

NSA Director Alexander told the Senate Armed Services Committee in the context of his confirmation to be the head of Cyber Command that NSA provides support to the Department of Homeland Security's cybersecurity activities as a Department of Defense activity, in coordination with the DNI.

- **What is your understanding of the proper roles of the Secretary of Defense and the DNI in this area?**

The roles of the Secretary of Defense and the DNI are determined by the context within which NSA provides support to DHS. The Intelligence Community, under the guidance of the DNI and in accordance with applicable laws, provides intelligence to support DHS. Intelligence support of DHS by NSA, through the provision of intelligence collection, analysis, and reporting, as well as any technical assistance, is clearly an area in which the DNI has an important role, as set out in statute and under E.O. 12333. In addition, the Secretary of Defense, through the Under Secretary of Defense for Intelligence, ensures that the DHS requirements for intelligence support from NSA are met, consistent with mission requirements, law and regulation.

The Intelligence Reform and Terrorist Prevention Act of 2004 established the Director of National Intelligence to act as the head of the Intelligence Community, principal advisor to the President, National Security Council, and Homeland Security Council on intelligence matters pertaining to national security, and to oversee and direct the implementation of the National Intelligence Program. Pursuant to Title 50, U.S.C., section 403, subject to the authority, direction, and control of the President, the Director of National Intelligence is responsible to coordinate national intelligence priorities and to facilitate information sharing among the Intelligence Community.

NSA is also a Combat Support Agency (CSA) of the Department of Defense, whose resources are critical to the conduct of military operations globally; including the support of civil authorities in the United States when the Department of Defense is called upon to support civil authorities. As a CSA, NSA can be tasked by the Secretary of Defense to support DHS directly in accordance with laws pertaining to the sharing and transfer of resources between Departments of the Executive Branch.

The Secretary of Defense, however, must ensure that NSA's support to military operations is not adversely impacted by the degree of support NSA is called upon to provide to other U.S. government elements outside the Department of Defense. Should the Secretary of Defense believe that this external support might result in NSA's inability to perform any of its assigned missions, then the Secretary has the option, when appropriate, to seek and obtain the guidance of the President as to the appropriate prioritization of NSA efforts.

- **Will the Committee be informed of all domestic cybersecurity activities, regardless of whether they are conducted under Title 10 authorities?** Yes, I will commit to ensuring the Committee is informed of all intelligence activities concerning domestic cybersecurity, including NSA's support of DHS.

Questions for the Record from Senator Coburn

Timing of DNI Job

When we spoke last week you said that in April, when the President first asked you to take the DNI job, you were reluctant because you had planned to retire after your time as USDI. The press has reported that a memorandum you wrote to the President about your vision for the way forward for the IC is what made the President want you to take the job.

- **Please explain the specific timing of when you gave this memo to the President and what prompted you to do so?**

On Friday, 21 May 2010, Secretary Gates summoned me to his office; he said that the President had spoken to him about my filling the DNI position. The Secretary reaffirmed his recommendation of me as DNI. I said I had been thinking about the job, and what I would do with it. The Secretary suggested that I write a letter to the President, and he would personally give it to the President the following Monday (the 24th of May). I wrote the letter on Sunday, the 23rd, and delivered it to the Secretary Monday morning the 24th. He was meeting with the President that afternoon, and passed the letter to him then.

- **Will you provide that memo to the Committee? If not, why not? How can we understand your vision for the IC if you won't share it with us?**

I'm not able to provide the Committee with a copy of a personal letter written in confidence to the President; however, I can say I emphasized the key points below, which are consistent with my statements in my one-on-one meetings with Members, Pre-Hearing Questionnaire, and the testimony I gave before the Intelligence Committee:

- The need to set expectations for the Intelligence Community. By that I mean that intelligence can reduce uncertainty for decisionmakers, but rarely can intelligence eliminate such uncertainty.
- The need for clarity in the roles and responsibilities of the DNI and other members of the national security and intelligence team. My view is that intelligence is an enterprise of complementary capabilities which must be synchronized. If confirmed I will lead the community as a team.
- My conviction that the DNI has a great deal of authority already, but the challenge has been how that authority is asserted. If confirmed, I will push the envelope on this. I believe my experience in the community would serve me (and the position) well in crystallizing and buttressing that authority. I will also defend the position of the DNI.

- My professional independence and the fact that I try always to be forthright about anything I am asked.
- **What were you told about why you were being offered the DNI position at a time the position was still occupied by someone else?**

During the April/May timeframe discussed above, I was simply asked whether I would consider serving in this position.

DNI Authorities

You have indicated that one of the problems Dennis Blair had in the DNI position was “chemistry.” But, you have also said you will rely on “relationships” with IC leaders and with the White House to get things done as DNI. The lesson I take from DNI Blair leaving the ODNI is that we can’t always rely on “relationships” or “chemistry.”

- **Don’t we need a real framework for cooperation and DNI direction, rather than handshakes?**

I believe that we already have such a “real framework for cooperation and DNI direction.” Handshakes, personal relationships, and “chemistry” are all important too, whether it is the DNI, IC leaders, or any other organization.

- **How do you speak truth to power if your authority is derived from your “relationship” with the White House?**

Speaking “truth to power” is first and foremost a function of one’s convictions—regardless of “relationships,” whether formal or informal. Over the course of my career, I believe I have demonstrated that conviction.

- **You said to me last week that the DNI has ample “explicit and implicit” authorities, but DNI Blair tried to assert his authority to appoint representatives overseas, and the battle ended up costing him his job. If the DNI can’t even assert “explicit” authority, how do you think you can assert implicit authority?**

Overseas relationships is an area where the DNI’s authorities are ambiguous. The National Security Act of 1947, as amended, (Sec 104A {50 U.S.C 403-4a (f) states “...the Director of the Central Intelligence Agency shall coordinate the relationships between elements of the intelligence community and the intelligence or security services of foreign governments or international organizations on all matters involving intelligence related to the national security....” I believe the DNI can assert authority in areas that are supported by the IRTPA, such as budget, programming, standards, information sharing, etc. Additionally, Director

Panetta and I have agreed to work together to clarify this ambiguity while fulfilling our statutory responsibilities.

Washington Post – Dana Priest Investigation

The *Washington Post* this week is highlighting bloat and inefficiency in the Intelligence Community. While I understand the need for some overlap to challenge conventional thinking and eliminate single points of failure, we have also seen cases where overlap doesn't seem to be helpful. For example, the redundant intelligence analysis missions of the FBI and DHS, does not seem to provide much benefit. I think other members share my view that DHS I&A has a larger portfolio than is manageable or necessary for that organization.

- **In your time in the IC, what products of value have you seen come out of I&A?**

I have seen valuable I&A products ranging from in-depth Assessments on border-security threats and other potential threats to short but informative products for state and local entities including police, fire, and other first responders. I&A not only serves a broad range of customers, but also collaborates with a broad range of partners in producing its analytic assessments. For example, I&A recently prepared an assessment on events in Ciudad Juarez in advance of a major interdepartmental border security operation (joint with the Mexican authorities) against the drug trafficking organizations. The assessment provided valuable information on the drivers of the violence in the city and prospects for addressing the problem. Roll Call Releases, which I&A produces collaboratively with FBI and the Interagency Threat Assessment and Coordination Group, promote awareness among federal, state, local, and private-sector first-responders of emergent threats and thus assist those organizations in developing countermeasure strategies. I understand that these products literally are provided at roll call lineups for state and local law enforcement and first-responder teams across the country and have received highly positive reviews. As another recent example, I&A produced an analytic assessment that informed state, local, tribal, territorial, and private sector partners about the increasing challenge of detecting terrorist plots by individuals or small groups acting quickly and independently.

- **Do you think that I&A's mission should be scaled back to focus only on analysis relevant to infrastructure protection, domestic protective measures, and support to state and locals?**

My general observation is that much progress has been made by the Department of Homeland Security, Office of Intelligence and Analysis, in integrating into the larger IC and in providing support to homeland security and law enforcement partners across all levels of

government. If confirmed, a top priority for me will be to look at all elements of the IC to ensure they are fully capable of meeting mission requirements. If deficiencies are discovered, I will work with the respective Department Secretaries and with the Congress to bring resources of the larger IC to bear on their remediation.

Questions for the Record from Senator Hatch

In your response to my question about the role of ideas in the war on terror, you said that you believed that closing down Guantanamo would “help our image” abroad.

- **Please cite any and all relevant data that indicates that closing Guantanamo would undermine terrorist ideology.**

Extremists regularly use Guantanamo Bay Detention Center (GTMO) to illustrate that the U.S. deliberately persecutes, imprisons, and tortures Muslims and is hypocritical about its own values and legal procedures when it pursues its war against Islam. Al-Qa’ida has made explicit references to GTMO in at least 32 public releases since 2003, including four releases in 2009. Al-Qa’ida has made one explicit reference to GTMO in 2010. Additionally, Al-Qa’ida global affiliates, including AQAP, have collectively referred to GTMO in at least 26 statements.

- **Do you believe that closing Guantanamo would lead propagandists for Islamic violence to stop citing Guantanamo in their recruiting rhetoric? Has there been a concomitant reduction in the use of Abu Ghraib in current recruitment rhetoric?**

While GTMO’s closure may not stop citations of GTMO in extremist rhetoric, it may reduce anger among Muslims who are vulnerable to radicalization. There has been a reduction in the use of Abu Ghraib in extremist rhetoric but it is still exploited as a symbol of western atrocities against Muslims.

Questions for the Record from Vice Chairman Bond

MIP v. NIP

Following the creation of the DNI, it appears that there has been a tendency to expand the MIP at the expense of the NIP.

- **Since much of the DNI’s statutory authority is budgetary, do you think this trend has undermined the DNI’s effectiveness as the leader of the Intelligence Community?**

The DNI's effectiveness as the leader of the Intelligence Community has been strengthened by the vital relationship established with the Department of Defense leadership.

I am not aware of any instance where MIP expansion has been at the expense of the NIP. The DNI has exercised his budget authority to participate in the development of the MIP, and supported adjustments to the budget. In the case of both programs, increased investments have been based on requirements. To that end, I feel strongly that the NIP and MIP should be synchronized to ensure that intelligence investments are complementary, and not duplicative.

Should I be confirmed as the DNI, I will continue to work to ensure the budgets for the NIP and MIP provide a balanced consolidated intelligence capability to keep our Nation secure.

CIA Information Sharing

In your meeting with me last week, you said that one of your priorities, if confirmed as DNI, would be to increase the amount of information CIA shares with the rest of the intelligence agencies.

- **What types of information is CIA not adequately sharing right now, and who should they be sharing it with?**

To improve information sharing, in January 2009, the DNI signed ICD 501, *Discovery and Dissemination or Retrieval of Information within the Intelligence Community*. This Directive promotes responsible information sharing by distinguishing between discovery (obtaining knowledge that information exists) and dissemination or retrieval (obtaining the contents of the information). It also establishes procedures for gaining access to information that has been discovered. The policy directs all IC elements to fulfill their "responsibility to provide" by making intelligence discoverable by automated means by authorized IC personnel. While much progress has been made in the year and a half since ICD 501 was signed, more work needs to be done to achieve the ultimate goal of IC information sharing. Future phases of ICD 501 will focus on the discoverability and retrieval of sensitive text-based analytic products, databases that inform analysis, and undissemated information. In terms of ICD 501, the CIA makes more products available to authorized users than any other IC element. In fact, efforts are currently underway to dramatically increase the number of available products.

- **What do you intend to do to increase the amount of CIA information sharing?**

Currently, information sharing is governed largely through legacy agreements which present a challenge when creating electronic information sharing solutions for the IC as a whole. Legacy agreements need to be reviewed, clarified, and updated to allow the CIA and the rest of the community to share information with confidence. In addition, if confirmed, I will also look to Congress if legislative changes are needed to facilitate information sharing. For example,

information sharing and the IC's ability to analyze intelligence information would be enhanced if Congress enacts legislation to give the ODNI the same operational files exemption granted to CIA, NGA, DIA, and NSA.

- **What other information sharing problems in the Intelligence Community would you address?**

If confirmed, I want to work on the technical aspects of ICD 501 by implementing the technical enterprise infrastructure to achieve seamless information sharing for the IC. It is also imperative to upgrade the security, connectivity, and operating processes for our data and networks, while monitoring and auditing access to information and subsequent use of information. It is crucial to strengthen support for, and sharing with, mission partners outside the IC as our non-federal colleagues continue to express concerns about information sharing from the federal level. I believe we need to examine the two way flow of information between federal and non federal components. In addition, I understand that in direct response to the White House-led review, the SSCI assessment and the McLaughlin report, there are efforts underway to update, harmonize, and simplify U.S. Person rules, including those that apply to FISA collection programs, to make sure agencies are aware of and maximizing their existing authorities, while also protecting privacy and civil liberties. These efforts will help facilitate information sharing. If confirmed, I plan to strongly support them.

Intelligence Community Acquisition Provisions

During the past several years, I've been working hard to get IC major system acquisition provisions enacted in the various Intelligence Authorization bills. These provisions are based upon the successful DoD Nunn-McCurdy statutes and are designed to help the DNI take control of the IC major system acquisition process.

- **Do you support the enactment of these provisions or do you consider them to be unnecessary?**

I appreciate the committee's concerns about controlling acquisition cost growth, as reflected in S. 3611, the Authorization bill voted out of committee on July 15. Though I have not had an opportunity to thoroughly review these provisions, I understand that they will place new reporting requirements on the ODNI and the IC elements. I can assure you that with or without the enactment of S. 3611, controlling cost growth of IC Major Systems Acquisitions (MSAs) will be an important objective for me as DNI, if confirmed. I am committed to continuing to provide visibility into the cost and schedule performance of the MSAs as well as corrective actions in the annual report to Congress on the Program Management Plans. I am also

committed to ensuring that managers take action to address problem acquisitions. I look forward to working with Congress to ensure the Committees get the visibility they need, while ensuring the burden of reporting does not distract managers from implementing corrective actions.

- **Assuming you are confirmed but these acquisition provisions are not enacted, what steps to you intend to take to ensure that the IC's major systems do not experience excessive cost overruns?**

Since the implementation of ODNI acquisition policy, there has been significant progress in the implementation of sound and stable Program Management Plan (PMP) baselines for IC Major Systems Acquisitions (MSAs). However, I recognize the importance of preventing excessive cost growth and, if confirmed, I plan to work aggressively to reduce risk early in the acquisition development cycle where history shows us the major drivers of cost growth occur. We will address cost growth risk at this critical juncture by ensuring technologies are sufficiently mature and requirements are well defined at the start of MSA development. In addition, we need to ensure acquisitions receive adequate, and stable funding and that we avoid "requirements creep." Finally, if confirmed, I will continue to provide Congress full transparency on the progress of IC MSAs against their PMP baseline goals and communicate what actions are being undertaken to address acquisition cost growth across the IC in the annual DNI PMP Report to Congress.

Accountability Reviews

For the past several years, I've been advocating for the adoption of a provision that would give the DNI the authority to conduct accountability reviews of elements of the IC or IC personnel to address specific failures or deficiencies.

- **Do you think this authority is necessary and would you exercise such authority if the provision is enacted and you are confirmed as DNI?**

I believe that IC elements must be held accountable. Such accountability is best accomplished by holding the IC element heads accountable for the actions of their agencies. While I support the intent of the legislation, I think existing law is adequate for holding IC elements and IC element heads accountable. Accordingly, I do not think this legislation is necessary. However, if I were confirmed, and if legislation were passed that would direct me to perform accountability reviews, I would certainly follow the law and perform those reviews.

DNI Authorities

I have asked every DNI whether he believed the current statutory authorities for the position were sufficient to allow him to be effective as the leader of the Intelligence Community. No DNI has ever provided concrete recommendations for improving the DNI authorities while in office, yet once they are out of office they tell me that I was right. You have been in the intelligence business for a very long time and have had a chance to assess the DNI's authorities from the perspective of your previous positions.

- **Give me at least one recommendation on how we might improve the statutory authorities of the DNI.**

The DNI already has significant statutory authority. I believe that the DNI model can work well based on existing law and, as I stated in my confirmation hearing, it is my intent, if confirmed, to use those authorities to their fullest. If confirmed, I will be in a better position to assess whether there are ways to improve, clarify, or strengthen the DNI's statutory authority. If I find that there are areas where statutory changes are needed, I will notify and work with the committee to make such improvements. One specific area that could strengthen the DNI's authority is legislation to grant the ODNI the same operational files exemption granted to CIA, NGA, DIA, and NSA, which would result in more robust information sharing.

- **Please provide to the Committee a similarly detailed explanation of your vision for the IC as the one you provided to the President?**

As stated above, my vision includes the need to set expectations for the Intelligence Community. By that I mean that intelligence can reduce uncertainty for decisionmakers, but rarely can intelligence eliminate such uncertainty. Additionally, there is a need for clarity in the roles and responsibilities of the DNI and other members of the national security and intelligence team. My view is that intelligence is an enterprise of complementary capabilities which must be synchronized. If confirmed I will lead the community as a team.

In your meeting with me last week, you said that one of your priorities, if confirmed as DNI, would be to clarify the DNI's authorities over covert action and our relationships with foreign intelligence services.

- **Please expand on that. How would you change the role of the DNI in these areas?**

There are ambiguities in authorities related to covert action and foreign intelligence relations. For example, the IRTPA provides that the DNI "oversees" the coordination of foreign intelligence relationships and that the Director of the CIA "coordinates" those relationships under the direction of the DNI. Ensuring the fulfillment of both the DNI's and the CIA's responsibilities in this area requires robust engagement and coordination between the ODNI and

the CIA. The DCIA and I have spoken and have agreed that, should I be confirmed, we will work together to ensure that both he and I are meeting our statutory responsibilities and to resolve any ambiguities with respect to these authorities.

- **What other changes would you make to the role and authorities of the DNI, if confirmed?**

If I am confirmed, I will assess whether additional changes are necessary; it would be premature for me to make any suggestions at this time.

In your meeting with me last week, you said that while you once believed that the DNI should have departmental authority over military intelligence agencies like NGA, you no longer believed that would be wise. Please take me through the evolution of your thinking on this important issue.

- **What led you to believe it would be a good idea and what changed your mind?**

I don't recall saying that the DNI should have "departmental authority" over military intelligence agencies like NGA, however when the IRTPA was being debated in the Congress, Gen Hayden (then serving as Director of NSA) and I (then serving as Director of NGA) suggested that another paradigm should be considered: moving the agencies who's first letter is "N" (as in national) out of the Department of Defense, and under the operational control of a DNI, might have merit. Putatively, although not expressed that way at the time, this would mean a "Department of Intelligence." I have since come to believe that this arrangement would not be workable, since it could pose profound civil liberties challenges, and the "donor" Department (DOD) would, over time, regenerate the capabilities lost to the "Department of Intelligence," since the support rendered by these agencies is so integral to warfighting.

More on the Authority of the DNI

In the Committee's questions to you prior to this hearing, we asked you to expand upon a statement you made in your paper, "The Role of Defense in Shaping U.S. Intelligence Reform," in which you stated, "The DNI cannot afford to wait for Congress to clarify IRTPA."

You responded that "the DNI needed to exert the authority he was granted, and push the envelope to embellish that authority *even more*."

But in that same paper, published in 2010, you also said, "I no longer believe as strongly as I once did in greater centralization of intelligence activity or authority." In your answers to our second set of questions, you stated that you do not "feel that more authority over Cabinet Department personnel and training is necessarily required."

- **On the one hand in 2010 you believe that the DNI should push for more authority, but on the other hand in 2010 you no longer believe in greater centralization of intelligence activity or authority. I'm really trying to understand your thoughts on this one. Do you think the DNI should have more authority or not? (Because, if confirmed, you will *be* the DNI...)**

After serving in my current capacity for over three years, and observing the ODNI, I have come to believe that not all intelligence management functions have to be centrally directed from the confines of the ODNI, but that they can be delegated to other parts of the enterprise, and be executed on behalf of the DNI. More centralization begets an even bigger staff.

You suggested in your answers to the Committee questionnaire that “the area of greatest ambiguity in the IRTPA is the relationship with and authority of the DNI over the CIA.”

- **What is it that you find ambiguous in the law?**

There are ambiguities in IRTPA concerning the relationship with and authority of the DNI over the CIA. For example, the law provides that the Director of CIA will conduct foreign intelligence liaison relationships and coordinate the relationships between elements of the Intelligence Community and the intelligence or security services of foreign governments. However, the Act assigns the DNI the responsibility to “oversee” these foreign relationships and does not further define the respective roles of the DNI and the Director of CIA in this area. Director Panetta and I have agreed that, should I be confirmed, we will work together to clarify these and other ambiguities. Similar dialogue between Secretary Gates, then-DNI McConnell and I helped attenuate some of the ambiguities created by IRTPA section 1018 and resulted in clarifying the DNI’s role in hiring and dismissing the heads of IC elements embedded in the Department of Defense. As I have stated previously, I believe that the problems of the past lie less in ambiguities in law and more in the manner in which the respective statutory authorities have been asserted.

- **You’ve been in this business for 40 years. You’ve seen it from all angles. Do you believe that the DNI has appropriate authority over the CIA?**

I believe that the extent of the DNI’s statutory authority over the CIA is not clear. If confirmed, I intend to compensate for that with a close and continuing relationship with the CIA Director.

USA PATRIOT Act

The three remaining sunset provisions of the PATRIOT Act are set to expire in February 2011. They are all FISA-related provisions: lone wolf, roving wiretaps, and business record court orders.

- **In your opinion, should these provisions be allowed to sunset, extended for another couple of years, or made permanent?**

These provisions should not be allowed to sunset; rather, they should be permanently reauthorized because they are important intelligence-gathering tools to help protect our nation from national security threats. As discussed in my prehearing questions, I would support reauthorization of these provisions with modifications to enhance privacy and civil liberty protections, provided they do not undermine the effectiveness of these important tools or prevent their reauthorization.

There was a move in the Senate Judiciary Committee during this Congress to place crippling restrictions on current investigative tools or undo key provisions in the PATRIOT Act. For example, one provision would have created a sunset for national security letters and another would have required FISA-like minimization procedures for NSLs.

- **In the past, we have relied heavily on the DNI to step in and defend these operational techniques. Will you do the same, even if others support watering them down?**

Yes. If confirmed, I will work with Congress to ensure that the Intelligence Community has the tools it needs to protect the Nation in a manner that protects the civil liberties and privacy of Americans.

Foreign Intelligence Surveillance Act

I spent a lot of time during the last Congress getting the FISA Amendments Act passed into law to ensure that critical intelligence collection would continue and that those electronic communications service providers who assisted with the President's Terrorist Surveillance Program received civil liability protection.

- **Certain provisions in the FISA Amendments Act are set to expire at the end of 2012. If confirmed, what role do you expect to play in the renegotiation of the FISA Amendments Act?**

I would expect that the ODNI, representing the Intelligence Community's interests, would have a leading role in the renegotiation of the FISA Amendments Act. For example, the

ODNI and the Department of Justice would lead the effort to evaluate whether the expiring provisions in the FISA Amendments Act should be reauthorized, reauthorized with modifications, or allowed to expire. We need to work with Congress to ensure that important intelligence-gathering tools do not expire.

HIG

The High-Value Detainee Interrogation Group (HIG) has been a disappointment for me so far. I am aware of their limited involvement in a few cases but I certainly have not seen them used as envisioned. If we detain a terrorist suspect in the U.S., the FBI grabs them. If our allies detain a suspect overseas, the CIA handles it. If we detain someone on the battlefield, our military handles it. It's hard to see what the role of the HIG is.

- **Are you satisfied with the current limited role for the HIG?**

Yes. The HIG was never envisioned, or chartered, to conduct all CT-related interrogations. Experience has shown that successful interrogations of suspected terrorists often depend on our ability to bring to bear critical capabilities and expertise – including the most experienced interrogators, subject matter experts, and behavioral scientists – that are tailored to the specific circumstances. In some cases, the necessary expertise is spread across several departments and agencies. The HIG was created to provide us with the unique ability to send an interagency team forward that capitalizes on some or all of these strengths of all these agencies, ultimately guided by what the circumstances require. The Directors of FBI, CIA and DIA are empowered to make that joint determination. The HIG has already deployed its Mobile Interrogation Teams (MITs) in support of counterterrorism operations domestically and overseas with positive results.

- **What changes would you recommend to the HIG or its operations if you are confirmed as DNI?**

I currently have no plans to make recommendations to change the HIG. If confirmed, I would evaluate the operations of the HIG in accordance with my responsibilities under the HIG charter. As time goes on, should I determine that modifications would be necessary or appropriate, I would discuss it with the interagency leaders.

- **Why is there a need for a HIG overseas if the USG is not going to take possession of terrorists overseas outside of Afghanistan?**

There is nothing in to HIG Charter or elsewhere that limits HIG deployments to situations where an individual is in the custody of a department or agency of the United States. The HIG has the unique ability to deploy inter-agency teams of experts to conduct interrogations of detainees in U.S. law enforcement or military custody, as well as detainees in the custody of a foreign government.

Disclosure of information to Congress

In your response to the Committee's questions you suggested that you would ensure that "Intelligence Community directives related to the disclosure of information to Congress are vigorously adhered to."

- **What aspects of the Intelligence Community directives governing disclosure of information to Congress do you believe are not vigorously adhered to currently?**

In my previous statement, I did not mean to imply that such directives currently are not vigorously adhered to, but rather to emphasize my commitment that such adherence continue.

DNI use of other Agency Staffs

You suggested that a DNI could use the staffs of other agencies and departments to discharge specific functions and activities on behalf of the DNI.

- **Please elaborate on what you have in mind?**

If confirmed, I would seek to use the intelligence elements of other Cabinet Departments and Agencies to execute IC management functions as an extension of the Office of the DNI. For example, the DIA could serve as the DNI's Executive Agent for IC Document and Media Exploitation; the NSA could serve as the DNI's Executive Agent for IC Foreign Language Machine Translation; the CIA could serve as the DNI's Executive Agent on Climate Change.

April 28 Information Paper

In response to the Committee's request that you explain in detail why *each* of the seventeen provisions described in your April 28 Discussion Draft "would infringe upon the Secretary's responsibilities and authorities in certain management issues within DoD," you answered, "while no single provision does significant harm, cumulatively, they could have a negative effect." While I understand your concern that the possible creation of inconsistent policies could create confusion within the DoD intelligence components, I would like to understand how some of the provisions in particular "infringe on the Secretary's responsibilities and authorities."

Section 307, Conflict of interest regulations for intelligence community employees. Directs the DNI to issue regulations prohibiting an officer or employee of an IC element from engaging in outside employment if such employment creates a conflict of interest or appearance thereof.

- **Is there a situation you can think of in which an intelligence community employee should be allowed to engage in outside employment that creates a conflict of interest? How would this section of the law, to use your words, “create confusion and conflict within the DoD intelligence components?” How does it “infringe on the Secretary’s responsibilities and authorities?”**

Approximately 80% of the personnel of the elements of the intelligence community are military members or civilian employees of the Department of Defense's intelligence components. They are already subject to extensive DoD directives implementing existing conflict of interest statutes, including prohibitions of outside employment that create a conflict of interest or appearance thereof. They have received extensive DoD training in conflict of interest matters, tailored to their duties. They are subject to existing DoD mechanisms for investigating and correcting violations. Overlaying an additional IC conflict of interest regime with DNI directives potentially containing different language, an additional DNI training program, and additional enforcement mechanisms will inherently waste effort and create the potential for confusion. The DNI's role regarding IC elements outside of the ODNI staff and the CIA should be oversight and coordination, and not execution of an elaborate new system duplicating what departments and agencies are already doing.

Section 323, Reports on the acquisition of major systems. Directs the DNI to submit to the intelligence and armed services committees detailed reports for each major system acquisition by an IC element.

- **Is there a reason why the Director of the Intelligence Community should not be aware in some detail, of all major system acquisitions within the Intelligence Community? What is the concern here?**

In March 2008, the SecDef and DNI signed a Memorandum of Agreement on the Management of Acquisition Programs Executed at the DoD IC Elements. The MOA contains provisions that ensure the DNI has full insight into the execution of acquisitions that are funded in the NIP and executed by DoD agencies. In accordance with the MOA, DoD and ODNI conduct joint quarterly reviews of all IC MSAs. In addition, they collaborate on an annual DNI report to Congress on the progress of IC MSAs against their cost, schedule and performance goals. As such, the reporting requirements of Sec 323 are adequately addressed by the existing oversight activities of DoD and the ODNI.

Section 339, Report on foreign language proficiency in the intelligence community. Directs the DNI to submit a report to the intelligence and armed services committees on the foreign language proficiency of each IC element, including an estimate of the number of such positions that each element will require. The specific concern in your paper was the “potential for interference with SECDEF’s management of personnel with foreign language skills in DoD intelligence components.”

- **How would a report on the foreign language proficiency of each IC element interfere with the SECDEF's management of personnel with foreign language skills?**

Section 339 would direct the DNI to submit annual reports to the armed services and intelligence committees on the foreign language proficiency of each IC element, including an estimate of the number of such positions that each element will require. DoD requires linguists for many other functions besides intelligence, including liaison with foreign armed forces and governments, the conduct of military operations, and training. The ODNI staff has no experience or information on these requirements, and is in no position either to report on the foreign language proficiency of DoD's IC elements (which include DIA and the intelligence components of the armed forces) or to recommend manning levels for them. The DNI certainly has an interest in the foreign language proficiency of the IC elements to support national intelligence programs, but any analysis of foreign language proficiency in the armed forces or other DoD components should be limited to support on national intelligence programs, and any such reports and recommendations for manning levels should receive SECDEF concurrence.

Insufficient Responses to Pre-hearing Questions

In your responses to this Committee you said that you were not in position to assess how well the DNI was carrying out the function of management of Information Technology in the community. Yet the vast majority of IT systems in the community are within the Department of Defense.

- **What is your assessment of the status of intelligence related IT systems and programs in the Community?**

The IC has made progress in laying the foundation for an integrated Enterprise Infrastructure. The IC and DoD share common IT architectures and standards, and services that guide investments in shareable applications and services. Together, the IC and DoD provide shared core services and capabilities, and continue to grow the shared data environment. The intelligence-related IT services and programs are better integrated allowing for greatly improved information sharing and collaboration within the IC, DoD, and our stakeholders.

Your public financial disclosure report from 2007 indicates you were a member of the Board of Directors for several companies and the Chief Operating Officer of DFI International, yet in your first set of responses to this Committee's questionnaire, when asked to list positions of trust you have held in any corporations, partnerships or other entities in the past five years, you indicated "None."

- **Please explain this discrepancy.**

When I answered the question, I overlooked the timeframe mentioned (five years); the following is the amended answer:

<u>Name of Entity</u>	<u>Position</u>	<u>Dates Held</u>	<u>Self or Spouse</u>
GEOEYE	Member, Board of Directors	Oct 06 - Mar 07	Self
3001, INC	Member, Board of Directors	Oct 06 - Mar 07	Self
Sierra-Nevada Corp	Member, Senior Advisory Group	Oct 06 - Mar 07	Self
Center for Strategic & International Studies	Senior Advisor	Oct 06 - Mar 07	Self
U.S. Geospatial-Intelligence Foundation	Advisor	Nov 03 - Mar 07	Self
DFI International	Chief Operating Officer	Oct 06 - Mar 07	Self

In the Committee's questionnaire you were asked to provide copies of all your published works and speeches, but you only provided three articles. You have published at least eight other relevant articles in *American Intelligence Journal*, *Signal*, *Defense Intelligence Journal*, *Joint Forces Quarterly*, and *Intelligencer*, dating between 1990 and 2002, yet these articles were not provided to the Committee.

- **Please explain this discrepancy and provide copies of these and any other published articles not already provided to the Committee.**

Over the years, I have provided input to, or wrote, articles as a contribution to various defense or intelligence-related publications but did not keep records or copies of them. The

information I provided for the initial questionnaire resulted from an internet search for such publications. Using the specific references above (and various search-engines), I have since found the following articles (listed below). Any omissions were and are purely unintentional.

American Intelligence Journal

“Air Force Intelligence: Working Smarter in the 1990s” Journal 11, Number 3 (1990); pp. 11-12 (copy unavailable)

“Reorganization of DIA and Defense Intelligence Activities” in Journal 14, Number 3 (Autumn – Winter 1993-1994); pp. 9-16 (attachment A)

“The Newly Revived National Imagery and Mapping Agency” Journal 21, Number 1&2 (Spring 2002); pp. 1-5; also published in the *Intelligencer* 13, Number 1 (Spring/Summer 2002); pp. 25-30 (attachment B)

Signal Magazine

“Desert War Was Crucible for Intelligence Systems”, Sep 1991; pp. 77-80 (attachment C)

Defense Intelligence Journal

“Defense Intelligence Reorganization and Challenges” in Journal 1, Number 1 (Spring 1992); pp. 3- 16 (attachment D)

Joint Forces Quarterly

“Challenging Joint Military Intelligence”, Number 4 (Spring 1994), pp. 92-99 (attachment E)

SIGNAL

“Critical Security Dominates Information Warfare Moves” in Vol. 49, no. 7 (March 1995), pp. 71-72. (Co-authored with Lt Col Eban Trevino, attachment F)

In the Committee's questionnaire you were asked to provide copies of all your speeches, but you indicated that you did not use notes, and that there were no transcripts. There are official videos of several of your speeches available online. Considering the importance the President has placed on this nomination, the degree of due diligence exhibited in providing information to this Committee seems superficial at best.

- **Please explain this discrepancy.**

In answering the original question, I was not aware of any official or unofficial videos of speeches or addresses made by me in the past. My speeches are extemporaneous. I often jot down notes as "memory joggers", however, the notes are not filed or kept. I take exception to the last sentence of the question.

2004 Iraq WMD NIE

During your confirmation hearing you noted that you agreed with the findings of the Committee's Iraq report, that you were very familiar with the flaws in the NIE, having had your "fingerprints on it" as a member of the National Intelligence Board, and that you could "attest, since [you were] there, [the failure] was not because of politicization or any political pressure. It was because of ineptness."

- **Did you see any evidence during this period that the Intelligence Community provided intelligence assessments on Iraq to the Administration that differed, in substance, from those provided to Congress and the public?**

No, from my vantage as Director of (then) NIMA, I did not see any evidence that the Intelligence Community provided intelligence assessments on Iraq to the Administration that differed, in substance, from those provided to Congress and the public.

- **Did you ever hear a member of the Administration say something publicly about the intelligence on Iraq that you believed at the time was not supported by the intelligence?**

I wondered about the certitude with which some in the administration spoke about the presence of WMD in Iraq, but I had no basis from my position as Director of NIMA to question those statements.

Why He Wants the Job

In my opening statement I explained my view that we need a DNI who has a fire in his gut, is willing to break paradigms and trends against business as usual, and who is not reluctantly accepting the job, but is willing to take on the old guard and change broken ways of going about intelligence. I asked you to tell us why you want to take on one of the hardest jobs in Washington, fraught with maximum tensions.

- **I understand that you accepted the job because you're a "duty man," but I need to know exactly why you want the job at this time.**

At my age and station in life, I do not lust for or aspire to the job of DNI. I am, as I have repeatedly stated, a "duty guy" at heart, and when asked by the Secretary of Defense, and subsequently by the Commander in Chief, to serve in this capacity, I agreed to do so. I have

when asked, taken on the task I was given—whether a second lieutenant, three-star general, or prospective DNI. I am convinced that I can make the position stronger, precisely because I have no “career” aspirations; I understand better than most the weaknesses and challenges of the position, but am convinced that a strong and visible leader of the IC is absolutely required.

Question for the Record from Senator Wyden

You stated in your testimony that you supported the declassification of the total size of the National Intelligence Program budget (the "NIP top line") as well as the Military Intelligence Program budget (the "MIP top line"). While top-line figures have been declassified on an ongoing basis for several years, prior top-line figures (from 1947 to 2006) are mostly still classified.

- **Would you support the declassification of these prior year top-line figures?**

I would support the declassification of prior year budgets if disclosure does not pose a threat to national security. A key factor influencing a decision would be if a foreign adversary could correlate changes to the budget to particular intelligence capabilities.

Question for the Record from the Committee

During the hearing on July 20, Vice Chairman Bond requested a copy of the letter that General Clapper provided to the President prior to his nomination. Chairman Feinstein agreed in the request. Please provide a copy of the letter.

As noted in a prior question, I’m not able to provide the Committee with a copy of a personal letter written in confidence to the President; however, I can say I emphasized the key points below, which are consistent with my statements in my one-on-one meetings with Members, Pre-Hearing Questionnaire, and the testimony I gave before the Intelligence Committee:

- The need to set expectations for the Intelligence Community. By that I mean that intelligence can reduce uncertainty for decisionmakers, but rarely can intelligence eliminate such uncertainty.
- The need for clarity in the roles and responsibilities of the DNI and other members of the national security and intelligence team. My view is that intelligence is an enterprise of complementary capabilities which must be synchronized. If confirmed I will lead the community as a team.

- My conviction that the DNI has a great deal of authority already, but the challenge has been how that authority is asserted. If confirmed, I will push the envelope on this. I believe my experience in the community would serve me (and the position) well in crystallizing and buttressing that authority. I will also defend the position of the DNI.
- My professional independence and the fact that I try always to be forthright about anything I am asked.

The following responses are provided to questions regarding my nomination as Director of National Intelligence.

- (1) Do you agree to appear before the Committee here, or in other venues, when invited? *yes*
- (2) Do you agree to send officials from the Office of the Director of National Intelligence and elsewhere in the Intelligence Community to appear before the Committee and designated staff when invited? *yes*
- (3) Do you agree to provide documents or any other materials requested by the Committee in order for it to carry out its oversight and legislative responsibilities? *yes*
- (4) Will you ensure that the Office of the Director of National Intelligence and officials elsewhere in the Intelligence Community provide such material to the Committee when requested? *yes*
- (5) Do you agree to inform and fully brief, to the fullest extent possible, all Members of this Committee of intelligence activities and covert actions rather than only the Chairman and Vice Chairman? *yes*


James R. Clapper

23 JUL 10
Date