

HEARING OF THE SENATE SELECT COMMITTEE ON INTELLIGENCE

NOMINATION OF DR. DONALD M. KERR TO BE
PRINCIPAL DEPUTY DIRECTOR OF NATIONAL INTELLIGENCE

WITNESS:

DR. DONALD M. KERR

CHAIRER BY: SENATOR CHRISTOPHER S. "KIT" BOND (R-MO)

LOCATION: 216 HART SENATE OFFICE BUILDING, WASHINGTON, D.C.

TIME: 2:36 P.M. EDT

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SEN. BOND: This hearing will come to order. Chairman Rockefeller regrettably is unable to be here today due to an unavoidable conflict and he has asked me to preside over the hearing, pursuant to the committee rules and practice.

I ask unanimous consent that any opening statements that members may have or that the witness may have may be included in the record in full. And hearing no objection, it is so ordered.

Dr. Kerr, I welcome you today to -- for the committee's hearing on your nomination to be the next principal deputy director of national intelligence. I appreciate having an opportunity to meet your wife Alison (sp), and welcome her and other family members.

As we know, in May 2006, General Hayden resigned this position to become director of the Central Intelligence Agency, and since then in spite of the importance of this principal deputy position for the IC, there had not been an urgency to fill this vacancy permanently. Earlier this year the committee held a hearing on the nomination of Admiral Mike McConnell to be director of DNI. At that time we asked if he would make finding a new principal deputy a priority. We were assured it would be, and Director McConnell has been good to his word. I'm pleased we're finally able to consider Dr. Kerr to fill this key post.

While a lot of focus is necessarily placed on the DNI, the role of principal deputy is no less essential to the success of the intelligence community and to its continued transformation. I expect that should Dr. Kerr be confirmed by the Senate, his background in technology and science can be extremely useful.

He comes before the committee having spent most of his professional career in government service. He has served in various positions at Los Alamos National Laboratory and at the Department of Energy. More recently he was assistant director over the Laboratory Division at the FBI, and then the deputy director for science and technology at the CIA. For the past two years, he has served as director of the National Reconnaissance Office, which unfortunately is

one of the more troubled and poorly performing agencies within the intelligence community. In addition to his government service, Dr. Kerr has held several executive management positions in the private sector.

These experiences collectively and separately give Dr. Kerr a unique perspective in assessing the technology and science challenges lying ahead for the intel community.

I would say that one of the most important things he can do is use the best science and technology to engineer an effective structure in the intelligence community. We gave a message charge to the DNI and did not give him the tools to accomplish that task. So we look to the new principal deputy and the director to give us a road map for next year on how we can assure that the community operates as was -- as we expected but regrettably did not give it the tools to do.

There are going to be some questions about programmatic decisions Dr. Kerr made as a director of the NRO -- some we consider missteps at the NRO prior to his tenure. That testimony will have to be taken in closed session. But I must say in open forum that there had been a disturbing lack of accountability at the NRO for actions that have resulted in the loss to the taxpayers of, appropriately enough -- inappropriately enough, an astronomical amount of dollars. The committee and the full Senate will have to understand the reasons for this lack of accountability, and we look forward to pursuing this in closed session. Before concluding, I add a very special word of thanks for Lieutenant General Ronald Burgess, who has filled in as the acting principal deputy for much of the past year. We are grateful for his service and applaud his continued dedication to the intelligence community.

With that, we are pleased to be joined by two distinguished members of the Senate who are at the table with Dr. Kerr, and I assume for the purposes of commenting about Dr. Kerr. And I start over here with a member of the committee, Senator Warner.

SENATOR JOHN WARNER (R-VA): Mr. Chairman, may I suggest that we extend a courtesy to our distinguished colleagues so that he can precede since I will join you for the balance of the hearing? So I'm going to stay.

SEN. BOND: Senator Bingaman, equally distinguished senator from New Mexico.

SENATOR JEFF BINGAMAN (D-NM): Thank you very much, Chairman Bond. It's a pleasure to be here to introduce to the committee and to endorse the nomination of Don Kerr for this important position.

I became acquainted with Don when I first was elected to the U.S. Senate and he was head of -- he was the director of Los Alamos National Laboratory, and he remained in that position until 1985. While there he established a very distinguished record of service. He established a variety of innovative programs, one of which I'll just mention to the committee: The Laboratory-Directed Research and Development Program, which was and continues to be a mechanism at the laboratory that has allowed for some of the very best of the research that is done at not only Los Alamos but all of our national laboratories to occur.

So I admired his work as head of Los Alamos, and I've admired his service to the country in many capacities since then. You went through that

list of positions that he has held, some in the private sector, some in the public sector.

But I feel strongly that he is extremely well-qualified for this important position. I know that the committee has a much clearer view than I do as to all the responsibilities that attach to this position that he has been nominated for, but I'm confident that you'll not find anybody who's better qualified by experience or training or capability to do the work.

So I would recommend that Don Kerr be approved and recommended to the full Senate for confirmation.

SEN. BOND: Well, thank you very much, Senator Bingaman. We will of course give your comments and support great weight, and we appreciate your taking the time to be with us.

SEN. BINGAMAN: Thank you.

SEN. BOND: Now I will turn to a fellow member of our committee, the other distinguished senator at the table, Senator Warner from Virginia.

SEN. WARNER: Thank you. At this time, Mr. Chairman, I wonder if you would invite the nominee to introduce his family.

SEN. BOND: Please, Dr. Kerr.

DR. KERR: Well, it will be a very short and brief introduction. My wife, Alison (sp), with whom I've been living, working and doing everything else one can do for the past 46 years, is here behind me. Here she is.

SEN. BOND: Welcome, Mrs. Kerr.

That was brief.

DR. KERR: I'm sorry I couldn't do better, sir. (Laughter.)

SEN. BOND: Well, I thought -- my brief sheet says that three's a daughter, Margo (sp), and she's not with us today.

DR. KERR: Well, we do have a daughter, Margo (sp). She's a practicing veterinarian in Denver and was here just a week or so ago with the two little girls she and her husband are adopting. But now she has to help support them.

SEN. WARNER: I think it's important that the record reflect that family.

Mr. Chairman, you've given a very complete briefing on the nominee's distinguished background, as supplemented by our colleague Senator Bingaman. So I just want to add a few words to put my statement into the record.

SEN. BOND: Please.

SEN. WARNER: I always like to start with the law, and that is the Intelligence Reform and Terrorism Prevention Act of 2004 established the office of the director of national intelligence, and the law served as the most dramatic reform of our nation's intelligence capabilities since Harry S. Truman signed the National Security Act of 1947. The 2004 law provides that the

principal deputy director of national intelligence -- the nominee now before us -- shall assist the director in carrying out these duties. Together they are the principal advisers to the president of the United States and the National Security Council and the Homeland Security Council for intelligence matters related to national security and the head of the United States intelligence community and overseeing and directing the national intelligence program of our nation. Now, despite what I have to say and what others have to say, the most important endorsement I think of this nominee, next to that of the president in selecting him, is that the director of national intelligence, Admiral McConnell, has complete confidence in this nominee's abilities to serve as his principal deputy.

We've all seen Admiral McConnell in action, and yesterday was a clear example of his extraordinary abilities as he appeared here in the Senate on some very important matters. And I can only add to this, Mr. Chairman, I added it up here quickly, 38 years ago I walked into the Pentagon, in the Navy's secretary - - undersecretary's office. And I've been dealing with intelligence matters for 38 years.

And I don't know that I've ever seen a more qualified individual than Don Kerr to trust our nation's intelligence to.

Good luck to you.

DR. KERR: Thank you very much.

SEN. BOND: Thank you very much, Senator Warner. We appreciate very much our distinguished colleagues joining us.

And now, before I ask the witness some questions, I want to add for my colleagues, following up on what Senator Warner just described, we have an urgent request before not just this committee but the entire Congress.

We haven't been able to act on the DNI's initial proposal three months ago to modernize the Foreign Intelligence Surveillance Act. But the threats are mounting, and we cannot leave the intelligence community blind, or you might say deaf, in some significant areas.

I've been excluded from much of the negotiations the majority has had with the administration on this issue, but I am now involved in the issue and have talked with the DNI, as I believe it should be at the table. And I urge my colleagues to consider a revised proposal that the DNI is making that he says will keep the country safe.

I'd be interested if Dr. Kerr has any comments on modernizing FISA. If you were already the principal deputy, then you would be spending your days and nights tending the shop while the DNI has been camped out on the Hill on this urgent matter, and as Senator Warner said, doing an excellent job.

There are a series of questions that are standard procedure, and let me ask you those.

First, as the nominee to be the principal deputy director of national intelligence, Dr. Kerr, do you agree to appear before the committee here or in other venues when requested?

DR. KERR: Yes, I do.

SEN. BOND: Do you agree to send officials from the ODNI or the intelligence community to appear before the committee and designated staff when requested?

DR. KERR: Yes, Mr. Chairman.

SEN. BOND: Do you agree to provide documents and any material requested by the committee in order for it to carry out its oversight and legislative responsibilities?

DR. KERR: Yes, subject only to the caveat, when restricted by law.

SEN. BOND: Will you ensure that the ODNI and the intelligence community provide such material to the committee when requested?

DR. KERR: Yes.

SEN. BOND: All right. Well, thank you very much, Dr. Kerr.

Now if you would like to offer your opening statement, we would be happy to receive that.

DR. KERR: Mr. Chairman, members of the committee, thank you, and with particular thanks to Senator Warner and Senator Bingaman for introducing me.

I'm pleased to appear before you to discuss my credentials as the nominee for principal deputy director of national intelligence. Indeed it is an honor to have been selected by the president and Director McConnell, and if I'm confirmed it will be a privilege to serve.

Based on the Intelligence Reform and Terrorism Prevention Act, and the intelligence community Directive No. 1, as has been pointed out, the duties and responsibilities of the deputy are substantially the same as for the DNI. However, the DNI I think will serve as he has been as principal adviser to the president and other senior officials. So I expect the principal deputy will be focused as much as possible on coordinating and integrating the activities and products of the 16 organizations that comprise the intelligence community.

Over a 40-year career, I have held a number of senior level public and private sector positions and have learned a few things along the way. In five areas I think I can bring strength and experience to this job, such as an ability to identify and deal effectively with troubled components which I have done in at least two government agencies to this point; a strong technical and management background; coalition building skills; the ability to drive organizational change; and a strongly held belief that an effective planning system coupled with strong financial management can achieve superior results.

While I learned this latter lesson in the private sector, I've applied the model to all my subsequent government jobs. I've been both personally and professionally committed to national security throughout my career. I've had direct responsibility for intelligence and defense activities in four different government agencies: the Department of Energy, the Federal Bureau of Investigation, CIA, and the NRO. And I have supported intelligence programs in private industry and as a staff member and later as director of the Los Alamos National Laboratory.

This has provided me opportunities to work on a wide variety of intelligence issues including nuclear proliferation, treaty monitoring, nuclear test detection and analysis, and development of future air and space reconnaissance systems.

I'm particularly proud of the programs I have led to bring technical solutions to intelligence and law enforcement challenges. My commitment to countering terrorism began with activities in 1978 and '79 when I was the Department of Energy member of the NSC executive committee on terrorism.

This commitment was substantially reinforced by direct responsibilities investigating the East African embassy bombings of 1998, and the attack on the USS Cole in 2000; and certainly refocused tremendously by 9/11 and the efforts of the past six years.

I'd like to take a minute to talk about my vision for the intelligence community as well as several goals I believe are critical for more effectively focusing the community in the challenging post- 9/11 environment.

I'd also like to share my philosophy about the role of intelligence in our national security construct. A popularly held contention is that the role of intelligence is to protect the nation from all harm. Well, this is a succinct way to talk about an ultimate goal. I think the situation is substantially more complicated than that.

One academic I think got it about right, describing the role of intelligence as extracting certainty from uncertainty, and facilitating coherent decision making in an incoherent environment.

These are not activities that lend themselves to guarantees or perfect scores as we would like, but they reflect the reality in which we operate. If I were to state what I believe the essence of national intelligence is, I would say that the primary goal is to reduce the risk our nation faces today and in the future. These challenges not only require our ongoing dedication and commitment to the national intelligence mission, but more importantly new and innovative approaches to the work we do, the operations we plan and carry out, the collection assets we design, build and operate, the analyses we produce, and the strategic partnerships we make across traditional and nontraditional boundaries.

Each era has its seemingly impossible challenges. We all know the future is unpredictable, and trends hard to predict. The elements that could significantly transform the geopolitical landscape include nuclear and biological weapons proliferation, catastrophic terrorism, and even pandemic disease.

The intelligence enterprise must think ahead to ensure that the capabilities needed to deal with these challenging and often times explosive issues are available to the analyst, policymaker, operations officer and warfighter when they are needed.

This is all the more difficult, because the threat is no longer predictable and confined to specific geographic areas. It is mobile, dispersed, dynamic and distributed.

Intelligence problems are also developing at a much more rapid pace than before. We need to posture ourselves to deal in that environment.

And so a few of the things I think most important are our need to seek global situational awareness to the degree we can. We need to be able to deliver critical information to support timely decision-making by both policy makers and our military leadership. We need to be able to anticipate strategic threats, although that may be the hardest thing of all to do. Importantly, as a consequence of intelligence reform we have to learn to operate as a unified, integrated yet distributed enterprise. We need to adopt technologies and concepts of operations that leverage U.S. advantage, and finally we need to maintain appropriate investment levels for future capabilities.

To do this I think three elements need to be in place. First of all, we have the duty to gather critical intelligence but to do so in a way that complies with the constitutional and other legal requirements that protect the freedoms and liberties of the American people. There must be proper training and oversight mechanisms for the intelligence community to ensure that there are clear rules for their activities. Second, given the non-public nature of most of the intelligence community's work, the DNI and the principal deputy must also ensure that Congress is kept appropriately informed of IC activities to enable Congress to perform its oversight responsibilities. To exercise such oversight, the committees must understand the intelligence process, its organizations, policies, funding, and activities. The DNI and other members of the community must communicate on a regular and continuing basis to keep the oversight committees fully and currently informed consistent with the protection of sources and methods.

Third, the intelligence community must deliver intelligence information to decision-makers without bias or prejudice. Intelligence analysis must be held to the highest standards of integrity and objectivity. It must also be rigorous, timely, and independent from political considerations. To position ourselves to meet the analytic challenges of today and tomorrow, we must go beyond simply doing our current jobs better. We must transform the way our analysts do their work. We must more effectively leverage new and emerging technologies and reach out to expertise wherever it resides.

Effectively inspiring the expertise and experience of our talented intelligence professionals requires strong and focused leadership. If confirmed, I would bring particular emphasis to a number of areas. I would focus on effective financial management, including reducing the indirect cost burden on mission wherever possible. This effort speaks to Director McConnell's goal of modernizing business practices and developing verifiable metrics. The real challenge is developing the right balance between tighter controls and mission effectiveness, and making financial reporting more useful to those who manage our programs. I believe that continuous improvement in financial management should be an intelligence community priority.

If confirmed, I will assist the DNI in moving the intelligence community forward from today's uneven but improving financial management environment to one characterized by common business processes and integrated systems that adhere to recognize best business practices across industry and government. Accountability is critically important in ensuring that officials are responsible for their actions. Within the intelligence community, accountability ultimately rests with the DNI and the principal deputy. However, in a government based upon checks and balances and collective decision-making, determining individual accountability is often very difficult.

It has been my experience that most government employees, regardless of whether they reside in the executive, legislative, or judicial branches, are simply trying to do what is right for the taxpayer. However, there are occasionally egregious exceptions, and when they occur swift and decisive action must be taken. Each and every member of the community is responsible for using the resources entrusted to them judiciously. Additionally, all government employees are expected to ensure their performance is consistent with the highest standards of professionalism and integrity. One of the first items on my agenda, if confirmed, would be to ensure that each member of the IC is as fully aware of what is expected and required as practical.

There has been significant discussion about the role of contractors in the intelligence community lately. There are compelling reasons why we use contractors to perform critical functions within the intelligence community. At the NRO, our industry partners design and build our satellite systems as well as provide 24 by 7 operational and maintenance support. We also rely on contractors to provide the basic services that we generally take for granted in the course of our day. These are services that are more economically outsourced and include everything from network maintenance to janitorial support.

There are also certain exigencies that justify an intelligence agency's use of contractors. For example, if an agency has a short-term project or mission that exceeds the capability of its current staff, it is sometimes more appropriate for that agency to use contractors to meet that temporary need than to hire and train permanent federal civilian employees to perform the work. We also employ contractors or employees of federally funded research and development centers to provide specialized capabilities that we do not find within the government workforce. My general philosophy is no contractor should perform inherently government work, under no circumstances should a contractor make policy or investment decisions on behalf of the government, and the use of contractors must be more cost effective than using government resources. If confirmed, I will continue to examine the appropriate use of contractors within the intelligence community.

I believe that the importance of a highly trained workforce cannot be overstated, either for the NRO or the intelligence community as a whole. While at the NRO I've taken a number of steps to work on that problem, starting with a statement of intent that I signed with the Air Force chief of staff more than a year ago that made it very clear that the Air Force and the NRO would work closely together to improve the career development of our shared workforce. We've also teamed with Air Force Space Command to train space professionals across the government in the new National Security Space Institute at Colorado Springs. I'm working on similar initiatives with the Central Intelligence Agency. Currently, the NRO's Acquisition Center of Excellence is helping our acquisition professionals complete education requirements leading to advanced degrees in public management and engineering administration. We've also partnered with Virginia Tech to provide an engineering administration Master's degree program on site at the NRO, and we tried to pull together all of the rest of our training in a virtual university construct to benefit all of our employees and our contractors.

If confirmed, I look forward to supporting Director McConnell in his efforts to more closely integrate the intelligence community. During my tenure, the NRO has been working toward an integrated mix of overhead and ground-based capabilities tailored to the geographically dispersed and dynamic nature of the current and projected intelligence problems, as well as the diverse needs of our many users. Integration is not only a watchword for technical collection and

operations, but it is imperative that we integrate intelligence collection and analysis more effectively. They are symbiotic disciplines. We can only achieve our goals and objectives by coming unified in our commitment to the intelligence community's contribution to the strongest defense possible for our nation and our people. Thank you for the opportunity to share with the committee my background, and if confirmed, my vision for my new role and responsibilities. I look forward to answering any questions you may have. Thank you, Mr. Chairman.

SEN. BOND: Thank you very much, Dr. Kerr. You -- one, I was going to ask about your goals and I think you've laid them out and the difficulty of predicting the future. I was reminded of Yogi Berra's admonition. He said, "Never make predictions, particularly about the future." I thought that was -- I've always thought that was a sound piece of advice.

But there's only a year and a half left in this administration, can you tell us why you took on this job?

DR. KERR: I thought about it very carefully, and had some extensive discussions with Director McConnell, with my wife, and with others whose judgment I respect.

At the end of the day, in all honesty, could not continue to be on the outside expressing views when the proper thing to do was to try to see if -- by joining other seasoned professionals in the leadership, both at the Department of Defense and at the DNI -- to see if we could make this thing work. That includes the responsibility to respond to the comment you made, which is, the legislation in 2004 was put together; the office of the DNI stood up; and now, with 3 years behind us, there's the opportunity to look back and say, what needs to be changed -- either in legislation or in an Executive Order, that would make it work better?

And I think, between Secretary Gates, Undersecretary Clapper, Director McConnell, General Hayden, and me, we have potential -- for five people who've worked together without friction, to try to make it work and maybe to pass it on to others in a more institutionalized form that it is today.

SEN. BOND: Thank you, sir.

The other -- next thing I had mentioned, I wanted to find out if you had any comments on the FISA modernization, or if you've been involved with the DNI's very excellent efforts to bring the case onto the Hill -- what, what you can, advice you can share with us on that?

DR. KERR: Well, I've not been directly party to the discussions going on between Director McConnell and the Congress. But that said, I share his view that we do need to do something to modernize FISA. I could speak more extensively in closed session with you but suffice it to say, 30 years ago there were certain assumptions about the future and certain realities of the context when the original legislation was passed.

Those assumptions and realities have changed considerably and, consequently, the legislation needs to be changed to actually deal with the way modern telecommunications systems work, and allow the Intelligence community to do the things it needs to do to collect foreign intelligence on foreign individuals outside of the United States without a warrant. And, of course, at the same time we should always be in the position of, if the target's within the United States, of seeking a warrant to do that.

Those two things are very important, coupled with the concern for those from which we would get information and that they not be at risk for cooperating with the government in this very important endeavor.

SEN. BOND: Let me deal with a point of friction for this committee. This committee came into possession of a point paper prepared by the NRO relating to commercial imagery. The paper appeared to be written in the fashion of talking points in opposition to commercial imagery. When our staff requested to be briefed on this document, the NRO declined. The NRO, Office of Congressional Affairs, advised that you had personally denied the committee's staff access to the requested information.

We could find no information in the point paper that would appear to justify refusing to brief Congress on its content. Are you familiar with that action and did you personally deny this request? Or did someone on your Congressional liaison staff misrepresent this?

DR. KERR: I think it may fall in the latter category. The only paper I know about is one that my former deputy wrote as a personal thing doing a financial analysis based on public sources. It was not an official NRO document.

SEN. BOND: No, this was -- this was definitely not -- I think we want to explore, may want to explore later who had the authority to deny a request for the information from Congress -- who would, who would, down the line, have that authority.

DR. KERR: Well, I think I can help you by telling you what I've said about this subject, would that be helpful?

SEN. BOND: Sure.

DR. KERR: I'll -- I'll give you a quote. I recommended that the government purchase geospatial products and services from the commercial remote sensing industry, as well as needed imagery "to ensure this information has the highest flexibility and utility for government users and to encourage new applications of imagery data from the private sector." I signed that in October, 2001 in response to tasking from the secretary of Defense and the then DCI, when I led the remote sensing study panel.

SEN. BOND: Well, we will explore with you later the other paper that -

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DR. KERR: I don't know what you're referring to, sir.

SEN. BOND: -- we will explore later. Now for the questions, I turn to Senator Warner.

SEN. WARNER: Thank you, Mr. Chairman. In listing the five matters that you felt you had a proficiency in, I would like to suggest as a sixth, and that is you have a good grasp of how to work with the Congress. I've had that privilege in the years on the Armed Services committee where you've testified a number of times before that committee, and with now on my second term in the Intelligence committee.

I'd also like to join the ranking member in his commentary with regard to the contribution of General Burgess filling in for this period of time. He's held in very high esteem here in the Congress and we wish him well.

Going back to the definition -- as I've said, under the law, that you and Admiral McConnell have, is adviser to the president. I hope I'm not being presumptuous in saying the following. I think that the intelligence community has got to work with the Executive Branch, and most particularly the office of the president, in more clearly defining the enemy that faces not only the United States but much of the free world today.

We use the term "war on terrorism," and now that seems to be misunderstood in many parts of the world -- Great Britain has ceased to use that term, some of our colleagues in the House have ceased. And I must say, that term is not specific. We talk about "radical Muslims," or "radical jihadists," and it's difficult for the general public which wants to be supportive -- and the general public which is deeply concerned after 9/11 about the vulnerability not only here at home but of our people, hundreds of thousands of them that serve abroad, and most notably those in uniform and members of the intelligence community -- the CIA and others, and the embassies. So I would hope that you could provide here this morning, and that you and the Admiral can, in working in briefings, try to more clearly define what that enemy is.

In my judgment, it's clearly a global threat -- it's not just isolated cells. There is a measure of some coordination. But first, what is the term that you would describe, generically, who the enemy is? And with respect to the Muslim world, that's a long and venerable and proud culture, and it's relatively a small number of those that are within that culture that are perpetrating the evil that's unfortunately spreading into places well beyond Iraq and Afghanistan.

DR. KERR: I think one of the things I need to do, of course, is immediately recognize that I'm not a political and economic analyst steeped in studying some of these threats around the world. That said, given the responsibility that I may take on, I'm going to have to work very much with a very senior analyst, named Director McConnell, who has been spending his time trying to think about this very problem and how to properly frame the question.

I think it's clear at this point that simply using the terms that go with armed conflict -- war and others -- is an insufficient way to think about the problem. I think we're at a juncture where we have to think about the other instruments of American power, and how they join with our incredible military prowess to project what we as Americans want the rest of the world to see, and for them to perhaps move away from thinking that the solution to their problems is simply to damage Americans or do worse.

I don't think it's restricted to people of Islamic faith. It's been the history of this country --

SEN. WARNER: I didn't suggest that, clearly.

DR. KERR: Yeah.

SEN. WARNER: But that seems to be a focal point of much of our attention now in both Iraq and Afghanistan. But what better evidence of that is our own internal bombing of Oklahoma some years ago.

DR. KERR: Exactly.

I think another thing we have to pay a great deal of attention -- and it's been in some of the estimates that you have seen -- is that set of countries where the demographics are such that right now half of the population is male, under the age of 15. And in 10 years, they will be in their early 20s, unemployed, perhaps without hope. And consequently, fodder, if you will, to lash out at America and America's interests. And so I'm greatly concerned about that and what we might be able to do as a country to influence those places in the world and how they develop, before it becomes something that we would characterize as a conflict.

SEN. WARNER: Thank you.

Mr. Chairman, I just simply wish to first compliment you on your statement. I thought it was very comprehensive. But back to my question, I would suggest -- I'd invite you to further amplify your thoughts in the record, because it would be of importance to us to study precisely what those definitions are -- particularly why the term "global war on terrorism" is found to be offensive to many people who have the best intentions.

One other caution: In this world in which we live, you've got to deal with the split-second answer in today's rapid media and dissemination of information. So we've got to come up with clear, precise definitions and repeat them constantly to the public so they know more precisely. This country's making an enormous sacrifice of life and limb and in every other way to help not only defend ourselves, but other people across this world who stand in fear of the threats that face us today.

SEN. BOND: Thank you very much, Senator Warner.

You've raised a question that we've debated in this -- both in public and in private hearings -- on learning more about the enemy, learning the terminology. And I think I've found a helpful (tact saying?) that these radicals are not jihadists, which is a holy spiritual journey for a believing Muslim. They are mufsideen committing haram and we should not -- we should not glorify them by calling them jihadists.

With that totally useful piece of information, I now turn to Senator Nelson.

SEN. BILL NELSON (D-FL): Thank you, Dr. Kerr, for your public service.

What would you do as the deputy director to get agencies motivated more to invest in research and development?

DR. KERR: Senator Nelson, thank you for the question. You've struck on a concern that I've had for sometime, because I've actually lived in the best of the intelligence community for investing in the future, and I have lived in an agency that in fact did it the least.

And I think part of what I might be able to contribute to is a more general community view of what appropriate levels of investment are needed for the future of our community and our country. Clearly, there are agencies that require more investment in technology to carry out their mission than others. So it isn't a case of just picking a number across the board, but it is

appropriate to say you've got to be investing today for your problems three, five and 10 years out.

And I think we have not done that well -- particularly with the pressures of the last few years to support current operations. I don't want to take resources from current operations, but if there are ways we can find to manage the resources we have better to make room for some future investment, I sorely want to do that. SEN. BILL NELSON: Well, what about the new Intelligence Advanced Research Project authority -- IARPA -- which is modeled after DARPA?

DR. KERR: That of course has just stood up. We have yet to see whether it can gain the same sort of stature and visibility in the intelligence community that DARPA has gained with the Department of Defense and the military services.

One of the things noteworthy about DARPA and their major programs today is that every one of them is done in alliance with one of the services or other Defense agencies. IARPA has not existed long enough to build those alliances and connections and to succeed, it will have to.

SEN. NELSON: Does the DNI support IARPA?

DR. KERR: Yes, he does. He's testified to that effect. And I think my responsibility will be to work with him so that the actual execution meets his expectations.

SEN. NELSON: So what would you do to enhance its stature?

DR. KERR: I think the first thing I would do would be to improve the connections with the agencies and the programs they already have. IARPA has been viewed with suspicion by them, particularly in instances where it appeared that the funds for IARPA were coming out of their normal operating budgets. That's not the way to gain friends. And so somehow there has to be a mechanism that they become partners rather than competitors for the same resources.

SEN. NELSON: You have been the head of the National Reconnaissance Office. And there have been some big programs that have been sole-sourced, instead of competed. And of course, the U.S. policy is that we compete. Can you explain the apparent anti-policy?

DR. KERR: We're really, in some ways, dealing with a part of the economy that is different from what I'll call the competitive private sector. We're dealing with a protected sector of the economy, which has dealt with companies that have chosen to do the majority of their business with the U.S. government. In some cases, those companies have had substantial investment over the years in particular capabilities that exist only within those companies. And so unless the United States is prepared to make comparable investments in prospective competitors, they really don't get to the point of competing in a credible way.

So what we have to do, as we look ahead, is ask which parts of the NRO program are most amenable to competition. For example, you might argue certain classes of sensors would be where you might have three or more competitors available whereas a certain other specialized capability would need to go to the company that had been the beneficiary of the prior government investment and had the expertise to do a particular kind of work.

SEN. NELSON: So you would want to encourage competition where there were several vendors that could do the work.

DR. KERR: Yes, sir.

SEN. NELSON: Okay. And I realize that you inherited some huge problems when you came in as the head of NRO. And this has been a concern of this committee's, and it's been a concern of the Armed Service Committee as well.

There were particularly two huge classified programs within the bosom of this committee that were cancelled, and as a result there's been a lot of money that has gone down the drain. These two programs represented significant new acquisitions undertaken by the NRO, and they were touted by NRO as examples of excellence and industry -- ingenuity, and both of them failed. Who was held accountable for these failures?

DR. KERR: Well, let me speak to the first of them, because when I came to the NRO, the so-called red team -- the technical review team -- had just completed its work with respect to one of those programs. I had been aware of their work, and in fact had been briefed on it along the way. And it was in fact after reviewing their recommendations as well as the work of the staff at the NRO that I went to Director Negroponete and recommended termination of that program.

The reason I recommended termination of that program was that I felt there was little to no prospect of that part of the program being successfully completed. We had managed to lay requirements on top of requirements. We had managed to change some direction enough times that we had a system that could not be manufactured by normal human beings.

Director Negroponete took that recommendation. He spent time considering it, but within about three weeks he directed me to terminate that part of the program, which I did.

With regard to how do we protect some of the investment made, we have, in fact, funded the continued reduction of technical risk in some of the specific new technologies that were part of that program. And they're slated for use in future programs, which I can talk to you about in classified session. We think we have done about as well we can to recover that part of the investment. That said, we couldn't recover a significant amount of it, as you're well aware. SEN. BOND: Dr. Kerr, we will -- we -- I think this is -- we will go into a classified session, and I think Senator Nelson will -- and I will -- and others will want to follow up.

Thank you --

SEN. NELSON: Well, Mr. Chairman, but the question was, in the public session, who was held accountable?

SEN. BOND: I didn't hear anybody.

DR. KERR: Well, I'll answer that, too.

In fact, the program manager was removed from that program as well as the direct reports. The senior leadership at the prime contractor was changed.

The award fees reflected the unhappiness of the government with their performance, and they have subsequently been put on the contractor responsibility watch list that the NRO has, which means that they can only bid on new work if we grant them a waiver. And they will not come off that list until they start delivering hardware to us. We're not satisfied with just changes in names and particular jobs and reorganization; we want to see the product that we've contracted for.

SEN. NELSON: Mr. Chairman, if I don't make it to the classified session, if you would get the details of that, I would appreciate it.

SEN. BOND: You can be sure -- we can be sure we will. Thank you very much, Senator Nelson.

Senator Chambliss.

SEN. SAXBY CHAMBLISS (R-GA): Thank you very much, Mr. Chairman.

And Dr. Kerr, thank you for your service. We appreciate you very much.

And Mr. Chairman, let me just echo the sentiments of you and Senator Warner relative to General Burgess. Boy, I don't know a member of the IC community that has been more direct, more straightforward and given us better briefings over the years than General Burgess. I'm sure glad to see he's going to stay with ODNI.

Dr. Kerr, we have a mutual friend -- Steve Van Cleeve (ph), who certainly gives you a very high recommendation and sends his best wishes.

As a member of the House Intelligence Committee following September 11, we did significant investigation into the reasons why September 11 happened. And it's pretty obvious -- it was pretty obvious to us then. There's been a lot of commentary -- a lot written and said about some of the reasons why, but it comes back to one basic reason, and that is there was a total lack of information sharing.

Now, you've been in the IC community both at CIA, at the FBI, and now at the NRO, and obviously you're moving into a much different atmosphere of your intelligence history -- employment history here. And what I want you to comment on is what you've seen relative to information sharing, what you think may be done to -- or may have been done to improve that. Where do you think we still need some improvement? And in your position as the deputy director of the DNI, I want to hear what you think you might be able to accomplish relative to continuing to help the information sharing issue spread.

DR. KERR: I think this is perhaps one of the issues that's a core issue of the intelligence reform legislation. I think steps have been made to have improved the situation from what it was in 2001 before 9/11. And that said, not enough has been done.

And I can simply give you an anecdote to help explain that. And it goes back to General Burgess, for whom we all have high regard. He wanted to send an e-mail to all of the 16 agencies in the community to people by name and found that that was impossible at the present time. And so one of the key things that we have to work on is we have to provide the infrastructure so that information sharing can be done directly and quickly rather than by working around awkward legacy systems from the past.

But the infrastructure's only part of it; the attitude is the other part of it. Now when I was at the FBI, we, in fact, had senior CIA personnel assigned there in line jobs. They were very effective at doing it, and there were FBI people assigned to the Counterterrorism Center at CIA. But the simple exchange of people isn't enough either because the way the organizations work, the connections have to be made not just at the top, not just at certain mid-level functions where they decide that swap of people makes sense, but it has to become a way of doing the work. And I would say that the real test of the leadership for the DNI and his deputy is going to be the degree to which we can change some of the attitudes that don't allow us to have that full connectivity at all levels between the agencies to focus on very hard problems.

SEN. CHAMBLISS: Well, I think you're exactly right. Those stovepipes that we've talked about so often unfortunately still exist -- maybe not to the degree prior -- that they did prior to September 11, but certainly there's some still there. And I frankly -- going back to what Senator Nelson asked you about, I, frankly, have an appreciation for the fact that you did step into a not-so-good situation at NRO. You made the changes that were necessary. I fully expect you to do the same thing here at ODNI, and I have all great confidence that you will.

So thank you for your willingness to continue to serve your country in this capacity, and we look forward to seeing this confirmation concluded. DR. KERR: Thank you, Senator Chambliss.

SEN. BOND: Thank you very much, Senator Chambliss.

Senator -- oops. Senator Mikulski -- she's -- okay, she's gone.

Senator Burr is gone.

Senator Whitehouse.

SEN. SHELDON WHITEHOUSE (D-RI): Thank you, Chairman.

Dr. Kerr, welcome. I don't want to hide the ball in any respect.

I at this point very much anticipate voting for your nomination and supporting you, but there are a few things I'd like to touch base with you on at this point in the public hearing.

The first is that I'm new in my position; you're about to be new in yours. We both have a lot of inherited baggage between our organizations. I hope you will understand that when this committee seems perhaps from your point of view to be unduly determined, unduly persnickety, unduly inquisitive about matters that the recent history has not been very favorable and that our desire to pursue these things and our sense of suspicion, if you will, has been well-earned. I think it can be earned back -- a sense of trust can be earned back, but I urge you to bend over backwards to accommodate our concerns and questions as we do our oversight job, bearing in mind that to a certain extent here the past is the future.

In that regard, the two big issues that I see are, first, the issue of intelligence integrity. There have clearly been episodes in which the intelligence community or elements of the intelligence community have produced the intelligence community that principals wanted to support the path that had

already been chosen rather than what people might call speaking truth to power. In accounting, people often talk about a plug number that fits between -- we don't want plug intelligence around here.

In that vein, you have superior scientific credentials. You have superior management credentials. Your analytic credentials are not as strong as your management and scientific credentials, as you alluded to earlier. You are also the deputy director, and if the director is away, you will be the acting director. A circumstance could easily emerge in which you are representing the intelligence community with principals in the White House at times of key decisions. What will your process be for making sure that truth is in fact told to power and that the real intelligence is what gets to the decision-makers, not just what they want to hear?

DR. KERR: Well, I can tell you first of all that I absolutely support your point that intelligence needs to be provided to policymakers and others who need it without bias, without political consideration, and as well-grounded in fact as possible.

With regard to what I would do, while my technical and management credentials are better than my analytic ones, I did in fact serve on the nuclear intelligence panel and chair it for a number of years within the community -- in fact from roughly 1979 until 1992. And I've been a senior reviewer of many of the estimates over the years.

So I think what I'm really trying to express is that Director McConnell and I are complementary in a way. He is an analyst by training and by profession, and that's his strongest suit. I have some other experiences that are complementary to his, and I think between us we can make a good team.

With regard to how I would deal on the community's behalf in advising the president and others, I've actually had that opportunity in the past on some particular issues. I was even able on at least one occasion to suggest to the president there were laws he could not suspend. These were the laws of physics. (Laughs.) But the point is, I think I have a reputation here with the Congress and with the administration of being straight in what I say and bringing integrity when I come to see you.

SEN. WHITEHOUSE: The other piece of the problem is on the performance accountability side. In my area we had the big dig, which was a tunnel project near Boston, which was a huge catastrophic disaster and provided immense news opportunities. When something goes wrong like that in the intelligence community, because it is covert, there are not those immense news opportunities. People don't see how badly things have gone off the rails. And indeed both the contractor who has failed or fouled up the program and their government managers have every incentive to paper it over and have it go away so that nobody notices. But as you know, there are fantastic, spectacular amounts of money at stake here.

How -- will you be fully supportive of our efforts in oversight in this respect, including the deployment of what we call "tag groups" into areas where we are really the only oversight that these programs get?

DR. KERR: Absolutely. And in fact, in past years I have worked with members of earlier tag groups. Often they include people with whom I've had professional experience in the past. I have no problem at all expecting to do that in the future.

SEN. WHITEHOUSE: I could not agree more with the concerns expressed by Senator Nelson about particular programs that we should probably discuss more in a classified setting. I want you to know that many weeks ago I asked for an explanation of what consequences had been applied in those circumstances. I gather that because of our recent conversation in our office, I've received a classified letter for the first time this morning. But the question that I asked weeks ago in an open committee hearing I've never received a response to.

So, you know, once again, I hope that you in your role in the committee -- when you walk away from a committee hearing with questions, somebody's actually tasked to get the answer back because this doesn't seem to be a very difficult question. You were actually able to answer it almost spontaneously when we met, and yet for weeks nobody got back to me on this question. And I think this question of performance accountability for contractors in a covert environment where nobody knows and huge amounts of money are being spent and it's only our oversight that provides any check and balance in the system -- it is really important that you get back to us.

DR. KERR: Right. Well, I was glad that you asked me the question. And I in fact am responsible for what you received. I didn't know about the earlier request.

SEN. BOND: Thank you very much, Senator Whitehouse. Senator Feingold?

SEN. RUSSELL FEINGOLD (D-WI): Thank you, Mr. Chairman.

Dr. Kerr, again, congratulations on your nomination. If you are confirmed you'll be coming to this position at a particularly critical moment.

The country needs the DNI to ask hard questions about the value, legality, and morality of our intelligence programs and to ensure that our intelligence is accurate, candid, and free of any politicization, and that's not an easy task at any time but particularly in this administration. But that is what is expected of the DNI and his deputy. Of course, we also expect you to level with the Congress, a topic that you and I discussed yesterday. Let me ask you, Doctor -- do you agree that intelligence activities that have implications for our foreign policy must be briefed to the full committee?

DR. KERR: Just to recall our conversation of yesterday, Senator Feingold, you made clear your membership here as a crossover member from foreign relations, and one of the points I tried to make was that oft times one of the foreign policy tools available to the United States is the intelligence community through liaison relationships and other things. My answer to that is I think those responsible for the oversight of U.S. foreign policy need to understand both the front channel and the back channel -- what's going in both of them, what's capable of being done in order to provide proper oversight of our foreign policy execution.

SEN. FEINGOLD: And in this context you're referring obviously to the full committee?

DR. KERR: Correct.

SEN. FEINGOLD: And so this would be particularly relevant to covert action, wouldn't it?

DR. KERR: I think it would be applicable to covert action. I think generally the full committee needs to know about covert action programs, and the only caveat I would add there is that which is present in the law and really refers to those special cases where lives are at risk or other very delicate things are hanging in the balance and where it might be left to the so-called Gang of Eight. SEN. FEINGOLD: And in fact the only provision in the National Security Act that allows for the so-called limited Gang of Eight notifications applies to covert action, and as you've indicated that can never be licensed to limit information that has implications for our foreign policy. So if confirmed will you review covert actions or any other intelligence activities that may have been limited to the Gang of Eight to ensure that the provision is not being abused?

DR. KERR: I will.

SEN. FEINGOLD: Doctor, do you believe that the laws that apply to elements of the intelligence community are binding and cannot be overridden by assertions of Article II authority?

DR. KERR: The -- Article II, as I understand it, refers to the role of the president as commander in chief, and the responsibilities he has for the military services and the Defense Department as a consequence. Some of the intelligence agencies are not in fact part of the Defense Department and so they would not fall within the ambit of the commander in chief designation. They would in fact be agencies of the federal government and subject to the laws and regulations that apply.

SEN. FEINGOLD: But in any event do you believe that the laws that apply to the elements of the intelligence community cannot be overridden by assertions of Article II authority?

DR. KERR: I'm not a constitutional scholar as I'm sure you recognize, but I don't know of any exceptions to the law that in fact any military or civilian employee of the government is entitled to.

SEN. FEINGOLD: So can you think of any laws that apply to the intelligence community that you believe intrude on the president's authorities?

DR. KERR: No, I don't.

SEN. FEINGOLD: No?

DR. KERR: I don't know of any.

SEN. FEINGOLD: Doctor, as deputy DNI you'll be conducting oversight of an intelligence community whose activities under this administration have been justified sometimes by what I consider to be and others consider to be outlandish legal theories on issues such as electronic surveillance and interrogation. Even worse, Philip Zelikow, who was counsel to the State Department until last year, has written that these -- those dubious legal theories have substituted for moral and policy deliberations. In other words, what some lawyer says the administration can do precludes consideration of what it should do. In my view, the DNI through its oversight role can help reverse this disastrous practice by insisting that our intelligence activities are truly in America's interest. One such issue is the DNI's oversight of the implementation of the president's new executive order on interrogations. I have opposed the administration's policies in this area on legal grounds but also

because they have damaged our long-term efforts to mobilize our friends and isolate our enemies in the fight against al Qaeda. Doctor, as deputy DNI, how will you ensure that these strategic issues are given appropriate weight?

DR. KERR: I think the fundamental commitment that DNI McConnell and I would both bring to this is that we do understand the responsibilities we have under the Constitution, under the law, and in fact need to secure the liberties for our people. I would in fact try to be very diligent in understanding not only the specific legal argument advanced for a course of action but try to understand it in a broader context of what the likely effect would be of that course of action.

SEN. FEINGOLD: I think that's terribly important and is exactly what you should be doing because, again, simply because something can be done by this -- by the executive branch even if that's right does not mean it's in the best interests of this country. Thank you, Mr. Chairman.

SEN. BOND: Thank you very much, Senator Feingold and Senator Whitehouse. We appreciate very much your staying with us. There are a number of things going on that I believe I and other members have to attend so I'm going to propose that the classified questions be submitted in classified form to the witness and ask that he respond to them in a classified manner, and I'd also say you've seen we have some healthy disagreements on policy on this committee and I would also say that I used to be a lawyer and I don't read the president's Article II powers as confined to the Defense Department, if that was the gist of it. So fortunately neither one of us is called on to be counsel to advise either the president or this committee so we will leave those subjects to perhaps people with more active and current knowledge of the law. With that I thank the witness and the members and declare this hearing adjourned. Thank you very much, Doctor.

DR. KERR: Thank you, Mr. Chairman.

END.