



Panel Discussion: Has Intelligence Reform Made the Country Safer?

Panelists:

- **Congresswoman Jane Harman, Chair of the Subcommittee on Intelligence, House Committee on Homeland Security**
- **General Michael V. Hayden (Ret.), Former Director of the CIA**
- **Fran Townsend, NSPG Member and Former Homeland Security Advisor**
- **Walter Pincus, The Washington Post**

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MR. MICHAEL ALLEN: All right, I think we're ready here. Thank you everybody. Thank you very much. I'm Michael Allen, project director for Congressman Hamilton and Gov. Kean's National Security Preparedness Group. I'll briefly introduce Walter Pincus and then turn the panel over to him. Each participant will give a five- to seven-minute opening statement and then Mr. Pincus will lead a discussion and then we'll open it up to Q&A.

Walter Pincus, of course, reports on the intelligence community for The Washington Post staff. He first came to the paper in 1966 after serving in the Army Counterintelligence Corps and doing a stint at the Washington Star. His articles were among those in the Post's 9/11 package that was awarded the 2002 Pulitzer Prize for national reporting. Among many others was the George Polk award for exposing the neutron warhead.

He's been a news consultant for NBC and CBS and won an Emmy in 1981 for writing a television documentary. He's covered intelligence and national security issues for many years and is widely held to be the dean of the intelligence community press corps. Please join me in welcoming Walter Pincus. Thank you. (Applause.)

MR. WALTER PINCUS: Thank you very much. I've got to put this microphone down my throat. It's good to hear that kind of introduction, which is short and that's better. It's an interesting subject and we've got an illustrious panel to talk about the first part, which is, are we safer? On my right is Congresswoman Jane Harman, who, what should I say, I met 40 years ago.

REP. JANE HARMAN (D-CA): I was 5. (Laughter.)

MR. PINCUS: And who was a longtime member of the House Intelligence Committee and is one of the four authors of this legislation. Gen. Michael Hayden is former CIA director, but he also was there at the beginning as the Deputy Director of National Intelligence, so he has two views of it.

And Fran Townsend was in the White House when the bill was being considered and when it was passed and is somebody who has spent time at Justice and at the White House. So brings another view to this. I think what we'll do is we'll have the panel each member give about a five or seven-minute overview. I'll then ask a couple questions and then we'll proceed from there with questions from the floor. So Congresswoman Harman.

REP. HARMAN: Well, thank you, Walter. Good morning everyone. The Bipartisan Policy Center is living up to its name. I have greeted about 200 of my nearest and dearest friends in this audience. And you are definitely bipartisan. You're in both parties and I assume all of you, certainly including all of us on the panel, are committed to making intelligence work better.

And my answer to the question, by the way, Walter, is yes. We are safer in the last five years. And I would say part of the reason is that we were able to do intelligence reform. I would not call it a paradox, as Patrick Neary does. I would call it a fact because we were able to legislate –not perfectly but adequately.

Let me also salute the bipartisan team in front of me, Gov. Tom Kean and Congressman Lee Hamilton. They separately and together embody to me what elected officials should be like. They're both former elected officials, which shows that they're a lot smarter than I am. (Laughter.) They did it voluntarily.

But they have worked together to bring real quality to our policymaking and real focus to the completely different challenges of the post-9/11 world and each of them is really a lovely human being in addition. And I just think we should all – I'm asking you all to salute their leadership. (Applause.)

So okay, Walter said that I was one of the so-called "big four" – I don't think I'm that big, but you know, Fran and I actually are as big as we need to be – (laughter) – but one of the big four who helped write the final version of intelligence reform five years ago. Another of the big four is Susan Collins. The other two are Joe Lieberman and Pete Hoekstra. But I've always said that the two females on the panel in the group, of course, did 98 percent of the work. (Laughter.)

And that is why the product is as good as it is. So let me make a few points. Early this morning after I read my newspaper – I want you all to know that I actually read print newspapers and I clipped out Walter's article today. I don't know how many of you still do this, but I wanted to show solidarity with The Washington Post and the rest of you who write for those financially viable products that we all love and need.

At any rate, in reading my newspaper, I was reading about the attacks on our consulate in Peshawar. So I e-mailed my friend Anne Paterson, our fabulous ambassador to Pakistan and said, so glad to

hear you're safe. I remember our visit to Peshawar. We went together, fondly, a few months ago and am pleased that that whole embassy and our consulate – our consul general, who also happens to be a woman, are safe.

And Anne e-mailed back immediately and said, the star performer in all this was our intelligence agencies. And they are doing a fabulous job in Pakistan. So listen up. I mean, Pakistan and Yemen are our two most dangerous places on the planet. And our intelligence agencies are doing a fabulous job.

Let me mention Yemen. I was in Yemen last week – finally got there. Tried to go there for years, but I made it. And among others, I talked to our government officials. You all know – talk about a paradox – that probably the person, the terrorist who would be, you know, terrorist number one in terms of a threat against us is an imam named al-Awlaki who is a dual citizen, U.S.-Yemeni, and who was the imam at the mosque in San Diego – to remind you, when two of the hijackers whom we couldn't find ended up in San Diego.

So isn't it a paradox that this guy whom we should have found before the 2001 attacks ends up in Yemen, where he is at large, but he is very much in the sights of the Yemenis with us helping them. He ends up being a person who is now – not only was an advisor to the Fort Hood shooter, was in the plot to have the Nigerian Christmas bomber blow up a plane over Detroit, but has literally in the past several weeks – and this has been in the press – called for attacks against the United States. So again, our intelligence women and men in a combination of agencies are hard on the case. And I predict that they will be successful.

So those are just two examples of events since 2004 that I think are keeping us safer. And let me just make a pitch for why I think intelligence reform was necessary and why I think our product was, under the circumstances, a pretty good product. We were operating before 9/11 on a 1947 business model. Everyone remembers that the CIA in our intelligence structure was part of the National Security Act of 1947. It was designed to keep us safe during a bipolar – in a bipolar world. And it worked pretty well, with a few glitches. But it worked pretty well.

Then the wall came down in 1989 and it took us 15 years to upgrade it or change it. And during those 15 years and even a few years prior to 1989, the world totally changed. And I would argue we didn't have the tools – the best intelligence tools against that world. And the example is our very flawed intelligence leading up to our decision to go into Iraq. I think that the reform, which was modeled after Goldwater-Nichols – you all know that our idea was to set up a joint command structure across 16 intelligence agencies – was designed reasonably well.

The early drafts, of course, were better. The original bill was introduced by the Democrats on the House Intelligence Committee. I was then the ranking member. But it had to change in order to get through Congress. It was based on recommendations of the joint commission on intelligence, which was the bipartisan, bicameral effort that Congress made – probably the last bipartisan, bicameral effort we made – (chuckles) – after 9/11. But it was also based on recommendations of the 9/11 Commission, which came after us.

And this joint command structure was supposed to be a flexible, nimble coordinator across these agencies. Coordinator is not a strong enough word. In talking to John Brennan, he uses the word, “orchestra conductor.” And I think that is closer to what we intended. We had to make compromises to get the bill through. You will all remember the implacable opposition of then-Secretary of Defense Rumsfeld. I’m sure Steve Cambone is going to explain that to us. (Laughter.) But also, of the chairman of the House Armed Services Committee, Duncan Hunter. And so we had to make compromises in order to get the bill through.

I want to salute the courage of Pete Hoekstra, who, in spite of that, joined this hardy little band of four and was very helpful and courageous as we struck the final compromises. And in the five years, we’ve had three DNIs. I’m looking at one right in front of me, Mike McConnell. Lovely man, tried very hard to implement the law. I would say we still have a work in progress. It’s 50 percent law and 50 percent leadership.

And let me just conclude with this. After the Christmas bombing – the failed Christmas bombing attempt, I think we all understand that probably the best fix we could have is sustained leadership at the top. I am not accusing anybody here – certainly none of my buddies who has worked in high positions of a failure of leadership – but I am saying that sustained leadership at the top is what is going to make an excellent workforce, which I and some of you have visited around the world, get the job done.

We now have the ability to leverage the strengths of 16 agencies. Our intelligence products are much better. I’ve very excited to read the Iran NIE when it comes out. I am sure it will be very, very good. I’ve talked to some people who were working on it. But I think we have the ability to leverage our strengths.

And we are now capable – great example is the revised screening procedures that the Department of Homeland Security came up with last week that are intelligence-based rather than name-based. We are now capable of taking a look at things based on the information we get from the tip of the spear, which is intelligence.

So let me just close with wishing everyone in this endeavor well and saying to everyone in this audience that your sustained leadership has helped us get to this point. Our country is safer. We’ve had a lot of success stories recently. And I think our future will depend on not letting down that focus. Thank you. (Applause.)

MR. PINCUS: Gen. Hayden.

GEN. MICHAEL V. HAYDEN (Ret.): Thank you, Walter. Just a couple of quick comments on the title for the panel: “Are We Safer?” And I will agree with the congresswoman: Yes, we are. And the DNI – the creation of the DNI, the work of the DNI – shares some of the credit for making us safer. I would argue that the National Counterterrorism Center is almost an unalloyed success story in terms of what it has done to change how we defend the United States.

David mentioned a few other things like information sharing, joint duty – I mean, these are all happening kind of below the surface of the water. Analyst training, FISA reform – which is much

more prominent – mission managers – the kinds of substantive process changes whose output, whose outcomes you see only after the course of years have been put in motion by the creation of the DNI. So that does make us safer.

But I've got an additional one that I want to share with you and I think I have a peculiar view on it because of the jobs that I have held. And I don't think it was a direct product of the legislation, but it clearly was a byproduct. And that was this: The creation of the DNI freed up the director of the Central Intelligence Agency to spend every waking and sometimes not-so-wakeful moment – (laughter) – running CIA.

My first encounter with Director Panetta during his transition, I had a little 3-by-5 card that was only half full of points I wanted to make to Leon as he was now coming here for his confirmation process. And the first thing I said to him was, I don't know if you realize this yet, but you are – you will be America's combatant commander in the global war on terrorism.

I cannot imagine doing that job, filling that function, if I had to do what Mike McConnell had to do every morning. I had a four-hour jump on Director McConnell in terms of turning to my task at hand because the DNI existed. Now, I don't know how that sustains itself after we get through the current war on terrorism. I suspect it will. I would go – I would travel to stations around the world after I became director and this was still when the whole question of the DNI was at least a jump ball with most of the CIA population.

And my wife, Jeanine, and I would have town meetings with all of our stations overseas. We'd do some broadcasting of the things we thought they should know. Took questions and invariably, within the first three questions, what about this DNI thing? And the answer I would give is the one I just gave you. That it freed up – I would be the first occupant of my suite to be able to spend my entire day being the director of CIA. And I think that really matters.

I'd also suggest that this is hard, as David pointed out. And both David and the congresswoman have commented on personalities matter. If something needs to be improved here, don't reflexively jump to the legislative fix. This may depend a lot more on personalities than it does on the careful structuring of the law. If you accept that premise, let me suggest to you some things that we could have done better.

The DNI has a really tough job: senior intelligence – principal intelligence adviser to the president and the smooth functioning of a very large American intelligence community. He really depends on his deputy. And I don't mean to be self-referential here, I was the principal deputy for about a year. But if you look at the history of the DNI, the position of Principal Deputy Director of National Intelligence has been vacant almost as long as it has been filled. That's not trivial. That's actually a big deal.

A second item that deals with personalities: The legislation says that the DNI will nominate to the president the director of CIA. That is the most important relationship in the American intelligence community. If you get that right, a lot of other things just happen naturally. And in order to make it right, the law says the DNI will nominate. We've had three DNIs. We've had three DCIAs since

the law was passed. The law was passed about – or became effective – we’ve had a DNI for about 62 months.

In that 62-month period – the period of time in which a sitting DCIA had been nominated to the president by a sitting DNI is seven months. All right? That relationship has to be built in the closest, most personal exchange of loyalties that one can imagine. And it’s not impossible when one or the other personality is merely delivered by the system, but it’s a lot easier when the DNI gets to shape that choice.

One final point: I guess a cautionary tale, so that we don’t misdiagnose the problem. I actually think, as much press as the DNI-DCIA relationship has gotten, it really isn’t the most critical relationship. It is the relationship of the DNI to those, as David suggested, those four big collection agencies that are in the Department of Defense. Now, I’ve been a head of one of those agencies. I was the head of – the director of NSA.

And there is a dual personality in each one of those agencies. They are unarguably national, but they are also combat-support agencies. Okay? My sense was one of this perhaps implied purposes of the law was to make sure that their national identities and their role in fulfilling these national functions were protected so that they did not become all-consumed by their DOD half of their personality, by their combat-support function.

REP. HARMAN: Mm-hmm.

GEN. HAYDEN: Okay? And the congresswoman’s nodding, so I think I’ve got that right. That is unavoidable because we are a nation at war – and now, perhaps not everyone in the nation is at war, but DOD and the American intelligence community is at war and has been at war for eight years. It is unavoidable that the defense personality of those key agencies that are truly national – that the defense personality becomes gradually more dominant.

That’s not a bad thing. That’s a good thing. You would want it that way when you’ve got our sons and daughters into harm’s way. But it isn’t perfectly consistent with the overall trajectory that the act was designed to set in motion. So I think we need to be aware of that as we kind of give a grade with regard to how well we’re doing or not doing. Thank you. (Applause.)

MR. PINCUS: Fran Townsend.

MS. FRANCES TOWNSEND: Thank you, Walter. You know, let me – I’m going to make a couple of comments. I, by and large, had the privilege of working with David when I was in the White House and in government and think he’s pretty well framed it for our discussion. I would say, because NCTC has come up as twice now, I agree that it is an unqualified success, but we need to be careful about how much we attribute that to intelligence reform. The predecessor to that was the Terrorist Threat Integration Center, which was stood up immediately in the aftermath of 9/11 and really was in motion before intelligence reform.

Now, that’s not to take away what I think is credit to intelligence reform. I think Walter’s article this morning has it right. There has been a doubling of the budget of the intelligence community in

the last eight years. Let's not underestimate the impact that's had in terms of strengthening our human intelligence capability and our analysis capability.

But intelligence reform was really important. And Congresswoman Harman and I have had many a conversation about the importance sharing. That was a tremendous driver. I have said it before; I'll say it again: The nation understood that there was an intelligence failure in 9/11. The nation understood that part of that was we didn't share the information that we had actually collected. The nation chose to forgive its government for that failure, but it had a right to expect it not to make the same mistake again.

And so information sharing is really important. And it's really – it's part of, I think, what we've seen in terms of the frustration in the aftermath of the Christmas Day attempt. That is the important part of the DNI's mission is tending the knitting of ensuring that this community, which is 16 separate agencies, does have the procedures and the process in place that allows them to leverage what is a tremendously valuable capability to the nation in terms of keeping it safe.

And so I do think we are safer. I think intelligence reform is a part of that, in addition to the budget increases. But this is one of those – it should be a work in progress forever. We shouldn't think it's going to be a work in progress for a period of time. Those of us who have worked in both the policy and national security communities understand that this is a business that will be a constant work in motion to adapt to threats we have not yet even considered that will come at us.

One of the other things that struck me – I mean, I had the privilege during the course of my career, whether it was the 9/11 Commission recommendations or the WMD commission recommendations or the legislation – all of those, I had some responsibility for the review of the recommendations that went to the president and then subsequently the implementation.

I can remember in the aftermath of Katrina – I didn't think I'd ever quote Gen. Russel Honoré – God bless him. He asked me once what my responsibility was and I used the coordinator word. And his great phrase is, when you have a coordinator, a coordinator starts out to make a horse; because they lack authority, they end up with a camel. (Laughter.) There's something to that, by the way. And I quote him because I actually think that's some of people's frustration with the DNI.

One of the things we've not talked about – I think Steve is going to talk to this in his panel – I'm happy, if people are interested, to have that conversation in this one – one of the great debates we had was budget authority. It was not just the hiring and firing; that one could be accommodated. But whether or not the DNI had budget authority was a tremendous internal battle inside the executive branch, between the executive branch and Congress.

And it mattered. It mattered because absent budget authority, the relationship with the president – the proximity to the president, the relationship and support of the president, the relationship with other Cabinet members – became of far greater importance because he didn't have the actual authority to impose it. Of course, how you spend your money is what your priorities are.

And so we've got to be clear and honest about whether or not we're frustrated over how the intelligence reform legislation has unfolded has been affected by whether or not the DNI had budget

authority. Let me say, having said that now, I tend to agree that just because there may be a gap or a lack of direct authority, the first answer ought not to be a legislative fix. We ought to say how much can we do in the existing authority? I think we can do more. I think we can do more, more effectively.

GEN. HAYDEN: I think that's right.

REP. HARMAN: That's right.

MS. TOWNSEND: And so I do think that we need to understand, though, what the role of the DNI is and what power he – or she someday – will wield. Let me say, my – the last point I'd like to make. David talked about many of the really important functions for which – as did Gen. Hayden – that the former president viewed as the drivers.

Freeing up the CIA director's time, but not losing the – what I call the enterprise management of the community, which – in a post-9/11 world with threats coming at us every day, the enterprise management got less attention than the daily direct operations, as you would expect and want it to be. And so somebody needed to spend their every day, all day worrying about the enterprise management.

That said, if the DNI spent the majority of his time as the enterprise manager – that's recruiting, training, tradecraft, acquisition, procurement – that sort of thing, you probably wouldn't be able to name him and you probably wouldn't care. What you hear about, the struggle that we read about publicly is the struggle over, is the DNI – what is the DNI's role vis-à-vis the CIA director when you're talking about bilateral foreign intelligence relationships?

We have some of our foreign intelligence colleagues here in the audience. I will tell you they say privately – I hope they'll be honest here – that it is incredible dysfunctional and confusing to them about who do they deal with. They understand the CIA director is the operational director. But if the DNI's role is going to be the enterprise manager, then there is – does he need to travel overseas? Does he need to interact with foreign intelligence service heads? And doesn't that create an inherent confusion among our allies? These are real questions.

And I think as we see debates unfold publicly, this is where – Congresswoman Harman said it's 50 percent law and 50 percent leadership – this is where leadership comes in. The president must be clear on what it is he wants his DNI to do, what role he wants him to fulfill and how he expects him to execute it. Absent that, the DNI and the director of CIA will define the roles themselves and guess what, there will be conflict. I guess that leaves things for Walter to write about – (laughter) – but perhaps not in the best interests of the community. And with that, I'll stop. (Applause.)

MR. PINCUS: There is always something to write about. Let me ask a question because we talk abstractly and I get complaints all over that I hang on to little facts. One thing that hasn't been mentioned directly – you know, I think it's a question I want to pose to the panel. The secretary of defense is really the 800-pound gorilla in intelligence. I mean, that's just a fact. How successful would the DNI program be today if Robert Gates were not the secretary of defense?

REP. HARMAN: Well, since Walter looked at me, I'll try that. And then I'll be corrected by my able friends. I think having Bob Gates as secretary of defense is a wonderful thing, period. But I also think because he was the DCI in another life and has a strong background in intelligence, it is a very helpful thing.

The essential compromise in the law is that we exempted tactical intelligence from the coverage of the DNI. We took out intelligence for the warfighter. That was something that was an imperative to get – we never got Don Rumsfeld's approval here – but to get him to stand back a bit and Duncan Hunter too. I'm quite sure Duncan Hunter voted against the final law. I don't recall, but at any rate, that was the compromise we made.

And looking back on it, I'm okay with that because I do agree with I think it was Mike who said it, that there is a different set of needs for the tactical warfighter than there is for strategic intelligence. So I think that having Bob Gates in that role now means that there is more running room to get the concept right. And I see improvement over the years in how it works.

Fran is right that left undefined, there will be inevitable conflict between the DNI and the CIA director and maybe others. But it's not left undefined. I think we are improving the definition of roles. We had a few dustups to get there, but boys will be boys. (Laughter.) And now we are doing better. So my answer to you, Walter, is the country is – should be grateful that we have Bob Gates in this role and that the fact that he's in this role and sees himself as a bridge to making the function work better is helping us fill out what was an incomplete picture of the role.

GEN. HAYDEN: That's all true. But Secretary Gates is still the secretary of defense. And he's not running to the conference table at lunchtime to have the meeting with the DNI and me to give up DOD equities. Give you an example: joint duty, which is a success story for the intelligence community. That is actually the one part of Goldwater-Nichols that is directly transferable. Title IV of Goldwater-Nichols seems to work just about the same way inside the intelligence community, except we're not in one Cabinet department; we're in many Cabinet departments.

So who gets to be the waiver authority – who gets to be the waiver authority for the joint duty requirement? All right, secretary of defense – well, actually Jim Clapper. Who gets to be the waiver authority for the Central Intelligence Agency? Not Mike Hayden; the DNI. Okay? That is a disequilibrium in trying to create a community. And so I agree – it's as good as it's going to get with Secretary Gates there, but there are unarguable equities that DOD will argue for even if you had Saint Francis of Assisi in the chair on the third floor. (Laughter.)

REP. HARMAN: I don't think we should invoke the Catholic Church just right now. (Laughter.)

GEN. HAYDEN: To put this in its starkest form, when we redid Executive Order 12333, which, again, could only be done with the DNI. The DCI cannot do that because he's out here fighting this war on a more tactical basis. On about page two, there was a sentence that referred to the whole Duncan Hunter subplot in section 1018 of the law, which in essence says, the new DNI isn't going to walk across the trap lines of the Cabinet-level officials that own intelligence agencies. More elegant language, but that's the point.

The original draft of that, which CIA supported strongly, was that in carrying out his responsibilities under this executive order or under the law, the DNI shall be presumed not to be – and then walking across the prerogatives of the Cabinet-level officials. That dog, to put it mildly, did not hunt anywhere else at the conference table in the Situation Room because everyone else at that table was a Cabinet official.

And in the final version, that language became, in carrying out his responsibilities under this executive order and under the law, the DNI will not – rather than shall be presumed not to. That’s moving heaven and earth. Until – and we may not need quite the stark language of “shall be presumed not to.” But until we sidle ourselves as a collective institution more in that direction, the DNI’s rucksack is going to be more than a couple bricks shy of a load in order for him to do everything we expect him to do.

MS. TOWNSEND: The only thing I would add – I mean, I agree with what’s been said – not to embarrass Mike McConnell, but I will tell you that it’s as important to Secretary Gates and his experience to the success of the DNI intelligence reform effort so too who is the DNI because it requires, as we saw in Mike’s relationship with Secretary Gates, somebody who knows how to build that relationship of trust.

I mean, there really is – because to be fair to Secretary Rumsfeld, he was responsible for fighting a war in two theaters and rightly was a voracious bureaucratic fighter for our sons and daughters, as you would want and expect him to be. And so that’s not – we got to be careful about where you sits, where you stand and what your responsibilities are. And so, yes, it’s important to this effort that Secretary Gates is there. Also too, it is important the leadership and the capability of the particular DNI.

MR. PINCUS: Then, let me raise one other sort of unsaid thing so far. One of the purposes of creating a DNI was to give somebody authority over intelligence – not just abroad but at home. And nobody this morning has ever mentioned the FBI. The FBI, which has spent I don’t even know the number of hundreds of million of dollars, can’t make their own computer system work. And was found that they didn’t even have an e-mail system at 9/11.

Why is it that the FBI is never mentioned when you talk about the DNI? The FBI director goes to the White House every morning and then somehow goes back and runs the FBI. And nobody talks about it. There have been major changes in the FBI internally, as there were major changes in the CIA and the Justice Department after 9/11 before the act. But how much authority and how much interest does the DNI pay to the FBI, which is the one agency in this country that has standing in the Congress and the country at large and can’t be touched?

REP. HARMAN: Well, I didn’t mention the FBI today, but the FBI is certainly an agency along with the Department of Homeland Security that I think about on a regular basis as my focus now as chair of the Intelligence Subcommittee of the Homeland Security Committee is on information sharing domestically and how are we doing making sure that our law enforcement community – way beyond 40,000 FBI agents – has the information to know what to look for and know what to do.

Certainly it is true, Walter – and I know you would agree with this – that more people are at risk here from a terror attack – more Americans are at risk here from a terror attack than are at risk in our embassies abroad or in our war theaters abroad. And so it is critical that this concept affect our communities – not just the Washington and New York communities, which were hit before, but all of our communities. So the FBI does play a critical role. I actually think that the FBI has ramped up its act considerably since 9/11.

Again, it's not perfect. The biggest meltdown in terms of not unraveling the plot leading up to 9/11 was within the FBI. You know, part A didn't talk to part B. And there was big issue about the wall, which was a fiction but nonetheless, there is no more wall. So that's a good thing. That's the second wall that came down, I guess.

I think the intelligence function of the FBI has been ramped up considerably. There's a culture clash in that agency in terms of intelligence collection and law enforcement. But it's better. And the joint terrorism taskforces – the JTTFs – that are around the country are helping our local so-called “fusion centers” pull – connect the dots before bad stuff happens.

And I just, you know, a perfect example – of course, it would be in my hometown – is about the Torrance Police Department. Torrance, California, is a wonderful community in the best congressional district on earth. (Laughter.) But Torrance PD noticed that there was a string of gas station robberies that must have been intended to fund something.

They got a search warrant, went into the apartment of one of the guys and discovered, lo and behold, weapons caches and plans to attack military recruiting centers, synagogues and LAX. And these guys were indicted on terrorism-related charges, tried in Article III federal criminal courts and convicted and are behind bars for a long period of time. So a terror cell was discovered in America by an astute police department, which then connected into a JTTF and the FBI took the ball across the finish line.

So I think the FBI is better. I think there is still an issue whether we need a domestic – and I think my answer is still no – whether we need a domestic intelligence agency modeled after the British agency. But I think that the FBI paired with the NCTC paired with local fusion centers is doing the job better.

And let me just mention one thing I omitted. An unfinished or an unfulfilled piece of the Intelligence Reform Act is the formation of a privacy and civil liberties board, which I know Tom and Lee and many of us think is essential. The Bush administration nominated folks to the confirmable positions – and I think they were confirmed –

MS. TOWNSEND: Convened it.

REP. HARMAN: – and it began to act. Those positions are unfilled in the Obama administration. And a number of us on a bipartisan basis have been raising this issue. And there has as yet been no response. I think it is important, especially as we ramp up domestic intelligence collection activities, which we must do. We have a homegrown terror problem in this country – not only from Muslim groups – think the Michigan militia recently.

But as we ramp them up, that we have an independent watchdog that is making certain that we're living our values. And security and liberty are not a zero-sum game. So I think that's a gap. I think we still over-classify material. And I think we have a leaks problem. Something Walter pointed out in his article today. But with those gaps, I think the FBI is growing into a bigger and more appropriate role.

GEN. HAYDEN: Walter, you raise a very good point. You could make the argument that the most major muscle movement inside the legislation wasn't sharing information between NSA and CIA – which is, you know, need to do better. The major muscle movement was the linkage of foreign and domestic intelligence. That's a big deal. It is a-cultural (ph) for Americans.

David was right when he said that could never be done by a DCI, simply because of the history of the agency. And frankly, his role of running a foreign intelligence agency at the same time. It could only be done by the DNI. All right? So I'd make the case: This is the really big one inside the legislation.

And I'd also make the case that it requires sustained energy on the part of all concerned in order to make it work because it is ahistorical and a-cultural for us. And I would refer you specifically to the new attorney general guidelines that were issued very late in the Bush administration by Atty. Gen. Mukasey. And in the CIA intelligence parlance, it was the spaces between cases. (Laughter.) More technically, it was allowing investigations and the gathering of intelligence and information without a criminal predicate.

Left on its own, without energy from the top – and here it's probably not from the top of Liberty Crossing – here it's from the top of the Justice Department. Without sustained energy on the part of the attorney general, that is so inconsistent with past practices that that will not get the traction that the legislation wanted it to have. And so this is one that the AG really has to take on. And it remains to be seen whether or not he'll have the focus on it.

MS. TOWNSEND: Yeah, when I was – I was at the Justice Department during the Clinton administration where I was counsel to the attorney general for intelligence policy which was really – there's now an assistant attorney general for the national security division. That's really where this rubber meets this road.

In terms of what's the appropriate FBI role as a member of the intelligence community, we have to remember they have their own history, very much a part of the Pike-Church hearings. There was an investigation called COINTELPRO. Many of you in the audience are familiar with this. And so the role of the FBI in terms of the gathering of domestic intelligence looms large in their thinking. And so they want very clear guidance.

The attorney general's guidelines go a long way to that, but we have to remember: The FBI is a different member of the intelligence community because of its law enforcement role and because it reports to the attorney general. You know, FBI agents will remind you and the director will remind you, they take the oath to support and defend the Constitution, not a particular policy or administration.

And as we heard in David's remarks, it is true to say the intelligence community has an appropriate role in terms of as a tool of a particular administration, each administration's foreign policy. And that's different. And the FBI is very conscious not to get pulled to that side of that scale because that's not the appropriate role that we believe they should play in this country either by law or by policy. And so it is – it has been a growth over time about what's the appropriate role, what is the appropriate capability they should have.

I'm glad Congresswoman Harman mentioned the Privacy and Civil Liberties Board because I, too, believe it plays an important function. You could hardly have imagined a more bipartisan group when it was convened in the prior administration. I don't have any doubt that that'll be the same intention in the current administration but it's important that it get up and running, especially as we see and hear more about domestic threats. And we push very hard for our domestic agencies both DHS and FBI to be aggressive. They need that kind of guidance that they can get from that bipartisan board.

MR. PINCUS: Let me do one quick final one and that is the director of national intelligence is the president's chief advisor on intelligence. Is he also – or she, it could be – the chief spokesman for the intelligence community?

I remember when the bill was being discussed up on the Hill, one of the issues was that Congress was looking finally for somebody to blame when there was something going wrong. They wanted one person to blame. If you all remember the December 25th bombing, it was John Brennan who stood up from the White House and was the person to, in effect, take the blame. So who is the spokesman for the intelligence community?

GEN. HAYDEN: (Inaudible, off mike) – go first?

REP. HARMAN: Yeah, why don't you go first? (Laughter.)

GEN. HAYDEN: I think it should be the DNI for a couple reasons. Number one, he's well-positioned to do that. He's the one with the god's-eye view, so to speak, over all the constituent parts of the community. Number two, just on a human basis, the rest of the community can't be looking at Liberty Crossing as the place that always asks them for something.

Liberty Crossing has to also be the place where things happen that help the rest of the community. And I'll be very candid, there are a couple times Mike McConnell went out there in harm's way when he could have just as easily sent that note from the Congress down (Route) 123 to Langley and let me handle it. And we were very, very grateful for that. On the immediate case that you raised, several people have already commented on that personal relationship with the president being very important to perhaps robust-up some shortfalls in the actual legislation.

The fact that Director Blair was not nearly as visible as John was in the aftermath of the December 25th thing is something that 100,000 people in the intelligence community, I'm sure, took note of. That was not a good thing. And he needs to be and be seen as the primary legitimate spokesman for what goes well and what goes ill inside the American intelligence community.

MS. TOWNSEND: I agree with Director Hayden. I think, look, I always used to joke, and many of you have heard me say it, that if there – when I had been at the White House in John's job, if there had been an attack, I was the easiest and quickest person to fire and hold accountable while you sort of did a scrub about who else was going to be held accountable.

But I do think in terms of the intelligence community, I do think that the DNI – and it has a whole host of – he's with the president every morning in the presidential daily brief, he has a view into what – if we learned anything from what we know now about the December 25th attempted attack, there isn't a single point of failure.

When there's a failure, there are multiple points of failure. And who's in the best position to assess where those multiple points are and the relative importance of any one of those points, and that's the DNI. And so I agree with you. I don't think that you want somebody at the White House to play that role. And I do think that the appropriate role there because of his access to the information that's necessary to make the judgments is the DNI.

REP. HARMAN: Well, I'm glad I'm last this time. I don't think – certainly, as one of the big four, we thought about who was the spokesperson. We thought about who was accountable. And on that score, I agree. The DNI is accountable – and commendable – for the successes and accountable for the failures. And it is true that there are tens of thousands of folks – I had thought that was still a classified number but what do I know, I work in Congress, so I'm therefore under-informed – but that that person needs to be a cheerleader for the exceptional women and men who work for the DNI.

And let me say rousingly, and I think we all agree, that those folks are amazing and they're out there in harm's way right now, and in many cases their families don't know what they actually do in the days and nights that they're out there. And when some of them sadly are killed in the line of fire, it will still not be disclosed what they did. They'll be a nameless star on that amazing wall at the – if they're CIA – assets of the CIA – and they might be in other roles. But at any rate, I see the DNI as the person we intended to be accountable. In terms of the spokesperson, I'm not sure who that should be. I think that could be a personal decision for any president.

In terms of the homeland, again, where more Americans are at risk, I kind of see that role, and at least I've urged that on her, as being played by the Homeland Department secretary. One of my early counsels to Janet Napolitano, a good friend of mine, was she should convert herself into the Everett Koop of protecting the country. Everett Koop, every time you saw him coming, you knew he knew more about cigarettes than everybody else. And I think that that is a role that should be played by our Homeland Security secretary. Again, accountability is different from being spokesperson.

MR. PINCUS: Now, questions from the floor.

QUESTION: I'd like to first get clarification from Ms. Townsend's comment about FBI agents having allegiance of the Constitution and suggesting that intelligence officers don't take that same oath –

MS. TOWNSEND: That's not what I said.

QUESTION: Well, no, I think it is what you said. It may not be what you meant. So that's why I want you – would like to get that clarification.

But your point goes to a different one which is the politicization of intelligence and what's going on there. You made the point that the intelligence community is getting drawn into the politics of the – politics or policies of the administration and suggesting that that's something that –

MS. TOWNSEND: That's not what I said.

QUESTION: – happens on the foreign intelligence side and doesn't happen on the domestic side. So I'd like you to talk a little bit more about that and clarify your remarks about who and what swears to the allegiance of the Constitution.

MS. TOWNSEND: Absolutely, no, and I'm happy to do that because I think a greater misunderstanding you could hardly have had. There is no question that both foreign intelligence officers and FBI agents uphold and defend the Constitution of the United States. The rules that govern their conduct under that rubric are very, very different. And for a whole host of legal and policy reasons.

And there have been great concerns by privacy and civil liberties advocates about the role that the FBI can and should play in terms of the collection of intelligence here inside the United States. And there's a whole – there are more than a hundred lawyers in the Justice Department that devote 24/7 to making sure that the FBI executes their authorities and responsibilities appropriately.

Now, it's interesting that you say that I – my comments were about the politization (sic) of the intelligence community because that's not what it was about. Look, I don't think there's anybody that I worked with who would advocate or countenance the politization of intelligence. That's different.

That is a corruption of the intelligence capability and mission, which is inappropriate. What I was referencing is it is a perfect – there is no question that the president can and does – Republican or Democrat – the intelligence community to support their foreign policy objectives. That's not politization. That is a stated use of the president's covert action authority. And so there is a difference. That is a line that can't and mustn't be blurred.

There has been much talk and much debate about it. And I think Gen. Hayden can also speak to this; there is a difference. There is a legitimate use in terms of your foreign policy objectives, the use of your intelligence capability to understand the intentions of your enemies, to understand the intentions of other states with whom you have diplomatic initiatives. All of that is perfectly appropriate to support your foreign policy objectives and is not politization.

GEN. HAYDEN: I just add that this challenge of being in that decision space for the decision-maker, being true to the facts and preserving your autonomy while at the same time being relevant and listened to by the policymaker, that's the existential challenge for all intelligence.

REP. HARMAN: Yeah, I think it's an important question and I'm glad you asked it. When Bob Gates left as DCI, he gave an impassioned speech to the workforce in the cafeteria at Langley and quoted these words, "and the truth shall set you free." And I think the role of our intelligence agencies – plural – is to speak truth to power.

Intelligence is not policy. Intelligence is a set of predictions – it's not science either – based on the best facts and other information about human behavior you can gather. But if it is corrupted and slanted to be what one thinks the policymaker wants to hear, or distorted or cherry-picked, I think it will inevitably, regardless of who is in power, lead to bad policy. Good intelligence doesn't guarantee good policy but bad intelligence tends to put us on a slope towards bad policy.

QUESTION: Hello, good to see you. My question is about oversight of the DNI from Congress. And I'm going to assume that no one on the panel is going to say, no, we shouldn't have congressional oversight reform, so my question is how are we going to have congressional oversight reform?

GEN. HAYDEN: Me first, no – (laughter).

REP. HARMAN: Yeah, Mike is ducking. He's now under the table. Does everybody know who Carie Lemack is? She was one of the most outspoken members of the 9/11 families. And I called them, but especially her, the wind beneath our wings as we tried to do intelligence reform. I see Tom and Lee nodding and everybody here nodding. And it is a huge credit to you that you've never quit. I mean, it would have been easy. (Chuckles.) It wasn't as bad as health care but it was up there in terms of a big project to accomplish.

Oversight, well, no one has missed it. Congressional oversight, in my view, is still challenging, but I think it has improved since we have passed the legislation and I think there is cooperation – big-time cooperation – between intelligence community leaders and the members of the House and Senate intelligence committees. I no longer serve on the intelligence committee but I think the effort is underway to do better oversight.

Other thing I'd like to say, though, is that's not – we don't get as high a mark with respect to homeland security oversight. One of the recommendations of the 9/11 Commission that has not been fulfilled, in addition to the standing up of the privacy and civil liberties court, is that we consolidate and reorganize the way Congress functions.

Congress still has whatever it is – 88 committees and sub-committees – that do oversight over homeland security. And that's an embarrassment and we are really not doing much to change the situation. And that makes it extremely hard, not just for the homeland secretary, who has to testify, you know, five days a week, but it makes it very hard for us to do effective oversight. So keep at it, Carie. If we're going to get it right, it's going to be because you and the families keep reminding us.

GEN. HAYDEN: That's a great question, and it's very important for the intelligence community. Look, we are secret espionage services inside of an open society – inside of an open society that, every day, is demanding more transparency and more accountability from every aspect of that society. We can't brief 300 million countrymen what it is we're doing. We have to do it through the vehicle of the Congress.

So this does have to work. And people on this side of the ball, on the executive branch, are almost as desperate as people in the Article I branch in terms of trying to make it work. All that said – and I have wonderful relations – I'm out of government now – with the people who are up there, and nobody gets a bridge built back home because they're on the Intel Committee, so this is truly a labor of love.

All that said, we haven't had an intelligence authorization bill for five years, and the intelligence reform aspect of the 9/11 Commission Report is the only element of the report that remains unacted upon.

MR. PINCUS: Let's go over there. Yeah, right there.

QUESTION: Pat Neary, ODNI. One of the difficulties in understanding how well the ODNI is doing, how far intel reform has come, is the problem of the model you use to measure it. As David Shedd mentioned, if you take a DCI model, do you get one result, measuring how the ODNI is doing? If you take the rejected secretary of intelligence model, you have a different result.

Congresswoman Harman, you mentioned the legislative intent in IRTPA and talked about Goldwater-Nichols, which, as you're aware, created a very empowered chairman of the Joint Chiefs of Staff and separated the Joint Staff out from the service staffs. And then, General Hayden, you mentioned the combatant command aspect of CIA in the CT field.

Would anybody in the panel care to take that analogy a step forward and say, is a chairman, joint staff model one for the DNI to emulate, in some respects, and if so, what informal authority should the DNI seek and what leadership moves should he take to make it more real?

GEN. HAYDEN: Yeah, there are difficulties transferring Goldwater-Nichols as a model to the intelligence community. Number one, you're not inside one cabinet department so you have no overarching authority. Number two – and this is missed by a lot, but it's really important – the Department of Defense is divided between two types of organizations – combatant commands and military departments.

These guys train, organize, equip and provide; these guys operate – okay? Train, organize, equip, provide – operate. The intelligence community is not organized that way. NSA, CIA, NGA, et cetera train, organize, equip, provide and operate their own forces. So as I suggested earlier, the only thing that seems to transfer is Title IV, which is the personnel model. And I think that transfers nicely. But the rest of it doesn't. And so we can't just simply grab it and throw it over here and expect it to work.

One thought has come to my mind. And it's not quite, Pat, in answer to your question, but it's related. And that's the chairman and SECDEF and Joint Staff and so on. I've thought a lot about the relationship between the DNI and the DCIA. I think that's the pass/fail relationship for the entire community. CIA is – David Shedd, there are six big collection agencies that you're – (inaudible) – read about.

One of them is CIA, but CIA is a bit different, not just by history, but by the kind of organization that it is. So that relationship is absolutely critical. I'm looking for a model in American history that suggests how that might be so we just don't have to create it out of whole cloth. And I'm thinking many elements of the SECDEF-chairman relationship might relate to the DNI-DCIA relationship.

There's no question that Mike Mullen works with Bob Gates. That said, Mike Mullen has some inherent authority and things that he can do because he is chairman of the Joint Chiefs of Staff. It's very rough. It probably breaks down at some point. But I think that might actually be transferable. But the broad Goldwater-Nichols model is not.

REP. HARMAN: Well, we considered a number of models. One thing we did not want to do is rebuild the Department of Homeland Security. Twenty-two agencies put together in that new form has proved to cause a number of digestion problems, not just there but certainly in Congress.

And those of us who were considering what to do wanted something much simpler. And we used models that had been suggested by, as I mentioned, the joint commission and the 9/11 Commission and others. And this seemed to be sort of, kind of right. Obviously, Mike's experience in the military gives him a certain advantage that I don't have in understanding how Goldwater-Nichols worked there.

But I continue to believe that the joint command idea – the orchestra idea – was a simpler way to leverage the strength of a number of agencies. It's not just the CIA-DNI relationship. I mean, we were very mindful – and I am very mindful, since my district makes most of this – of our amazing technology that we use in the intelligence business. Mike understands that. He was at NSA. It's – the let-offs that we are able to produce hopefully will never be able to be produced anywhere else on the planet.

But leveraging those assets so that everybody wins, not just an agency has ownership over them and can use them for that agency's agenda, was a big piece of what we had in mind. So I think on balance, our concept is fine – 50 percent law, 50 percent leadership. And I would hope, going forward – this is something I didn't say yet – that a piece of what we have in mind would be implemented by the DNI and future DNIs.

And that is to not build a big bureaucracy that competes with the pieces of the – which competes with what the responsibilities of the DNI are, but to have something lean and nimble. We had thought the CMS staff would be adequate. That was 500 people. Obviously, that hasn't been adequate. Not to build big, new buildings, but again, sit as orchestra conductor, waving the baton across a symphony orchestra in which many instruments play, hopefully using the same score and making real music.

MS. TOWNSEND: You know, the only thing I would add: I was reminded by your question and the discussion about the model between the chairman and the SECDEF of an argument that came up in the policy debate that was brought to my attention by Steve Cambone – and you'll have the chance to ask him. And he made the point – we were talking about, in this structure, having the CIA, who had its own operational authorities, reporting to an individual in the DNI who did not have operational authority, and how were we going to square that?

It was going to cause real – I mean, when you look at the chairman of the Joint Chiefs, he's reporting to somebody who has a consistent and larger set of authorities, and so he kind of makes logical sense, in the bureaucratic and legal sense. This was going to be a challenge. And I think part of what you're hearing in discussion of your question is, we continue to grapple with that, because that – it's the only direct report, and CIA doesn't have a parallel line to somebody who has operational authorities like everybody else does. And I do think that, that's caused some of the friction.

QUESTION: Chairwoman Harman, you said earlier, just today, that – you said you're a member of Congress, and therefore under-informed, and then that the role of intelligence, in your words, was to speak truth to power.

And I'm struck that almost a year ago, Speaker Pelosi said that Congress misled – the CIA, anyway, misled Congress, in her words, "all the time." And I wanted to ask, one, in your opinion, is that true? You know, if so, two, is it still ongoing in your experience? And then three, what can be done to remedy that as we talk about intel reform?

REP. HARMAN: Well, I think the briefings to Congress are improving – I made that point – and the materials provided to Congress are improving. One of the huge fights I had when I was a member of the Gang of Eight was to get more people briefed on the Intelligence Committees. Mike will remember –

GEN. HAYDEN: A Saturday afternoon. (Laughter.)

REP. HARMAN: – a Saturday afternoon phone call from me to him when he was shopping for a cell phone for Jeanine in a shopping mall. Have I –

GEN. HAYDEN: So far, so good. (Laughter.)

REP. HARMAN: So far, so good. Yeah, that was the day that the president had declassified portions of the terrorist surveillance program, and it was the first day that those of us who had been briefed on that program could call others to understand some things that we had not understood.

I did not understand that, that program did not strictly follow FISA. We can have another conversation about that somewhere else, but I did not understand that during the briefings that we had on the program. But at any rate, I called Mike to urge that he come over immediately – Congress was in session that weekend – to brief all the members of the Intelligence Committee on

the program, which I think – thought would be very helpful. That did not happen that day, although he was willing to do it.

GEN. HAYDEN: I was en route.

REP. HARMAN: He was en route and called back. So he couldn't do it, but it eventually did happen. And I think the briefings of more people is better. But that still leaves something that Pete Hoekstra has said, and I think would still say if he were here, and that is that we play – those of us on the Intelligence Committee – play 20 questions. If you don't ask precisely the right question, you don't get the information.

And so my version of this – and I'm just speaking for myself – is that the Intelligence Committees, which are leadership-appointed committees, should be given full information. We're an independent branch of government. We should keep what is classified, classified. That's something I assiduously try to do.

There should not be over-classification, but certain things, certain secrets, certainly relating to sources and methods, should not be in our newspapers, Walter – (laughter) – or even revealed to Congress, outside of strict, classified environments. So I think we're doing better, and I think it is crucial that, that relationship work well, because in the end, what are we trying to achieve?

We are trying to get an environment where we know the plans and intentions of our enemies in advance, where we put the best people and the best structure and the best technology against the hardest targets. And those targets are hard, and they are evolving. And unless we are able to do that and to be nimble, as we have been recently, in terms of how we're going to screen passengers trying to enter this country, one of these days, the bad guys are going to score again.

GEN. HAYDEN: I need to comment on that. Within limits of sources and methods, because you're always sensitive about how big a group you brief – but put that caveat aside. The overwhelming instinct of the intelligence agencies is to brief the Hill, brief them broadly and brief them deeply. I mean, to use an airman's metaphor, since I spent most of my life in the Air Force, if you want these people to be there at the crash, you've got to put them on the manifest, okay? (Laughter.)

REP. HARMAN: No, no, no. (Laughter.)

GEN. HAYDEN: There are no upsides to trying to hide the ball. Now, that said, I was President Obama's DCIA for three weeks, and I will tell you in that 21-day period, I had the same kind of conversation I had with his predecessor about a sensitive matter and whether or not I should brief it to the Hill. And I was pushing one way, and his NSC and staff were pushing the other.

And I will add that President Obama has threatened to veto the current intelligence authorization bill if it still contains language that takes out of his control who on the Hill is briefed. This isn't so much about intelligence – well, it is – but it's really about Article I and Article II. And the intelligence agencies, and particularly CIA, and particularly CIA when they do covert action, is operating on the outer limits of executive prerogative. Blame this one on Jimmy Madison.

MR. PINCUS: Well, I think on that note, you're not going to solve that problem, and we'll leave open some more questions for the next panel, which can take care of the ones we've left open. Thanks very much. (Applause.)

MR. ALLEN: Thanks very much to our panel. We're going to have a very brief break – just enough time to put the next panel up and start immediately. So stay tuned for just a minute.

(END)