

Restructuring the U.S. Intelligence Community

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Oettinger: We have a change of pace, and a change of speaker. Gordon has for the last decade or more been in the business of diagnosing the ills of the older structure and helping to devise ways of reforming it. Again, interruptions are fair game on Gordon; he’s an alumnus of the seminar and knows what to expect. Gordon, it’s all yours.

Lederman: Thank you very much. I appreciate everybody’s sitting through another two-hour session late in the afternoon. I also have to say that Darryl’s outstanding presentation makes him a hard act to follow. So I appreciate your staying through another one.

As Professor Oettinger mentioned, I took this class in the spring of 1996. Now I notice that the class has moved from the Kennedy School location up to near the law school. I don’t know if that represents some sort of change in the intellectual approach. I was a law student when I took the course, and maybe it’s a good thing to move toward the legal side.

Seriously, I have to thank Professor Oettinger for being such an outstanding mentor to me over the years. He’s one of my primary intellectual godfathers, and his thinking has influenced

me tremendously since I took the class. I looked up the syllabus, and I believe that your last reading was *Whence and Whither Intelligence, Command, and Control?*, which Professor Oettinger wrote many years ago.¹ I reread it on the plane up here, and it's an incredibly powerful statement about all the balances that exist. I tend to like the word "tensions," but he doesn't. Today you could hear his comments about how on the one hand you don't want to have rogue operations that violate the law, but on the other hand you don't want not to do anything because you're so fearful of violating a law. That's just one example of his approach toward organizational behavior and the national security bureaucracy, which is to look at competing poles and try to find the proper balance, but also to recognize that the balance changes over time, because new technology, new threats, innovation, or new personalities always require a recalibration of the balance or of the tension. That model has influenced me tremendously. I really appreciate what Professor Oettinger has taught me.

As I read in the paper, one of the questions that Professor Oettinger asks somewhat seriously and somewhat humorously is "Who owns you?" in the sense that where you stand depends on where you sit bureaucratically. Everybody comes from a different perspective, and it's important to know that so you can get a sense of where a person is coming from. So let me tell you a little bit about where I'm coming from.

I was an undergraduate here and went to law school here, I clerked for a year for a judge, and then I moved to Washington, D.C., to work for a law firm, Arnold & Porter. In the meantime, I had written a third-year paper at the law school, actually under Professor Oettinger's guidance, on the Goldwater–Nichols Department of Defense Reorganization Act, to which I think I was introduced in this class. Darryl talked about how his paper led to where he is today and about the importance of trying to do as much research as you can now.² It was the same for me. My paper was later published as a book while I was practicing law, and that book, it turns out, has sent me down a particular path and brought me to where I am today. Because of that book, I met a former CIA [Central Intelligence Agency] general counsel who became a partner at Arnold & Porter. He was starting a national security law and policy practice to try to operate in the space that Darryl was talking about: bridging the public-private divide, trying to bring the public and private sectors together on issues of national security, and advising companies and nonprofit organizations on how to navigate the national security bureaucracy. So I worked there for about four and a half years, and then 9/11 happened and the 9/11 Commission was stood up, and it was time for me to go into the public sector to get a view of national security from that perspective.

It turns out that while Goldwater–Nichols reorganized the Defense Department—and we'll talk about that in a few minutes—that legislation and the type of reorganization that it represented were seen as a model for intelligence reform. So when the 9/11 Commission was looking at intelligence reform, I joined the Commission staff to apply the Goldwater–Nichols paradigm to intelligence. The commission had eight teams focused on different substantive areas. I was on the

¹ Anthony G. Oettinger, *Whence and Whither Intelligence, Command and Control? The Certainty of Uncertainty* (Cambridge, Mass: Harvard University Program on Information Resources Policy, P-90-1, 1990), [On-line]. URL: <http://www.deas.harvard.edu/courses/ge157/oetting-p90-1.pdf>

² Darryl Williams, "Combating Global Terrorism: Bringing All Elements of National Power to Bear," in *Seminar on Intelligence, Command, and Control, Guest Presentations, Spring 2006* (Cambridge, Mass: Harvard University Program on Information Resources Policy, in press).

intelligence team with three other people. They were all intelligence professionals from CIA and other agencies, and I was the outsider. My job was to bring the outsider view; to say, “That may be how it’s been done, but what’s the basis for that?” Somebody would say, “Well, the law says such and such.” I would say, “Show me where in the law it says that.” Or they’d say, “This is effective.” I’d say, “Show me the evidence for why it’s effective.” That was my role as the outsider: to know when I should be the apprentice, to learn from my colleagues, to acknowledge I don’t know how things operate, but also to be the skeptic and to say “Maybe we can do it differently.”

The 9/11 Commission came out with its recommendation in July 2004 to create a director of national intelligence [DNI] and a national counterterrorism center [NCTC]. There were thirty-nine other recommendations in the report as well. There was a lot of political pressure to act on the recommendations. The presidential election and the congressional elections were coming up, and national security was a major issue. The 9/11 Commission had a very prominent public persona, so there was some significant movement on Capitol Hill to try to pass legislation implementing the key recommendations.

In the Senate the jurisdiction over the intelligence reform legislation was given to the Homeland Security and Governmental Affairs Committee. It was given to that committee for several reasons, partly because it had jurisdiction over government reorganization generally. There was also a very strong relationship between the chair of the committee, Senator Susan Collins, a liberal Republican from Maine, and the ranking member, Senator Joseph Lieberman from Connecticut, a conservative Democrat. They had a very good working relationship, and I believe that the Senate leadership saw intelligence reform as a kind of Holy Grail of legislative activity. It had been tried numerous times, but had never been successful or successful enough. The thought was that if this were going to happen, they had to give it to a committee with a strong bipartisan character.

The only problem was that the Committee didn’t normally work on intelligence issues and therefore needed some expertise. The Committee staff approached the 9/11 Commission staff for assistance. It made sense for me to go over, since I was the person who had focused almost all my time on the Commission staff working on intelligence reform. So I went over with some colleagues and became one of the leading drafters and negotiators of the intelligence reform legislation, which was passed in 2004 and signed by the president in December 2004.

After working on that legislation, I stayed on the committee. In early 2005 I did what I call a road show, going to various intelligence agencies and think tanks in D.C. to lecture about the bill and explain the bill’s provisions, because so much of it is insider baseball. I also spent some time working on other committee business focused on Department of Homeland Security [DHS] oversight, because this committee received jurisdiction over much of the DHS. Then, in late August/early September, Hurricane Katrina hit, and this committee got jurisdiction for conducting the Senate’s inquiry into the government’s preparedness for and response to Hurricane Katrina. So I worked on that for six months or so.

Right now I’m between jobs. I left the committee staff this past Friday, and on Tuesday I’ll be joining the NCTC, which was envisioned by the 9/11 Commission and created by the

intelligence legislation. Anyway, this is a long-winded explanation of where I come from, or, as Professor Oettinger would say, who owns me.

Oettinger: I'd like to make a point harking back to something that Darryl said about using your precious time in the university to do some thinking and some writing. Gordon's use of that time helped him later on, but if you tracked the rapid movement both across jobs and, within the job, across tasks, it's not an inaccurate picture of the general fate of most congressional staffers, or for that matter, agency staffers, or consulting firms, or any number of other occupations that people with solid minds tend to be attracted to. You have damn little time to think about what you're doing and you have to live off the capital you form, so you've got to form it now because it's going to get harder and harder to accumulate intellectual capital. I think that's the point that Darryl was making and I'm just leveraging Gordon's account of his subsequent experience to reinforce that point.

Lederman: I second that wholeheartedly.

Let me talk a little bit about what the commission found in terms of intelligence, and then talk about the legislative process and the main provisions of the legislation. One of the rules when writing the 9/11 Commission report was you could only use five acronyms, of which one was CIA, one was FBI [Federal Bureau of Investigation], and maybe US was one of the others. The key in writing that report was to make it as accessible as possible. So if I happen to mention something and you don't understand, definitely flag that.

Let me start out with two basic overviews: one of the Goldwater–Nichols Act, and the second of intelligence generally. Goldwater–Nichols I knew a little more about since I had done this research. Intelligence was something I had to pick up on the fly when I was with the commission. So it's a combination of my impressions, what I read, what I learned from talking to people, et cetera.

The point about Goldwater–Nichols is that, as you know, there are the military services: the Army, the Navy, the Air Force, and the Marines. They are responsible for training and equipping troops and providing equipment for use in particular settings: the land, the air, the sea. The Army and the Navy have a long history, going back hundreds of years. Warfare, certainly up to World War II was, by today's standards, fairly simple in the sense that you could divide responsibilities among the media—the air, the sea, or the land—fairly easily. Obviously this is sort of somewhat stylized, but the Navy would bring the troops to land. They would disembark and go do their thing. There were no Navy airplanes or anything like that. Warfare in each service could operate as a coherent, autonomous entity.

Warfare changed with technology: the airplane and the growing complexity of warfare. It became pretty clear that you needed integration among the military services to accomplish combat operations in an effective and efficient manner. As Darryl showed in one of his charts, the Defense Department divided the world into various geographic commands and functional commands. They include EUCOM [European Command]; CENTCOM [Central Command], the command responsible for the Middle East; and NORTHCOM [Northern Command], which is responsible for the continental United States. These various geographic commands are responsible for employing the troops and the assets of the military services to accomplish

missions. Whatever Army troops are deployed to Iraq right now, such as the 82nd Airborne, and whatever aircraft carriers are floating off shore are all under the command of CENTCOM's combatant commander.

Before 1986, the combatant commanders were not particularly strong. The center of gravity in the military was really the military services. They were the most powerful actors in the Defense Department. They dominated the spirit of the Defense Department. As a result, military operations were not as effective and efficient as they could be. Congress became frustrated with that. There were several instances of military failures and even successes that were inefficient, like the Grenada invasion. So Congress, in its wisdom, passed the Goldwater–Nichols Department of Defense Reorganization Act in 1986, the idea being to recalibrate the balances (to use Professor Oettinger's term) or the tensions in the Defense Department. Instead of having the military services as the center of gravity, the idea was to shift it to the combatant commanders. They would have clear authority over the military assets from the services in their regions in order to employ them to accomplish missions.

Part and parcel of that was the idea that the Defense Department needed to develop a more joint character. "Joint" means interservice: the Army, the Navy, the Air Force, and the Marines working together. The Defense Department needed officers who could think of military problems and challenges not just from the perspective of their military service, but also from the perspective of the entire Defense Department. One way to accomplish that was to get officers from each service to serve outside of their service during the course of their careers, the idea being that if you serve in some entity outside of your service you'll start to see things from that entity's perspective. You'll start to look at your own service's perspective with perhaps a little more skepticism, or a little more sophistication, and a Defense Department-wide, joint culture can develop.

The way the legislation sought to accomplish that was to require officers who want to make flag rank to serve in joint duty assignments. Looking back fifteen or twenty years now, I think it's generally accepted that one of the most powerful pieces of legislation that has been written in the national security field was the single line in the Goldwater–Nichols Act that said: "If you want to make flag rank, if you want to be a general or an admiral, you must serve outside of your service." It's like Adam Smith's "iron hand" with the economy. It's all about incentives. If you structure incentives in a particular way, you can guide people to where you want them to go. This provision in this legislation was intended to get officers to have experiences that develop a joint mindset.

Oettinger: I want to make clear what this was trying to remedy by giving you two concrete examples. I have a good friend who was a one-star general in one of the services, and before Goldwater–Nichols he accepted an assignment that today would be regarded as a joint duty assignment. The chief of staff of his service told him that was the end of his career, because he was no longer regarded as a member of the service club. That's how harsh it was before.

Another example is that Gordon alluded to commanders and their responsibility for essentially fighting the battle using all the assets from the various services. Prior to Goldwater–Nichols, if a combatant commander had operational control over an officer from one of the services and this officer was not performing well or was committing some dereliction of duty or

whatever, the only way the commander could bring him to court martial was by going through that individual's service and having the service chief initiate the court martial. Again, Goldwater–Nichols changed that so that the combatant commander had more direct authority. Obviously, under the prior system your incentives were to please your service chief and the hell with the combatant commander. So that one line Gordon referred to produced a very radical change, mainly in the context of military careers.

Bieda: At the same time as Goldwater–Nichols did that for the combatant commanders, the service focus basically went from warfighting, or combat, to readiness: training and equipping. That's our function in the individual services: to be ready to fight for those combatant commanders. The combatant commanders do have some forces assigned to them, called "*in extremis* forces." The other forces are resident in the services, and when a particular plan or an action is called up those supporting squadrons and units get assigned to that combatant commander, just as Gordon said.

Lederman: Just to recap the Goldwater–Nichols model, basically you had an entity dominated by stovepipes, each one focused on its own particular mission, or its own particular discipline. But the problem that the entity faces is interdisciplinary, so therefore you need to strengthen the poles of the balance: the parts of the organization responsible for integrating across the entity to bring all instruments of that entity to bear against a particular mission. In the Defense Department context, it's the combatant commander, who is outside any single military service and is responsible for fighting the wars to accomplish the mission. So that's Goldwater–Nichols.

Let's move to intelligence and review what intelligence is in the first place: something that I think people could write lengthy tomes to define. Basically, there are different disciplines involved in collecting information. There is human source intelligence: collecting information from spies and informants. There is signals intelligence: collecting information via intercepting communications. There's imagery intelligence: collecting information from imagery. There are other types of disciplines and ways of collecting information.

The Senate committee staff put together this chart to capture the organizational structure of the intelligence community prior to passage of the legislation in a way that makes the point driven home by the 9/11 Commission (**Figure 1** – see http://hsgac.senate.gov/_files/OldIntelligenceCommunity.pdf). Basically, you had different agencies, and a concept called the intelligence community. Now ask yourself: what other part of the U.S. government is called a community, and what does the term "community" connote? There's the international community, the United Nations, the community of states. What does that mean? It means a decentralized society where there is little centralized authority. Things are done by consensus rather than by direction.

Prior to 9/11 you had the CIA, which is responsible for human source intelligence and also for all-source analysis, meaning analysis using information collected by all these disciplines in the intelligence world. Then you have different agencies such as the National Security Agency [NSA] to do signals intelligence or intercept communications, the National Geospatial-Intelligence Agency to do the imagery intelligence, et cetera. Those agencies are located in the Department of Defense [DoD]. Then you had the FBI, located in the Department of Justice under

the attorney general, and all the smaller players. Of course, DHS is relatively new and not pre-9/11, but this was the state of the intelligence community after 9/11 and before the legislation.

How do you integrate across the intelligence community? The three boxes at the bottom show some entities that were created, but they really weren't the center of gravity of the intelligence community. The center of gravity was really the agencies, the disciplines, the way you go about human intelligence and signals intelligence, et cetera. It sounds like the DoD prior to Goldwater–Nichols, where the center of gravity was the services, not the combatant commanders.

Oettinger: In a sense there are some significant differences. The five agencies under the DoD, as you described them, represent different disciplines, but serve somewhat similar ends. The rest of them, the ones to the right of the Defense agencies on the slide, fall under different departments and possibly serve rather different ends, so you can see that the issue of integrating is different from the disciplinary perspective versus the agency perspective. Or is that irrelevant?

Lederman: I think that is a very good point. This is sort of a side comment, like a footnote. When you go to someplace to work you have to figure out the lexicon that you deal with, and the level of abstraction. I jumped into the 9/11 Commission and I didn't know much about intelligence issues. I knew about Goldwater–Nichols, but even in a year and a half there is only so much you can do in terms of research. You can sort of drill down. When you go to Capitol Hill you have to figure out the most important things to focus on, because you're not going to have ten hours to brief the senator on all the details of everything. She wants to know the major thing that we're focusing on.

So what did the 9/11 Commission find? It found two things. First, as Professor Oettinger indicates, the center of gravity was the main collection disciplines: the CIA for human intelligence, the NSA for signals intelligence, the National Geospatial-Intelligence Agency for imagery intelligence, and the FBI with its domestic capability. The other capabilities could be pretty much left aside for the sake of argument. Why is that important? Darryl captured it articulately: that the nature of the threat has changed significantly from the cold war. It's fair to say that in the cold war the major focus of the intelligence community was on the Soviet Union, the Warsaw Pact: a slow, lumbering brute of a bureaucracy with tanks and missiles and factories to be counted. One of the primary tasks of the intelligence community was to warn of an impending nuclear attack. You could almost see it coming if you knew what to look for. If I'm about to punch you, you can see my arm winding up. The intelligence community devoted a lot of time to figuring what that windup would look like. Can we look at what the Soviet military forces are doing to figure out the indications of a nuclear attack? Also, the world was on pre-Internet time and had pre-Internet technology, so it operated in relatively slow motion compared to where we are now.

There was also a sharper divide than today between foreign and domestic. We had spies domestically, but it's not as though we had terrorists attacking us domestically. If you think of sports analogies, it was like baseball or football, in that your offense was out there on the field, they did their thing in relatively slow motion with bursts of activity, and then they came off the field and your defense—your domestic assets, your FBI—would go out on the field and play.

The nature of the twenty-first century threat is much different. As Darryl says, it's global, attacks come without warning, the threat rides the international infrastructure of finance and transportation, et cetera. It's really like trying to track needles in a global haystack. You need a quantum leap in real-time sharing of information among the different collection disciplines.

The commission found that sharing just was not taking place sufficiently in the intelligence community before 9/11. There was an entity called the Counterterrorist Center at the CIA that had sort of a nominal responsibility for leading the intelligence community's operations against terrorism, but it was basically a CIA entity. It did not fulfill a community-wide role. It was like having one unit of the Army have a DoD-wide role. You could see how it might approach issues from the Army's perspective and not be successful in rallying all relevant DoD entities for a DoD-wide mission, and the commission found that is in fact what happened to the CIA's Counterterrorist Center.

When you look at the types of capabilities that the intelligence community needs to counter terrorism, one way to think about it is that to fight terrorist networks the intelligence community needs to be its own network. What does that mean? It means that the community, or this collection of agencies, needs to share information and move resources at a very rapid pace. If the enemy is quick and nimble our intelligence assets need to be quick and nimble as well, sharing information across the agencies, and even, as Darryl pointed out, getting information from the private sector.

Professor Oettinger pointed out that in the military context people would think of their military services' needs first. In a setup where the intelligence community is dominated by the collection agencies, that's what would happen in the intelligence context. When it would come to key protocols for information sharing or for movement of resources, it was the agencies' needs that dominated in terms of personnel, information sharing, security, or technology. It was really an agency-specific basis, not community-wide.

What kind of capability are we looking for? We talked about baseball and football, but maybe now the analogy is more to hockey or to basketball, where you need seamless integration among the players. It's very rapid play. It's moving up and down the court—offense, defense—with the same players going back and forth. You don't have time to sub out your foreign-oriented agencies and move in your domestic ones.

Sports analogies are fine, but how about other analogies? One of the things that I thought about a lot about on the commission staff and also on the committee staff was the notion of the Internet. What we'd want to do is network the intelligence community as the Internet is networked. I have no claim to any technical knowledge, but my understanding is that the reason the Internet works is that when you go out and buy your computer with an Internet hookup, you don't say, "Maybe I'll design my own computer program just to hook up to the Internet, and then I think I'll convince the other three billion people who use the Internet to use my hookup." No, you use the one that everybody else uses, because your incentive is to connect, and it's that connectivity that makes the Internet work. Everyone has the incentive to use a common protocol.

That paradigm applies to the intelligence community. We want that community to be networked. What does that mean? It means that information, people, and resources can be moved across the community rapidly. That requires the protocols, the connections among the agencies, to

fit together seamlessly. What are those protocols? There's the budget: can money be moved from agency to agency? There's personnel: can personnel be put together in teams or in centers to focus on a problem regardless of what agency they're coming from? There's security: can we ensure that information can be shared and that people can talk to each other without undue security barriers, recognizing that there is always a tension between having maximum security and maximum sharing? You don't want to go to either side. The question is: where should the balance be, and who is making the decision?

It is these protocols that are so critical for integrating the intelligence community. But the commission found that this integration didn't take place, and that there was really no one in charge of the intelligence community with the power or the authority to integrate among all the agencies. Once again, returning to the Internet example, when you buy your computer, no one is forcing you to buy the computer language to link up with the rest of the three billion people who use the Internet. You have your own private-sector incentive to do that, because you want to connect. But the government context is different. The incentive structure is totally different. You can't count on the agencies to have the incentive to connect to other agencies as fully as they should. Of course they want to, but they prioritize their own needs, and that's certainly understandable, because they're the center of gravity. They have their own legitimate needs and requirements. So the commission's recommendation was, "You need someone with authority over the intelligence agencies to break down those barriers and to come up with the balancing among the different tensions—security versus information sharing, et cetera" and that person must have the authority to make decisions about integrating the intelligence community and to make those decisions stick.

There really wasn't anyone with that authority. There was an official called the director of central intelligence [DCI]; George Tenet, for example. The DCI basically had three roles basically. He was the head of the CIA, but also the nominal head of the intelligence community as a whole. So those were two roles. The third role was as the analyst-in-chief for the president. George Tenet would brief the president every morning about the latest news in the intelligence world. The commission recognized that was just too much for one person to do, for several reasons. Number one, you don't have time to do all those jobs. Number two, you have a fundamental conflict of interest between being the head of the CIA and being the head of the intelligence community. What happens if the CIA is competing with the NSA for resources? Can the DCI, as head of the CIA, adjudicate that properly? Even if he can, the NSA might not want to play, because it doesn't trust the DCI to be objective. So the commission recommended that these positions be split: that the CIA should have its own director, and that there should be a head of the intelligence community as a whole, separate from the CIA.

Another critical element was that even if you have a head of the intelligence community, you need to ensure that this person has enough authority to make decisions and make them stick. The DCI did not have that authority. If you read the National Security Act of 1947, as amended—the legislation creating the modern-day national security establishment after World War II—there are words in there about authority that the DCI had. But first of all, those words didn't necessarily translate into practice and to any real levers of authority, and second of all, there really wasn't much there in the first place. The commission found that the DCI lacked the most critical authority in government, and that's control over resources: control over the budget of the intelligence community, and control over the people. The DCI didn't have the authority to move

people or move money around from agency to agency to meet new threats. The commission said, “We need a DNI, separate from the CIA director, with the authority to network the intelligence community and develop these common protocols like security, personnel, and budget, so that the agencies can work together.”

It’s starting to sound somewhat like Goldwater–Nichols. How do you get the military services to work together? How do you get the different agencies to work together? Just as in Goldwater–Nichols, which strengthened the combatant commanders, the 9/11 Commission recommended the creation of centers to be responsible for integrating the intelligence community’s activities against certain targets. I mentioned before that the CIA had its Counterterrorist Center, and that the commission found it was a CIA center, not a community-wide center. So the commission recommended creating national intelligence centers, separate from the agencies, to be responsible for missions.

George Tenet said that he would convene a five o’clock meeting every day to find out what the intelligence agencies were doing against terrorism. Think to yourself, first, what CEO would convene a five o’clock meeting every day to find out what his corporation is doing on one business mission? Second, who else but the DCI has the mission of coordinating what the intelligence community was doing against terrorism? There really was no one below the DCI who was responsible for integrating across the intelligence community for terrorism or for any other mission. Various initiatives were tried over the years, but nothing ever proved successful. So the commission said, “Create these national intelligence centers, separate from the agencies, and they will be responsible for intelligence missions in particular areas.”

One final thing about the commission’s recommendations was that on terrorism specifically it recommended creation of the NCTC. Half of that center would be responsible for integrating intelligence community efforts related to countering terrorism. It would be like a national intelligence center for terrorism. The other half would have an executive branch-wide function, just as Darryl talked about. That function would be to integrate all instruments of national power to counter terrorism. The commission came out with its report, the ball was picked up by the Senate and the House, I moved over to the Senate and started working, and away we went.

Let me describe the process and then I’ll talk about the substance of what the legislation created. Congress is usually out of session in August, but the commission’s report was released in July, and there was a lot of pressure to act before the election. So we got to work quickly. Members of the Homeland Security and Governmental Affairs Committee were called back for eight hearings during August and into September. It’s very rare for Congress to work during its August vacation. The staff was working furiously. The committee held its markup session, which is when the committee gets together and reviews the legislation and votes it out of committee to send to the floor of the Senate for consideration by the full Senate. It was totally bipartisan. Senators Collins and Lieberman worked very closely together. The committee had the markup in September and voted the bill out unanimously. It was a very strong bill, very robust, specifying a lot of the provisions about the DNI and the NCTC.

The bill went to the floor of the Senate and there were about 300 amendments, because a senator can offer an amendment on any subject to any bill. If the bill is on intelligence, you can offer an amendment on grain production or whatever. The key in the Senate is that you want to

figure out what legislation is definitely going to be passed, and then you try to hook your amendment onto that legislation, because you know that bill is going over the goal line. Everybody saw this intelligence bill was going the distance because of the political environment, and we had 300 amendments to deal with. Fortunately, we managed to get hundreds of them knocked out through a procedural mechanism to declare most of them irrelevant. (I can go into that more if you're interested.)

We went to the mat on a number of key provisions about the bill. One segment of the Senate wanted to strengthen the DNI and make him even more powerful, but we thought it was too much. Other segments wanted to weaken the DNI, and we resisted that successfully. Finally, one segment, very powerful in the Senate, resisted the commission's recommendation to declassify the top figure of the intelligence budget. I'll talk more about that later in terms of the substance, but it was a big issue.

Oettinger: Isn't it 9/11 that galvanized the senators? Historically, except for a few involved in the committees, they didn't give a damn about this topic. So what got them exercised?

Lederman: Do you mean the declassification?

Oettinger: No. It's just that you've now described several issues on which senators had strong feelings. Is this because of 9/11? Earlier in our history, by and large this was considered a specialized topic, like chicken growing in North Carolina or something, and senators didn't pay much attention to it.

Lederman: Yes, I think it was 9/11. The 9/11 Commission had really raised the public profile of the issue and there was no question that this was happening. The only question was what the details would be. One of the smartest things the 9/11 Commission did—and I take absolutely no credit for this in any way; it was all Professor Philip Zelikow's, one of Professor Oettinger's former colleagues, who was the executive director, and the commissioners' idea—was to hold a series of hearings during the course of its investigation at which findings were released about various topics. That did several things. It forced the staff to come up with the findings early. It raised the public profile of the commission. It also—and you can't underestimate this—forced us to go through the process of getting information reviewed and approved for public disclosure. If you look at the congressional investigation after 9/11, they wrote their report, they finished, they gave it to the intelligence agencies, and they said, “Go declassify this and do it fast.”

The intelligence agencies said, “Whoa, it's going to take us a long time to go through that.” The commission wanted to avoid that problem and we got a lot of information approved for publication during the course of our investigations, so that when the report was due in July we basically could hit “print.” Anyway, because of all that the political environment dictated something was going to happen. The only question was what it would be.

We went to the mat in the Senate on the declassification of the top-line number of the intelligence appropriation—the budget if you will—and a few other things. Senators Collins and Lieberman won all of them against some of the most powerful members of the Senate, and the bill passed the Senate ninety-six to two.

The House of Representatives had some different ideas. Their bill had a more minimal conception of the DNI and the NCTC. It did not have declassification of the intelligence appropriation. But what it did have, which we did not have in the Senate as much, were provisions that covered a full spectrum of counterterrorism, immigration, law enforcement, and other topics. The House bill was a very wide-spectrum bill. The Senate bill was narrower.

Then it had to go to conference, as it is called. The House passes a bill, the Senate passes a bill, and they meet in conference to come up with a compromise version that has to pass both houses and then be signed by the president. That's the standard procedure.

We went to the conference, and it was awkward, because the leaders from the House were from the House Permanent Select Committee on Intelligence, but the leaders from the Senate were from the Homeland Security and Governmental Affairs Committee: two committees that didn't normally deal with each other. The Senate had a rather narrow bill: the DNI, NCTC, and relatively few other things were in there. The House bill had immigration, law enforcement, and all these other provisions that were quite controversial. We in the Senate had to figure out how to deal with all these provisions. We had to get all these other senators involved to help us look at them. The negotiations were extremely arduous, both on the other provisions and on the DNI and NCTC, especially on the DNI. Ultimately, Senators Collins and Lieberman compromised on the declassification of the intelligence appropriation. We had to give that up in order to get the bill. I can tell you, though, that Senators Collins and Lieberman would have walked away from the bill even at the last moment if they didn't feel the DNI's authorities were sufficiently powerful for the DNI to do the job.

The key for Senators Collins and Lieberman was to focus on what they considered the most important aspects in the legislation. We would of course have preferred to have the Senate bill, but that wasn't going to happen. So we focused on the DNI's authorities and the NCTC and its mission. Within them, we wanted to make sure the most important provisions were adopted. The Senate bill had all these different officials being created under the DNI. We said, "If the DNI is powerful, he or she will create those positions on his or her own. If the DNI is weak, the words in the legislation will not mean that much. These officials will be powerless." So we gave up on all these officials we wanted to create and we just focused on the DNI's authorities.

We finally reached a compromise with the House. It came down to a few words that the brilliant staff director of the Senate Homeland Security and Governmental Affairs Committee, Michael Bopp, came up with on a Sunday night, and Senator Collins negotiated it with the House of Representatives. Actually, the story is that she emailed Senator Lieberman on a Sunday night when he was at a concert at the Kennedy Center, and asked him, "Are these words okay?" He emailed back, "Yes," and that was it. The President signed the bill on December 17, 2004. That's the story of the legislative process.

Let me tell you about the substance of the legislation. The main thing to focus on is the DNI's authorities.

When legislation passes, you have the words on the page, and then you have the legislative history, which is all the stuff that Congress generates when passing the legislation. So you've got the hearings, the statements of the witnesses, the questions and answers, all the exhibits, drafts of the legislation that were produced, and the debate on the floor of the Senate with members of

Congress debating back and forth. You've got all the amendments that were filed, and then changed, reworded, rejected, or accepted, and all the members' statements explaining everything. As you probably know from reading the newspaper accounts about recent Supreme Court nominees, there's a whole debate about how much weight you give to the legislative history, but that's for the lawyers to deal with.

One of the key legislative history mechanisms is what's called a colloquy, which is when members of Congress explain what the provisions of the legislation mean. What's most important is when the authors of the legislation explain the meaning of the provisions. So you had a colloquy between Senator Collins and Senator Lieberman, and it explained the concept and theory behind the DNI, the authorities, and the NCTC [see appendix]. If you're looking for a five-page summary of the provisions and the theory behind it, that's really what to look at. I think you may also have fifteen pages from a Senate report released by the committee I worked for, and that gives an overview of Goldwater–Nichols in the Defense Department context and how it relates to the intelligence context.

Returning to the substance, you now have the job of the DNI separated from that of the CIA director. Instead of having three jobs, the DNI now has two jobs—the head of the intelligence community and the sort of analyst-in-chief function—but he's no longer head of the CIA. The new CIA director would handle that.

One of the biggest areas in dispute was the DNI's budget authority. A problem with this legislation is that it's total insider baseball, because if you read the legislation and the key provisions about the DNI nobody can understand what they are talking about. It requires some explanation of the context in which this debate took place.

What's the budget process in the executive branch? This is where the rubber hits the road. The big fight in the intelligence bill is not over the DNI's tasking authority. Everybody agreed that the DNI should be able to task. The fight was over the money, the resources, because that's what people care about. Norm Augustine, former chief executive officer [CEO] of Lockheed Martin and a former director of defense research and engineering, wrote a short book talking about his life as a public official. Clearly he's somebody who knows what he's talking about, with decades of experience. He had a list of maxims, and one of them was, "As in business, cash is king." You need to follow the money. Others say "The golden rule in government is that he who has the gold rules." Anyway, the point is that the key power the DNI needed to have was control over the money. If you look at the story of 9/11, you can see that the DCI, George Tenet, did not have control of the money and that the performance of the intelligence community suffered as a result.

Why did it suffer? We need to go into this dry exposition of the budget authority. So I prepare you in advance: it's boring.

Oettinger: There is a profound warning there. Whenever you read a newspaper story in *The New York Times* or *The Wall Street Journal*, and it says that something was done on a technicality, wake up! That's where the news story ends and the public stays uninformed, because that's about as far as the newspaper reporters think the readership will carry them, but it's where the real business really starts. Then you need to go to other sources to get the kind of story that you're

about to hear from Gordon. That's where the real stuff happens. Unfortunately, it tends to be ignored most of the time.

Lederman: Actually, one of the interesting things during this process was to read news accounts of what was going on and seeing what was right and what was not so right. I've been involved in briefing the press a lot on behalf of the committee, explaining various provisions of the legislation. It is a fascinating point. It's the money.

Congress has the power of the purse, but what does that mean in terms of the process? People in Washington say that there is not one budget: there are actually three budgets at any single time. There is the budget that the executive branch is spending now, there is the budget that Congress is considering for next year, and there is the budget that the executive branch is thinking about for two years from now that it is going to give to Congress to enact.

So there is this budget process that takes place. In the executive branch, the departments develop what's called their budget proposal. They say, "We have this threat. In the future we have to carry out these missions," and so the DoD says, "I need \$100," the DHS says, "I need \$200," and the Environmental Protection Agency [EPA] says, "I need \$300." A Harvard professor reportedly once said, "It's time that people—the media, government, and academia—start focusing on the *real* secretive agency in the U.S. government. It's not the CIA, or the NSA; it's the OMB, the Office of Management and Budget." It assists the president in developing the budget proposal.

So the Department of Defense comes to OMB and says, "I need my \$100." DHS says, "I need \$200." The EPA says, "I need \$300." OMB has to say, "We only have \$300 to spend in total. We have to allocate that money across the departments," and OMB comes up with the president's budget proposal. I can't remember exactly what day it is, but basically early in February of every year the president presents his budget to Congress. It just happened, and in the committee there was a flurry of activity where we were all reading this 800-page document about the DHS and trying to figure out what it said.

Congress gets the budget proposal from the president and then spends the next six months reviewing it, holding hearings, and figuring out what money to appropriate. The appropriation means that Congress enacts the appropriation bill to give the executive branch its money. So the executive branch sends its budget proposal to Congress, Congress reviews it and passes appropriations bills, signed by the president, that are legal documents. They allow departments to draw money from the Treasury. The appropriations bill has \$100 for the Defense Department, and that means that the secretary of defense can write a check for \$100 using the U.S. Treasury checking account.

The appropriations bill then goes over to the executive branch, but just because there is an appropriation doesn't tell you when the agencies get the money. If I'm going to pay you \$50,000 a year, does it mean I pay you \$50,000 on January 1, or \$50,000 on December 31, or maybe equal amounts every two weeks? The timing of the payment is something that the executive branch has to come up with. It's called an apportionment plan. OMB develops this apportionment plan in conjunction with the various departments. So you've got a budget request, appropriation by

Congress, and back to the executive branch for apportionment. Once the money is apportioned, you then have budget execution, which is how the money is actually spent by the agencies.

The DCI really did not have control over the resources in the intelligence community. What did that mean practically? If you look at the slide (Figure 1) you've got the CIA as a separate agency, and you've got all these other agencies that are in other departments. The ones we're focusing on, as Professor Oettinger noted, are in the DoD. The DCI basically controlled the budget for the CIA, because the CIA was a separate entity under the DCI. (By "budget," I mean what the proposed budget that would be sent via the White House and OMB to Congress for debate and ultimate passage in appropriations bills.) When it came to these other agencies, the DCI didn't have much control over their budgets. The DCI had to get the secretary of defense to sign off on the budgets of many of the other agencies. These agencies are in a bind. They answer to the secretary of defense, but they also answer to the DCI, so it's an inherent tension in the way the intelligence community is structured. The CIA doesn't have that tension because it's separate, but these others have in essence a dual chain of command.

So the appropriation for intelligence is passed by Congress, and then it's up to the executive branch to allocate it. This is where it gets to be total insider baseball. If the intelligence appropriation is classified, it means that the money for intelligence is hidden in the larger appropriations bills, because Congress cannot pass a classified bill. Everything it passes, all legislation, is public. On the flip side, if Congress passed a law that said that the intelligence appropriation is fifty cents, then everybody would know what it is. If Congress passed legislation that said, "The appropriation for the Defense Department is ten dollars; the appropriation for DHS is ten dollars; the appropriation for EPA is ten dollars, and the total U.S. government budget is forty dollars," forty minus thirty equals ten, and you would know what the intelligence appropriation was. That means that the appropriation for intelligence needs to be hidden in the other appropriations.

Maybe that doesn't sound so bad. But the appropriation for intelligence is hidden in the appropriations bills for other departments, and all agencies but the CIA are actually resident in other departments. That meant that the DCI didn't really have much control over the money, because the money was basically going through the secretaries of the departments to the intelligence agencies within them, and the DCI didn't have sufficient visibility into where it was going. Said more technically, the DCI did not have authority over the intelligence agencies' execution of their appropriation.

Why is that important? With the appropriation classified, you essentially cut the DCI out of budget execution. If I pay you your \$50,000 salary on December 31 you're probably not going to quit during the course of the year, because you want your money. If I pay you your salary on January 2, you might quit on January 3. So the timing of the payment is critical for controlling an agency's actions.

Also for example, let's say NSA had a program that cost \$100, and the DCI was not sure this program was going to work. He might want to say, "I'll give you \$50 for the program now. Show me it works, and I'll give you the other \$50." The DCI didn't have that control.

Let's say the program costs \$100, the DCI gives you \$50, you spend \$10, and the program is a complete failure. So you've got \$40 that you haven't spent and you're not going to spend

because the program is a failure. It would be nice for the DCI to know where that \$40 is in order to reallocate it. Let's say that there is a terrorist threat and the CIA needs a new gizmo to combat that threat. There is \$40 right there that the DCI could move, but if he does not know where the money is he can't possibly move it. That was another source of the DCI's weakness.

Then there's a third source. Let's say you allocate \$100 to the FBI, and the DCI says, "Because of terrorism we need more money in the CIA. I need to take \$50 from the FBI and move it to CIA." The DCI really couldn't move that resource. It gets back to that network idea. The legislation sought to remedy that problem by giving the DNI strong budget authority and the ability to transfer money and people across the community.

So, getting down to brass tacks, what are the DNI's authorities in the new legislation over the budget? We lost the battle over declassification. That's just the way it was going to go in order to get the legislation passed by the House of Representatives. As a result, the DNI was not going to have full budget execution authority. We tried to construct a process by which the DNI would still have as much control over the appropriation as possible even though the money is basically being passed through various departments. In the statute, we mandated that the apportionment process – meaning the process by which OMB says to the intelligence agencies, "You can write your check against the Treasury for ten dollars this quarter, ten dollars next quarter, and so on" – be done at the exclusive direction of the DNI. That power permits the DNI to control the timing of spending by the intelligence agencies. So when you read the legislation, you probably say, "I don't understand this stuff. The DNI clearly doesn't have enough authority." It's insider baseball, and it requires the DNI to use that authority, but it's in the legislation.

Another provision of the legislation is audit power, to provide the DNI with insight into how intelligence agencies are executing their appropriation. The DNI can audit where the money is going, so the DNI can know about that forty dollars left over from your failed program and move it to some other priority.

We also gave the DNI authority to move resources—\$150 million—across the intelligence community over the course of a year. The Senate bill and the White House wanted unlimited transfer authority. The House had a very low limit, so we fought over that and compromised on \$150 million. Also, when we thought about how much money the DNI really needs to move over the course of a year, we thought \$150 million was sufficient. We would have liked more, but we were satisfied with that.

This is the Collins–Lieberman chart of the new intelligence community (**Figure 2 – see http://hsgac.senate.gov/_files/IntelRestructuringChart.pdf**). You've got the DNI and the agencies—CIA, FBI, and a few of these DoD agencies. They're under the DNI, who has what you could call, to use the constitutional law analogy, enumerated powers. This is different from a department of national intelligence, where the secretary would control the entire department. The DNI has specific authorities, because most of these agencies are in other departments and the secretary of their own department has his or her own authority over them. The DNI has certain enumerated authorities, such as the budget, the reprogramming of money, some personnel authority, information technology, and security. It starts to sound like what we talked about before, in terms of those protocols linking up in the Internet analogy, so you can move resources, information, and people across the different agencies.

The national intelligence centers are also not mandated by the legislation. The DNI has the authority to create them if he wants. They are like the combatant commanders in the sense that the DNI could establish possible future national intelligence centers for geographic and some transnational topics. You could have a center for North Korea, let's say, and the head of that center would be responsible for integrating across these agencies for the mission of intelligence on North Korea. These centers could be large, they could be small, they could be temporary, they could be more permanent. This gets back to Professor Oettinger's paper, *Whence and Whither Intelligence, Command, and Control?* He talks about how you need to calibrate the balances, or the tensions, but they always change with new threats, new technology, innovation, new personalities, or whatever it may be. What we wanted to do here was give the DNI the flexibility to reallocate resources. Today terrorism is the major threat. What about tomorrow's threats? We didn't want to mandate a lot of things. We wanted the DNI to have the levers of power to be able to shift the focus of the intelligence community. We wanted to give the DNI the flexibility to move resources and create new institutions and get rid of old ones.

Oettinger: You've sensitized me now by taking us through much of where the money is and control of the money flowing with apportionment. The DNI has the authority to move the funds, but where is the authority to know where the funds are? I'm paranoid about that, because there are authorities all over the place saying "The agencies shall give information..." that have no teeth in them. Are there teeth so that the DNI can find out where the money is and can exercise this authority to move money and people?

Lederman: It's a great question. Maybe I'm the only one who finds this interesting, because of my legal training, but I found a difference in drafting legislation between words on the page that are just mere words on the page versus words on the page that are real levers of authority. There are words on the page that say the DNI can do audits and sort of follow the money, but it gets back to that notion of "he who has the gold rules" or that cash is king. We changed the wording from what was in the National Security Act. It had said that "The DCI develops the budget." We changed the wording to "determines the budget." The White House, the House, everybody involved, understood that meant it's the DNI who signs off on the budget proposal, rather than it being an agreement between the DNI and the secretaries of the departments in which intelligence agencies are located. The wording in the legislation is crystal clear.

Oettinger: It implies he knows what the amounts are.

Lederman: There are other words in the legislation about how the DNI gets information directly from NSA and from the various intelligence agencies, but the point is that if your boss is the one signing off on your salary, chances are you're going to give him information. Of course the DNI can just sign whatever paper is put in front of him by the agencies. No one can control for failure to perform one's job in a competent manner. The idea is that we're restructuring the incentives and the power relationships. It's up to the people who have the jobs to exploit the power, but if the DNI is the one who clearly controls the money, we hope that the agencies will turn around and start saluting. It remains to be seen in practice, and there are certainly countervailing pressures.

Some people critique the legislation and say “You didn’t give the DNI enough authority.” But what’s the alternative? If the legislation had said “We want to take all the agencies shown on the first chart (Figure 1) out of the Defense Department, put them under the DNI, give the DNI plenary authority, and create a department of national intelligence,” everybody would have said, “You’re creating a big bureaucracy. You’re weakening the Defense Department.” So it’s a balancing act between having the agencies be within other departments and trying to give the DNI these powerful enumerated authorities. Still, you put your finger on a clearly critical issue.

This slide (Figure 2) shows the office of the DNI, the new entity created. The DNI has his own staff. Then there are the NCTC and the National Counterproliferation Center—another center that was created. These centers are like the combatant commanders. They are sort of the “joint” part of the intelligence community, with people coming from the agencies to populate those entities.

Oettinger: Have they got their own appropriations, or do they have to beg on bended knees to the agencies?

Lederman: This is all under the DNI.

Oettinger: Does the DNI have a budget of his own?

Lederman: This is once again kind of insider baseball here. If you look at the structure and power dynamics of the pre-legislation intelligence community (Figure 1) there are many concentric circles involved. You’ve got organizational boundaries—the CIA, the NSA, the Department of Defense—and you also have budgetary boundaries. You had something called the National Foreign Intelligence Program. The DCI was the head of the intelligence community, but intelligence agencies inside the Defense Department were responsible for a dual mission. They had a national mission—providing intelligence for the president, et cetera—and they also served the tactical needs of the Defense Department. They were in the intelligence community, but their budget was split between the national mission—the National Foreign Intelligence Program—and the needs of their departments.

The legislation changed the name to National Intelligence Program to symbolize that you can’t divide intelligence between foreign and domestic anymore, because of the nature of the threat, as Darryl described. So the locus of the DNI’s greatest authority, when we talk about the money that he controls, is the National Intelligence Program. That isn’t necessarily synonymous with the intelligence community, because agencies in the intelligence community are dealing with more than just National Intelligence Program activities. For example, the Defense Department has its tactical intelligence activities.

Oettinger: If you go to the seminar Web site, you can find references and some detailed discussions of TIARA, which stands for Tactical Intelligence and Related Areas, which is the big hunk of the Defense Department money. I guess that remains, or is that now within the DNI’s authority?

Lederman: There were two major Defense Department intelligence programs: the TIARA programs and the JMIP, the Joint Military Intelligence Program. That’s a whole other story right

there. My understanding is that there is a new program, the Military Intelligence Program, that collects all defense intelligence activities. As Darryl said, these things keep evolving with new programs.

Let me move on to the NCTC, because I want to talk about that and then open it up to questions. The NCTC, as I mentioned, has two roles. It has the intelligence analysis and integrating function, and then it has this other executive branch-wide function. This other function responds to a problem that the commission identified, and Darryl said it better than I could: “Terrorism is an interdisciplinary problem. It requires all instruments of national power to be used against it.” That includes diplomacy, finance, the whole range. Who in the executive branch is responsible for that integration? The National Security Council [NSC] staff has a sort of integrative executive branch-wide focus, but the commission’s findings amounted to “We don’t really want the NSC staff involved in tactical operations. It just makes everybody nervous. There’s the Ollie North problem. We want to keep the White House out of operations. We just don’t want to go down that road.” Even more important, the commission found that the NSC staff should really focus on policy issues and strategy, and if they’re consumed with a more tactical or operational role they don’t have the time or the manpower for their policy and strategic role.

So the commission decided to recommend creation of a new entity that’s responsible for this integration across the executive branch. It will be the second part of the NCTC. It will be on the frontier of a Goldwater–Nichols for the executive branch. Just as in the Defense Department you have the military services—stovepipes—and you needed to strengthen the combatant commanders to integrate them to fight wars and to accomplish missions, and just as in the intelligence context you need national intelligence centers to integrate across the intelligence agencies, so you need an entity to drive integration across executive branch departments.

If you look at interdisciplinary threats, how do you integrate across the executive branch when the executive branch is dominated by very strong departments? Professor Oettinger’s paper goes into this. You can’t just do away with departments. You can’t do away with the military services. You can’t do away with the agencies. You need them all, but just because you need them doesn’t mean they should dominate. You need a balance between them and integrative mechanisms.

So how do we do a Goldwater-Nichols for the executive branch? What are other contexts in which this Goldwater–Nichols model for the executive branch comes up? In Iraq, you’ve got a U.S. military command structure and a U.S. civilian infrastructure. What integration is there between the two? Senator Warner, chairman of the Senate Armed Services Committee, said recently that we need to be thinking about a Goldwater–Nichols for the executive branch because the split is just no longer acceptable.

I spent several months on the Hurricane Katrina investigation. Who is responsible in the executive branch for integrating across emergency management functions to make sure you’re using all these assets in an efficient and effective manner? You can make different arguments, but what’s clear is that many government agencies need to have a role in emergency management. You need the various parts of the DHS. You need the Defense Department bringing in the MREs [meals ready to eat] and trucks and blankets. You need the Department of Transportation. You

need Health and Human Services to prevent disease. You need all these different departments as part of it.

So, returning to the NCTC, the commission report said, “Create this planning function under the DNI so that both the intelligence part of the NCTC and the planning part will report to the DNI.” In subsequent congressional testimony, the commissioners started to say, “Maybe the planning function should report to the president.” In the Senate, we felt that was the way to go because this planning function is really executive branch-wide. Why should it be under the DNI? It can include intelligence, but it’s far more than intelligence. Are you going to give the chief intelligence official responsibility for operational planning across the executive branch? It didn’t make sense.

The other catch is authority. If you remember the Defense Department model, combatant commanders command their assets to accomplish missions and fight wars. When the 82nd Airborne goes to Iraq it’s under the combatant commander. In the intelligence context, there are these national intelligence centers. The vision on the Senate side was that these entities would play an integrative function within the intelligence community. The commission didn’t recommend giving this planning function authority over the different departments in the executive branch. I think the commission thought that was a bridge too far. Similarly, in the legislation we didn’t give this planning directorate any authority to order any agency to do anything.

You can say “It’s weak. What power does it actually have in practice?” It has the power that now it answers to the president. The NSC staff doesn’t have any power either, but it has the proximity to the president. We’ll see how this plays out in practice. The hope is that this directorate of strategic operational planning, as it’s called, will bring together representatives from across the executive branch to figure out, “What plan can we come up with to ensure that we’re all on the same page and using the same playbook for counterterrorism operations?”

One example that the staff director of the 9/11 Commission would give, and that we gave in the Senate, was the hunt for bin Laden. Everybody agrees we should find bin Laden. No government agency says, “We don’t think we should be trying to get him.” There may be relative priorities. For example, if we think that bin Laden is hiding in a particular country, how hard do we press that country to catch him or enable us to catch him, even if that country’s government might be toppled? That’s a question that this planning directorate would surface to the NSC for resolution. Meanwhile, when it came to the actual operational coordination, the NCTC would ensure that all the agencies were on the right page.

There is a definition of what legislation calls “strategic operational planning.” I’ll read it. This is from Senator Lieberman, speaking in this colloquy that was handed out to you.

The legislation defines strategic operational planning to include ‘the mission, objectives to be achieved, tasks to be performed, interagency coordination of operational activities, and the assignment of roles and responsibilities.’ Examples of missions include destroying a particular terrorist group or preventing a terrorist group from forming in a particular area in the first place. Objectives to be achieved include dismantling a

terrorist group's infrastructure and logistics, collapsing its financial network, or swaying its sympathizers to withdraw support. Tasks include recruiting a particular terrorist, mapping a terrorist group's network of sympathizers, et cetera. Examples of interagency coordination include the handoff from the CIA to DHS or to the FBI of tracking a terrorist as he enters the United States, or coordination between the CIA and Special Operations Forces when operating against a terrorist sanctuary abroad.

That is Senator Lieberman's explanation of what this entity is supposed to do, and Senator Collins concurred in that. It's clearly something that needs to be fleshed out in practice, but there was really no one doing that effectively and on a sustained basis. These new functions really try to bridge the stovepipes in the executive branch.

I'll stop there and open it up to questions. You have been exceedingly patient and gracious after three and a half hours of listening to presentations.

Student: You mentioned that Goldwater–Nichols included the idea of operating in different services. To what extent is that going to be used in this new structure, or is that not included? For example, would you find CIA officers doing a shift at some other agency?

Lederman: The legislation does talk about that sort of personnel rotation. It gives the DNI that authority, and actually says that this authority is based on the Goldwater–Nichols model. But this is where we get back to the complication that we're not creating a department of national intelligence by taking NSA and the National Geospatial-Intelligence Agency out of the DoD and putting them in a new department. If we created a department of national intelligence with the DNI as the head, we could say, "Hey, do you want to be promoted in this department? You need to serve outside the CIA. You need to serve in another agency within the department." Because we didn't do that, we didn't know if we could actually mandate that. For example, if you work for the CIA and you want to be promoted to some rank in the CIA, do you need to work in NSA, which is in the DoD? We could have done it, but it was just a bridge too far. So the legislation has something there for a DNI who wants to make something of it, but it's not as clean as the Goldwater–Nichols approach because of the particular circumstances with which we were dealing.

Bieda: Did you consider potentially mandating movement from those agencies to support the manning of the various centers that were created? One of the places where you do have Goldwater–Nichols going on with the intelligence community is in the Situation Room of the White House, with staff from multiple agencies.

Lederman: There are two separate things. One is: can you mandate that, in order to be promoted in your intelligence agency, you need to serve in another intelligence agency? We put words like that in there. We said, "Look to Goldwater–Nichols," but it's not as clean as what Goldwater–Nichols says.

In terms of personnel transfer, the DNI has clear authority. When a national intelligence center is set up, the DNI can transfer 100 people to that center. Before this legislation, under the National Security Act of 1947 as amended, the DCI could transfer people only with the

concurrence of the head of the department in which the agency was located. We took out the provision that required the secretary's concurrence, so now the DNI does have some ability to transfer people among the agencies without getting the concurrence of the head of the department.

Student: Did the DNI have management authority over FISA [Foreign Intelligence Surveillance Act] in the original intent of the commission recommendation, or was it the result of a compromise between the Senate and the House bills?

Lederman: FISA governs domestic surveillance of agents of a foreign power. You can think of the intelligence community pre 9/11 as being divided along two axes. There was the divide between the CIA and the agencies in the Defense Department, something that Professor Oettinger alluded to, and then there was the foreign-domestic divide, say between CIA and FBI. The question with regard to FISA was “How much authority do you give the DNI to task domestic collection by the FBI?”

The 9/11 Commission's recommendation was not crystal clear about the relationship between the DNI and the FBI, and I could go into that. One of the interesting things in this whole process was that I worked on the commission report, staying up all hours of the night and seeing how it was written. The next day I showed up on Capitol Hill. The commission had done a good job of distributing its report to everybody. All the staffers were sitting around scrutinizing each page and saying, “Well, it says ‘the’ here rather than ‘a.’ I don't know; what are we supposed to conclude from that?” They were all scrutinizing it as though it were the Bible, but I knew how it had been written. Then I went from that to working on the legislation to see how that was written and then watching everybody parse the words of the legislation.

Oettinger: It's like looking too closely at the making of sausage.

Lederman: Exactly. Bismarck said that there are two things you don't want to see made: sausage and legislation. There is actually a third thing, which is commission reports.

To get back to your point, the commission was a little vague on what to do with the FBI. I think it's fair to say that in Congress there was more squeamishness about bridging the foreign-domestic divide than there was about bridging the CIA-DoD divide, and that's because of concerns about civil liberties. On the Senate side, we were more comfortable with bridging the foreign-domestic divide, because of the creation of a civil liberties board. That was also recommended by the 9/11 Commission, and Senator Collins and Senator Lieberman were big supporters of it. The idea was that if we're unifying the intelligence community, and integrating it, we need a civil liberties watchdog to make sure everything is being done in the most appropriate way possible. The Senate bill included that board; the House bill did not. That was actually a pretty big fight, but we managed to get the House to accept a board.

Oettinger: There is now a civil liberties officer reporting to DNI's general counsel.

Lederman: Right. That's a different thing. There is a civil liberties officer under the DNI, but there is also the civil liberties board that was created—sort of an executive branch-wide board.

For FISA the idea was that the DNI is not really supposed to get involved too much in the actual day-to-day operations of any of the agencies. The DNI should be at a higher level. But the DNI needs to be able to task collection, both foreign and domestic, so we gave the DNI the authority to manage collection under FISA. Actually, we deleted the prohibition on the DCI's doing that management, so that the DNI could say, "Our intelligence from abroad shows that there is a terrorist cell operating in New York. We need domestic resources on that problem, even if we need to take them away from Los Angeles." If the DNI can't do that, we've got problems. That was the idea behind giving the DNI the authority to manage the FISA collection process. That is different from the process by which any particular warrant is issued.

What is FISA? You've probably seen FISA in the news lately in connection with this NSA wiretap issue. FISA is the statute that governs how the executive branch gets a warrant for conducting surveillance on agents of a foreign power. Basically the executive branch goes to judges who operate a secret court, they approve a warrant, and then the executive branch goes out and does the surveillance. The DNI wouldn't be the one to decide "We need to conduct surveillance on Joe, and I'm going to apply for a FISA warrant on behalf of the government." That's the job of the FBI and the attorney general. The allocation of resources is the DNI's role.

Student: You talked about the debate on declassifying intelligence appropriations. Did those who were opposed to declassification want to undercut the power of the DNI, or was there another reason why one might want to have the appropriations classified? What would that other motivation be?

Lederman: That's a great question. One of the things I was not happy about with the commission report was that the commission recommended declassifying the appropriation by using the argument that the public has a right to know how much money we're spending. In fact, the commission went further. It said "Not only should you declassify that top number—\$100—but you should also declassify the top number for each agency: \$50 for agency X, \$15 for agency Y, and so on." They never said you should declassify the whole budget—all 800 pages of it or whatever—just those top numbers. They said "The public has a right to know what that tip-top number is and how it relates to all our other priorities. Are we spending \$1,000 on the DoD and \$5 on the intelligence community? Maybe it needs to be more. If we're spending \$100 on DoD and \$150 on the intelligence community, what are we getting for our money?" It was that sort of thing. You can see that people can start to make judgments on the basis of the relative amounts. In terms of the next level down—the agency total number—remember that the agencies are divided on the basis of collection disciplines. People could start saying, "We're spending *how* much money on the NSA compared to *how* much on the CIA? Shouldn't it be different? What does this say about our priorities in terms of how much we're spending on what type of collection discipline?"

As I said before, in my opinion the real reason to declassify the budget is the DNI's power, and I think that's what really sold Senator Collins and Senator Lieberman. It's total insider baseball. It's an issue of DNI authority and how much power he has, because control of the money is power. If you declassify the appropriation and the appropriation is going straight to the DNI, it doesn't have to go through those other departments and the DNI can have total control over it.

What was the resistance to it? During the House-Senate conference to resolve differences in the bill there was an initial meeting of the members. It was somewhat a formality but not totally. Then the staff met for a negotiation session. The first real negotiation session started out over some of the language, but it basically got into this big theoretical, philosophical fight, and we spent a lot of time on the appropriation. The arguments they made were, “You’re going to harm national security if you release this number.” That argument certainly didn’t speak to the sixty-five senators who voted in favor of declassification.

Then they said, “You don’t need to give the DNI the appropriation, because when you send the appropriation through the departments, it’s just a mechanical process. They don’t mess with it. The departments just read the law, they allocate the money, and there’s no problem.” I said, “If it’s so mechanical, why do you care whether it goes to the department? Let it go to the DNI.” They had no answer, because it’s not mechanical. So you have to make your own call about motivation. Personally I think the issue was the DNI’s authority.

I should also mention that Collins and Lieberman did not favor declassifying the appropriation at the level of each agency. The recommended declassification was only that top number. The Senate bill never had that next layer down, where you could compare the money given to each intelligence agency. That wasn’t even on the table.

Student: How does the position of the DNI affect the CIA’s ability to muster the military branches’ intelligence agencies for support in their operations and hence also get the military branches to support those operations? Can the DNI bridge that gap as well, or is the DNI’s position really only over the specific agencies, such as the NSA and the DIA? Does it even relate down to the military branches?

Lederman: I can’t really get into the details, but basically one way to think of the DNI’s authority is like concentric circles. The locus of the DNI’s greatest authority is the old National Foreign Intelligence Program, now the new National Intelligence Program. The DNI has the utmost authority over whatever is being funded by that program. The next level out is organizations in the intelligence community, or anybody who is not funded by the National Intelligence Program. The DNI has (I’m trying to remember the details) some tasking authority over those entities. It depends on who is paying for them. The DNI doesn’t have tasking authority over every entity in the entire U.S. government that somehow deals with intelligence. A great example is the DHS, which has about 180,000 people. That’s basically 180,000 collectors: customs agents, immigration agents. That’s a massive intelligence collection resource. The DNI doesn’t really task the customs service, but they need to be working in collaboration. Sorry; it’s kind of a vague answer.

Student: It seems like there’s some place for the first DNI to determine how the words on the page materialize in terms of real teeth. How much of your insider perspective would you be prepared to share on how and when John Negroponte was selected and how he’s fulfilled the expectations of the people who drew up the legislation?

Lederman: This is not the answer you want, but I’m going to have to respectfully decline to answer. First of all, the committee that I worked for had jurisdiction over the legislative process for the intelligence legislation, but the jurisdiction went back to the intelligence committee in the

Senate to do oversight. The committee that I was working for this past year had some moral authority because of Senators Collins and Lieberman as the bill's authors, but aside from the DHS's intelligence capabilities we weren't conducting congressional oversight. It went back to the Select Committee on Intelligence in the Senate. So that's the first thing.

The second thing is that I'm actually going to work for the government next week, so I can't really comment on anything about that. Sorry to disappoint, but it's just the nature of the constraints.

Student: Could you go into a little more detail about how exactly the classification or declassification of the top-level budget amount affected the DNI's power? I'm not particularly well-versed in the specifics of government, but it seems to me that as long as the DNI knew how much money there was and knew when he was going to get it, whether or not that number was available for public consumption wasn't that important.

Lederman: One way to think of it is that if the appropriation were declassified, the DNI would definitely know where all the money is going because the money would go to him, and he would be the one to allocate it and direct its execution. But when you combine intelligence agencies being located in other departments, with the money going through those departments to the intelligence agencies resident within them, with the DCI's not having the authority to determine the budget in the first place or to tell OMB how to apportion, the DCI really just wasn't a player in that. Admittedly, this is all stylized. He had some role. He had some knowledge, but not at the level where it needed to be. So I think it's a composite of different factors: the agencies' being in the departments, the departments' getting the money via the appropriation, the DCI's lack of legal authority, and the departments' not really wanting the DCI to be very involved.

The legislation doesn't change all those factors. The legislation does not give the appropriation directly to the DNI; declassifying the intelligence appropriation would have done so. But we changed the DNI's role in the budget formulation to give him clear authority. We gave the DNI authority over the apportionment. We changed the DNI's role to be able to access information. It's not perfect, and that's why we wanted declassification in the first place, but the hope is that this would be sufficient to give the DNI as much visibility and control of the money as possible. It's not a replacement for total declassification.

Student: It seems there are some procedural roadblocks set up there. It's not simply visibility and power. Under the previous system, were there extra complicating factors? It's not as simple as saying, "This is the budget for intelligence this year." Presumably the DNI would know what that number is and would funnel it through these other channels so that it's not readily visible.

Lederman: Where the rubber meets the road on this is not the top-level number: it's how you spend the fifty dollars I gave you for that program and how you get that money. Is it every quarter, every week, at the end of the year, or at the beginning of the year? It's that micro level. The DCI may have had visibility into the large numbers, but it was at the lower level, where the flows of money are really sort of tentacles of control, where the DCI wasn't a real player. Again, this is stylized. The DCI had some visibility. He had some role. But it really was not sufficient. Think of a corporation and how a CEO would control money. It wasn't the same. Look at the 9/11

Commission report. Money wasn't moved and personnel resources weren't moved to meet the terrorist threat.

Oettinger: Thank you very much for a great presentation. Here is a small token of our large appreciation.

Lederman: I'm not sure what help I can give in terms of getting into any of these agencies, but if you have any career questions or whatever feel free to get in touch with me through Professor Oettinger.