

but two—hearings before the Senate Judiciary Committee.

He has been candid and forthcoming in answering countless oral and written questions from the Judiciary Committee. And he has met one-on-one with numerous Members—both Republican and Democrat.

And now it's time that Brett Kavanaugh gets the fair up-or-down vote that he's been waiting on for 3 years.

Later this morning, the Senate will give him that vote. We will fulfill our constitutional duty of advice and consent.

Over the last few weeks, we've heard a lot about his sterling credentials and professional experience.

He is a graduate of Yale College and Yale Law School and was awarded a prestigious Supreme Court law clerkship.

He has an extraordinary range of experience in both the public and private sectors.

He has dedicated more than 16 years to public service—as an appellate lawyer, a prosecutor, and an Assistant to the President.

He has argued both civil and criminal matters before the U.S. Supreme Court and appellate courts throughout the country.

And he has received the American Bar Association's stamp of approval to serve on the Federal bench on three separate occasions.

Brett Kavanaugh is respected in the legal community for his keen intellect and legal prowess. And he has earned the reputation as a man of integrity, fairness, and honesty.

In a larger sense, today's vote is about more than just Brett Kavanaugh as an individual nominee. Today's vote is another sign of progress for the judicial nominations process.

The Senate is continuing on a path we began a little more than a year ago. At that time, the Senate turned away from judicial obstruction and advanced the core constitutional principle that every judicial nominee with majority support deserves a fair up-or-down vote.

I am proud of the Senate for continuing on this path—for fairness, for principle, for the Constitution.

And I urge my colleagues to support the nomination of Brett Kavanaugh.

Mr. LEAHY. Mr. President, have the yeas and nays been ordered?

The PRESIDENT pro tempore. The yeas and nays have not been ordered.

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. ISAKSON). Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Brett M. Kavanaugh, of Maryland, to be United States Circuit Judge for the District of Columbia Circuit?

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from North Carolina (Mrs. DOLE) and the Senator from South Dakota (Mr. THUNE).

Further, if present and voting, the Senator from North Carolina (Mrs. DOLE) and the Senator from South Dakota (Mr. THUNE) would have voted "yea."

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER), the Senator from North Dakota (Mr. CONRAD), the Senator from Hawaii (Mr. INOUE), the Senator from West Virginia (Mr. ROCKEFELLER), and the Senator from Colorado (Mr. SALAZAR) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 57, nays 36, as follows:

[Rollcall Vote No. 159 Ex.]

YEAS—57

Alexander	Crapo	Martinez
Allard	DeMint	McCain
Allen	DeWine	McConnell
Bennett	Domenici	Murkowski
Bond	Ensign	Nelson (NE)
Brownback	Enzi	Roberts
Bunning	Frist	Santorum
Burns	Graham	Sessions
Burr	Grassley	Shelby
Byrd	Gregg	Smith
Carper	Hagel	Snowe
Chafee	Hatch	Specter
Chambliss	Hutchison	Stevens
Coburn	Inhofe	Sununu
Cochran	Isakson	Talent
Coleman	Kyl	Thomas
Collins	Landrieu	Vitter
Cornyn	Lott	Voinovich
Craig	Lugar	Warner

NAYS—36

Akaka	Feinstein	Menendez
Baucus	Harkin	Mikulski
Bayh	Jeffords	Murray
Biden	Johnson	Nelson (FL)
Bingaman	Kennedy	Obama
Cantwell	Kerry	Pryor
Clinton	Kohl	Reed
Dayton	Lautenberg	Reid
Dodd	Leahy	Sarbanes
Dorgan	Levin	Schumer
Durbin	Lieberman	Stabenow
Feingold	Lincoln	Wyden

NOT VOTING—7

Boxer	Inouye	Thune
Conrad	Rockefeller	
Dole	Salazar	

The nomination was confirmed.

The PRESIDING OFFICER. The President will be immediately notified of the Senate's action.

**GENERAL MICHAEL V. HAYDEN TO BE DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY**

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to a vote on Executive Calendar No. 672, which the clerk will report.

The legislative clerk read the nomination of General Michael V. Hayden, United States Air Force, to be Director of the Central Intelligence Agency.

Ms. MIKULSKI. Mr. President, there are five criteria I use to evaluate all executive branch nominees: competence, integrity, commitment to the core mission of the department, com-

mitment to the Constitution, and independence. Based on what I know about General Hayden after working closely with him for more than 5 years, and based on his testimony last week, I will support his nomination to be Director of the Central Intelligence Agency, CIA. I have no question about his competence or personal integrity and expect him to remain an independent voice, committed to the Constitution not just with words but with deeds.

My confidence in General Hayden should not be interpreted as confidence in this administration. I have flashing yellow lights about the Bush administration's willingness to politicize this important intelligence agency. I am also concerned that this administration sometimes pays lip service to the law of the land, as we have seen with recent revelations about the warrantless surveillance program.

In more than 35 years as military intelligence officer, General Hayden has clearly demonstrated his competence, both in his work as Director of the National Security Agency, NSA, and as Deputy Director of National Intelligence. He led NSA at a critical time in the Agency's history, as the United States took the offensive against those who had attacked us. He inherited an agency that needed to be transformed: from its Cold War orientation, from analogue to digital, from concentrating on the Soviet threat to looking at multiple threats and nonstate actors. He accomplished this transformation at breathtaking speed. As Deputy Director of National Intelligence, General Hayden helped stand up a brand new intelligence organization, recruiting a top-notch team, breaking down "stove pipes" between agencies, and helping to unify the entire intelligence community.

I have known and worked closely with General Hayden since 1999, when he came to NSA. I have no question about his personal integrity. He has always been a candid reformer. But recent revelations about the warrantless surveillance program have raised serious questions: questions about the integrity of surveillance programs that may have side-stepped the law; questions about a decision at the highest level to keep most members of the Senate Select Intelligence Committee in the dark about these programs; and questions about whether a candid reformer has become a cheerleader for this administration. I discussed my concerns with Hayden during the confirmation hearing, and he promised to "speak truth to power." I take him at his word, but the proof will be in his deeds.

I have no question about General Hayden's commitment to the mission of the intelligence community. He has worked in almost every aspect of collecting and analyzing intelligence. But his expertise is technical intelligence, known as signals intelligence, SIGINT, and the CIA is our Nation's lead agency for human intelligence, HUMINT.

These two disciplines have very different challenges, different technology, and different cultures. Many have asked if a SIGINT expert is the right choice to lead a HUMINT agency. General Hayden addressed this question in our hearing. He believes his long career in intelligence has prepared him for this challenge. He has a plan to improve HUMINT tradecraft and develop common standards among all HUMINT agencies, including the Defense Intelligence Agency. He will also invest in research and development of the cutting-edge technology our men and women at the CIA need to accomplish their mission. General Hayden has promised to focus our human intelligence activities on understanding tomorrow's threats, not just responding to today's headlines. I believe he will bring to the CIA the same leadership, passion for reform, and respect for our intelligence workers that he brought to the NSA. He will be a strong advocate for the CIA as it struggles to redefine itself.

I have two flashing yellow lights about this nomination. First, I have serious questions about the Bush administration's commitment to protecting the Constitution. Second, I believe that we need a CIA Director who will be independent.

I believe General Hayden is committed to protecting the Constitution while he works to protect our country from terrorists. But I am concerned that others in this administration pay lip service to the law of the land. We all take an oath when we take office. We swear to support and defend the Constitution of the United States. We don't swear to a President or to a party. We know there are real threats, predators, actors who want to kill Americans. And we know that some of the tools that keep us safe must remain secret. Which is why our commitment to the Constitution is more important than ever. We can not protect the American people and ignore their Constitution when nobody's looking. Support for the Constitution must be more than lip service. We need a real commitment to put the Constitution first. The Framers gave Congress the responsibility for oversight over the President's policies. We must be informed about significant intelligence activities, as the law requires, so we can exercise our responsibility to protect the Constitution as we protect our Nation from the threats we face.

I am very concerned about the independence of the CIA. We need an independent voice at the CIA, someone who is willing to speak truth to power to whomever is President and also to the congressional oversight committees. The last few years have been difficult ones for the CIA, in part because American people have lost confidence in its leaders. The Agency has had too many "yes" men, too few independent voices. I asked General Hayden how he would avoid another Powell, when our distinguished Secretary of State was sent to

the United Nations with wrong information, because CIA analysis had become too politicized. General Hayden said that his job at the CIA will be to let intelligence analysts do what comes naturally: provide unvarnished intelligence analysts, independent of political concerns. He said, "My job is to keep anything from getting in the way" of their work. He promised to consider implementing a dissent channel to allow intelligence workers an avenue for expressing their concerns without leaking classified information to the press.

In conclusion, Mr. President, I believe General Hayden is qualified to lead the CIA, and I will vote for his confirmation. But I have serious concerns about how the Bush administration has politicized this important intelligence agency. The Senate Select Committee on Intelligence must keep a close eye on the CIA as it struggles to redefine itself and its role in our reformed intelligence community.

Mr. KERRY. Mr. President, I opposed the nomination of GEN Michael Hayden to serve as Director of the Central Intelligence Agency.

General Hayden has many qualifications as an intelligence professional, but I am sad to say that he is the wrong person for the job.

Over the last years, the abuse of the CIA by the Rumsfeld Pentagon and the Cheney White House has hurt our national security and our credibility around the world, as the CIA was bullied into becoming a client of administration ideologues, yielding unfounded claims of "slam dunk" evidence for mythical weapons of mass destruction in Iraq.

I am not confident that General Hayden is the person best equipped to restore the CIA's independence and credibility, not just because he comes from Secretary Rumsfeld's Pentagon but because he was the Administration's principal spokesperson and defender of an illegal domestic spying program.

We are reminded again and again of the administration's determination to keep the extent of their illegal domestic spying program secret. All we have to do is look at the news that the Department of Justice abruptly ended an investigation into the conduct of Department lawyers who approved the program—not because the approving lawyers were cleared of wrongdoing but because investigators were denied the information to conduct the investigation.

The question before us is not whether we are committed to destroying terrorists and preventing terrorist attacks before they happen. We all are. In fact, we can wage and win a far more effective war on terror. No, the question is whether we can restore checks and balances between the executive and legislative branch and what can be done to restore accountability for an administration that too often appears run by people who hold themselves above the law. How many times will Government

secrecy shield decisionmakers from any kind of accountability?

The fact that General Hayden was the key architect and, more recently, the principal defender of a program that listened to phone calls of Americans without a warrant, a program the administration refuses to come clean about, resides at ground zero of this debate.

The goal of General Hayden's program was appropriate: to find al-Qaida operatives who would do us harm. But the administration, instead of relying on the consent of the people through the American Congress and the court created under the Foreign Intelligence Surveillance Act, chose, unnecessarily, to assert the President's unfettered authority as a war-time commander to execute this program.

We must use every tool at our disposal to protect America. But the administration has no reason to assert unchecked Executive power when Congress is more than willing to work to create the mechanisms to keep America safe while we still preserve our essential liberties.

America has been the strongest, safest, most secure Nation on the planet for more than 200 years without ever having to choose between security and freedom. We can have both. But it requires an executive branch that respects the co-equal branches of Government. After the terrorist attacks of September 11, 2001, the Nation was united behind the President. Congress was—and is—prepared to do anything necessary to win the war on terror and ready to work with the President. If President Bush believed the domestic eavesdropping laws were insufficient, then all he had to do was ask Congress to improve them immediately. But the President didn't do that. Instead, he decided he was above the law.

General Hayden was the architect of that plan, and to this day he clings to an unnecessarily expansive interpretation of Executive power. That is not what America needs in the next Director of the Central Intelligence Agency.

We take our civil rights very seriously—and we should. It is our heritage and our birthright—one generation's gift to the next, earned in the blood of Americans since our revolution.

The mistrust, the anger, the lack of confidence so many Americans feel about this program is a reflection of our love of liberty. Regrettably, it is also the result of the way this administration has conducted itself: asserting its right to act by executive branch dictate because we are a nation at war. In one moment, the President of the United States says we are not listening to domestic calls without a warrant; in another, the Attorney General says he can't rule it out.

We are a nation at war with global jihadists, a war that, as the Department of Defense calls it, will be a "long war." Ad hoc and secret solutions to issues that demand a reasoned balance between security and the freedom of

law abiding Americans cannot simply be handed over to the executive branch—of any party.

This Congress has much work to do before we can say we have effectively insisted on that balance and done our duty. Before we do, it would be a mistake to support General Hayden's nomination.

Mr. KENNEDY. Mr. President, I intend to vote against General Hayden.

I respect General Hayden's lifetime of public service, and his testimony included some encouraging signs that he learned important lessons from the way intelligence was used to defend the Iraq war.

However, I cannot support General Hayden's nomination in light of the very serious questions about the scope and legality of the NSA domestic surveillance programs that he helped design, implement, and defend.

Until there is a full accounting of the surveillance program, I cannot in good conscience support a promotion for its chief architect.

We all want the administration to have strong leaders and the necessary means to gather the best possible intelligence for our foreign policy and national security, especially the war on terrorism.

Those critical goals require a Director of Central Intelligence who will work with Congress—not against us—in our efforts to prevent terrorism and improve our national security laws. We must protect the country while preserving our constitutional freedoms.

Mr. THUNE. Mr. President, today the Senate will vote on confirmation of three of President Bush's nominations. Once again, the President has nominated experienced, well-qualified individuals who deserve confirmation by the Senate.

The President has nominated Brett Kavanaugh to serve as a judge on the U.S. Court of Appeals for the DC Circuit. Mr. Kavanaugh has extensive experience in the law, having formerly served as a law clerk to Supreme Court Justice Anthony Kennedy. He later served as Associate White House Counsel, where he worked on a wide variety of legal and constitutional issues. Mr. Kavanaugh also practiced law as a partner in the Washington, DC, law firm of Kirkland & Ellis, and most recently serves as Assistant to the President and staff secretary at the White House.

Yesterday I voted in favor of the motion to invoke cloture on Mr. Kavanaugh's nomination, which now allows the Senate to give him an up-or-down vote. I am pleased that the Senate will now be allowed to vote on Mr. Kavanaugh's nomination, and I hope the Senate will continue to give fair up-or-down votes to the other well-qualified judicial nominees the President forwards to the Senate.

The President has also nominated GEN Michael Hayden as Director of the Central Intelligence Agency. General Hayden is a career Air Force officer

with a distinguished history of service to our country. His previous service as Director of the National Security Agency will serve him well in his new role at the CIA, where I believe he will continue to be a strong leader in service to our Nation.

Finally, the President has nominated Gov. Dirk Kempthorne to serve as Secretary of the Department of the Interior. Governor Kempthorne has an impressive career in public service, having served as a United States Senator representing the State of Idaho in this body for 6 years. I am confident that his career of public service and his Western State perspective will help him be an effective and responsible steward of our country's public lands, waters, and other natural resources.

Unfortunately, a family obligation prevents me from being present during these votes. However, I support each of these nominees and, if present, would vote to confirm them. I therefore ask that the record reflect my support for each of these nominations.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

• Mrs. BOXER. Mr. President, had I been present to vote on the nomination of Gen. Michael Hayden to be Director of the Central Intelligence Agency, I would have cast a vote of "no".

I oppose General Hayden's nomination because of his role in the administration's program to conduct warrantless electronic surveillance on U.S. persons—a practice I believe is unlawful under the Foreign Intelligence Surveillance Act.

During his nomination hearing before the Senate Intelligence Committee, General Hayden admitted to participating in the design of the electronic surveillance program during his tenure as director of the National Security Agency. And as the Principal Deputy Director of National Intelligence, General Hayden became the chief advocate for the electronic surveillance program, even taking the unusual step of appearing before the National Press Club to defend the Administration's program.

We are all united in fighting terrorism, but we can do it in a legal and constitutional way that gets the bad guys and protects our values and freedoms.

While I oppose the nomination of General Hayden because of the controversy surrounding the electronic surveillance program, I wish him the very best and hope that he will turn out to be a strong and independent leader at the CIA.

But I also hope that the Intelligence Committees in the House and Senate will conduct careful and thorough oversight over General Hayden and the CIA to ensure that the civil liberties of U.S. citizens are protected. •

Mr. NELSON of Florida. Mr. President, today I voted to confirm the nomination of General Michael Hayden to be Director of the Central Intel-

ligence Agency replacing my friend and Florida colleague Porter Goss. I voted to confirm General Hayden based on his impressive record as a career intelligence officer in a broad spectrum of strategic intelligence activities and programs. He is widely regarded as one of the most qualified intelligence planners and managers among military or civilian intelligence professionals.

Despite my vote in favor of his confirmation I remain deeply concerned that recent revelations regarding domestic intelligence collection by the National Security Agency may have violated our laws. In hearings before the Senate Select Committee on Intelligence General Hayden often deferred questions about the program, the President's and Justice Department's statements about the program, and his own involvement in the NSA's activity to closed sessions. My Intelligence Committee colleagues pursued these questions and ultimately recommended approval of the nomination on a bipartisan 12-3 vote. I still have many questions about this program and how it was conceived and operated, and I will continue to seek answers to them. However, General Hayden has sufficiently demonstrated his objectivity, independence and openness that I am comfortable with confirming his nomination.

Given the threats our Nation faces today and challenges that our intelligence system has had coping with those threats, General Hayden should bring to this position much needed efficient, effective and, most importantly, independent leadership and management. That should be good for our intelligence agencies and good for the Nation.

Mr. JEFFORDS. Mr. President, I am casting my vote today in favor of GEN Michael V. Hayden to be Director of Central Intelligence. General Hayden has a strong background in intelligence. He has spent his career in national security and particularly intelligence, serving as Commander of the Air Intelligence Agency and as Director of the National Security Agency. General Hayden has served overseas in leadership positions with the U.S. Government in South Korea and Bulgaria, and is currently Principal Deputy Director of National Intelligence, serving directly under Director of National Intelligence, John Negroponte. General Hayden was straightforward in his answers to tough questions during his confirmation process, showing a clear command of the issues of national security and the challenges facing the intelligence community.

The confirmation process has also brought to light General Hayden's leadership qualities. At this time of change and realignment at the CIA, strong leaders are clearly needed. The agency has had a difficult time adapting to the changes in the intelligence community structure and has suffered a decline in morale and sense of mission. By all accounts, General Hayden

will bring a welcome change at the top, hopefully infusing the agency with a new sense of direction and relevance that is badly needed.

I remain very concerned, however, that the wiretapping activities of the NSA have been insufficiently investigated. General Hayden insisted in his confirmation hearings that he was given unequivocal legal advice each step of the way. I do not doubt that this is true, but I believe that significant and compelling questions still remain about the validity of the legal foundation for the wiretapping programs. I have yet to be convinced that these activities are legal. Even if they are found to be legal, I question whether we really want our Government to be engaged in these activities.

But the debate on the NSA activities is far larger than just General Hayden. This debate must go on in depth and focus on the legal and policy issues at stake, not on the personalities of those involved.

We need to get the CIA back onto its feet and functioning properly. I believe that General Hayden is capable of doing that. I trust he will put his considerable skills to work in earnest on this task, as its success is critical to our national security.

Mr. CHAMBLISS. Mr. President, the men and women at the CIA today represent the best intelligence professionals in the world, and they deserve the best leadership and support. I have known General Hayden for some time, and I am convinced that he is the right person for this job.

My initial concern regarding a military officer directing the world's most sophisticated civilian intelligence agency have been addressed by General Hayden in private conversation as well as at the public hearing. The role and mission of the intelligence community at the Department of Defense where General Hayden has been for over 30 years is different from the role and mission of the CIA. General Hayden has convinced me that he can make the transition from the military side to the civilian side of the intelligence community while continuing to move the CIA in a positive direction of change and transition.

General Hayden has been instrumental in building our intelligence capabilities to meet the challenges of the 21st century. Even before becoming the Principal Deputy Director of National Intelligence, General Hayden has demonstrated his willingness to express his opinion and speak his mind. His credibility and integrity are second to none. He brings all these traits to his position as the Director of the Central Intelligence Agency.

He also brings with him the experience of leading an organization in transformation when he was at the National Security Agency. Today the CIA is in transformation to position itself from the preeminent intelligence organization during the Cold War to becoming an intelligence organization fo-

cused on new threats and national security issues such as countering terrorism, preventing countries such as Iran and North Korea from obtaining nuclear weapons, and protecting America's interests in Asia, Latin America, and elsewhere.

General Hayden will face challenges as he continues this transformation to ensure that the CIA continues to be the world class organization it must be to address these threats. This means continuing efforts to replace the old, risk adverse system that was not positioned to address the threats we are facing now and may face in the future. It also means ensuring the Agency does not reverse course by infusing ideas that previously opposed change, information sharing, or oversight.

Throughout his career, General Hayden has proven his management and leadership abilities. He will provide the enthusiastic and dedicated officers at CIA the "top cover" necessary for them to undertake the innovative approaches to intelligence gathering that is required to penetrate the hard targets of today, and I am confident he will be able to keep the CIA moving on the right course.

Finally, General Hayden will head an organization that is responsible for managing our national human intelligence effort. His military experience combined with his experience as the Principal Deputy Director of National Intelligence will serve him well as he integrates the human intelligence efforts of the Department of Defense, the FBI, and others into the National Clandestine Service, recognizing the requirements and capabilities of those organizations as he establishes common standards designed to further strengthen our country's intelligence capabilities.

I believe General Hayden is a qualified and dedicated person to lead the CIA at this critical juncture, and I look forward to working closely with him as the Director of the CIA.

Mr. FEINGOLD. Mr. President, I will vote against the nomination of Michael Hayden to be Director of the CIA because I am not convinced that the nominee respects the rule of law and Congress's oversight responsibilities. General Hayden is highly experienced and talented. And some of his testimony before the Intelligence Committee, including his acknowledgment that the intelligence process was manipulated in the lead-up to the war in Iraq, was encouraging.

It was therefore particularly disappointing that General Hayden failed to dispel serious concerns about his direction and defense of a program to illegally wiretap Americans on American soil without the required warrants. Having finally been briefed about this program last week, I am more convinced than ever that this program is illegal. I am equally convinced that there is no reason that this program could not have been briefed to the congressional intelligence commit-

tees 4½ years ago, as is required by law. Yet General Hayden expressed no doubts or concerns about the legality of the program or the administration's failure to inform Congress.

It is not sufficient for General Hayden to say that the lawyers told him it was okay. He has an independent obligation to abide by the law. No one can force him to break the law—not the lawyers and not the President. Nor were the legal issues especially complex or beyond the understanding of a very intelligent and experienced intelligence professional. For years, General Hayden had been conducting surveillance in compliance with the FISA law. For years, the NSA had been notifying the congressional intelligence committees about its programs. Then, one day, everything changes. FISA no longer applies—and, by the way, don't tell Congress. We know from General Hayden's testimony in 2002 that he understands the importance of the legal protections that FISA provides regarding surveillance of U.S. persons. His decision that it was OK to secretly bypass those protections is inexcusable.

The Congress must stand up for the law and for our constitutional system of checks and balances. I believe that the President must be held accountable for breaking the law and for insisting that he can continue to do so. I am deeply concerned that, unless this body speaks, it will be seen by history as having consented to this illegal action.

But those who carried out and defended this program also have some responsibility. We know, from Attorney General Gonzales' testimony to the Judiciary Committee, that this administration acknowledges virtually no limits to its authority. Under the theories put forward by the administration's lawyers, whenever national security is supposedly at stake, no laws are binding and Congress is merely an inconvenience. These assertions are contrary to our constitutional system and they are dangerous. And they cannot serve as an excuse for experienced leaders like General Hayden who know better.

My decision to vote against General Hayden is not simply about responsibility for past conduct, although that is important. I will vote against this nominee because, given his recent actions and his less than reassuring testimony, I am not convinced that he will abide by the laws relevant to the position of the Director of the CIA. When I asked General Hayden about legally binding restrictions on the authorities of the CIA, such as those prohibiting the CIA from engaging in domestic security, he spoke about Presidential authority and consultations with Government lawyers. That was also his response to questions about illegal warrantless wiretapping as well. We know what this administration's lawyers have to say about following the law, and General Hayden provided no reassurance that he will see things any differently.

General Hayden's conduct and testimony also raise serious questions

about his willingness to respect congressional oversight. He was complicit in the administration's failure to inform the full congressional intelligence committees about the warrantless surveillance program, even though this notification is required by law. In his testimony, he repeatedly failed to explain or criticize the administration's failure to inform the full committees about the program. As Director of the CIA, General Hayden would have a legally binding duty to keep the congressional intelligence committees informed of CIA activities. If General Hayden does not acknowledge this duty, we cannot be assured that the Congress will be kept fully and currently informed, as is required by law.

Finally, I remain concerned about previous misleading testimony by General Hayden regarding warrantless surveillance and his explanation for that testimony. In 2002, he told a joint congressional committee that, under FISA, persons inside the United States "would have protections as what the law defines as a U.S. person and I would have no authorities to pursue it." In fact, the President had already authorized the NSA to bypass those legal protections. General Hayden's explanation for this statement, that he was speaking in open session at the time and had earlier given a fuller briefing to the committee in closed session, does not justify a public misleading statement.

Our country needs a CIA Director who is committed to fighting terrorism aggressively without breaking the law or infringing on the rights of Americans. General Hayden's role in implementing and publicly defending the warrantless surveillance program does not give me confidence that he is capable of fulfilling this important responsibility.

The stakes are high. Al-Qaida and its affiliates seek to destroy us. We must fight back and we must join this fight together, as a nation. But when administration officials ignore the law and ignore the other branches of Government, it distracts us from fighting our enemies.

I am disappointed that the President decided to make such a controversial nomination at this time. In keeping with Senate historical practices, I defer to Presidents in considering nominations to positions in the executive branch. I do not believe it is the role of the Senate to reject nominees simply because they share the ideology of the person who nominated them. But we should not confirm a nominee for this position of great responsibility when his conduct and testimony raise such troubling questions about his adherence to the rule of law.

(At the request of Mr. LEVIN, the following statement was ordered to be printed in the RECORD.)

• Mr. ROCKEFELLER. Mr. President, the Senate today considers the nomination of GEN Michael Hayden to be Director of the Central Intelligence

Agency. I support General Hayden's confirmation. He is the right person to lead the CIA out of a period of turmoil and controversy.

Without question General Hayden has the necessary credentials. He is a career Air Force intelligence officer who led the National Security Agency for longer than anyone in the history of that agency. When he took over the NSA it was no longer at the cutting edge of information technology as it had been during the Cold War. Not everything he tried worked but he led the agency's turnaround. We no longer worry, as we did in 1999, that the NSA is on the verge of going deaf.

General Hayden left the NSA a year ago to become the Principal Deputy Director of National Intelligence—the number two job in the new organization created by Congress to modernize the intelligence community. He has helped Director John Negroponte start the process of building a cohesive community from the 16 disparate intelligence agencies. Now he will have a chance to continue working on that integration as the Director of the agency that is the lynchpin for U.S. intelligence, the CIA.

While his qualifications are obvious, General Hayden's selection is not without controversy. As Director of the NSA he designed and implemented a warrantless surveillance program, authorized by the President, to intercept communications inside the United States. The goal of this program is to find terrorists, something every Member of this body supports. But the program's questionable legal underpinnings and the decision to keep it hidden from most Members of Congress have raised questions about General Hayden's judgment and independence.

I wrote Director Negroponte in February expressing my view that General Hayden's role in the public defense of the NSA program was inappropriate for an intelligence official. I reiterated that concern directly to General Hayden in a letter to him prior to his confirmation hearing last week. Officials of the intelligence community must avoid even the appearance of politicization.

General Hayden addressed this issue in his hearing and responded privately to my letter. After carefully considering his answers and his response, I am convinced that he believes the NSA program is legal. I also believe his public appearances were in large part his effort to defend the men and women of the NSA. I still believe his participation in the White House public relations campaign was inappropriate, but I believe his explanation is sincere.

I raise this issue because it gets to the heart of what I think will be General Hayden's challenge at the CIA—rebuilding the agency's credibility and reestablishing its independence. The CIA was established in 1947 to be an independent source of intelligence for the President and other senior policymakers. We have no less a need for that

independence now than we did then. The Government, both the executive branch and the Congress, must have intelligence that is timely, objective, and independent of political considerations. This is not just a goal; it is the standard set in law.

Unfortunately, over the past few years we have witnessed a pattern of cynical manipulation of intelligence for political purposes. This politicization has damaged the credibility of the intelligence community and undermined America's efforts to deal with critical national security challenges. General Hayden must take steps to assert his and the CIA's independence.

The situation in the period prior to the Iraq war must never be repeated. Administration officials accepted without question any nugget of intelligence, no matter how poorly sourced, if it supported the decision to go to war with Iraq. In areas where the intelligence did not support the administration's preconceived view, such as alleged Iraqi ties to al-Qaida and the 9/11 attacks, the administration badgered the intelligence community to find a link, ignored the intelligence that showed there was none, and set up a rogue intelligence operation at the Defense Department to aggressively push the alleged connection.

But perhaps the most blatant abuse of the intelligence process was and continues to be the leaking and selective declassification of intelligence information to support particular policy goals. Many of my colleagues have decried the unauthorized disclosures that regularly appear in the press. I join them in condemning these damaging leaks. But it is important to understand that most disclosures of intelligence information are generated by executive branch officials pushing a particular policy, and not by the rank-and-file employees of the intelligence agencies. This has been the pattern of the current administration, particularly related to Iraq.

Based on his past performance I am sure that General Hayden will stand up to blatant attempts to influence intelligence judgments. I also believe he has the character to speak out when he believes the intelligence process is being misused by senior policymakers.

General Hayden also will need to regain the trust of the Congress. The administration's repeated refusal to allow effective oversight of some of the most important intelligence programs has endangered critical intelligence capabilities and alienated the Intelligence Committees when their support is most needed. Signals intelligence and intelligence obtained from detainees are critical elements of our efforts to detect and stop terrorists. But the administration's ill-advised attempts to shield these programs from oversight have created suspicion and undermined public support for our counterterrorism efforts. Sustaining

these kinds of intelligence programs over the long term requires the Congress to be a full partner from the beginning. Our mutual goal should be to ensure that critical intelligence programs receive the attention and support they need to be effective.

Some have questioned the wisdom of a military officer serving in this position. While I want to make sure that General Hayden is outside of the military chain of command, I am convinced that General Hayden's military experience will enable him to successfully manage the important and sometimes difficult relationship between the CIA and the Department of Defense. As CIA Director he also will be the national manager of human intelligence collection activities across all agencies, including the Defense Department. This function is essential to ensuring effective coordination of our sensitive intelligence operations overseas. We cannot afford the creation of redundant capabilities or any confusion as to who is in charge of these delicate operations.

General Hayden will take over the helm of the CIA at a time of rapid expansion of the workforce and following a period of dramatic decline in employee morale. Under his predecessor's tenure the CIA lost many of its most experienced and talented officers. He will need to move quickly to convince the current workforce that the days of political litmus tests are over and experienced professionals will be in charge rather than political cronies.

I cannot overstate the importance of the job General Hayden is undertaking. The CIA and our other intelligence agencies are the front line of our defense. The CIA must find better ways to penetrate targets such as Iran and North Korea while continuing to adapt to the ever changing tactics of the international terrorist movement.

The Senate Intelligence Committee's 2004 review of Iraq intelligence exposed some glaring problems in the collection and analysis of intelligence. The CIA has been undergoing its own internal review and has begun integrating the lessons it has learned. It will be General Hayden's job to see that the CIA embraces the reforms needed to deal with the challenges of the 21st century. I am confident he is the right person for the task.●

Mr. LEVIN. Mr. President, the CIA must at all costs avoid a repeat of the pre-Iraq war intelligence fiasco, when CIA Director Tenet said the case for weapons of mass destruction in Iraq was a "slam dunk," and then proceeded to distort and exaggerate underlying intelligence in order to support the administration's Iraq policy. The CIA needs an independent Director who will speak truth to power and provide objective assessments of a professional intelligence community, and not try to please policymakers by telling them what they want to hear.

General Hayden not only promises to be independent and objective, General Hayden has proven he has the backbone to do so.

For instance, General Hayden is perhaps the only high-level official who has criticized the Department of Defense policy office of Douglas Feith. That office, before the war began, undertook to use a direct pipeline to the White House for distorted intelligence assessments, bypassing mechanisms in place which are intended to produce balanced, objective assessments.

General Hayden has done more than speak openly of his concerns about the Feith operation. He acted upon them by placing a cautionary disclaimer on the reporting of his agency relative to the links that Feith and others were trying to create between Saddam Hussein and al-Qaida, so that his agency's reports could be misused for that purpose.

Again, speaking truth to power, General Hayden showed independence when he stood up against the positions being urged by Secretary of Defense Donald Rumsfeld during the recent reforms of the intelligence community.

As to the surveillance activities of the National Security Agency, which General Hayden formerly led, many of us have concerns. But those concerns as to the legality and as to the decision to implement the alleged collection of phone numbers called by millions of Americans should be placed at the doorstep of the Attorney General and the White House.

I am one of those being briefed on the program, and I have a number of concerns. But my concerns are with the legality and privacy intrusions and effectiveness of the program authorized by the President, and given the legal imprimatur of the Attorney General. I know of no evidence that General Hayden acted beyond the program's guidelines as set up by the President and the Attorney General.

I will vote for General Hayden's confirmation.

Mrs. FEINSTEIN. Mr. President, I rise in support of the nomination of GEN Michael Hayden to be the next Director of the CIA.

I support his confirmation first because I think General Hayden's vision for the future of the CIA is right on point.

He has pledged to make the collection of human intelligence a top priority—a necessary move in understanding our Nation's enemies and the threats we face.

At the same time, General Hayden understands the failures of analysis prior to the Iraq war and is committed to making major changes.

Only time will tell, but I am hopeful that General Hayden has what it takes to put the agency on the right path after recent collection and analytic failures.

Secondly, I think General Hayden brings with him the overarching view of the entire intelligence community needed to carry out the vision and transition the CIA to deal with the new asymmetric threat posed by the terrorist world. I think this is critically important at this time.

General Hayden served 6 years as the Director of the National Security Agency, the largest intelligence agency in the intelligence community.

He ably led a transformation from a Cold War institution to a key component of our Nation's counterterrorism efforts.

Additionally, he served as Principal Deputy Director of National Intelligence under Ambassador Negroponte for the past year.

In this role, he oversaw the day-to-day operations of the Office of the DNI, and many of the DNI's accomplishments to date can be directly attributed to General Hayden's service.

Third, I am pleased that General Hayden made a commitment to me to appoint experienced intelligence professionals to serve on his direct staff and in senior positions across the agency.

I also support the administration's intention to name Stephen Kappes as the Deputy Director of the CIA.

Mr. Kappes brings a wealth of experience in the clandestine service to the agency's senior leadership.

Perhaps more importantly, his return to the agency has already gone a long way to assure operators that they are well represented in management and that their concerns will be met.

General Hayden will come to the agency at a time of major personnel problems.

But he has already taken steps to move the agency beyond the problems of the past and that is good news.

There is no question that the concerns that have been raised about General Hayden are legitimate and important.

Before my meeting with General Hayden and his appearance at the confirmation hearings, I was concerned that he will not be sufficiently independent of the Department of Defense. On this point, I have been reassured.

General Hayden has shown his independence in the past, and has committed that if he finds his uniform to be a hindrance in any way, he will "take it off."

Similarly, the Intelligence Committee will need to pay close attention to intelligence activities of the Department of Defense, especially in the area of human intelligence.

I have concerns that the Pentagon is going too far in this area, and I want to make sure that the CIA remains the leader and primary provider of this type of intelligence collection.

My greatest concern about General Hayden is that he was not more forthcoming in his answers during the open confirmation hearing.

Many members asked important questions on the NSA domestic surveillance program and on detention, interrogation and rendition policies.

In my view, the public deserved more forthcoming answers than those provided by General Hayden.

For example, I felt that General Hayden should have stated clearly, in full



public view, whether he believes that certain interrogation techniques constitute torture. He could say yes or no without disclosing sources and methods.

It is my hope that General Hayden will be more forthcoming once he is confirmed as Director of the CIA.

The challenge ahead of General Hayden is daunting, but it is absolutely critical to our nation's security that he succeed.

I believe General Hayden is the sound intelligence professional the CIA needs to regain its footing as the world's premier spy service and the hub of our nation's intelligence analysis and research and development capabilities.

I look forward to working with him to protect the American people.

Mr. LEAHY. Mr. President, in several crucial respects, the CIA today is in disarray, and fixing our premier intelligence agency must be a top priority. The CIA must become as effective as we need it to be in combating terrorism and in serving all of our national security interests. The keys to a strong and competent CIA are the independence and proficiency of its leadership.

I had a lengthy private discussion with General Hayden in deciding how I would vote on his confirmation. Our discussion confirmed the confidence that I have long had in General Hayden's professionalism and competence. I remain outraged about the controversial domestic surveillance initiatives that the NSA has overseen at the White House's direction, but the fact remains that President Bush and Vice President CHENEY—not General Hayden—were the “deciders” in ordering this surveillance of Americans, with then-White House Counsel Gonzales acting in his capacity to validate a program that was structured and operated outside the checks and balances of existing law.

The CIA right now is in desperate need of professionalism after the debacle of the Agency's outgoing leadership, and my discussions with General Hayden have led me to conclude that he has the competence, the experience, and the independence to serve capably in helping to repair the damage that has been done to the Agency. I will vote for his confirmation.

Mr. REID. Mr. President, I rise in support of the nomination of General Hayden as the new Director of the Central Intelligence Agency. Based on my review of his long record as a career intelligence man and his answers to some important questions during his confirmation hearing, I am hopeful General Hayden will provide the CIA the kind of non-partisan leadership it has sorely lacked for the past several years.

And I am also hopeful that this nomination signifies that the Bush administration has recognized, finally, that professionals, not partisans should be put in charge of national security.

General Hayden has impeccable credentials and a career in intelligence

matters that is as impressive as it is long. Anyone can read the public record and quickly see that this man is more than qualified for this job.

And my personal meeting with General Hayden shortly after he was nominated only served to reinforce that impression. I met with him privately—one on one—in my office just off this floor, for more than 45 minutes.

During the course of that meeting, we discussed General Hayden's career in the Air Force from 1969 until today and his dedicated service to America's intelligence community that ultimately earned him a fourth star.

My meeting convinced me that General Hayden understands and respects the role of Congress in national security matters. He seems to grasp how essential it is that he consult regularly with the congressional leadership on these critical issues. And he seems to recognize the need to keep the congressional oversight committees fully informed about the intelligence community's activities.

All of these are important because we are a nation at war and actions by the Bush administration have left our intelligence community—this Nation's eyes and ears on those who mean us harm in disarray.

As a direct result of this administration's actions, the Central Intelligence Agency and those it placed under contract have been directly implicated in numerous instances of abuse of detainees that have given this nation a black eye around the world and been counterproductive to winning the fight against terrorism.

The findings of our intelligence community are increasingly questioned by the American people and the world.

And scores of incredibly talented and experienced career intelligence professionals have been driven from their jobs because they insisted on speaking the truth rather than tow the Administration's line.

Things apparently got so out of hand at CIA in recent months that the President's intelligence advisory board finally had to intervene and recommend change.

All of these developments have harmed national security and placed Americans at greater risk. And it is against this difficult backdrop that the Senate debates the nomination of General Hayden. As Senator LEVIN said in the confirmation hearings, “The next Director must right this ship and restore the CIA to its critically important position.”

I want to briefly lay out the three major challenges that I believe General Hayden faces in ensuring that he achieves the success the Senate expects of his tenure.

The first challenge is independence.

General Hayden needs to speak truth to power and call the shots as he sees them, not as he thinks his boss wants them seen. Rebuilding the independence of intelligence also means ending its politicization. General Hayden must

stand up to an administration that has either attempted to bully the intelligence community into saying what it wanted or worked around it when it couldn't get the answers it needed. General Hayden must provide assurances to Congress that intelligence assessments, and professional intelligence civil servants, will be protected from outside interference, not politicized.

The second challenge is openness to oversight.

This administration has refused to follow the law and Senate rules that require keeping the intelligence committees fully and currently informed of important intelligence practices. Administration ideologues have apparently authorized detention and interrogation practices that have backfired in our efforts in the war on terror, and concocted controversial legal arguments for presidential powers backing a warrantless surveillance program that circumvents the law—all without keeping Congress properly informed as required under the law. General Hayden must ensure that Congress is able to carry out its constitutional obligations on critical national security matters.

The third challenge is fixing our strategy in the war on terror.

After more than 4 years of the war on terror, Osama bin Laden remains at large and al-Qaida and other radical fundamentalist terrorist organizations pose a grave threat to our security. Terrorist attacks have increased not decreased on this administration's watch. Two of the three so-called axes of evil are more dangerous today than they were when President Bush first uttered that memorable phrase and the third, Iraq, is on the verge of becoming what it was not before the war—a haven and launching pad for international terrorists. And America's standing in the world has reached record lows in critical regions of the world.

In the short run, General Hayden must insist that the Bush administration redouble and refocus its efforts that go after “high value targets”. It is a travesty—a travesty—that nearly 5 years after 9/11, the Bush administration has not captured or killed Osama bin Laden. The CIA must lead efforts to understand the challenge posed by Iran and North Korea and their nuclear ambitions.

General Hayden must also build a global human intelligence capability over the next several years with diverse officers who understand the cultures and speak the languages of every key target across the entire globe. The CIA must play a leading role in understanding how to help win the battle of ideas going on within the Islamic world, and how to change the calculus of the young so that new generations of terrorists are not created.

These are all large and important challenges, with grave consequences for America and the world. Based on

everything I have seen I am hopeful he is up to the task. And I am hopeful this administration will let him do the job for which it nominated him.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of General Michael V. Hayden, United States Air Force, to be Director of the Central Intelligence Agency?

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from North Carolina (Mrs. DOLE) and the Senator from South Dakota (Mr. THUNE).

Further, if present and voting, the Senator from North Carolina (Mrs. DOLE) and the Senator from South Dakota (Mr. THUNE) would have voted "yea."

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER), the Senator from North Dakota (Mr. CONRAD), the Senator from Hawaii (Mr. INOUE), the Senator from West Virginia (Mr. ROCKEFELLER), and the Senator from Colorado (Mr. SALAZAR) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 78, nays 15, as follows:

[Rollcall Vote No. 160 Ex.]

#### YEAS—78

Akaka	Domenici	McCain
Alexander	Ensign	McConnell
Allard	Enzi	Mikulski
Allen	Feinstein	Murkowski
Baucus	Frist	Murray
Bennett	Graham	Nelson (FL)
Biden	Grassley	Nelson (NE)
Bingaman	Gregg	Pryor
Bond	Hagel	Reed
Brownback	Hatch	Reid
Bunning	Hutchison	Roberts
Burns	Inhofe	Santorum
Burr	Isakson	Sarbanes
Byrd	Jeffords	Schumer
Carper	Johnson	Sessions
Chafee	Kohl	Shelby
Chambliss	Kyl	Smith
Coburn	Landrieu	Snowe
Cochran	Lautenberg	Stabenow
Coleman	Leahy	Stevens
Collins	Levin	Sununu
Cornyn	Lieberman	Talent
Craig	Lincoln	Thomas
Crapo	Lott	Vitter
DeMint	Lugar	Voinovich
DeWine	Martinez	Warner

#### NAYS—15

Bayh	Dorgan	Kerry
Cantwell	Durbin	Menendez
Clinton	Feingold	Obama
Dayton	Harkin	Specter
Dodd	Kennedy	Wyden

#### NOT VOTING—7

Boxer	Inouye	Thune
Conrad	Rockefeller	
Dole	Salazar	

The nomination was confirmed.

Mr. DODD. Mr. President, I would like to say a few words about the nomi-

nation of General Michael V. Hayden to be Director of the Central Intelligence Agency. I regret that I was not able to vote to confirm his nomination at this time, and I would like to take a few minutes to explain my vote.

As my colleagues may know, I voted to confirm General Hayden when he was nominated to be the Deputy Director of National Intelligence, DNI. I stand by that vote for two reasons. First, General Hayden is obviously qualified on paper to fill the position. Second, he was serving as Deputy to the current DNI, John Negroponte. So there was a clear line of authority.

But today when the Senate voted on his nomination to be Director of the CIA, these two circumstances were significantly different. First, issues like the potentially illegal wiretapping of American citizens' phone lines by the National Security Agency—a program which General Hayden reportedly designed and ran—have come to light. And second, he will no longer be serving as a deputy but as head of one of our Nation's premier intelligence agencies—yet he is not resigning his commission as a uniformed officer. That raises the question of whether and to what degree he will be independent from decisions made at the Pentagon.

Some of my colleagues have insisted that Secretary of Defense Donald Rumsfeld will no longer be in the chain of command overseeing General Hayden in his position at the CIA. Certainly, there is precedent for uniformed officers serving as head of the CIA. However, when we look at this precedent we also have to realize that circumstances have changed. A not insignificant part of the reason that we invaded Iraq is because our Nation's intelligence was politicized, and because intelligence activities were manipulated to justify a predetermined conclusion—that Iraq had weapons of mass destruction.

Much of this intelligence manipulation was performed by intelligence bureaus within the Pentagon, under the supervision of Secretary Rumsfeld, who has been steadily expanding the Pentagon's role in U.S. intelligence activities. It would seem to this Senator that given Secretary Rumsfeld's track record, concentrating intelligence in his hands would be unwise to say the least.

The truth is that we don't really know how much independence General Hayden will show with respect to the Secretary of Defense. After all, he is a military officer, with an active commission. And the record is mixed with respect to predicting how the cards will fall. On one hand, there are reports that he stood up to Secretary Rumsfeld and other political appointees in the President's Cabinet on certain occasions. On the other hand, he reportedly designed and strongly supported a program to wiretap the homes of American citizens, whose legality is in question.

If he was just following orders, these circumstances raise serious questions about his ability to exercise independence as Director of the CIA. If, as is widely believed, he was the driving force behind the NSA's wiretapping program, then I question his ability to balance the important need to defend our Nation from threats with the equally important need to protect constitutional rights of all Americans.

I frankly think it is a shame that Congress didn't take a few more days, or even a couple of weeks, to more deeply probe these fundamental issues of security and liberty. Indeed, if this body had taken sufficient steps to get answers about the NSA's wiretapping program, and if General Hayden had considered leaving his role as an active military officer during his tenure as CIA Director, then it is possible that the concerns I mentioned might have been alleviated.

I also regret the fact, however, that President Bush didn't pick somebody who was equally qualified but not tied in to controversial programs such as collecting telephone information and listening in to conversations between American citizens. Because in this time of difficulty for the CIA, we don't just need someone who is qualified, we also need someone who is credible. While the extent of General Hayden's involvement in these activities is as yet unclear, I am concerned that his role could potentially undermine his ability to carry out his duties as head of the CIA.

Mr. President, despite some opposition, General Hayden was confirmed earlier this morning by the Senate. At this juncture, I can only hope that he proves my concerns to be unfounded. I wish him only the best in pursuing a goal that I know we all share—the safety and well-being of American citizens in this time of war.

The PRESIDING OFFICER. The President will be immediately notified.

The majority leader is recognized.

Mr. FRIST. Mr. President, I know Senator NELSON will have 2 minutes of remarks to make; 30 seconds for me. The next vote will be our last. We anticipate a voice vote on the confirmation of Dirk Kempthorne after cloture is invoked. We are working on agreement for when we return. I expect the next votes to occur on the morning of Tuesday, June 6.

100 HOURS OF SERVICE AS PRESIDING OFFICER

Two quick congratulations: On behalf of the entire Senate, I congratulate two Senators for their presiding service. Earlier this week, Senator VITTER reached the 100-hour mark and will receive the Golden Gavel Award; and later this morning, Senator ISAKSON will get his 100th hour of service. We thank them both for their efforts in the Chair.

(Applause, Members rising.)