

Statement of Robert S. Litt
Before the Senate Select Committee on Intelligence
May 21, 2009

Madam Chairman, Vice Chairman Bond, Members of the Committee, thank you for giving me the opportunity to appear before you today. I have also appreciated the opportunity to meet privately with several of you and to discuss a variety of issues that are important to you.

I am deeply honored that President Obama has nominated me to be the General Counsel of the Office of the Director of National Intelligence. The past few years have been trying ones for the Intelligence Community. It has been accused of a wide variety of failures, of errors of omission and of commission, of excessive passivity and of over-aggressiveness. And it is still dealing with a restructuring, initiated by Congress with the passage of the Intelligence Reform and Terrorism Prevention Act of 2004, that is unparalleled since the passage of the original National Security Act in 1947.

Our nation needs a strong and vital Intelligence Community in order to protect itself from its enemies; but the Intelligence Community equally needs clear rules that define what it can and cannot do. These twin mandates are reflected in the twin statutory responsibilities of the Director of National Intelligence to ensure both that the President, the Executive Branch and the Congress are provided intelligence that is “timely, objective, independent of political considerations, and based upon all sources available to the intelligence community and other appropriate entities,” and that the activities of the Intelligence Community are carried out in “compliance with the Constitution and laws of the United States.” If confirmed as General Counsel, I look forward to assisting Director Blair in carrying out these responsibilities.

Director Blair has made clear to me that he expects my role to encompass the provision of both sound legal advice and sound judgment, and if confirmed I am prepared to do so. I have been fortunate to be mentored by a number of outstanding lawyers from whom I have drawn lessons that guide my approach to the practice of law. My father was a general practice lawyer in the New York suburbs. He made me conscious from a young age of the lawyer’s broad responsibilities both to ensure that justice is done in the individual case, and towards the improvement of society as a whole. I have always tried to keep in mind his example.

After graduating from Harvard College and Yale Law School, I had the great honor to clerk for two outstanding judges. The first was the legendary Judge Edward Weinfeld of the United States District Court for the Southern District of New York. Judge Weinfeld was justly famous for his extraordinary diligence, his fairness and his thoroughness. He was fond of saying that “every case is important,” and for him this was more than a platitude: it characterized his approach to the law, in that he gave every case the same degree of attention and thought. I often feel his guiding presence looming over my shoulder. After Judge Weinfeld, I clerked on the United States Supreme Court for Justice Potter Stewart. Like Judge Weinfeld, Justice Stewart did not approach the law with ideological preconceptions. He was always concerned with finding the right outcome in the law, not in justifying a predetermined outcome that fit his personal preferences.

I was then hired as an Assistant United States Attorney for the Southern District of New York by Robert B. Fiske, Jr., an outstanding lawyer and leader whose career exemplifies the old-fashioned ideal of the lawyer as public servant. After six years as a federal prosecutor, I joined the firm of Williams & Connolly in Washington, where I had the opportunity to work closely with Edward Bennett Williams, one of the giants of the bar, known for his preparation, his judgment and insight into human nature, and his zealous devotion to his clients' interests. Finally, I had the privilege to work in the Department of Justice with former Attorney General Janet Reno and present Attorney General Eric Holder, each of whom I admire for their unflinching commitment to doing the right thing in all circumstances and for their understanding of the moral responsibilities of a government lawyer.

Each of these very different individuals left their mark on me. I cannot hope to match their achievements but I have learned much by their example. I have learned that a lawyer has the responsibility to try to help a client achieve his or her goals within the law, but equally to tell a client forthrightly when a proposed course of conduct is not within the law. I have learned that a lawyer's duty to a client encompasses first of all a careful, dispassionate and unbiased analysis to determine what the law actually is. But a lawyer should also exercise independent judgment and advise the client as to the prudence or wisdom of the proposed course of conduct. I have learned that a lawyer for the government in particular has obligations not only to his or her client agency but also to the public at large, and if the client's proposed action would not serve the public interest, the government lawyer should say so even if that action is legal. If confirmed, I pledge that I will approach my responsibilities as General Counsel in this spirit.

Over the years I have had the opportunity to work on a variety of matters affecting the Intelligence Community. While at the Department of Justice I worked on matters involving the Foreign Intelligence Surveillance Act and the Classified Information Procedures Act; I participated in reviews of covert actions and in evaluating crimes reports and requests for legal opinions from the Intelligence Community. I have spoken and written about the law and the Intelligence Community. I have represented several members of the Intelligence Community in a variety of matters.

As a result of this experience, as well as my discussions both with the staff at the Office of the Director of National Intelligence and the members of this Committee, I have some knowledge of the legal issues that the Intelligence Community faces. I would like briefly to touch upon some of the issues that I expect I will be dealing with if I am confirmed as General Counsel. First, I know that Members of this Committee are concerned with whether the Director of National Intelligence has the proper authorities to do the jobs that Congress has set out for him, and if confirmed I will pay close attention to how those authorities operate in practice and will bring any deficiencies to the attention of this Committee.

If confirmed, I will also be mindful of the need for Congress to exercise oversight of the activities of the Intelligence Community. I believe that Congressional oversight is particularly important in the area of intelligence, because of the central role of intelligence in protecting our national security, the power of the tools given to the Intelligence Community and their potential risks to privacy and civil liberties if used improperly, and the necessarily secret nature of much of what the Intelligence Community does. Sections 502 and 503 of the National Security Act require that the two intelligence committees be kept "fully and currently informed" about

significant intelligence activities, and Director Blair has reiterated to the entire community the need to comply strictly with this requirement.

There are also several substantive areas that I expect will continue to be at the forefront of the activities of the Office of General Counsel. One of the principal responsibilities of the Director of National Intelligence is to ensure that relevant information is shared to the maximum extent possible within the Intelligence Community. We cannot afford to have information that is essential to our national security “stovepiped” within individual components of the community. The Office of General Counsel is deeply involved in writing the rules that will encourage this sharing of information and, if confirmed, I look forward to assisting Director Blair in moving towards an ever more integrated and cooperative Intelligence Community.

At the same time, the collection, analysis and dissemination of intelligence information must be done in a manner that protects constitutional and statutory rights. Again, it is my understanding that the Office of General Counsel, along with the Civil Liberties Protection Officer, plays an important role in creating and overseeing the structures and rules that ensure that intelligence activity is consistent with the civil liberties and privacy of Americans. This is one of those areas where it is important to provide clear guidance to the Intelligence Community, so that they know what they can and cannot do and do not feel the need to consult with lawyers on a daily or hourly basis as they do their jobs – which is neither efficient nor realistic.

One particular area of concern to me is the security of our information and communications systems. While at the Department of Justice, I helped create and stand up the Criminal Division’s Computer Crime Section, and I am acutely aware that our networks are not only vulnerable to attack but are repeatedly attacked every day. The President has ordered a review of our cybersecurity policies. While I do not want to prejudge its conclusions I would anticipate that the Intelligence Community would of necessity have a vital role to play in this area, and that the Office of General Counsel would play an important role in ensuring that the Intelligence Community’s activities in this area are consistent with the law.

In the course of my professional career I have been privileged to get to know many individuals who work as part of the Intelligence Community, both lawyers and non-lawyers. They are dedicated professionals, many of whom gave up potentially lucrative career opportunities and have chosen to serve the United States and protect its people. If confirmed, I look forward to the great privilege of assisting them in that vital task.

Thank you for your consideration of my nomination.