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NOMINATION OF MICHAEL LEITER TO BE DIRECTOR, NATIONAL COUNTERTERRORISM CENTER

HEARING

BEFORE THE

SELECT COMMITTEE ON INTELLIGENCE

OF THE

UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

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NOMINATION OF MICHAEL LEITER TO BE DIRECTOR, NATIONAL COUNTERTERRORISM CENTER

TUESDAY, MAY 6, 2008

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC.

The Committee met, pursuant to notice, at 3:20 p.m., in Room SH–216, Hart Senate Office Building, the Honorable Jay Rockefeller (Chairman of the Committee) presiding.

Committee Members Present: Senators Rockefeller, Feinstein, Wyden, Feingold, Whitehouse, Bond, Warner, and Snowe.

Chairman ROCKEFELLER. This hearing will come to order.

The Committee meets today to consider the President's nomination of Mr. Michael Leiter to serve as the next Director of the National Counterterrorism Center.

Before the Vice Chairman and I make our opening statements, I'm pleased to recognize our former colleague, Chuck Robb. Senator Robb not only served as a valued member of this Committee, a very good friend to me—southwestern Virginia and West Virginia share characteristics—but he went on to make an important contribution to intelligence reform as the Co–Chairman of the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction.

It's a pleasure to have you here today to introduce Mr. Leiter. And I recognize Senator Robb for so doing.

Senator WARNER. Mr. Chairman, might I interject and join you in recognizing the presence of our distinguished colleague, a very special colleague to me, having shared the responsibility of the Commonwealth of Virginia with him for many years.

And I also wish to point out, Mr. Chairman, that he's never lost a beat in continuing to do public service. You mentioned one commission; there are probably several others you could mention.

But we thank you, Senator, and we welcome you before the Committee. When I had the pleasure of meeting with the nominee, we talked about you and I said he couldn't have picked a more able, inspiring Senator to introduce than you.

Vice Chairman BOND. Mr. Chairman, this is getting thick. [Laughter.]

Vice Chairman BOND. We could all say things about our former colleague, Senator Robb, but I think maybe we ought to get on to hearing his introduction.

Senator WARNER. Well, it was a small matter of Virginia with the two of us representing it. I think that required a little——

Vice Chairman BOND. Oh, I thought it was—I thought you laid it on thick. I have a lot more I was going to say too. I don't want to wait till I get to my formal remarks.

Senator ROBB. Mr. Chairman, I am prepared to proceed whenever you would like me to, but I do not want to interrupt my distinguished former colleagues.

Chairman ROCKEFELLER. Unless you choose to proceed, in which case you may do so.

STATEMENT OF THE HONORABLE CHARLES S. ROBB, A FORMER U.S. SENATOR FROM VIRGINIA

Senator ROBB. Thank you, Mr. Chairman. I do indeed appreciate the warm welcome from you and from others, from the four Members who are currently at the Committee table, all friends of long standing, and I am truly delighted. As a matter of fact, this used to be my favorite Committee, so I'm especially pleased to be here.

Mr. Chairman, Mr. Vice Chairman, members of the Committee, as all of you know, Senators are often asked to introduce someone from their home state who's been nominated by the President. And in many cases, they may know this person only casually, and they do so as a courtesy.

But for me, this introduction is personal. I'm delighted to have this opportunity to present the man that the President has formally nominated to become the Director of the National Counterterrorism Center. I'll let him present his son Zach in a few minutes for advice and counsel that he might want to share.

Of course, Michael Leiter doesn't really need an introduction to this Committee because you've been working with Mike as Acting Director since Scott Redd retired last fall, and prior to that, as Deputy Director of the NCTC, and before that when he helped stand up the ODNI as chief of staff to the Deputy Director of that organization.

You already know his reputation in the intelligence community, and it is truly remarkable. As recently as early 2004, I had never heard of Mike Leiter. Yet in the last four years there is no one in the entire IC with whom I have had the pleasure of working more closely or for whom I have developed a higher regard.

I give senior U.S. Court of Appeals Judge Larry Silberman full credit for bringing Mike into the intelligence orbit. When Judge Silberman and I agreed to co-chair the WMD commission—and were incidentally given preferential hiring and detailing authority throughout government—Larry recommended to me that the very first people we ought to bring on board the commission's professional staff, even before choosing an executive director or general counsel, were a couple of recent super-bright Supreme Court law clerks to help us deal with the complexities of government organizations and requirements.

He just happened to know two such men who fit that bill perfectly. And after we interviewed them, we agreed wholeheartedly and we hired them on the spot. The other man, Brett Gerry, is now chief of staff to the Attorney General of the United States.

And I would submit to you that Mike Leiter, who is here for confirmation at this particular hearing, is as prepared, as qualified, as motivated to continue leading the NCTC as anyone in the IC today.

I like and admire Mike Leiter for a number of reasons, not the least of which is the diversity of his experience. As a naval officer, he served in Bosnia and Iraq. His peers chose him to be president of the Harvard Law Review. He clerked for Justice Breyer.

He was a highly regarded fast-track federal prosecutor in the Eastern District of Virginia, where most of the cases involving terrorism are brought, known as the rocket docket. And he was a real leader on the WMD Commission. He was the go-to guy for all of us on the Commission when we needed something done right and done quickly. And he was also a major drafter of our final report.

When Vice Admiral Scott Redd, who came out of retirement to serve as executive director of the WMD Commission and was then persuaded to come out of retirement again to stand up the NCTC, needed a Deputy Director at NCTC, he persuaded the DNI to let Mike move over to take the job, because Scott had worked very closely with Mike on the WMD commission and he knew just how good he was.

Mike Leiter is a man wise beyond his years. He has a powerful intellect, impeccable integrity, indefatigable energy, and really solid judgment, even when he's faced with the most difficult and complicated questions. If there's anyone in the intelligence business who knows Mike Leiter and doesn't think he's the perfect fit for this incredibly difficult job, I simply haven't met them.

Mike has the trust and admiration of his peers and his subordinates, because they know he'll speak truth to power and he'll take full responsibility for his decisions. I've watched him conduct his 0800 SVTC, his secure video teleconference, with participants from all over the globe, representing all elements of the counterterrorism network, dealing with raw intel reports in real time from every source imaginable, and he's as nimble and impressive as they come. As a leader, he's the real thing.

There are, of course, no guarantees in countering the terrorist threats that we face 24/7, and Mike knows that as well as anyone. But with a consummate professional like Mike Leiter at the helm of NCTC, I'm confident that we're currently doing the best job that we've ever done to stay ahead of those who would do us harm.

Mr. Chairman, distinguished members of this Committee, I hope you can tell I have enormous confidence in and unqualified respect for Mike Leiter. And I hope, in your wisdom, you will confirm him as quickly as possible.

With that, Mr. Chairman, I thank you and I leave you in his care and abandon him to your plight, and I thank you.

Chairman ROCKEFELLER. Thank you, Senator Robb.

I've been passing around a note up here that I was at your wedding at the White House——

Senator ROBB. Yeah.

Chairman ROCKEFELLER [continuing]. Trying to impress my colleagues. [Laughter.]

Vice Chairman BOND. I am impressed.

Senator ROBB. And Mr. Chairman, before I leave, I might add that I was at your very first swearing-in as well, so we go back a long way—as governor, not as Senator.

Chairman ROCKEFELLER. And you were the only governor to show up.

Senator ROBB. With that, Mr. Chairman, I seek your leave, sir.

OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV, A U.S. SENATOR FROM WEST VIRGINIA

Chairman ROCKEFELLER. I welcome Mr. Leiter to this Committee even as I thank the departing Senator Robb. I also extend our welcome to his son Zachary, which has me in thorough confusion, because there are two extremely cute boys who look very much alike. So I need to have Zachary identified. That's Zachary. Hi, Zachary. Welcome.

As outlined by Senator Robb, Mr. Leiter brings with him a demonstrated record of experience, which I believe will serve him well, should he be confirmed in his role as the Deputy and now Acting Director of NCTC. Mr. Leiter has demonstrated the leadership skills that are necessary for having that job.

The NCTC was a key recommendation of the 9/11 Commission, was a central pillar of the Intelligence Reform and Terrorism Prevention Act of 2004. In that Act, Congress made the Director of NCTC a Presidentially appointed and Senate-confirmed position to ensure the Director had sufficient standing to execute the broad range of responsibilities assigned to your incredibly complex work.

The National Counterterrorism Center has two critical functions—number one, to serve as the primary organization in the United States government for integrating and analyzing terrorism related to intelligence; and, two, to conduct strategic operational planning to integrate all instruments of national power—not just intelligence—in the battle against terrorism.

In accordance with these functions, the Director of NCTC has unique dual-reporting requirements. On matters of terrorism intelligence and analysis, the NCTC Director reports to the Director of National Intelligence, but on issues related to counterterrorism strategic planning, the Director of NCTC reports directly to the President.

I look forward to hearing Mr. Leiter's views on both of these critical functions, the position's unique reporting requirements and the adequacy of the authorities given to the Director of the Center. I also hope to hear Mr. Leiter's plans to advance and strengthen the important work now being conducted at the NCTC.

The Committee, of course, is very familiar with the NCTC's work. Not only are we a customer and a consumer of your intelligence analysis, but the Committee has had an opportunity to visit the NCTC just recently, where you presided over that, as I hope I told you, brilliantly.

Our visit there inspired confidence in the Center's capability to go after terrorists around the globe. It just did. The NCTC leadership, staff, analysts are undeniably dedicated to keeping this nation safe from terrorism. I take this opportunity to extend our public thanks to Mr. Leiter, his deputies, and the many analysts at NCTC who met with me and the Vice Chairman and other mem-

bers of this Committee. We say that frequently, but what needs not to get lost is that we mean it.

As we all know, the threat of terrorism is real, on-going, and evolving. The most recent National Intelligence Estimate on terrorism—a portion of which was declassified in July, 2007—stated that from its safe haven in Pakistan, al–Qa'ida had regenerated key elements of its U.S. attack capabilities. Most troubling is the judgment that they will continue to try to acquire and use chemical, biological, radiological or nuclear materials in attacks. Clearly the NCTC must succeed at the tasks assigned to it; our security and safety depend on it.

Mr. Leiter is not a product of the intelligence community himself, but after meeting with him and reviewing his background I believe he has a resume that will serve him well. And, quite frankly, there are parts of me that welcome the fact that you don't have that as part of your official background. It implies and infers to me a certain kind of objectivity, when necessary, irreverence, and that you'll give us your thoughts, straight and true.

Unlike many nominees, we have direct evidence of your ability to do this job since you've been Acting for six months. Undoubtedly there are many challenges ahead. And we will probe into some of those, but I now ask if Vice Chairman Bond wishes to make an opening statement.

OPENING STATEMENT OF HON. CHRISTOPHER S. BOND, A U.S. SENATOR FROM MISSOURI

Vice Chairman BOND. Thank you very much, Mr. Chairman. Of course I'm delighted to be able to welcome Mr. Leiter to the Committee's hearing on the nomination to be the next Director of the National Counterterrorism Center. And I expend a very special welcome to your young son, Zachary, and the guy who's riding shotgun for him, Will. The two of them, I am sure, can provide any assistance that you need. If you need a little fire support, we can call in those two guys.

But, Mike, if you're confirmed as Director, the time period for which you would serve could be an abbreviated one due to a change in administration. But I strongly hope it will not. And whoever that person may be—and there's a little disagreement on this panel—I will certainly urge that you continue to do so if you continue to realize the high accomplishments that you have already registered. But the potentially short term should in no way diminish the responsibilities and challenges that lie ahead. And our expectations, as you've heard from the Chairman, are very high that you will address these challenges head-on.

The NCTC was created, as you well know, to address the shortcomings identified in the 9/11 Commission report. As such, we realize the NCTC is still in the building phase, is not a finalized entity, but there have been some very encouraging signs that its creation was indeed a very wise one.

The Chairman has already ably outlined the major responsibilities of the NCTC. They include assigning responsibilities, making sure other agencies have access, and receive all source intelligence for the counterterrorism plans, and have the intelligence they need to carry out their missions. And if there is one area that I think

was sorely lacking, it was that sharing of information that put us in a position where we could not determine the extent of the threat to us prior to 9/11.

But, Mr. Leiter, you've been with the NCTC for 15 months, and I'd be interested to hear your assessment of the progress, particularly as it comes to the role of strategic operational planner for the IC. I look forward to hearing your ideas on how to advance progress and resolve any concerns that may exist within the IC about NCTC's role as a strategic operational planner.

I was around when the initial effort was made to set up the NCTC, and let us say that that was not a painless birth. There were quite a few difficulties in getting it established. But the agencies who may have been somewhat under-enthusiastic at the first are the ones who will benefit from the NCTC's counterterrorism analysis, and they should now be willing fully to assist in performing the mission, whether that means better information sharing or providing more analytic resources or support.

As you and I have discussed in conversation, I find it particularly encouraging that, with your experience and knowledge of it and bringing a fresh view in, you have understood so clearly what is now being recognized much more widely, and that is that while there must be kinetic force to fight the immediate challenges of the radical terrorists who threaten us, that the 80 to 90 percent of the battle is still going to be in the rest of smart power. Smart power, in my view, encompasses the educational, economic, diplomatic, political, social, trade efforts that must go along if we are to stop the spread and stop the cancer of radical terrorists growing.

So, Mike, I hope you can give us an idea of what you can do to move forward on all these areas. I'm particularly interested in your thoughts on the FBI co-locating its international terrorism headquarters within the NCTC; and the CIA's al–Qa'ida analytic elements, thus far, refusing to co-locate at your facility. We'd like to hear which one's the better decision, from your perspective, and why.

Mr. Chairman, this is such an important job. I hope we can get the Committee to act on this and get it to the floor, and get him confirmed—so long as he doesn't blow it in the coming few moments, which I am confident he will not. I look forward to his statement.

Chairman ROCKEFELLER. You may proceed.

STATEMENT OF MICHAEL LEITER, DIRECTOR–DESIGNATE, NATIONAL COUNTERTERRORISM CENTER

Mr. LEITER. I felt okay until that last comment there, Mr. Chairman. [Laughter.]

Mr. LEITER. Chairman Rockefeller, Vice Chairman Bond and Senators Feinstein and Warner, thank you very much for the opportunity to appear today. I would also like to add a very special thanks—I'm sorry he's not here to hear it—to Senator Robb, for that incredibly kind introduction and his kind words.

It has been my distinct privilege to serve at NCTC since February 2007, first as the principal Deputy Director and, for the past six months, as the Acting Director. I'm extremely honored to appear before the Committee today to discuss my credentials. I have

submitted for the record a longer statement, and I ask that it would be made part of the record, Senator.

Chairman ROCKEFELLER. It will be.

Mr. LEITER. Before going forward, although he's been welcomed by all of you, I want to note how privileged I am to have my son Zachary with me today. And I honestly could ask for no better inspiration in the work that I have to do at NCTC than people like Zach and the Zachs all around the world.

On September 11th, 2001, our nation experienced what was undoubtedly the most traumatic terrorist attack in our nation's history. Now, this Committee and, I think, the public needs no reminder of that fact, but I begin here because it was in fact that event that was the impetus to the creation of NCTC. And from my perspective, it remains the guiding principle and the guiding vision for me at the Center.

The goal at the time of the attack and the creation of NCTC was simple, and that was to provide greater security for the nation and do so while protecting fundamental American values. The means to doing that were equally straightforward: create in NCTC a center to organize the U.S. government's intelligence and strategic planning response to terrorism in a manner that was simply not possible before 9/11.

Should I have the honor of being confirmed by the Senate, it is these two foundational principles—greater security while simultaneously protecting fundamental American values—that will guide all of my actions. In many ways I believe, and I hope you believe, that my credentials speak very much to these principles and, moreover, to the type of work that NCTC must do.

I am not, as the Chairman has noted, a product of a lifetime of service in a single government agency. Rather, my career includes service in the United States Navy—Senator Warner, I did not plan ahead—the Department of Justice, the office of the DNI, and in the judicial branch as a law clerk to federal judges, to include Associate Justice Stephen Breyer of the Supreme Court. And I believe I would also be remiss, considering what NCTC and this nation has to do, if I did not also note my seven-plus years of service as a first responder, as an EMT and firefighter working for local governments.

I would proffer that such experience—the military, law enforcement, intelligence, legal, and as a first responder—are many of the same key elements that NCTC and we as a nation must bring together to address terrorism effectively.

Now, in each of these roles, in addition to my service with the Robb–Silberman Commission, I have strived to gain the trust and confidence of my subordinates, my peers, and my superiors. And my approach has always been straightforward: listen to those around you and lead with vision, tenacity, judgment and, above all else, integrity.

It is these traits that I have attempted to bring to NCTC over the past year, and it is my performance over the past six months as Acting Director that I would suggest best foreshadows how I would lead NCTC in the future.

Throughout this time I have attempted to build strong partnerships throughout the U.S. government, within the intelligence com-

munity, but also beyond. And I have urged all those within NCTC to similarly aggressively lead their community counterparts.

With that overview, I would like to briefly provide you with my outline for my vision of NCTC and, by extension, the future of the U.S. government's fight against terrorism.

My first priority and the very first responsibility given to NCTC under the Intelligence Reform Act is to ensure that NCTC is the primary organization for analyzing and integrating terrorism information, ensuring counterterrorism information sharing among federal agencies, and supporting other agencies' sharing of counterterrorism information with non-federal, state, local, tribal, and private-sector partners.

This is an area in which, from my perspective, we have made really tremendous progress, although much, much more remains to be done, especially, I would note again, as it relates to supporting the non-traditional partners outside of Washington who are so critical to this fight.

Second, NCTC must further institutionalize U.S. government-wide, beyond the intelligence community, strategic planning. From my experience working in the interagency system, I am more convinced today than ever before that our success in the fight against terrorism will only come through such coordinated and synchronized efforts, to include the full weight, as Vice Chairman Bond noted, of our diplomatic, financial, military, intelligence, homeland security, and law enforcement activities. And it is up to NCTC—and, if I am confirmed, it is up to me as Director of NCTC—to drive those efforts.

Third, again as the Vice Chairman noted, NCTC and, I believe, the entire U.S. government, must increase our efforts to combat violent extremism through greater ideological engagement. Despite our successful kinetic actions against the enemy, it has to be emphasized over and over again that the fight against terrorism will not be won solely through bullets and bombs. Rather, we must have an equally robust effort in what many term the war of ideas.

If confirmed, I will take it as my charge to provide the intelligence analysis necessary to enable this engagement and equally, if not more important, to help bring together all the elements of national power beyond the intelligence community in this long-term effort.

Fourth, NCTC must provide leadership and programmatic oversight of the intelligence community's counterterrorism efforts beyond the NCTC and on behalf of the DNI. Ultimately, NCTC is simply one part of a much larger intelligence community effort against terrorism. In this regard, NCTC must help to lead that community to ensure that we function as more than the sum of our parts and make best use of what are limited resources.

Fifth and finally, and perhaps in many ways the most important, NCTC must continue to attract the most highly motivated and qualified personnel to allow us to meet all of these challenges.

Mr. Chairman, I am very pleased that you got to meet some of those highly qualified, highly motivated analysts and planners who do the work at NCTC, and I very much recognize that as a leader, NCTC's ultimate fate will be based far more on my ability to enable that extraordinary workforce than my personal efforts alone.

In doing all this, from my perspective, little is more important than ensuring that this Committee and the larger Congress are appropriately informed of NCTC's activities. And moreover, while I begin with the legal requirements as a lawyer—and they are paramount—I also heartily welcome your valuable insights into how NCTC, the intelligence community and the U.S. government should go about this business.

Your years of experience are ones that I hope I can benefit from in leading NCTC, if confirmed. Let me stress that no single department, no agency and, most importantly, no branch of government has a monopoly on wisdom on how to fight terrorism. If confirmed, I look forward to the benefit of the Committee's views and will seek its advice on how NCTC should proceed in this mission.

In closing, Mr. Chairman, I would like to take a note from my predecessor, Scott Redd, on the occasion of his confirmation hearing about three years ago. Then he noted that he was entering the realm of being a so-called political appointee and he noted that there was nothing political about the job of the Director of NCTC. I could not agree more strongly.

Every day that I have served at NCTC I have been guided by the foundational principles that I noted when I opened—providing Americans and our allies with greater security while simultaneously protecting fundamental American values. In my view, NCTC's mission has not been and must never be driven by political calculations, for whatever differences we may have on approach or emphasis, they pale in comparison with our very common goals.

Mr. Chairman, members of the Committee, thank you again for this opportunity, for which I am truly humbled and honored. I look forward to answering your questions today and, if the Senate chooses to confirm me, to working very closely with all of you and your staffs in the future to ensure that I wisely carry out my duties as Director of NCTC.

Thank you.

[The prepared statement of Mr. Leiter follows:]

PREPARED STATEMENT OF MICHAEL LEITER, DIRECTOR (ACTING), THE NATIONAL COUNTERTERRORISM CENTER

Chairman Rockefeller, Vice Chairman Bond, members of the Committee. Thank you for the opportunity to appear before you today on the occasion of my nomination to serve as the Director of the National Counterterrorism Center (NCTC). It has been my distinct privilege to serve as the Center's Principal Deputy Director since February 2007, to serve as its Acting Director for the past six months, and most recently to be nominated by the President to serve as the Center's Director. I am further honored to appear before this Committee today to discuss my credentials to be confirmed as NCTC's Director, as well as my vision for NCTC in the coming years.

Before turning to these issues, however, I think it critical to reflect briefly on why NCTC was created by the Congress and President less than four years ago. On September 11, 2001, our nation experienced the single most traumatic terrorist attack in its history. NCTC was created to organize the U.S. Government's intelligence and strategic planning response to the threat of terrorism in a manner that was not, for a variety of reasons, possible before the tragedy of 9/11. And we were created to do so in a manner that not only provides our citizens with greater security, but also simultaneously protects the civil liberties that are the very essence of our nation.

I begin here because it is these foundational principles—providing greater security while protecting fundamental American values—that will, if I have the honor of being confirmed by the Senate, motivate all of my actions. And I would seek to

lead NCTC in a manner that fully honors all of those who have been touched by the scourge of terrorism.

In many ways I believe that my credentials speak very much to these guiding principles and, moreover, to the type of work that is required of NCTC. I am not, as this Committee is well aware, a product of a lifetime of service in a single department or agency. Rather my career includes service in the United States Navy, the Department of Justice, the Office of the Director of National Intelligence, and in the Judicial Branch as a law clerk to two federal judges. And I believe I would be remiss if I did not also note my seven-plus years of experience working for local governments as a first responder. I would proffer that such experience—the military, law enforcement, intelligence, legal, and local first responder communities—are many of the same key elements that NCTC, and we as a nation, must bring together to address terrorism effectively.

From my perspective my legal training and experience as a law clerk to Associate Justice Stephen Breyer and then as an Assistant United States Attorney is especially relevant to the NCTC's work. As 9/11 so vividly illustrated, a substantial portion of counterterrorism intelligence and the U.S. Government's response to terrorism must occur within our borders. Having led interagency investigative teams as a prosecutor, I believe I have a healthy appreciation of the issues faced by law enforcement agents in the United States. Moreover, having served for two federal judges of the highest caliber, I have developed an unshakeable and profound respect for the importance of the rule of law and respect for civil liberties.

These experiences have, I believe, prepared me well to lead an organization that must not only analyze information that is collected within the United States, but also advise the Director of National Intelligence on operations relating to counterterrorism in the United States and assist the President's National and Homeland Security advisors in devising forward-looking strategic plans to counter the potential spread of violent extremism here at home.

I believe that my experience studying the Intelligence Community from the outside further qualifies me to lead the interagency element that is NCTC. As a lead investigator and report drafter for the Commission on the Intelligence Capabilities of the United States Concerning Weapons of Mass Destruction (WMD Commission) I had the distinct honor of working intimately with nine preeminent Commissioners, to include Senator Chuck Robb who was kind enough to introduce me to the Committee today. Equally important, I had the luxury of devoting more than a year to an in-depth, Intelligence Community-wide study of where we performed well and where reform was necessary.

In this role I spent countless hours examining intelligence collection, analysis, dissemination, and structural characteristics and, much more significantly, formulating recommendations to improve the Intelligence Community's performance. Much of my time at the Commission was devoted to the issues I have faced since arriving at NCTC—integrating counterterrorism information, confronting the spread of weapons of mass destruction, and ensuring that policy makers receive timely, accurate, and unbiased assessments of complex national security challenges. My subsequent service to then-Director of National Intelligence John Negroponte and then-Principal Deputy Director of National Intelligence Michael Hayden provided the even more illuminating experience of turning the Intelligence Reform and Terrorism Prevention Act of 2004 and the Commission's freshly authored recommendations into real action and tangible results across the Intelligence Community.

Ultimately, however, I believe that my strongest credential to serve as Director of NCTC cannot be distilled from a list of educational or professional accomplishments. Rather, I consider my proven leadership of NCTC to be the truest testament to my qualifications. During my time at NCTC—and in my leadership elsewhere, to include the U.S. Navy and the Office of the Director of National Intelligence—I have strived to gain the trust and confidence of my subordinates, peers, and superiors. My approach has been straightforward: listen to those around you and lead with vision, tenacity, judgment, and integrity.

I am proud of the relationships that I have developed since arriving at NCTC, both within our walls and with key partners in the U.S. Government, among state and local leaders, and our foreign allies. I have undoubtedly made mistakes during this period, but I have done all that I can to learn from those mistakes and improve my—and NCTC's performance. And I believe that overall, and in spite of the fact that I have served as both the Acting Director and Principal Deputy Director for the past six months, I have helped NCTC become more effective during this time.

These are, from my perspective, the principal reasons that I am qualified to serve as the Director of NCTC. I would now like to provide you with my vision for the future of NCTC and, by extension, what the future holds for the U.S. Government's fight against terrorism. More specifically, I will address five broad topics: (1) im-

proving NCTC's intelligence support to "non traditional" partners; (2) institutionalizing cross-Government strategic operational planning; (3) advancing the U.S. Government's global ideological engagement; (4) leadership and programmatic oversight of the Intelligence Community's counterterrorism efforts on behalf of the Director of National Intelligence (DNI); and (5) ensuring that NCTC has the people to fulfill all of its responsibilities.

My first priority, and the first responsibility given to the Center by the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), is to ensure that NCTC is truly the primary organization for analyzing and integrating terrorism information, ensuring counterterrorism information sharing among federal agencies, and supporting other agencies' sharing of counterterrorism information with non-federal partners. In all of these roles I report to the DNI, Michael McConnell, and serve as his Mission Manager for counterterrorism. On several occasions prior and subsequent to the President's decision to nominate me to serve as Director, Director McConnell and I have spoken to discuss my potential leadership of NCTC and I am confident that we share a common vision for the Center's future.

I believe that NCTC has, since its inception, made enormous progress toward fulfilling this primary responsibility. Today NCTC authors the majority of terrorism analysis that goes to senior policy makers and it ensures that all such products are appropriately coordinated among Intelligence Community components. But whereas this progress has been significant, we have moved more slowly in our support to "non traditional" partners such as FBI Joint Terrorism Task Forces; state, local, and tribal homeland security officials; and military commanders in the field. NCTC has not—and will not if I am confirmed—seek to displace the FBI, DHS, and DIA as they serve these respective customers, but we can and must do a better job of crafting our analytic product to support these diverse consumers.

In addition, we must continue to strengthen our focused information sharing efforts to these customers, as best embodied by our Defense Intelligence Unit (co-staffed by personnel from DIA's Joint Intelligence Task Force for Combating Terrorism and U.S. Northern Command) and the Interagency Threat Assessment and Coordination Group (ITACG, staffed by state and local law enforcement officers). These targeted information sharing components not only push information to these customers with unique counterterrorism needs, they also help to educate the rest of NCTC's staff on how our products can be shaped to speak more effectively to those combating terrorism outside of Washington.

Second, NCTC must further institutionalize U.S. Government-wide strategic operational planning (SOP). In its essence, SOP bridges the gap between coordinated interagency policy and strategy, and operations by Departments and Agencies to implement that strategy. From my experience working within the interagency system I am more convinced than ever that success against terrorism will only come through such coordinated and synchronized efforts—to include the full weight of our diplomatic, financial, military, intelligence, homeland security and law enforcement activities.

Since the President's approval of the first-ever National Implementation Plan in 2006, SOP has matured and evolved very significantly. Although we continue to pursue broad strategic plans that meaningfully guide department and agency programs and budgets, we have also initiated far more granular, targeted efforts to ensure department and agency implementation of plans on key topics (e.g., terrorists' acquisition of weapons of mass destruction). I strongly believe that this combination of "deliberate" and "dynamic" planning, with forceful support from the National and Homeland Security Councils, will ultimately lead to cohesive government planning and execution against terrorism.

Third, NCTC must—through both its intelligence and strategic operational planning components—increase our efforts to combat violent extremism through ideological engagement. Despite our successful kinetic actions against the enemy, it must be emphasized that the fight against terrorism will not be won solely with bullets and bombs in the central battlefields of Afghanistan, Iraq, and elsewhere. Rather, we must have an equally robust effort in what many term the "War of Ideas."

This global ideological engagement constitutes a key center of gravity in the battle against al-Qa'ida, its associates, and those that take inspiration from the group. Terrorist leaders aggressively employ messages related to current events, leverage mass media technologies, and use the Internet to engage in a communications war against all who oppose their oppressive and murderous vision of the world. We must engage them on this front with equal vehemence and we can do so in a way that makes quite clear how bankrupt their extremist ideology is. If confirmed as the Director of NCTC, I will expend significant time and energy to make sure that the Center's analysts address this issue from all perspectives, and I will spend equal time working to bring together all elements of national power—from the Depart-

ments of State, Defense, Homeland Security, Justice, and elsewhere—to tackle this long-term effort.

Fourth, NCTC must provide leadership and programmatic oversight of the Intelligence Community's counterterrorism efforts on behalf of the DNI. As IRTPA clearly recognized and as the WMD Commission further noted, there is a dire need for interagency coordination on key mission areas such as terrorism. Ultimately NCTC is only one part of a much larger counterterrorism effort within the larger Intelligence Community. In this regard NCTC must help to lead that community to ensure that we function as more than the sum of our parts. If confirmed, I intend to continue working closely with Director McConnell as well as the leadership of the Intelligence Community to coordinate counterterrorism efforts and provide budgetary advice to the Director as he formulates future National Intelligence Program budget requests.

Fifth, NCTC must continue to attract highly motivated and qualified personnel to allow us to successfully meet all of the preceding challenges. Doing so will require us to hire officers directly to NCTC as well as working extremely closely with our partner agencies to obtain qualified detailees. NCTC has experienced substantial growth since its inception and I believe that this growth must continue through Fiscal Year 2009 in order to provide the analytic and strategic planning support mandated by IRTPA. As the Center grows we must provide our workforce—both permanent and those detailed from elsewhere in the interagency—the resources, opportunities, and incentives necessary for success. As a leader I know that NCTC's ultimate fate will be based far more on my ability to enable NCTC's extraordinary workforce than on any personal efforts.

In doing all of this, little is more important than ensuring that this Committee and others are appropriately informed of NCTC's activities. One way the Center does so is through the daily provision of intelligence directly to the Congress. Already this year NCTC has provided more than 223 separate analytic terrorism products over CAPNET, a secure Internet link between the Intelligence Community and the Congress. These products include Intelligence Community Terrorist Threat Assessments, NCTC's Terrorism Dispatch, and the NCTC's Spotlight. I am completely committed to ensuring that this Committee has the information it needs to perform its constitutional oversight duties. The principle of checks and balances is one of the fundamental tenets of our form of government and it is one that I fully appreciate and look forward to supporting through open and honest communication with the Congress.

Moreover, while the legal requirements for oversight are clearly paramount, I also heartily welcome your invaluable insights on how NCTC and the counterterrorism community should go about its business. Your many years of experience in intelligence and elsewhere are a strength that I intend to benefit from in leading NCTC if confirmed. No single department, agency or branch of government has a monopoly on wisdom when it comes to fighting terrorism. If confirmed, I look forward to the benefit of the Committee's views and will seek its advice on how NCTC should proceed in its vitally important missions.

In closing, I would like to take a note from my predecessor, Vice Admiral Scott Redd's confirmation hearing. Almost three years ago Admiral Redd noted that although he was entering the realm of being a "political appointee," there was nothing political about the job of Director of NCTC. I could not agree more strongly. Every day that I have served at NCTC I have been guided by the foundational principles that I noted when I opened—providing Americans and our allies with greater security while simultaneously protecting fundamental American values. In my view NCTC's mission has not been and should not be driven by political calculations, for whatever differences we may have on approach or emphasis, they pale in comparison with our common goals.

Thank you again for this opportunity for which I am truly honored. I look forward to answering your questions and, if the Senate chooses to confirm me, to working very closely with you in the future to ensure that I carry out my responsibilities wisely.

Chairman ROCKEFELLER. Thank you, Mr. Leiter. That's a comforting statement, delivered with, I believe, the core values that are within you.

We sent you some questions, and in one of your answers, you wrote, "Our former Director concluded that the NCTC permanent cadre should comprise 20 percent of the NCTC's total personnel strength. Over the past six months, I have concluded that a slight-

ly higher percentage would be optimal. In this light—this is what you said—"in this light, if I should be confirmed, I would pursue a strategy to ensure that the NCTC permanent cadre be approximately 30 to 35 percent of the NCTC total workforce."

Now, this is one of those questions which is always hard to answer but, generally speaking, in an era of leniency and scarce resources and flexibility and cutting through the waters rapidly, I'm somewhat concerned at this strategy of the growth of the permanent staff of the NCTC. I believe that a certain percentage of experienced permanent staff is required, obviously, for the sake of the overall, and that's a very large number, and I recognize that. I'm not convinced that the permanent cadre needs to be as high as 35 percent. I'm not necessarily criticizing that before I hear what your response is, but I worry about hiring a permanent cadre of new analysts without intelligence community experience.

I understand that some intelligence agencies continue to resist detailing their personnel to what will hopefully be your agency. And I wonder if your strategy is a way to deal with this intransigence. So would you please describe your efforts and authorities available to you as Director to ensure agencies are living up to their expectations and providing the requisite number of staff to you, and that they are of the requisite quality that matches your standards. I'm especially interested in learning more about the participation of the Department of Homeland Security and of State.

Mr. LEITER. I'd be happy to, Mr. Chairman.

First, one point I would like to make, that in terms of hiring of new analysts directly to NCTC, in all but the rarest occasions, those individuals who are being hired do have prior analytic experience. So simply because we are hiring them does not mean that they have not previously worked at different agencies before, and bring that experience with them.

Now, I'd like to set some foundational principals also. I am firmly committed to ensuring that there's a flow of people back and forth from NCTC to other agencies. I think it is that expertise that gives NCTC strength. The reason behind moving above that original 20 to 25 percent was purely born out of our experience, and much less so in terms of difficulty getting people from other agencies and much more so in ensuring that our teams at NCTC have sufficient continuity, that there wasn't excessive flow in and out based on detailees going back and forth.

Now, in terms of the Director's authorities to ensure that agencies are providing sufficient staff, my authorities are co-extensive with the Director of National Intelligence's authorities. So if an agency fails to provide detailed analysts, I work with the DNI to ensure that those people are transferred. Now, I can pledge to you that, if confirmed, Senator, I will not hesitate in the least to go to the DNI and suggest that the DNI use his budgetary authority and reduce funding to individual elements if they are not supporting NCTC.

Now, you asked about DHS and State. I want to start with the basic premise that most agencies have done an outstanding job of supporting us. And although there were earlier bureaucratic fights, I do want to highlight CIA has been stellar in its support of NCTC, and they should be commended for that.

Other agencies have not been quite as forthcoming in some of their support. The recent inspector general report noted some shortcomings on the part of both DHS and the Department of State. I am pleased to say that, after I read that report last week, I called up the office of the Secretary of Homeland Security, and the Secretary's office has already committed additional support to immediately fill critical needs.

Chairman ROCKEFELLER. May I interrupt, only to this point—since my time is up—that when you get new people, you know the intelligence world and you know the agency's world very well. And, you're very forthright and I deem you to be dogged. Do you say, "This is who I want," or do you select from those that they send you?

Mr. LEITER. There is some combination. We go out, initially, and we recruit. We then ask those people to go through their chains and provide names. Those names are then submitted to us from the agency and we either accept or reject people that the agency has submitted. In many, cases people are submitted to us that we do not believe are of sufficient experience or skill level that they will not help NCTC, and we send them back, and we say, please try again.

Chairman ROCKEFELLER. So in the mixture, you go to the CIA, or some other agency, and you say, "I really need these six people."

Mr. LEITER. We will select both based on skill set and, in some instances, we do by-name requests working with that agency.

Chairman ROCKEFELLER. Senator Bond.

Vice Chairman BOND. Thank you very much, Mr. Chairman.

Mr. Leiter, as you probably well know, last summer, Congress passed the Protect America Act, and after that, this Committee worked long and hard and came up with what I think was an excellent bipartisan measure to make sure that the FISA operations could continue. However, we have yet to see a positive action by the House on that bill, which is set to expire in August.

To the extent that you can say so in this forum—obviously, details would not be appropriate—to what extent does NCTC rely on intelligence information collected under Protect America Act certifications in conducting terrorism analysis, and what impact would there be on your ability to conduct that analysis of counterterrorism should this intelligence source stop?

Mr. LEITER. Mr. Vice Chairman, I would begin just by saying that NCTC, obviously, does not collect any intelligence.

Vice Chairman BOND. That's correct.

Mr. LEITER. So we are a consumer of the intelligence that is collected by organizations like the National Security Agency. That being said, a significant percentage of the information that we analyze comes from signals intercepts, most notably from FISA and, since its passage, the Protect America Act. So that is a significant portion of what we look at to understand terrorists' plans, intent and the like.

We do not, as a general matter, know whether or not something is collected through standard FISA or Protect America Act. We don't delve into that level of detail. I will say that, as I understand it, the flexibility that the Protect America Act is quite helpful and allows us to be more agile in our collection, which, of course, pro-

vides us with greater information as analysts. And in that regard, it's quite important.

Vice Chairman BOND. In the Committee's pre-hearing questions, you were asked about the benefits of co-location, particularly given that only the NCTC and FBI's al–Qa'ida analytic elements are located at the NCTC. You noted that there are some significant advantages to having some CIA analysts remain closer to the operational counterparts at CIA headquarters.

Given that no other al–Qa'ida analytic elements are located at ALX1, does it still make sense for the FBI to have their international terrorism headquarters there? And without getting into classified matters, can you give us an analysis of what significant advantages there are in having the CIA analysts remain at CIA headquarters—and other reasons other agencies have given for not locating with the NCTC?

Mr. LEITER. Senator, I do think there are enormous benefits to having the FBI Counterterrorism Division co-located. I think it makes sense for FBI—and, obviously, I can only speak so much for FBI and CIA—I think it makes sense for FBI because they are able to co-locate their analysts and their operators together while at the same time having them co-located with NCTC. That is a luxury that CIA does not have. CIA cannot both co-locate its analysts with NCTC and its operators.

So in that regard, I think the approach for FBI and for CIA makes sense. And I would be fearful—and again, I don't want to speak too much for CIA—but I would be fearful of removing the CIA analysts from their operational counterparts. I think that is a very important co-location. We, I believe, have been quite successful in coordinating and collaborating regardless of whether all of our analysts are co-located at NCTC.

Vice Chairman BOND. In our previous discussion, you and I talked about advancing the United States' global ideological engagement and fighting the ideological war against violent extremists. What's the NCTC currently doing to counter the spread of violent extremist ideology and how would you judge the effectiveness of these efforts? And how can we measure them in the future?

Mr. LEITER. On the analytic front, Senator, we're doing a tremendous amount and looking at radicalization from a number of angles.

To begin, I would say we look at it obviously from a religious angle, we look at it from ethnographic angle, we look at it from a psychological angle. And these are all critical elements of understanding the process of radicalization and then designing strategies. That's the most advanced effort and it's an effort that I'm very proud of.

On the coordination and strategic planning efforts for the U.S. government, those are far more nascent. And I think that, if confirmed, I would view it as my number one strategic planning priority to forcefully coordinate and synchronize U.S. government efforts.

We've been at this from NCTC's perspective for only about four months, five months. I think we've made excellent progress in coordinating some of the U.S. government messaging. But this is about much more than messaging. It is forcefully coordinating

things like foreign aid, private investment overseas and the like, both overseas and domestically, to counter the spread of the ideology which contributes to terrorism.

Vice Chairman BOND. Thank you very much.

Chairman ROCKEFELLER. Thank you, Mr. Vice Chairman.

Senator Feinstein, if you'd forgive me, I have certain standard preliminary questions which I failed to ask you.

Mr. Leiter, do you agree to appear before the Committee here or in other venues when invited?

Mr. LEITER. I do.

Chairman ROCKEFELLER. Do you agree to send officials from the NCTC or the intelligence community to appear before the Committee and designated staff when invited?

Mr. LEITER. I do.

Chairman ROCKEFELLER. Do you agree to provide documents or any material requested by the Committee in order for it to carry out its oversight and legislative responsibilities——

Mr. LEITER. I do.

Chairman ROCKEFELLER [continuing]. And think it through carefully before answering.

Mr. LEITER. I do, consistent with past precedent.

Chairman ROCKEFELLER. Will you ensure that the NCTC and the intelligence community provide such material to the Committee when requested?

Mr. LEITER. I do, Senator.

Chairman ROCKEFELLER. Okay. Thank you.

Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

Mr. Leiter, I very much appreciate the time we've had to spend, and at that time you mentioned the absence of sufficient support from the State Department of Intelligence and Research and also from the Department of Homeland Security. You just said that you had talked to both and you believe the situation would be remediated.

I'd like to ask you a simple question. If it is not, would you please let us know?

Mr. LEITER. I will happily let you know, Senator Feinstein.

Senator FEINSTEIN. Thank you very much.

In your written responses to the pre-hearing questions, you noted that DNI McConnell had specifically tasked you to "increase the quality of NCTC's analytic products."

In what way have you found those products deficient? And how do you plan on or have you increased the productivity and the quality?

Mr. LEITER. Senator, I think some of our products—if I look back a year or more—some of those products did not include, for example, the regional context that was required; I mean, terrorism occurs in regions. And we didn't always integrate regional expertise sufficiently. So I think our readers could not get the full picture.

I think in some areas we ran the risk—I'm not sure it ever happened—but we ran the risk of groupthink as quickly-emerging plots are being uncovered.

So what we've tried to do in the first instance is make sure that our analysts get better training and coordinate better with our re-

gional counterparts. And on the second, we have actually done integrated red team and alternative analysis during threat streams as they emerge to ensure that we are not getting caught or pushing the intelligence community down the avenue of groupthink that has been so harmful in the past.

Senator FEINSTEIN. Now, we are being told that al–Qa'ida is in its strongest position since the attack on 9/11. The unclassified judgments from the NIE on terrorism last summer stated, "Al–Qa'ida is and will remain the most serious terrorist threat to the homeland, as its central leadership continues to plan high-impact plots while pushing others in extremist Sunni communities to mimic its efforts and to supplement its capabilities. We assess the group has protected or regenerated key elements of its homeland attack capability, including a safe haven in the FATA areas of Pakistan, its operational lieutenants and its top leadership."

The classified reports since then are even more blunt. "Despite tens of billions of dollars spent since 9/11 and countless lives lost, al–Qa'ida remains firmly ensconced in the FATA region. It's able to plot and we are still revising our counterterrorism strategy."

What is your vision of how we should be fighting terrorism into the next administration?

Mr. LEITER. Senator, thank you for that question—and I'll obviously have to leave it at a level of generality considering the unclassified nature.

First, I think we have to fight a full spectrum war. There are pieces of al–Qa'ida and other terrorist groups which will only be incapacitated through either kinetic means or law enforcement—actual incapacitation.

That being said, that is one end of the spectrum. And I would say in the FATA and elsewhere, whether or not it's North Africa or East Africa, we have to do a better job of coordinating with that kinetic force the other elements of national power.

We have to——

Senator FEINSTEIN. Explain kinetic force—that's a bit above my pay grade.

Mr. LEITER. I apologize. Kinetic force is high explosives. It's going out and killing people. And there is a certain population that that is probably the right answer.

But we have to combine with that and build around that the other elements of diplomacy, political engagement, financial sanctions and ideological engagement to ensure that the people who are trying to incapacitate do not find support in their society.

I think that is particularly important in Pakistan. We have to continue to work with our allies, we have to have a government that is a long-term partner with the United States, that does not fluctuate when their administration changes or our administration changes. And we have to ensure that they are able to drain the swamp which supports the individuals who are actively plotting against the United States and our allies.

Senator FEINSTEIN. Well, those are generalities. Any specifics?

Mr. LEITER. Senator, I would be happy to go into extensive discussion of specifics of my thoughts on the FATA. Again, I think in an open session, it's difficult to give you many of those specifics.

Senator FEINSTEIN. Okay, fair enough. My time is up.

Thank you, Mr. Chairman.

Chairman ROCKEFELLER. Thank you, Senator Feinstein.

Senator WYDEN.

Senator WYDEN. Thank you, Mr. Chairman.

Mr. Leiter, I want to follow up a different path in the same area as Senator Feinstein discussed to get your assessment of where we are today. Director McConnell gave us some stunning testimony three months ago. He said that al–Qa'ida central leadership in Pakistan—and I'll quote here—"has been able to regenerate the core operational capabilities needed to conduct attacks in our country." So extra points for the Director's, you know, candor, but I still want to get your sense.

As of today, are our counterterrorism efforts succeeding?

Mr. LEITER. Senator, I think our counterterrorism efforts are succeeding along a number of fronts, and along a number of fronts, we obviously haven't succeeded well enough. I think——

Senator WYDEN. But Mr. Leiter, how can you say we're succeeding when al–Qa'ida actually appears to be regenerating its capabilities? I think we'd agree there's no bigger terrorist threat than al–Qa'ida. So tell me specifically, how can you say we're succeeding when al–Qa'ida appears to be regenerating its capabilities?

Mr. LEITER. Senator, what I was trying to say about that success is in terms of our intelligence capabilities of watching plots as they develop, tracking those plots, disrupting those plots and defending the homeland, there have been successes. We are doing far better today, I think, at NCTC—but beyond NCTC—than we were.

Where we have clearly not succeeded—I agree with the premise of your question—we have clearly not succeeded in stopping core al–Qa'ida plotting. We're better at disrupting it, but we have not disrupted the senior leadership that exists in the FATA, and we have also not stopped the organization from promulgating a message which has successfully gained them more recruits.

Senator WYDEN. First of all, this isn't my analysis; this comes from the Director and it reflects, in my view, great credit on the Director for his assessment. And if he says they're regenerating and you've said that, in many respects, the problem is not being addressed, that to me suggests that there needs to be changes in our strategy for dealing with the principal threat.

What is your view about the changes that need to be made?

Mr. LEITER. Senator, I think the change in the government in Pakistan offers real possibilities. I think it offers possibilities to work with that government and then have them develop a plan. Ultimately, our success will rest on the success of the Pakistani government to address the problem which is, to a significant degree, within their borders. I think that is one area where we have to further our engagement with the Pakistanis and work with them to help them defeat it.

Senator WYDEN. Do you believe that any time soon, the Pakistani government will be capable of taking away al–Qa'ida's safe haven in the Pakistani tribal areas?

Mr. LEITER. I think we have to work with the Pakistani government both on capability and in——

Senator WYDEN. The question was, do you think any time soon the Pakistani government will be capable of taking away al–Qa'ida's safe haven in that area?

Mr. LEITER. I think there is much more that the government of Pakistan could do.

Senator WYDEN. I will ask you that question for the record so we get a closed——

Mr. LEITER. I'd be happy to.

Senator WYDEN [continuing]. Transcript, because that to me is the central question. Are we going to be able to get them to take away that safe haven any time soon?

One last question, if I have the time, Mr. Chairman. You've been very indulgent. I'm also concerned about terrorism financing from Saudi Arabia. The high prices that Americans pay at the pump right now are creating huge profits in Saudi Arabia, where oil wealth has made a large number of people very rich. And the problem, of course, is that many of these Saudi citizens turn around and use their oil money to finance terrorism around the world.

Now top Treasury officials have said publicly—I was in the Finance Committee when they did—that more money flows from Saudi Arabia to the Taliban and Sunni terrorist groups than from anywhere else in the world. In your view, how serious is this problem?

Mr. LEITER. Senator, the problem of terror funding from Saudi Arabia and elsewhere is very serious. The Saudis have been extremely effective in disrupting major portions of al–Qa'ida within the peninsula, but they continue to face challenges in stopping funding elsewhere. I think they have been extremely effective in some ways, but there are many potential sources of funding.

Senator WYDEN. How cooperative are they being now when it comes to cutting off funding for terrorists outside Saudi Arabia? I mean, it seems to me that they're interested in protecting their own country, but I don't see a lot of cooperation as it relates to the area outside Saudi Arabia and that this is a problem today. Is that true?

Mr. LEITER. Senator, I'm not sure I would characterize it exactly that way and I would ask—considering the sensitivities here—I'd be happy to talk to you about that in a closed session.

Senator WYDEN. I'll be glad to talk to you some more about it. But, I mean, this is a matter of public record. I mean, we're not talking about something that's classified. Stuart Levey came to the Finance Committee and, in response to my questions, said in public the Saudis are dragging their feet with respect to the Financial Intelligence Unit and the Charities Commission, and that's how they get all their money out around the world to finance terrorism. Is Mr. Levey right?

Mr. LEITER. Senator, first I would largely defer to Under Secretary Levey, who I think is closer to this problem on a day-to-day basis than I am. I think that there are many things that we could discuss in closed sessions about particular efforts by the Saudis, both within the peninsula and overseas, that would give greater clarity to what the Saudi efforts have been.

Senator WYDEN. I would like greater clarity, but I'd like some of it on the public record. I mean, Stuart Levey in particular talked

about Saudi failure in two kinds of key areas. With oil at $100 a barrel, I mean, the Saudi government certainly can't say they can't afford to take these steps. What arguments would there be for the Saudis not to take action to follow through on pledges they made to our country, both with respect to the Financial Unit and the Charities Commission? What possible argument would there be for their not following through?

Mr. LEITER. Senator, I'm not here to defend the government of Saudi Arabia as to why they have or have not followed through on these commitments. I think the problem of funding of terrorism in Saudi Arabia and elsewhere is one that we have to pursue, and I think that Under Secretary Levey, as I said, who is extremely close to this, understands the challenges of Saudi Arabia. I think the Saudis have made great progress in some areas, and in other areas, like other countries, they have likely fallen short. And I would happy to discuss it in great depth in a closed session.

Senator WYDEN. Chairman, can I ask one final question?

Chairman ROCKEFELLER. One.

Senator WYDEN. Thank you very much.

Mr. Leiter, you told Senator Bond that NCTC has only been engaged in counterterrorism messaging efforts for the last four months. Why did the NCTC decide to do this after not doing it for so long and what has been started in the last four months?

Mr. LEITER. And Senator, I apologize. I really misspoke in saying that.

The NCTC, since we first helped author the National Implementation Plan in 2005 and 2006, one of the key pillars of that plan was ideological engagement. So in that sense and in many respects, we've been involved since 2005, when we were first established. What we have started over the past four months—a bit longer now, since January—was a more forceful integration of efforts across the U.S. government, principally with CIA, Department of Defense and the State Department to coordinate messages and other outreach in a way that we were not given the opportunity to do before.

Senator WYDEN. Thank you, Mr. Chairman.

Chairman ROCKEFELLER. Thank you.

Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Mr. Chairman.

Welcome, Mr. Leiter.

I'd like to follow up on questions that you've been asked by Vice Chairman Bond and by Senator Wyden relating to the whole question of ideological engagement—what you referred to as "draining the swamp of ideology." And I couldn't agree with you more that we can attack with kinetic means and should and must attack with kinetic means certain individuals and certain structures. But if the purpose of the whole exercise is simply to have others come up and replace them and you haven't won the underlying battle, you really aren't making the kind of progress that the country needs.

And I see your initiative as a correct one. I see it as a bold one. And I look at you as an individual reporting to the Director of National Intelligence, which is an agency still sort of seeking to find its way administratively, and on something like this, probably having to bump into not only CIA and various components of Defense and the State Department and USAID within State and Homeland

Security perhaps—who knows who all you all have to be involved with.

From a point of view of administering that purpose, do you have the clout that you need to even convene people, let alone get direction? What would be the primary motivating administrative force behind this effort, if it's not yourselves and your organization? And if it is yourself and your organization, how do you compete among bigger, stronger, closer-to-the-President entities that you would seek to bend to your will?

Mr. LEITER. Senator, thank you for the question. I do want to clarify. Although on the analytic front, for ideological engagement, I report to Director McConnell, for this planning and coordination of the war of ideas, in fact, I report to the President directly.

And in that regard, what I require and what I so far have gotten over the past five to six months is a strong hand from the National and Homeland Security Councils, because in that coordination of those, if I may, big dogs, I need a National and Homeland Security Council and a White House that is supportive of our efforts to force them together to get that message out and coordinate. I have thus far had that, and in the process I have been assured that I will continue to have that. And the authority that we were given came directly from the principals committee.

Senator WHITEHOUSE. Well, that's very good to hear. I appreciate it. That's more than I thought you'd been given, and I was worried that you were getting off on a mission from which some people never return to have the bureaucratic support behind them to make it happen.

Mr. LEITER. And Senator, I don't want to underestimate the challenge there. The challenge remains, and it's a significant challenge. And I do think there was great wisdom, from my perspective, in having a dual reporting chain. Although it is complicated, I think a dual reporting chain—the DNI on intelligence and the President on strategic planning—is critical.

Senator WHITEHOUSE. Mr. Chairman, I don't have further questions. I am supportive of this nominee and hope that he can be confirmed rapidly.

Chairman ROCKEFELLER. Well, he might be pleased to hear that.

Senator Feingold.

Senator FEINGOLD. Well, thank you, Mr. Chairman. I have a full statement I'd like to enter into the record, if I could.

Chairman ROCKEFELLER. Please.

Senator FEINGOLD. And let me also say that I really enjoyed our meeting the other day. Thank you for the time. And I think you're highly qualified for this, and I look forward to supporting your nomination.

Mr. LEITER. Thank you, Senator.

OPENING STATEMENT OF THE HONORABLE RUSSELL D. FEINGOLD, A U.S. SENATOR FROM WISCONSIN

Senator FEINGOLD. Mr. Chairman, while this is a nomination hearing, it comes at an opportune time to discuss the challenges we face in our fight against al–Qa'ida and its affiliates. The State Department's Country Report on Terrorism, released last week, painted a bleak picture. Al–Qa'ida has reconstituted some of its pre–9/

11 operational capabilities in the FATA, while its network in the Middle East, Southeast Asia, Africa, Europe and Central Asia is working to attack U.S. and other western interests.

To name just two regions that we talked about that I follow closely, the terrorist threat in North Africa is growing and al–Qa'ida continues to pose a serious threat to the United States and allied interests in the Horn of Africa. Yet, almost seven years after September 11th, I think the administration still lacks comprehensive coordinated strategies to fight al–Qa'ida and its affiliates globally or regionally.

Perhaps most dangerous of all is our lack of information not only on current terrorist safe havens but, as we talked about, on future ones. Despite the 9/11 commission's warning that we must focus on "remote regions and failing states," I think we've basically failed to do that.

We've also failed to establish a global collection strategy that encompasses not only the intelligence community but other means by which our government gathers information, especially our State Department. Simply put, we need to ask what it is we need to know to protect ourselves, now and in the future, who is best positioned to learn it, and how do we direct resources accordingly?

Those questions have not been asked, much less answered, which is why Senator Hagel and I have supported legislation to establish an independent commission to examine these issues and make recommendations to Congress and to the next President. And this legislation was, of course, approved by this Committee last week, and I'm certainly very pleased with the process that we went through in that regard.

Mr. Leiter, do you agree with the DNI that we have devoted disproportionate resources toward current crises rather than long-term threats? And would you agree that we do not have enough resources devoted to tracking potential terrorist safe havens around the world?

Mr. LEITER. Largely yes, Senator. I wish I had more resources to dedicate to longer-term threats, absolutely.

Senator FEINGOLD. Obviously you're part of the intelligence community. But in trying to understand conditions that can lead to far-flung regions to become safe havens, how important is State Department reporting?

Mr. LEITER. I consider State Department reporting absolutely critical, Senator, because much of the information about the instability that can lead to safe havens or ideological radicalization comes not from covert collection but from open collection, best done by Foreign Services Officers.

Senator FEINGOLD. In that spirit, there are, of course, times in which the intelligence community is better suited to collect information on the terrorist threat. But do you agree that there are times in which diplomatic reporting can get us information more effectively than the intelligence community?

Mr. LEITER. Absolutely, Senator.

Senator FEINGOLD. Shouldn't we find ways to direct resources toward whoever is best positioned to learn about safe-haven conditions?

Mr. LEITER. Yes, I believe we should.

Senator FEINGOLD. Mr. Chairman, last week CIA Director Hayden gave a speech in which he discussed a number of threats to the United States, including how changes in population demographics result in violence, civil unrest and extremism, as well as the rise in ethnic nationalism.

In that speech he mentioned the CIA, the FBI and DOD, as well as academia and the business sector, but not the State Department. While the Director understandably was talking about what the CIA brings to the table, his failure to even mention that diplomatic reporting could help us understand these threats, I think, highlights the enormous challenges we face and the reason why this commission is so important.

Mr. Leiter, do you agree, on another matter, with the State Department's conclusion included in its Country Report on Terrorism issued last week that incarcerating or killing terrorists will not achieve an end to terrorism?

Mr. LEITER. Yes, I do.

Senator FEINGOLD. For example, would you agree that the strike acknowledged by DOD in Somalia last week is not a substitute for a comprehensive strategy to stabilize the country?

Mr. LEITER. I believe they are complementary.

Senator FEINGOLD. And in that regard, what is that strategy? What is the road map to start to reverse Somalia's status as a terrorist safe haven? Specifically, who should we be reaching out to as potential partners in Somalia?

Mr. LEITER. Senator, I think the importance of a central government and authority in areas like Somalia cannot be underestimated. So we must identify those parties that can, in fact, consistent with American values, govern that region and provide security that we can support but we can never be a replacement for.

Senator FEINGOLD. And who would those parties be, if you can say?

Mr. LEITER. Senator, I have to admit—I'd be happy to take that back for the record—I'm not familiar. As you know, the parties in Somalia are rapidly changing and numerous, and I simply couldn't give you a detailed explanation of who would be best fit for a variety of purposes.

Senator FEINGOLD. Well, as you know from our conversation, I'll be very interested in the details when you have an opportunity to do that. And I certainly wish you well.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Feingold follows:]

PREPARED STATEMENT OF HON. RUSS FEINGOLD, A U.S. SENATOR FROM WISCONSIN

The State Department's Country Report on Terrorism released last week painted a bleak picture of the fight against Al Qaeda and its affiliates. According to the report, Al Qaeda has reconstituted some of its pre-9/11 operational capabilities in Pakistan's FATA region while its network includes associates throughout the Middle East, Southeast Asia, Africa, Europe and Central Asia who are working to attack U.S. and other Western interests. In the Afghanistan-Pakistan region, Al Qaeda has greater mobility and ability to conduct training and operational planning, particularly for attacks targeting Western Europe and the United States. Portions of Pakistan have become a safe haven for Al Qaeda and a host of other dangerous organizations and the threat is expanding, with extremists gaining footholds in settled areas of the country. Meanwhile, Al Qaeda has expanded its presence in Afghanistan.

Among the litany of threats described in the report are two other regions that I have followed closely. First, the terrorist threat in North Africa is growing. Al

Qaeda in the Lands of the Islamic Maghreb operates across the Sahel region, including in Mali, Mauritania, Niger, Algeria and Chad, to recruit for training and terrorist operations. And Al Qaeda continues to pose a serious threat to U.S. and allied interests in the Horn of Africa. Somalia's political instability, among other factors, permits terrorist transit and safe haven.

Almost seven years after September 11, the Administration still lacks comprehensive, coordinated strategies to fight Al Qaeda and its affiliates. I have pushed for legislation to require a global strategy to fight Al Qaeda, which the Administration has resisted. I have succeeded in requiring the administration to produce a regional strategy for the Horn of Africa. Unfortunately, the GAO found that this strategy was "incomplete" and lacking numerous characteristics needed for an effective strategy, including information on necessary resources, investments and risk management. Meanwhile, the Administration appears fixated on a purely military approach to the region. Indeed, the very week that DOD announced another strike in Somalia, we were reminded yet again—by no other than the State Department—that "incarcerating or killing terrorists will not achieve an end to terrorism."

Perhaps most dangerous of all is our lack of information, not only on current terrorist safe havens, but on future ones. The leadership of the Intelligence Community has acknowledged a lack of "global reach." It has also admitted that "disproportionate" resources are directed at current crises, rather than long-term threats. Despite the 9/11 Commission's warning that we must focus on "remote regions and failing states," we have simply failed to do so. We have also failed to establish a global collection strategy that encompasses not only the intelligence community, but other means by which our government gathers information, especially our State Department. Simply put, we need to ask what it is we need to know to protect ourselves, now and in the future, who is best positioned to learn it, and how do we direct resources accordingly. Those questions have not been asked, much less answered. For that reason, Senator Hagel and I have supported legislation to establish an independent commission to examine these issues and make recommendations to Congress and to the next president. The Senate Intelligence Committee approved this legislation last week, and I will fight to get it passed into law.

Mr. LEITER. Thank you, Senator.

Chairman ROCKEFELLER. Thank you, Senator Feingold.

I just have one comment to make, and then Vice Chairman Bond may have a question or so.

When Senator Wyden was talking about Saudi Arabia, I could sort of feel my blood pressure rising. And it's almost fascinating. I think that oil was discovered there as late as the early 1930s. And I have this general view that virtually everything we do in that part of the world is dominated by our need for oil.

And I was stunned—I guess it was approximately a year ago, maybe a little bit less—when the President gave them $20 billion to buy arms. It had not occurred to me that the Saudis were either in need of arms or in need of money with which to buy arms. And I was thinking, somewhat irreverently, that that could go a long way towards finding the way to take carbon dioxide out of everything that we burn and make it virtually carbon-neutral.

But nobody seems to want to address this issue. And it's either because the hold that they have over us—and some other countries around there but particularly them—the hold they have over us based upon the friendships that go back over the years and the visits and the ambassadors here and there, that it, in effect, ends up psychologically tying our hands in order to do exactly what it is your job to do, and that is to make sure that they are doing everything they can to cut off money for terrorists, that they are not just doing that within their own country—and granted, they're very good at that, because they're a regency. None of them are elected, and they could be overthrown, have been before.

That's a profound sense of unease on my part about America facing the world. It's like we're facing the world and mouthing all the right sounds, but in fact not doing what's needed to be done.

And I don't necessarily ask for a response on your part, although I would welcome one, but I think it's an overridingly important matter, not only with the credibility to our own people of our efforts in the war on terrorism, but I cannot believe that people all over the world who wish us ill are not watching that very closely and taking some either amusement or at least interest from that fact.

Mr. LEITER. Senator, three quick points. One, as the Acting Director of NCTC and, if confirmed, as Director, obviously I have a piece of the Saudi Arabia portfolio, and that is the counterterrorism piece. And I always remind my staff, and I remind myself that counterterrorism is only one piece of the national security puzzle. It may be a critically important piece, but it is one piece.

Second, I would say that the one thing that I can assure you is that I would never allow NCTC analysts—and I will always support them in every way I can—to not have their work colored by the discomfort or political consequences that you fear we as a nation experience.

I will demand of them—I have in the past and I will in the future demand of them—that they give the straight truth and speak to power about what the Saudi actions are or are not, and explain what the counterterrorism consequences are, completely and utterly unclouded by other political consequences.

Chairman ROCKEFELLER. I believe you.

Vice Chairman Bond.

Vice Chairman BOND. Thank you very much, Mr. Chairman. I agree with the concern that you have raised and Senator Wyden has raised about the financing coming from Saudi Arabia. This is a very serious question. I know that, having worked with Stuart Levey and the others, we know what has been done and there is much more that needs to be done, and we will look forward to following up with you to see what the NCTC can bring forward.

Also, with respect to al–Qa'ida and its planning capability in the FATA, I think that there have been some recent newspaper op-ed pieces talking about a better strategy for dealing with the FATA. And I hope we can go into those, because I think we can take those as a stepping-off point to see where you would go from there.

I would note that with all the planning capabilities, there are a number of high-level al–Qa'ida operatives who have kinetically disappeared on a regular basis in the FATA, and that has limited their ability to carry out operations. And I also think that the fact that we have been kept free from attacks since 9/11 is in no small part due to the information collection, the activities in the groups you serve as well as our military efforts there.

But I would ask you first, some people say that the battle with al–Qa'ida is no longer in Iraq. Now, that is directly military. But I would ask your assessment of where al–Qa'ida is posing the greatest threat to United States interests. Is it not in Iraq?

Mr. LEITER. Senator, to the extent that we have military forces in Iraq, al–Qa'ida in Iraq, which continues to exist, poses the most

direct threat to U.S. interests, those troops on the ground in Iraq, in Iraq.——

Vice Chairman BOND. What would the impact on terrorism be if we departed and Iraq was open as potentially a safe haven for al–Qa'ida again? What would the impact on the terrorist threat to the United States be?

Mr. LEITER. Senator, were al–Qa'ida to have a safe haven in Iraq, I would assess that that safe haven would pose a very similar threat to the United States and U.S. interests as does the FATA in Pakistan. And, from my perspective, that's a dire threat.

Vice Chairman BOND. Well, I would think there would be much greater opportunity for establishing command and control and operational activities than they have in the FATA.

But I'm very interested in the points that Senator Feingold raised about the comprehensive view of where the threats to the United States come from terrorism and how we're going to deal with them.

Now, it seems to me that what he outlined pretty much fits with what I thought the NCTC was supposed to do—figure out where the terrorist threats are, where the emerging threats are, and be able to take those recommendations through the principals committee to all of the agencies, whether it's State Department, military, CIA, or anyone else that has something to do with them.

Am I wrong? Is this not pretty much what he outlined what your responsibility is? And if it is, are you lacking in statutory authority? Or what do you and the NCTC need to answer those very important questions that Senator Feingold raised?

Mr. LEITER. Senator, I do think that's NCTC's responsibility. It is to identify where the threat is and then help write the plan and implement the plan for attacking that threat.

I think that we have done that and we continue to try to do that. We are trying to grow the capacity every day to do more of that in more places.

Vice Chairman BOND. And would you not say that developing threats—and he indicated the challenges that he sees in the various locations in Africa—is that part of your portfolio?

Mr. LEITER. Absolutely, Senator. We've been instrumental in authoring regionalization counterterrorism plans in North Africa, East Africa, Southeast Asia, and the like.

Vice Chairman BOND. My personal view is that we ought to see that you have the resources, the horsepower to do it. I think you are in the best position to do it. You have the assets; you have the analysts and others. My view is that we need to look to you to get this job done.

If you need a commission, tell us. If you need resources, tell us. Or, as I am concerned, there isn't adequate legislative structure for the DNI, through exercising his powers, to develop an effective, integrated intelligence collection operation and assignment of responsibilities activity.

This all goes to, I guess, the strategic operational planning, and I would like to know your views on that and if you see any weaknesses in the strategic operational planning that is going on at the NCTC, and what we can do to fix them.

Mr. LEITER. Senator, I think the strategic operational planning construct, as I said in my opening statement, is exactly what the U.S. government needs because it is the only place in the government that can have concerted, continued effort at interagency coordination beyond simply the NSC and HSC.

That being said, it is a construct which runs up against many entrenched institutional both executive branch and congressional interests.

Vice Chairman BOND. Stop! Congress? I say that mockingly because we do turf about as well as anybody else. But we do see it in there.

So we need to discuss with you, are there additional statutory authorities needed to get this job done?

Mr. LEITER. Senator, I actually think, with what I've seen thus far, that with a strong National Security Council this can be done well. But I would absolutely take from you the charge to look, if I'm confirmed, at how we can improve this. And I am more than happy to come back to this Committee and make those suggestions to give us a stronger hand to coordinate U.S. government efforts if that is what needs to happen.

Vice Chairman BOND. I believe it's absolutely essential. You referenced the State Department and others. And, frankly, right now, our best diplomacy is being conducted by the U.S. Army and National Guard. And I'd like to see the State Department get in the game. That's just—I won't ask you to comment on that.

Mr. Chairman, I'll leave that one lying out there.

Chairman ROCKEFELLER. Well, it would also be good if we gave them the money to be in the game.

Vice Chairman BOND. Exactly. That's our responsibility, our failure.

Chairman ROCKEFELLER. Thank you, Vice Chairman Bond.

Mr. Leiter, I just would like to say things which would be excessive, so I won't. But if there were a single negative vote on you in this Committee, I would be very surprised. And that's not just because there is the absence of fault or the absence of commission on your part as Acting, but also because of what I feel is the truly extraordinary abilities that you bring and the role model that you serve as, not only to us but to Zachary, who has long since disappeared—decided not to defend you in critical situations—but that you're kind of an ideal of what a public servant ought to be.

So this hearing is a pleasure. I would like to see you get confirmed next week. We have to get the record of this hearing transcribed and made available to all Members, then there are other small details that we have to do. But if it could be done next week, I'd like to do it simply as a way of giving you a faster start. If it can't be, it will not be because we don't want to, but because of technical questions which will not remain about you but remain in our process.

So I thank you, and this hearing is adjourned.

Mr. LEITER. Thank you, Mr. Chairman.

[Whereupon, at 4:40 p.m., the Committee adjourned.]

Supplemental Material

SELECT COMMITTEE ON INTELLIGENCE

UNITED STATES SENATE

QUESTIONNAIRE FOR COMPLETION BY PRESIDENTIAL NOMINEES

SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE

QUESTIONNAIRE FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART A - BIOGRAPHICAL INFORMATION

1. **NAME:** Michael Evan Leiter
2. **DATE AND PLACE OF BIRTH:** April 8, 1969; New York, NY
3. **MARITAL STATUS:** Divorced
4. **SPOUSE'S NAME:** [Redacted]
5. **SPOUSE'S MAIDEN NAME IF APPLICABLE:** [Redacted]
6. **NAMES AND AGES OF CHILDREN:**

NAME	AGE
[Redacted]	[Redacted]

7. **EDUCATION SINCE HIGH SCHOOL:**

INSTITUTION OF DEGREE	DATES ATTENDED	DEGREE RECEIVED	DATE
Dwight Englewood School	8/83-6/87	High School Diploma	6/87
Columbia University	8/87-6/91	B.A.	6/91
Harvard Law School	8/97-6/00	J.D.	6/00

8. EMPLOYMENT RECORD (LIST ALL POSITIONS HELD SINCE COLLEGE, INCLUDING MILITARY SERVICE. INDICATE NAME OF EMPLOYER, POSITION, TITLE OR DESCRIPTION, LOCATION, AND DATES OF EMPLOYMENT.)

EMPLOYER	POSITION/TITLE	LOCATION	DATES
National Counterterrorism Center	Acting Director	Washington, DC	10/07-present
National Counterterrorism Center	Principal Dep. Dir.	Washington, DC	2/07-10/07
Director of National Intelligence	Dep. Chief of Staff	Washington, DC	5/05-2/07
Commission on the Intelligence Capabilities of the U.S. Regarding WMD (Robb-Silberman)	Dep. GC; Asst. Dir.	Washington, DC	4/04-5/05
U.S. Department of Justice, U.S. Attorney's Office for the Eastern District of Virginia	Asst. US Attorney	Alexandria, VA	10/02-5/05
Supreme Court of the United States, Justice Stephen Breyer	Law Clerk	Washington, DC	7/01-8/02
US Court of Appeals for the First Circuit, Chief Judge Michael Boudin	Law Clerk	Boston, MA	7/00-7/01
Bartlit Beck Herman Palenchar and Scott	Law Clerk	Denver, CO	6/00-7/00
Miller, Cassidy, Larocca, and Lewin	Summer Associate	Washington, DC	7/99-8/99
Williams & Connolly	Summer Associate	Washington, DC	5/99-7/99
International Criminal Tribunal for the Former Yugoslavia	Law Clerk	Hague, Netherlands	6/98-8/98
United States Navy	LT, Naval Flight Off.	Pensacola, FL Whidbey Island, WA	8/91-6/97

9. GOVERNMENT EXPERIENCE (INDICATE EXPERIENCE IN OR ASSOCIATION WITH FEDERAL, STATE, OR LOCAL GOVERNMENTS, INCLUDING ADVISORY, CONSULTATIVE, HONORARY, OR OTHER PART-TIME SERVICE OR POSITION. DO NOT REPEAT INFORMATION ALREADY PROVIDED IN QUESTION 8):

Escambia County, Florida Volunteer Fire Department (part time volunteer)	Firefighter/EMT	Pensacola, FL	5/92-6/93
Englewood Volunteer Ambulance Corps (part time volunteer)	EMT	Englewood, NJ	4/85-6/91

In both these positions I served as a first responder and provided emergency medical and rescue services.

10. INDICATE ANY SPECIALIZED INTELLIGENCE OR NATIONAL SECURITY EXPERTISE YOU HAVE ACQUIRED HAVING SERVED IN THE POSITIONS DESCRIBED IN QUESTIONS 8 AND/OR 9.

Since my time serving in the United States Navy as a Naval Flight Officer in EA-6B Prowlers I have acquired a wide range of intelligence and national security expertise. As a Naval Flight Officer (NFO), I deployed twice aboard the *USS George Washington* to the Mediterranean and Arabian Gulf. While deployed in 1994 and 1996, I participated extensively in US, NATO, and United Nations sanctions enforcement and peacekeeping operations in the former Yugoslavia and Iraq. During these deployments I acquired expertise in tactical signals intelligence (SIGINT), carrier air wing strike planning, joint and combined air operations, suppression of enemy air defenses (SEAD), and close air support (CAS).

Subsequent to my service in the United States armed forces, I acquired experience in international law and issues involving war crimes while serving as a law clerk with the United Nations International Criminal Tribunal for the Former Yugoslavia. For approximately two months, I served with the tribunal's Office of the Prosecutor assisting in the investigation and prosecution of individuals accused of war crimes in Croatia and Bosnia-Herzegovina.

Upon graduating from law school and completing judicial law clerkships, I acquired additional national security expertise while serving as an Assistant United States Attorney in the Eastern District of Virginia (Alexandria). Although the majority of my prosecuting experience did not involve international investigations, I led a major international narcotics and money laundering investigation and prosecution involving activity in the United States, the Netherlands, Venezuela, and the Caribbean. During this period as an Assistant United States Attorney I led teams comprising special agents from the Federal Bureau of Investigation, the Drug Enforcement Administration, the Internal Revenue Service, as well as state and local law enforcement officers, and worked extensively with the Department of Justice on issues requiring requests for international law enforcement and legal assistance under Mutual Legal Assistance Treaties (MLATs).

While serving with the U.S. Department of Justice I was detailed to the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, better known as the WMD Commission or Robb-Silberman Commission. As the Commission's Deputy General Counsel and Assistant Director I was a principal drafter of the Commission's report and participated in all aspects of the Commission's 13-month long investigation of the Intelligence Community's performance in assessing the state of Iraq's pre-war WMD programs. During the period, I worked closely and extensively with senior officials and intelligence collectors, analysts, and program planners from all parts of the Intelligence Community, to include the CIA, FBI, DIA, NSA, NGA, DHS, and NCTC. During this period I acquired extensive knowledge of Intelligence Community collection operations (e.g., HUMINT, SIGINT,

GEOINT, MASINT, and OSINT), analysis, budgetary planning, support to policy makers, and weapons of mass destruction.

Immediately following the WMD Commission, I joined the fledgling Office of the Director of National Intelligence (ODNI) as the Office's Deputy Chief of Staff. In this role I worked closely with then-DNI John Negroponte, then-PDDNI Michael Hayden, all members of the ODNI senior staff, leaders throughout the Intelligence Community, officials at the National and Homeland Security Councils, and members of congressional staffs. During this period I acquired expertise in intelligence reform, most notably working closely on the DNI and Attorney General's plan for developing a National Security Branch within the FBI, working on the development of mission management principles for the NCTC, NCPC, and other ODNI Mission Managers, as well as numerous other IC-wide and ODNI initiatives.

Since joining the National Counterterrorism Center (NCTC) I have acquired additional expertise in all aspects of counterterrorism intelligence and counterterrorism policy planning. As the Principal Deputy Director and now Acting Director, I have supervised all aspects of NCTC's operations, to include counterterrorism intelligence analysis, mission management of the larger Intelligence Community's counterterrorism elements, watchlisting, information sharing, terrorists' acquisition of WMD, countering violent extremism, counterterrorism-related biometrics, and long-term counterterrorism planning. In addition, I have worked closely with the National and Homeland Security Councils, as well as the Departments of Defense, State, Homeland Security, Energy, and others to develop counterterrorism strategic plans across a wide variety of subjects. Finally, I have acquired extensive experience working with various foreign government security and intelligence services.

Although not a topic normally associated with "national security," my time as a first responder—as a volunteer firefighter and emergency medical technician (EMT)—has also provided me with what I believe is valuable expertise in current counterterrorism intelligence as operations. These experiences have provided me with at least some greater appreciation for the challenges faced by state and local officials and, I believe, provide me with increased insight into how the federal government must support these officials and the potential value these officials offer in our domestic counterterrorism efforts.

11. HONORS AND AWARDS (PROVIDE INFORMATION ON SCHOLARSHIPS, FELLOWSHIPS, HONORARY DEGREES, MILITARY DECORATIONS, CIVILIAN SERVICE CITATIONS, OR ANY OTHER SPECIAL RECOGNITION FOR OUTSTANDING PERFORMANCE OR ACHIEVEMENT):

Harvard Law School, *magna cum laude* graduate (2000)
Harvard Law School, Sears Prize for top two students in class of 2000 (1998 award)
Harvard Law School, Lewis Human Rights Fellowship (summer 1998)

United States Navy Decorations
Air Medal (Strike Flight: 3 awards): operations in Iraq and Former Yugoslavia
Navy and Marine Corp Achievement Medal (2 awards)

Navy Unit Commendation
Meritorious Unit Commendation (2 awards)
Battle "E" Ribbon
National Defense Medal
Armed Forces Expeditionary Medal
Southwest Asia Service Medal
Armed Forces Service Medal (2 awards)
Sea Service Deployment Ribbon (2 awards)
NATO Medal (2 awards)
Navy Pistol Marksmanship Ribbon

12. ORGANIZATIONAL AFFILIATIONS (LIST MEMBERSHIPS IN AND OFFICES HELD WITHIN THE LAST TEN YEARS IN ANY PROFESSIONAL, CIVIC, FRATERNAL, BUSINESS, SCHOLARLY, CULTURAL, CHARITABLE, OR OTHER SIMILAR ORGANIZATIONS):

ORGANIZATION	OFFICE HELD	DATES
Harvard Law Review	President (1/99-1/00)	8/98-6/00
Harvard Law School Veterans Assoc.	none	8/97-6/00

13. PUBLISHED WRITINGS AND SPEECHES (LIST THE TITLES, PUBLISHERS, AND PUBLICATION DATES OF ANY BOOKS, ARTICLES, REPORTS, OR OTHER PUBLISHED MATERIALS YOU HAVE AUTHORED. ALSO LIST ANY PUBLIC SPEECHES YOU HAVE MADE WITHIN THE LAST TEN YEARS FOR WHICH THERE IS A TEXT OR TRANSCRIPT. TO THE EXTENT POSSIBLE, PLEASE PROVIDE A COPY OF EACH SUCH PUBLICATION, TEXT, OR TRANSCRIPT):

See "Tab A" for copies of articles and statements

Published Writings

Note, Federal Prosecutors, State Ethics Regulations, and the McDade Amendment, 113 Harv. L. Rev. 2080 (2000), published in the Harvard Law Review, June 2000.

Recent Case, Statutory Interpretation – Americans with Disabilities Act – *Ford v. Schering-Plough Corp.*, 145 F.3d 601 (3d Cir. 1998), 112 Harv. L. Rev. 1118 (1999), published in the Harvard Law Review, March 1999

Public Speeches & Congressional Testimony in Open Hearings

March 13, 2008: Statement before the House Committee on Homeland Security, Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment concerning the Interagency Threat Assessment and Coordination Group (ITACG), Washington, DC

February 13, 2008: "Looming Challenges in the War on Terror" given at the Washington Institute for Near East Policy, Washington, DC

October 4, 2007: Statement before the Committee on House Homeland Security Subcommittee on Border, Maritime and Global Counterterrorism concerning the coordination of law enforcement elements overseas, Washington, DC

July 25, 2007: Statement before a joint session of the House Armed Services Committee and House Permanent Select Committee on Intelligence concerning the 2007 National Intelligence Estimate on the Terrorism Threat to the U.S. Homeland, Washington, DC

PART B - QUALIFICATIONS

14. QUALIFICATIONS (DESCRIBE WHY YOU BELIEVE YOU ARE QUALIFIED TO SERVE IN THE POSITION FOR WHICH YOU HAVE BEEN NOMINATED):

I believe that I am qualified to serve as the Director of the National Counterterrorism Center (NCTC) based on my successful leadership of the Center since my arrival in January 2007 combined with my varied experiences in the U.S. military, domestic law enforcement, and intelligence reform. From my perspective I have—based on these factors—illustrated the intellectual capacity, expertise, judgment, and real-world leadership necessary to lead this vital organization.

Since arriving at the NCTC I have played a critical role in advancing the Center's mission. Under the leadership of Vice Admiral Scott Redd, the first Senate-confirmed Director of NCTC, I managed and led all areas of the NCTC and, I believe, contributed significantly to the NCTC's successful mission accomplishment. As the Principal Deputy Director, my responsibilities have run the full gamut of counterterrorism intelligence and planning, to include: reviewing and developing counterterrorism intelligence analysis, leading the coordination of counterterrorism intelligence on a daily basis and during times of crisis, representing the NCTC and the counterterrorism intelligence community within the National and Homeland Security Councils, developing strategic operational plans related to the War on Terrorism, managing NCTC personnel and budgetary plans, briefing congressional members and staff, engaging in outreach to State, Local, Tribal, and Private sector partners, and participating in public outreach.

During this period of service NCTC initiated many new and successful endeavors. For example, during the summer of 2007, NCTC—and I personally—organized and led an Interagency Task Force to respond to what counterterrorism analysts assessed to be a heightened threat environment emanating from al-Qa'ida's safe haven in Pakistan's Federally Administered Tribal

Areas. Through this NCTC-led task force, we were able to forcefully coordinate U.S. Government efforts to collect additional intelligence related to the threat and put in place innovating, interagency programs to increase the likelihood that any threat would be detected or disrupted. As a result of the success of this task force, I have personally led the development of additional targeted Strategic Operational Planning efforts in conjunction with the National and Homeland Security Councils and the rest of the counterterrorism community to ensure that the U.S. government is acting in a coordinated, integrated, and synchronized manner.

In addition, I personally lead NCTC's efforts to expand its intelligence support to more "non traditional" customers. In this regard, I have worked extensively to successfully establish and develop NCTC's Interagency Threat Assessment and Coordination Group, which provides specialized support to State, Local, and Tribal sector partners. Through efforts such as this NCTC has, I believe, expanded significantly the quantity and quality of its intelligence support to federal and non-federal customers alike.

Since November 2007 I believe that I have further illustrated my capacity to successfully lead NCTC. Upon Vice Admiral Redd's retirement I have led NCTC and I have done so while serving as both the Acting Director and Principal Deputy Director. During this time, the Center Center has tackled and led such difficult initiatives as how counterterrorism biometrics will be used by the U.S. Government, how the U.S. Intelligence Community can best manage our efforts against terrorists' acquisition of Weapons of Mass Destruction, and how the theory of joint duty can be best implemented in practice. Throughout this period we have also consistently expanded our authorship of intelligence analysis for senior policy makers, most particularly in critical areas such as radicalization, terrorist travel, and threats to the U.S. Homeland. Finally, and perhaps most important, we have continued to attract the best and brightest to work at NCTC and vastly improved our relations with other parts of the U.S. Government—both inside and outside the Intelligence Community.

I believe that I am further qualified to serve as the Director of NCTC based on my prior professional and academic experience. Beginning with the former, over the past several years I have been fully committed to, and involved with, intelligence reform. As the Deputy General Counsel and Assistant Director for the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction (WMD Commission), I led multiple efforts and was a principal drafter of the final report. During this period I had the opportunity to intensively study all parts of the Intelligence Community and craft recommendations for how performance could be improved. I believe that my subsequent experience, as Deputy Chief of Staff for the Office of the Director of National Intelligence, gave me the further opportunity to put the theory of intelligence reform into action. During this period I worked closely with all of the Intelligence Community's leadership, as well as that of NCTC.

Although I was not a part of the Intelligence Community while serving with the U.S. Department of Justice, I believe that my experience as an Assistant United States Attorney also adds to my qualifications for the position. My close work with federal, state, and local law enforcement agents, as well as extensive experience in criminal investigations and prosecutions provided me with an appreciation of domestic operations and civil liberties that is, I believe, critical to

understanding how counterterrorism operations can and cannot advance within the United States.

My appreciation for the difficult legal and constitutional issues involved in some aspects of counterterrorism intelligence and policy is, I think, further enhanced by my other academic and professional experience in the law. As a former law clerk to Associate Justice Stephen G. Breyer and graduate of Harvard Law School, I believe that I have a background that is extremely useful when considering how counterterrorism actions implicate legal and constitutional protections.

As a former naval flight officer who participated in international operations in the former Yugoslavia and Iraq, I believe I also have a sufficient understanding of military operations to ensure that NCTC provides the intelligence and planning support required by the Department of Defense. I believe that my military service provides me with an appreciation for some of the demands placed on our men and women in uniform and how Washington-based elements such as NCTC must support their missions.

Finally, I believe that I am qualified to serve as the Director of the National Counterterrorism Center because of the character, integrity, judgment, and leadership that I have tried to bring to all of the preceding endeavors. For while professional and academic experience is invaluable, I believe these more fundamental traits are what provide for lasting and meaningful success.

I have been incredibly honored to serve as the Acting Director of NCTC over the past five-plus months and I have tried my utmost to enable the incredible talents of those who serve within the organization. It is with their trust and confidence that I have been able to find whatever success I have enjoyed. I believe that NCTC has, with my assistance, been successful over the year, and I hope that the Committee will judge that my time as the organization's Acting Director, as well as my prior experiences, qualify me to be confirmed to this critical position.

PART C - POLITICAL AND FOREIGN AFFILIATIONS

15. POLITICAL ACTIVITIES (LIST ANY MEMBERSHIPS OR OFFICES HELD IN OR FINANCIAL CONTRIBUTIONS OR SERVICES RENDERED TO, ANY POLITICAL PARTY, ELECTION COMMITTEE, POLITICAL ACTION COMMITTEE, OR INDIVIDUAL CANDIDATE DURING THE LAST TEN YEARS):

I believe that I donated approximately $100 to Senator John McCain in approximately 1998 or 1999. I cannot, however, find any record of doing so.

16. CANDIDACY FOR PUBLIC OFFICE (FURNISH DETAILS OF ANY CANDIDACY FOR ELECTIVE PUBLIC OFFICE):

None.

17. FOREIGN AFFILIATIONS

(NOTE: QUESTIONS 17A AND B ARE NOT LIMITED TO RELATIONSHIPS REQUIRING REGISTRATION UNDER THE FOREIGN AGENTS REGISTRATION ACT. QUESTIONS 17A, B, AND C DO NOT CALL FOR A POSITIVE RESPONSE IF THE REPRESENTATION OR TRANSACTION WAS AUTHORIZED BY THE UNITED STATES GOVERNMENT IN CONNECTION WITH YOUR OR YOUR SPOUSE=S EMPLOYMENT IN GOVERNMENT SERVICE.)

A. HAVE YOU OR YOUR SPOUSE EVER REPRESENTED IN ANY CAPACITY (E.G. EMPLOYEE, ATTORNEY, OR POLITICAL/BUSINESS CONSULTANT), WITH OR WITHOUT COMPENSATION, A FOREIGN GOVERNMENT OR AN ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE FULLY DESCRIBE SUCH RELATIONSHIP.

No.

B. HAVE ANY OF YOUR OR YOUR SPOUSE'S ASSOCIATES REPRESENTED, IN ANY CAPACITY, WITH OR WITHOUT COMPENSATION, A FOREIGN GOVERNMENT OR AN ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE FULLY DESCRIBE SUCH RELATIONSHIP.

No.

C. DURING THE PAST TEN YEARS, HAVE YOU OR YOUR SPOUSE RECEIVED ANY COMPENSATION FROM, OR BEEN INVOLVED IN ANY FINANCIAL OR BUSINESS TRANSACTIONS WITH, A FOREIGN GOVERNMENT OR ANY ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE PROVIDE DETAILS.

No.

D. HAVE YOU OR YOUR SPOUSE EVER REGISTERED UNDER THE FOREIGN AGENTS REGISTRATION ACT? IF SO, PLEASE PROVIDE DETAILS.

No.

18. DESCRIBE ANY LOBBYING ACTIVITY DURING THE PAST TEN YEARS, OTHER THAN IN AN OFFICIAL U.S. GOVERNMENT CAPACITY, IN WHICH YOU OR YOUR SPOUSE HAVE ENGAGED FOR THE PURPOSE OF DIRECTLY OR INDIRECTLY INFLUENCING THE PASSAGE, DEFEAT, OR MODIFICATION OF FEDERAL LEGISLATION, OR FOR THE PURPOSE OF AFFECTING THE ADMINISTRATION AND EXECUTION OF FEDERAL LAW OR PUBLIC POLICY.

I have not personally engaged in any such activity.

My former spouse, [Redacted] to whom I was married from August 1999 until September 2006, was employed by the Natural Resources Defense Council (NRDC) from October 2004 until July 2006. During this period, [Redacted] participated directly and indirectly in issues related to environmental protection. Approximately 70% of her work involved litigation and the remainder involved advocacy, mostly involving air pollutants.

For all of the litigation in which she was involved and in which the U.S. Government was involved, NRDC was adverse to the U.S. Government's regulatory position. The only instance in which [Redacted] can recall actively lobbying a member of Congress involved the regulation of mercury emissions from coal fired power plants. In that instance, [Redacted] engaged in at least one meeting with congressional staff from the office of Senator Robert Byrd (D-WV). In addition, [Redacted] also participated in several "strategy meetings" on the same and related topics with congressional staff from the Senate Environment and Public Works Committee.

PART D - FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST

19. DESCRIBE ANY EMPLOYMENT, BUSINESS RELATIONSHIP, FINANCIAL TRANSACTION, INVESTMENT, ASSOCIATION, OR ACTIVITY (INCLUDING, BUT NOT LIMITED TO, DEALINGS WITH THE FEDERAL GOVERNMENT ON YOUR OWN BEHALF OR ON BEHALF OF A CLIENT), WHICH COULD CREATE, OR APPEAR TO CREATE, A CONFLICT OF INTEREST IN THE POSITION TO WHICH YOU HAVE BEEN NOMINATED.

None.

20. DO YOU INTEND TO SEVER ALL BUSINESS CONNECTIONS WITH YOUR PRESENT EMPLOYERS, FIRMS, BUSINESS ASSOCIATES AND/OR PARTNERSHIPS, OR OTHER ORGANIZATIONS IN THE EVENT THAT YOU ARE CONFIRMED BY THE SENATE? IF NOT, PLEASE EXPLAIN.

Not applicable; currently a full time U.S. Government employee.

21. DESCRIBE THE FINANCIAL ARRANGEMENTS YOU HAVE MADE OR PLAN TO MAKE, IF YOU ARE CONFIRMED, IN CONNECTION WITH SEVERANCE FROM YOUR CURRENT POSITION. PLEASE INCLUDE SEVERANCE PAY, PENSION RIGHTS, STOCK OPTIONS, DEFERRED INCOME ARRANGEMENTS, AND ANY AND ALL COMPENSATION THAT WILL OR MIGHT BE RECEIVED IN THE FUTURE AS A RESULT OF YOUR CURRENT BUSINESS OR PROFESSIONAL RELATIONSHIPS.

Not applicable; currently a full time U.S. Government employee.

22. DO YOU HAVE ANY PLANS, COMMITMENTS, OR AGREEMENTS TO PURSUE OUTSIDE EMPLOYMENT, WITH OR WITHOUT COMPENSATION, DURING YOUR SERVICE WITH THE GOVERNMENT? IF SO, PLEASE PROVIDE DETAILS.

No.

23. AS FAR AS CAN BE FORESEEN, STATE YOUR PLANS AFTER COMPLETING GOVERNMENT SERVICE. PLEASE SPECIFICALLY DESCRIBE ANY AGREEMENTS OR UNDERSTANDINGS, WRITTEN OR UNWRITTEN, CONCERNING EMPLOYMENT AFTER LEAVING GOVERNMENT SERVICE. IN PARTICULAR, DESCRIBE ANY AGREEMENTS, UNDERSTANDINGS, OR OPTIONS TO RETURN TO YOUR CURRENT POSITION.

I have no current or foreseeable plans to leave Government service; because I am currently a full time U.S. Government employee the last specific question is not applicable.

24. IF YOU ARE PRESENTLY IN GOVERNMENT SERVICE, DURING THE PAST FIVE YEARS OF SUCH SERVICE, HAVE YOU RECEIVED FROM A PERSON OUTSIDE OF GOVERNMENT AN OFFER OR EXPRESSION OF INTEREST TO EMPLOY YOUR SERVICES AFTER YOU LEAVE GOVERNMENT SERVICE? IF YES, PLEASE PROVIDE DETAILS.

During the winter of 2006, just prior to being offered the position of Principal Deputy Director of NCTC, the University of Virginia School of Law offered me a position as a visiting Professor for the 2007-09 academic years. Once I accepted my position at NCTC I informed the Dean of the law school that I would not be leaving government service. The Dean conveyed to me that the University understood my choice but that they would be interested in again speaking with me if I did, at a future date, leave the government. I currently have no agreement of any kind with the University concerning future employment.

25. IS YOUR SPOUSE EMPLOYED? IF YES AND THE NATURE OF THIS EMPLOYMENT IS RELATED IN ANY WAY TO THE POSITION FOR WHICH YOU ARE SEEKING CONFIRMATION, PLEASE INDICATE YOUR SPOUSE'S EMPLOYER, THE POSITION, AND THE LENGTH OF TIME THE POSITION HAS BEEN HELD. IF YOUR SPOUSE'S EMPLOYMENT IS NOT RELATED TO THE POSITION TO WHICH YOU HAVE BEEN NOMINATED, PLEASE SO STATE.

Not applicable; not currently married.

26. LIST BELOW ALL CORPORATIONS, PARTNERSHIPS, FOUNDATIONS, TRUSTS, OR OTHER ENTITIES TOWARD WHICH YOU OR YOUR SPOUSE HAVE FIDUCIARY OBLIGATIONS OR IN WHICH YOU OR YOUR SPOUSE HAVE HELD DIRECTORSHIPS OR OTHER POSITIONS OF TRUST DURING THE PAST FIVE YEARS.

NAME OF ENTITY	POSITION	DATES HELD	SELF OR SPOUSE
Leiter Family Foundation	Officer	1999-present	self

27. LIST ALL GIFTS EXCEEDING $100 IN VALUE RECEIVED DURING THE PAST FIVE YEARS BY YOU, YOUR SPOUSE, OR YOUR DEPENDENTS. (NOTE: GIFTS RECEIVED FROM RELATIVES AND GIFTS GIVEN TO YOUR SPOUSE OR DEPENDENT NEED NOT BE INCLUDED UNLESS THE GIFT WAS GIVEN WITH YOUR KNOWLEDGE AND ACQUIESCENCE AND YOU HAD REASON TO BELIEVE THE GIFT WAS GIVEN BECAUSE OF YOUR OFFICIAL POSITION.)

During an official U.S. Government interaction with a foreign liaison partner I received one gift that was valued at more than $100. This gift was reported through the ODNI Protocol Office, which in turn reported the gift to the U.S. Department of State. The item was subsequently, because of its valuation, given to the U.S. Government.

28. LIST ALL SECURITIES, REAL PROPERTY, PARTNERSHIP INTERESTS, OR OTHER INVESTMENTS OR RECEIVABLES WITH A CURRENT MARKET VALUE (OR, IF MARKET VALUE IS NOT ASCERTAINABLE, ESTIMATED CURRENT FAIR VALUE) IN EXCESS OF $1,000. (NOTE: THE INFORMATION PROVIDED IN RESPONSE TO SCHEDULE A OF THE DISCLOSURE FORMS OF THE OFFICE OF GOVERNMENT ETHICS MAY BE INCORPORATED BY REFERENCE, PROVIDED THAT CURRENT VALUATIONS ARE USED.)

DESCRIPTION OF PROPERTY	VALUE	METHOD OF VALUATION

Please incorporate "Schedule A" of the disclosure forms of the Office of Government Ethics and please refer to "Tab B" for copies of forms

29. LIST ALL LOANS OR OTHER INDEBTEDNESS (INCLUDING ANY CONTINGENT LIABILITIES) IN EXCESS OF $10,000. EXCLUDE A

MORTGAGE ON YOUR PERSONAL RESIDENCE UNLESS IT IS RENTED OUT, AND LOANS SECURED BY AUTOMOBILES, HOUSEHOLD FURNITURE, OR APPLIANCES. (NOTE: THE INFORMATION PROVIDED IN RESPONSE TO SCHEDULE C OF THE DISCLOSURE FORM OF THE OFFICE OF GOVERNMENT ETHICS MAY BE INCORPORATED BY REFERENCE, PROVIDED THAT CONTINGENT LIABILITIES ARE ALSO INCLUDED.)

NATURE OF OBLIGATION	NAME OF OBLIGEE	AMOUNT

None.

30. ARE YOU OR YOUR SPOUSE NOW IN DEFAULT ON ANY LOAN, DEBT, OR OTHER FINANCIAL OBLIGATION? HAVE YOU OR YOUR SPOUSE BEEN IN DEFAULT ON ANY LOAN, DEBT, OR OTHER FINANCIAL OBLIGATION IN THE PAST TEN YEARS? HAVE YOU OR YOUR SPOUSE EVER BEEN REFUSED CREDIT OR HAD A LOAN APPLICATION DENIED? IF THE ANSWER TO ANY OF THESE QUESTIONS IS YES, PLEASE PROVIDE DETAILS.

No.

31. LIST THE SPECIFIC SOURCES AND AMOUNTS OF ALL INCOME RECEIVED DURING THE LAST FIVE YEARS, INCLUDING ALL SALARIES, FEES, DIVIDENDS, INTEREST, GIFTS, RENTS, ROYALTIES, PATENTS, HONORARIA, AND OTHER ITEMS EXCEEDING $200. (COPIES OF U.S. INCOME TAX RETURNS FOR THESE YEARS MAY BE SUBSTITUTED HERE, BUT THEIR SUBMISSION IS NOT REQUIRED.)

	2007*	2006	2005**	2004**	2003**
SALARIES	146,711	111,861	140,027	112,365	85,220
FEES	none	none	none	none	none
ROYALTIES	none	none	none	none	none
DIVIDENDS	~24,000	23,379	52,623	45,653	26,361
INTEREST	~4,000	3,731	23,703	27,147	33,182

GIFTS	none	none	none	none	none
RENTS	none	none	none	none	none
OTHER	none	10,984 (CG)+	84,404 (CG)+	109,627 (CG)+	7,807 (CG)+
TOTAL	**~174,711***	**149,955**	**300,757****	**299,539****	**153,049****

**2007 taxes have not been filed as of the date of completion of this form and these figures are thus based on estimates from 2006 and preliminary computations (i.e., pre-accountant review).*

***Figures for these years are based on tax returns for years that I filed a "married, filing jointly" return (i.e., prior to my divorce).*

+*Capital Gains*

32. IF ASKED, WILL YOU PROVIDE THE COMMITTEE WITH COPIES OF YOUR AND YOUR SPOUSE'S FEDERAL INCOME TAX RETURNS FOR THE PAST THREE YEARS?

Yes.

33. LIST ALL JURISDICTIONS IN WHICH YOU AND YOUR SPOUSE FILE ANNUAL INCOME TAX RETURNS.

United States; District of Columbia

34. HAVE YOUR FEDERAL OR STATE TAX RETURNS BEEN THE SUBJECT OF AN AUDIT, INVESTIGATION, OR INQUIRY AT ANY TIME? IF SO, PLEASE PROVIDE DETAILS, INCLUDING THE RESULT OF ANY SUCH PROCEEDING.

No.

35. IF YOU ARE AN ATTORNEY, ACCOUNTANT, OR OTHER PROFESSIONAL, PLEASE LIST ALL CLIENTS AND CUSTOMERS WHOM YOU BILLED MORE THAN $200 WORTH OF SERVICES DURING THE PAST FIVE YEARS. ALSO, LIST ALL JURISDICTIONS IN WHICH YOU ARE LICENSED TO PRACTICE.

I have had no clients other than the United States because all of my time practicing law has been with the U.S. Department of Justice.

Bar of the District of Columbia (5/2002-Present)

Bar of the Commonwealth of Massachusetts (5/2001-11/2007)
Bar of the State of Colorado (5/2001-11/2007)

36. DO YOU INTEND TO PLACE YOUR FINANCIAL HOLDINGS AND THOSE OF YOUR SPOUSE AND DEPENDENT MEMBERS OF YOUR IMMEDIATE HOUSEHOLD IN A BLIND TRUST? IF YES, PLEASE FURNISH DETAILS. IF NO, DESCRIBE OTHER ARRANGEMENTS FOR AVOIDING ANY POTENTIAL CONFLICTS OF INTEREST.

No.

36. IF APPLICABLE, ATTACH THE LAST THREE YEARS OF ANNUAL FINANCIAL DISCLOSURE FORMS YOU HAVE BEEN REQUIRED TO FILE WITH YOUR AGENCY, DEPARTMENT, OR BRANCH OF GOVERNMENT.

Attached.

PART E - ETHICAL MATTERS

38. HAVE YOU EVER BEEN THE SUBJECT OF A DISCIPLINARY PROCEEDING OR CITED FOR A BREACH OF ETHICS OR UNPROFESSIONAL CONDUCT BY, OR BEEN THE SUBJECT OF A COMPLAINT TO, ANY COURT, ADMINISTRATIVE AGENCY, PROFESSIONAL ASSOCIATION, DISCIPLINARY COMMITTEE, OR OTHER PROFESSIONAL GROUP? IF SO, PROVIDE DETAILS.

No.

39. HAVE YOU EVER BEEN INVESTIGATED, HELD, ARRESTED, OR CHARGED BY ANY FEDERAL, STATE, OR OTHER LAW ENFORCEMENT AUTHORITY FOR VIOLATION OF ANY FEDERAL STATE, COUNTY, OR MUNICIPAL LAW, REGULATION, OR ORDINANCE, OTHER THAN A MINOR TRAFFIC OFFENSE, OR NAMED AS A DEFENDANT OR OTHERWISE IN ANY INDICTMENT OR INFORMATION RELATING TO SUCH VIOLATION? IF SO, PROVIDE DETAILS.

No.

40. HAVE YOU EVER BEEN CONVICTED OF OR ENTERED A PLEA OF GUILTY OR NOLO CONTENDERE TO ANY CRIMINAL VIOLATION OTHER THAN A MINOR TRAFFIC OFFENSE? IF SO, PROVIDE DETAILS.

No.

41. ARE YOU PRESENTLY OR HAVE YOU EVER BEEN A PARTY IN INTEREST IN ANY ADMINISTRATIVE AGENCY PROCEEDING OR CIVIL LITIGATION? IF SO, PLEASE PROVIDE DETAILS.

No.

42. HAVE YOU BEEN INTERVIEWED OR ASKED TO SUPPLY ANY INFORMATION AS A WITNESS OR OTHERWISE IN CONNECTION WITH ANY CONGRESSIONAL INVESTIGATION, FEDERAL, OR STATE AGENCY PROCEEDING, GRAND JURY INVESTIGATION, OR CRIMINAL OR CIVIL LITIGATION IN THE PAST TEN YEARS? IF SO, PROVIDE DETAILS.

No.

43. HAS ANY BUSINESS OF WHICH YOU ARE OR WERE AN OFFICER, DIRECTOR, OR PARTNER BEEN A PARTY TO ANY ADMINISTRATIVE AGENCY PROCEEDING OR CRIMINAL OR CIVIL LITIGATION RELEVANT TO THE POSITION TO WHICH YOU HAVE BEEN NOMINATED? IF SO, PROVIDE DETAILS. (WITH RESPECT TO A BUSINESS OF WHICH YOU ARE OR WERE AN OFFICER, YOU NEED ONLY CONSIDER PROCEEDINGS AND LITIGATION THAT OCCURRED WHILE YOU WERE AN OFFICER OF THAT BUSINESS.)

No.

PART F - SECURITY INFORMATION

44. HAVE YOU EVER BEEN DENIED ANY SECURITY CLEARANCE OR ACCESS TO CLASSIFIED INFORMATION FOR ANY REASON? IF YES, PLEASE EXPLAIN IN DETAIL.

No.

45. HAVE YOU BEEN REQUIRED TO TAKE A POLYGRAPH EXAMINATION FOR ANY SECURITY CLEARANCE OR ACCESS TO CLASSIFIED INFORMATION? IF YES, PLEASE EXPLAIN.

Yes. Upon entry of duty with the Office of the Director of National Intelligence I was required to take, and successfully completed, a counterintelligence polygraph.

46. HAVE YOU EVER REFUSED TO SUBMIT TO A POLYGRAPH EXAMINATION? IF YES, PLEASE EXPLAIN.

No.

AFFIRMATION

I, Michael Evan Lester, DO SWEAR THAT THE ANSWERS I HAVE PROVIDED TO THIS QUESTIONNAIRE ARE ACCURATE AND COMPLETE.

1 April 08
(Date)

(Name)

Michele K. Boyd
(Notary)

MICHELE K. BOYD NOTARY PUBLIC PRINCE GEORGE'S COUNTY, MD

Michele K. Boyd
NOTARY PUBLIC
Prince George's County
State of Maryland
My Commission Expires
August 1, 2010

TO THE CHAIRMAN, SELECT COMMITTEE ON INTELLIGENCE:

In connection with my nomination to be Director of the National Counterterrorism Center (NCTC)**, I hereby express my willingness to respond to requests to appear and testify before any duly constituted committee of the Senate.**

Signature

Date: 7 April 08

LEXSEE 113 HARV. L. REV. 2080

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LENGTH: 6510 words

NOTE: FEDERAL PROSECUTORS, STATE ETHICS REGULATIONS, AND THE McDADE AMENDMENT

SUMMARY:
... Buried within a 920-page appropriations act passed by Congress in October 1998 was the most significant change in the ethics regulation of federal prosecutors in more than twenty years. ... This hierarchy could interfere with the effective investigation and prosecution of federal crimes when state ethics rules conflict either with federal ethics rules or with federal investigative and prosecutorial techniques. ... In United States v. Hammad, the defendant claimed that the DOJ had violated ethics rules by directing an informant to contact him while he was represented by counsel. ... Second, the Act would exempt federal prosecutors from any state ethics rule "to the extent that the ...rule is inconsistent with Federal law or interferes with the effectuation of Federal law or policy, including the investigation of violations of Federal law." ... A combination of the Leahy proposal and "dynamic conformity" would strike the optimal balance between effective regulation of prosecutorial ethics and protection of legitimate federal law enforcement interests. ... Courts should hesitate to allow state ethics rules to "overturn" tacitly national rules governing grand jury conduct, federal statutes that explicitly permit the use of wiretaps, and other long-established federal law enforcement techniques. ... The merging of ethics with substantive, procedural, and investigative aspects of the law requires careful judicial consideration of what federal interests are at stake whenever courts must adjudicate claims of prosecutorial misconduct. ...

TEXT:
[*2080]

Buried within a 920-page appropriations act n1 passed by Congress in October 1998 was the most significant change in the ethics regulation of federal prosecutors in more than twenty years. The provision, known as the McDade Amendment, n2 subjects U.S. government attorneys to the ethics rules of "each State where such attorneys engage[] in [their] duties, to the same extent and in the same manner as other attorneys in that State." n3 The McDade Amendment represented the culmination of years of debate among the Department of Justice (DOJ), Congress, the courts, and the private bar about both which branch of government and which level of government - state or federal - should have the authority to determine the ethics rules governing federal prosecutors. n4

The McDade Amendment does not, on cursory examination, appear to depart radically from prior ethics requirements for prosecutors. Before the Amendment's enactment, federal prosecutors were required to comply with the ethics rules of the jurisdiction in which they were licensed. n5 Yet the McDade Amendment alters the ethics rules in two fundamental ways. First, unlike earlier standards, the Amendment requires prosecutorial compliance with the ethics rules of every jurisdiction in which an attorney "engages in that attorney's duties," n6 rather than merely with the rules of the jurisdiction in which the attorney is licensed. In an era in which federal prosecutors often conduct complex, [*2081] multi-state investigations, n7 such a change has significant consequences. Second, the McDade Amendment gives state ethics rules priority over federal policies without considering the unique role of federal prosecutors or permitting exceptions from compliance when federal policy interests so require. This hierarchy could interfere with the effective investigation and prosecution of federal crimes when state ethics rules conflict either with federal ethics rules or with federal investigative and prosecutorial techniques.

The McDade Amendment's significance, however, cannot truly be appreciated without reviewing the expansive scope of attorney ethics regulations. Today, state ethics rules often extend beyond vague aspirational guidelines to encompass substantive, procedural, and investigative aspects of the law. n8 Furthermore, an ethics violation raises not

only the threat of disciplinary sanctions against an attorney, but also the specter of evidence exclusion in a criminal prosecution - or even the dismissal of criminal charges against a defendant. n9

This Note evaluates the McDade Amendment's impact on federal prosecutors and argues that the Amendment will unduly hinder federal law enforcement. Part I explores the evolution of ethics regulations, emphasizing the increasing tendency of such regulations to infringe on substantive areas of law and on areas of federal procedure. Part II discusses state ethics rules that conflict with federal prosecutorial interests. Part III describes the McDade Amendment in detail and forecasts its probable effects on federal prosecutorial conduct and the enforcement of federal law. Finally, this Note concludes that Congress and the federal courts must remain involved in crafting reasoned exceptions to state ethics rules for federal prosecutors.

I. The Evolution of Ethics Rules

The scope and binding authority of ethics rules for lawyers have changed dramatically in the past 150 years. n10 Although ethical standards [*2082] were once nonbinding advisory canons that articulated aspirational goals for the legal profession, they have since become detailed rules with virtually the same force as statutory law. n11 Whereas violations of early ethical canons at most led to "informal sanctions and peer pressure," n12 breaching modern ethical rules can result in formal sanctions, n13 exclusion of evidence, n14 or, if the perpetrator is a prosecutor, dismissal of criminal charges. n15

The American Bar Association (ABA) first adopted comprehensive ethics standards, entitled the Canons of Professional Ethics ("Canons"), in 1908. n16 The Canons consisted of loosely defined ethical standards to which lawyers were to aspire. n17 In 1969, the ABA took a significant step toward transforming ethics rules from advisory standards to binding statutory law by promulgating the Model Code of Professional Responsibility ("Model Code"). n18 Unlike the Canons, the Model Code is a multifaceted body of both ethics recommendations and ethics requirements. n19 Notably, the Model Code was the first compilation of ethics rules intended to be adopted by state authorities and to have the binding effect of law. n20 The Model Code includes Disciplinary Rules that prescribe "minimum levels of conduct below which no lawyer can fall without being subject to disciplinary action." n21 Moreover, the Model Code includes far more specific guidelines than the Canons for [*2083] attorney conduct, such as limitations on attorney contact with represented parties, n22 conflicts of interest, n23 and the proper use of evidence. n24

In response to growing dissatisfaction with the Model Code during the 1970s, the ABA drafted the Model Rules of Professional Conduct ("Model Rules") in 1983. n25 Continuing the increased legalization of ethics standards, the ABA decided to eliminate the Model Code's ethics recommendations in favor of a statute-like presentation of its ethics rules. n26 The Model Rules also accelerated the trend toward expansive ethics rules that provided very specific standards governing a wide range of attorney conduct. n27 Despite the ABA's stated position that the Rules should not be used "by opposing parties as procedural weapons," n28 courts have - perhaps unsurprisingly, considering the legalization trend - sometimes allowed them to function as such. n29 Unlike the Model Code, the Model Rules did not meet with uniform approval by the states and therefore produced inconsistencies in ethics regulation across state lines. n30 Many states also significantly altered vital sections of the ABA's model legislation, further varying the ethical landscape. n31 In light of both the expanded scope and binding nature of modern ethics rules, Part II examines how these features of modern ethics rules have affected federal prosecutors.

II. Ethics Rules and Federal Prosecutors

Many ethics rules hold implications for federal prosecutors that are not raised by their application to attorneys more generally. Specifically, federal prosecutors have cited three ethics rules that have hindered [*2084] their law enforcement activities. First, the DOJ has complained that Model Rule 4.2, which limits an attorney's ability to contact a person represented by counsel without the knowledge and permission of that person's counsel, impairs the government's capacity to conduct undercover investigations. n32 Second, the DOJ has argued that Model Rule 3.8, which circumscribes a prosecutor's power to subpoena an attorney to obtain information about that attorney's client, may hamper the government's ability to use a grand jury effectively. n33 Finally, the DOJ has contended that interpretations of Model Rules 3.3 and 3.8 that require prosecutors to present exculpatory evidence to grand juries interfere with unique federal interests in grand jury procedure. n34

The sharpest controversy concerning ethics rules and federal prosecutors has surrounded the application of Model Rule 4.2 and its predecessor, Model Code Disciplinary Rule 7-104 ("DR 7-104"), to preindictment contacts. In 1980, the DOJ's Office of Legal Counsel issued a memorandum opinion positing that DR 7-104 did not preclude federal

prosecutors from contacting witnesses and suspects without the knowledge of their counsel and before the start of formal adversarial proceedings, when done in accordance with DOJ policy. n35 The opinion relied, in part, on language in DR 7-104 that permitted contact with represented parties when the contact was "authorized by law." n36 The DOJ maintained that preindictment contact was permissible because the Department had the power to draft regulations that were "reasonable and necessary means to effectuate" a statutorily imposed duty n37 - in this case, the U.S. Attorneys' duty to "prosecute ...all offenses against the United States." n38

[*2085] The Second Circuit questioned the validity of this position in 1988, holding that DR 7-104 applied to preindictment criminal investigations. n39 In United States v. Hammad, the defendant claimed that the DOJ had violated ethics rules by directing an informant to contact him while he was represented by counsel. n40 The appellate panel rejected the district court's exclusion of evidence obtained in violation of the no-contact rule under the circumstances at issue in Hammad, n41 but it endorsed the applicability of the rule to both criminal investigations in general and preindictment contacts in particular. n42 Although it recognized that certain uses of an informant fell within DR 7-104's "authorized by law" exception, the Second Circuit refused to delineate the precise circumstances under which such contacts would be permissible under the ethics rules. n43 Thus, Hammad engendered uncertainty regarding when undercover operations could proceed against represented parties and what the evidentiary and professional repercussions of DR 7-104 violations could be. n44

In 1989, Attorney General Richard Thornburgh responded to Hammad n45 by proclaiming that neither DR 7-104 nor Model Rule 4.2 prohibited "contact with a represented individual in the course of authorized law enforcement activity" n46 and that the DOJ would resist on "Supremacy Clause grounds" any disciplinary action against federal prosecutors by state authorities for violation of ethics rules that interfered with "legitimate federal law enforcement techniques." n47 The Attorney General claimed that a broad interpretation of the rule could bar routine contacts with witnesses, use of informants for undercover operations, and other dealings with persons not yet the subject of adversarial proceedings, thereby placing a "substantial burden on the law enforcement process." n48 In 1995, Attorney General Janet Reno issued formal regulations that codified the Thornburgh Memorandum. n49

[*2086] Courts resisted both the Thornburgh Memorandum and the Reno Regulations. In 1998, the Eighth Circuit rejected the validity of the Reno Regulations. n50 The court found no statutory support for the Attorney General's promulgation of a rule exempting federal prosecutors "from the local rules of ethics which bind all other lawyers appearing in that court of the United States." n51 Accordingly, the Eighth Circuit panel invalidated the rule exempting federal prosecutors from the Missouri version of Model Rule 4.2, which the local federal district court had adopted. n52

Although Rule 4.2 has generated the greatest consternation among federal prosecutors, a second issue concerning ethics restraints on prosecutorial conduct arose when the U.S. District Court for Massachusetts amended its local ethics rules to limit a prosecutor's ability to subpoena another attorney for purposes of obtaining information about that attorney's client. n53 In 1986, federal prosecutors challenged that court's power to adopt a Massachusetts state ethics rule, based on Model Rule 3.8(f), n54 that required prosecutors to acquire judicial approval before serving such a subpoena. n55 The federal government claimed that adoption of the rule was beyond the district court's authority because the rule conflicted with federal rules of procedure [*2087] regulating grand juries n56 and might allow state authorities to discipline federal prosecutors. n57

In an equally divided en banc decision, the First Circuit affirmed the district court's adoption of the ethics rules and defended the court's right to promulgate local procedural and ethics rules. n58 Relying on statutory authorizations, n59 the Federal Rules of Procedure, n60 and "inherent judicial authority," n61 the First Circuit concluded that the district court's power to control the conduct of attorneys appearing before it could not "be seriously questioned." n62

In addition to these challenges to Model Rules 3.8 and 4.2, federal prosecutors have also disputed the validity of the combined application of Model Rules 3.3 and 3.8 - ethics rules that require the presentation of exculpatory evidence to grand juries. n63 Federal prosecutors object to the combination of Model Rule 3.3(d) - which requires attorneys in ex parte proceedings to disclose all material facts to a tribunal n64 - and Comment 1 of Model Rule 3.8 - which applies Model Rule 3.3's requirement to grand jury proceedings. n65 Relying on United States v. Williams, n66 the federal government has contended that a federal court may not adopt ethics rules that "change[] the nature of the grand jury or the traditional relationship between the prosecutor, the constituting court, and the grand jury itself." n67

[*2088] By 1998, the war over ethics regulations had reached a stalemate. Whereas the DOJ insisted that it needed the power to exempt its prosecutors from certain rules, the federal judiciary, although sometimes siding with the DOJ, n68 rejected the argument that the Attorney General had the authority to create blanket ethics exemptions for federal

prosecutors. At the same time, state courts and local ethics regulators demanded that federal prosecutors conform to the same standards as other attorneys in their jurisdictions. n69

III. A Congressional Salvo in the Ethics War: The McDade Amendment

To restrain the perceived overzealousness of federal prosecutors and to prevent the DOJ from exempting its prosecutors from ethics rules, Congressman Joseph McDade (R-Pa.) introduced the Ethical Standards for Prosecutors Act in 1996. n70 The Act, which took effect in 1999, requires that "an attorney for the Government shall be subject to State laws and rules, and local Federal court rules, governing attorneys in each State where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State." n71

The McDade Amendment creates three problems for federal prosecutors. First, the law subjects federal prosecutors to all state ethics rules; unlike prior DOJ guidelines, section 530B affords no exceptions for federal prosecutors when state ethics rules impinge on federal law enforcement interests. n72 Second, section 530B's failure to specify a priority order of ethics rules creates a quandary for prosecutors faced [*2089] with state ethics rules that are inconsistent with local federal rules. n73 Third, the Amendment's language confuses traditional choice of law rules - which tied prosecutors to the rules of a particular jurisdiction - by requiring prosecutors to comply with all rules of each jurisdiction in which "such attorney engages in that attorney's duties." n74

A. Constraining Federal Law Enforcement Interests

The McDade Amendment requires federal prosecutors to comply with state ethics guidelines without regard for other federal interests at stake. This blanket imposition of state rules on federal prosecutors ignores the fact that ethics rules must work hand in hand with other procedural and substantive rules and laws. Ethics rules should be thought of as an "overlay" that can be intelligently written and applied only after consideration of the powers and responsibilities of the attorneys subject to regulation. Because state and federal prosecutors possess different substantive powers and must follow different procedural rules, the ethics rules with which they must comply should be tailored separately to each group. n75

Florida's ethics rules concerning grand jury procedures illustrate this problem. When the State of Florida adopted grand jury ethics rules for its prosecutors, the state legislature most likely had state prosecutors in mind. n76 In Florida, however, state prosecutors have very different powers and responsibilities than their federal counterparts. For example, although both federal and state prosecutors use grand juries in Florida, state prosecutors have means to obtain information in criminal investigations that are unavailable to federal prosecutors. Florida state prosecutors may secure an "investigative subpoena" that enables them to conduct investigative interviews and to obtain information that can be substituted for information that one might normally secure through a grand jury subpoena. n77 Moreover, a state prosecutor can criminally charge an individual in Florida using information supplied solely by the prosecutor; federal prosecutors, on [*2090] the other hand, are constitutionally required to indict defendants through grand juries. n78 Thus, ethics rules that limit the permissible bounds of prosecutorial conduct in grand juries, such as Model Rule 3.8(f), may have a much greater effect on federal prosecutors than on state attorneys. n79

In addition to these differences in the procedural options available to federal and state prosecutors, federal prosecutors are uniquely suited to certain types of investigations, most notably those that involve interstate activity or require complex covert surveillance. n80 These investigations, frequently necessary for prosecuting organized crime syndicates or large-scale drug operations, often require special techniques that state prosecutors are less likely to need. n81 Thus, state ethics rules designed to suit the crimes investigated by state prosecutors may poorly fit federal prosecutors.

Indeed, some states' applications of their ethics rules epitomizes the "poor fit" that inspired the drafting of the Thornburgh Memorandum. An expansive interpretation of ethics rules that bars attorney-directed contact with suspects by law enforcement agents, by informants, or through electronic surveillance could paralyze federal undercover investigations. n82 [*2091] Although federal prosecutors can usually claim that their contacts are "authorized by law" and therefore at least permissible under Model Rule 4.2, n83 the State of Florida has eliminated this possibility by deleting the "authorized by law" exception. n84 Similarly, Oregon has interpreted its ethics rules to prohibit attorney involvement in certain undercover operations regardless of whether the attorney is conducting a criminal investigation. n85 These rulings may not significantly impair state prosecutors' efforts to obtain convictions. They may, however, have a greater restrictive effect on federal prosecutors due to the unique nature of federal crimes and federal prosecutors' consequent reliance on wiretaps, undercover agents, and cooperating witnesses. n86

One of the greatest dangers of the McDade Amendment, therefore, is that federal prosecutors may feel compelled to dissociate themselves from undercover investigations, thereby increasing the likelihood that these unsupervised investigations will proceed without attention to the protection of constitutional rights. n87 Attorney involvement in such operations furthers the public interest not only because such participation may result in more successful prosecutions - when appropriate - but also because attorneys are more attuned to protection of suspects' civil liberties. n88 If courts interpret state ethics rules to preclude prosecutors' use of informants, undercover agents, or wiretaps, prosecutors may simply choose to surrender all involvement in investigations so the investigatory conduct of nonattorneys is not imputable to prosecutors and the prosecutors are not subject to sanctions for ethics violations. n89 [*2092] Consequently, extending Model Rule 4.2 and its state counterparts to preindictment criminal investigations, as the McDade Amendment does, may actually weaken the constitutional and privacy rights that the Amendment seeks to protect.

B. Conflicting Ethics Rules

The McDade Amendment also places federal prosecutors in the unenviable position of having to decide whether to comply with state or federal ethics rules. Federal courts are not automatically bound by the ethics rules of the state in which they are located; Congress empowers them to adopt their own rules of attorney conduct. n90 Even though many state and federal courts base their ethics rules on the same texts - either the Model Code or the Model Rules - significant differences among jurisdictions persist. n91 The McDade Amendment offers no answers for attorneys confronted with incompatible rules. n92 Although a federal prosecutor might reasonably assume that a state would not discipline her for favoring a federal rule over a conflicting state standard, the mere possibility that defense counsel will complain of ethics violations is likely to chill certain prosecutorial actions. n93

C. Indeterminate Choice of Law

The McDade Amendment introduces a new choice of law provision - that prosecutors comply with the ethics rules of any state in which they engage in their duties - that mandates conformity with a multitude of state standards. n94 Before the Amendment, the Model Rules generally required attorneys to comply with the ethics rules of the jurisdiction in which the litigation was pending. n95 Although a departure from this standard may be of minimal significance to an attorney whose cases are confined to a single state, federal prosecutors commonly find that their duties extend to multiple jurisdictions. n96 If the [*2093] McDade Amendment's choice of law provision is read to extend to every deposition, interview, and undercover investigation, then federal prosecutors could confront a dizzying array of ethics rules. Although most state rules are based on the Model Code or the Model Rules, they are, in practice, often quite dissimilar. n97 Thus, in addition to imposing substantive and procedural limits on federal prosecutors, section 530B also injects an element of confusion into choice of law practice that may hamper federal prosecutorial efforts still further. n98

IV. After the McDade Amendment

This Note concludes by describing legislative and federal court rulemaking efforts to reform the McDade Amendment. This Note ultimately argues that the best solution to the McDade Amendment's problems involves both "dynamic conformity" n99 between federal and state courts' rules and explicit federal exceptions to those ethics rules that pose the greatest threat to federal law enforcement interests. Because such a rulemaking process will undoubtedly require several years, this Note suggests that in the interim, federal courts should carefully avoid expansive interpretations of state ethics rules that either unduly burden federal law enforcement interests or encroach upon federal procedural rules.

A. Current Legislative and Rulemaking Proposals

In January 1999, Senator Orrin Hatch (R-Utah) attempted to amend the McDade Amendment with his Federal Prosecutor Ethics Act. n100 Although the Act has so far failed to advance beyond the Senate Judiciary Committee, it offers a viable solution to two of the three most significant problems with section 530B. First, the Act would remove [*2094] the Amendment's jurisdictional standard - that a prosecutor comply with the rules of any state in which "such attorney engages in that attorney's duties" n101 - and replace it with a more manageable standard - that prosecutors comply with the rules "of the State in which the Federal prosecutor is licensed as an attorney." n102 Second, the Act would exempt federal prosecutors from any state ethics rule "to the extent that the ...rule is inconsistent with Federal law or interferes with the effectuation of Federal law or policy, including the investigation of violations of Federal law." n103 Thus, the Act would effectively restore the ethics requirements that existed for federal prosecutors before the Amendment's enactment, codifying the DOJ's position that federal attorneys should not be disciplined for violating ethics rules that conflict with federal law enforcement interests.

During the 106th Congress, Senator Patrick Leahy (D-VT.) proposed an alternative bill that attempts to solve the problems of the McDade Amendment through an innovative combination of congressional action and the federal judicial rulemaking process. n104 The Professional Standards for Government Attorneys Act of 1999 purports to eliminate choice of law issues; it explicitly applies either the rules of the court in which a case is adjudicated, the rules of the court under whose authority a grand jury is impaneled, or - for conduct not covered by the first two criteria - the rules of the state in which the attorney is licensed. n105 Rather than create a specific exemption from rules that conflict with federal policy, the Act requires that the Judicial Conference of the United States propose within one year of the statute's enactment a "uniform national rule governing attorneys for the Government with respect to communications with represented persons and parties." n106 Senator Leahy's proposal would thus codify an ethics choice of law doctrine and ensure that judicial rulemaking addresses at least one of the ethical dilemmas faced by government prosecutors.

While Congress examined Senators Hatch and Leahy's proposals, the Judicial Conference was considering the adoption of a uniform federal code of attorney conduct that would also address some of the McDade Amendment's shortcomings. n107 The Subcommittee on Federal Rules of Attorney Conduct is currently contemplating whether the federal courts should adopt a code of attorney conduct that institutes [*2095] automatic and ongoing conformity between the federal court rules and the state court rules of the state where the federal court sits. This approach, known as "dynamic conformity," n108 could also allow the traditional rulemaking system to adopt special federal regulations, ensuring the protection of "certain core procedural areas of special concern to federal courts." n109 Although this proposal would not necessarily resolve federal prosecutors' problems with Model Rules 3.3, 3.8, and 4.2, n110 it would create a structure in which unique federal interests are recognized and protected by federal ethics rules. n111

B. A New Proposal

A combination of the Leahy proposal and "dynamic conformity" would strike the optimal balance between effective regulation of prosecutorial ethics and protection of legitimate federal law enforcement interests. By mandating application of the ethics rules only of the state in which a federal prosecutor is licensed, both the Hatch and Leahy bills would successfully dispose of section 530B's impracticable choice of law provision. n112 Both proposed bills would also correct the McDade Amendment's failure to consider federal law enforcement concerns. n113 However, because the Hatch bill attempts to remedy this aspect of the McDade Amendment through a nebulous exemption for prosecutors, it will surely be unpalatable to opponents of similar privileges. n114 Thus, more definitive exceptions should be promulgated - as the Leahy bill provides - through the Judicial Conference and the federal courts' rulemaking process. A federal rulemaking committee under the Judicial Conference is an ideal venue within which to develop ethics exceptions for federal prosecutors because the process [*2096] enables all three branches of the federal government and members of the bar-at-large to participate in framing appropriate regulations. n115 One shortcoming of the Leahy bill, however, is that it mandates only that the Judicial Conference address the preindictment problems that Model Rule 4.2 poses. n116 Although this rule's application is the most problematic under the McDade Amendment, such a narrow focus should not prevent the rules process from examining other areas of ethics regulation that uniquely affect federal prosecutors. n117

Dynamic conformity would also address the final problem exacerbated by the McDade Amendment - the inconsistency between state and federal ethical rules. n118 State officials have traditionally regulated attorney ethics, n119 and establishing dynamic conformity between state and federal rules would best maintain this distribution of authority, while still ensuring that the vast majority of ethics rules would apply to all attorneys in a jurisdiction regardless of whether they practice in federal or state courts. Dynamic conformity would also keep ethics rules consistent, thus relieving prosecutors from having to negotiate irreconcilable ethical standards. Under a regime that combines dynamic conformity with special federal exceptions, state bar associations can ensure that federal prosecutors are presumptively subject to state standards, unless the federal Rules Committee has recognized a special federal policy, as congressional dictate could authorize it to do.

Unfortunately, such a balanced solution is unlikely in the immediate future. n120 In the interim, federal courts should carefully evaluate whether and what special federal interests are at stake before they automatically impose sanctions for alleged violations of state ethics rules. n121 Considering the degree to which ethics rules such as Model [*2097] Rules 3.3 and 4.2 intrude into procedural and substantive areas of federal law, federal courts should ensure that such rules do not interfere with the national uniformity intended by the federal court system. n122 Courts should hesitate to allow state ethics rules to "overturn" tacitly national rules governing grand jury conduct, n123 federal statutes that explicitly permit the use of wiretaps, n124 and other long-established federal law enforcement techniques. n125 Although courts should demand more than a cursory claim of necessity from the government when a federal prosecuto-

rial practice conflicts with a state's reading of an ethics rule, judges should permit a showing of explicit or implicit congressional or judicial approval of law enforcement methods to exempt a prosecutor from bar discipline or judicial sanctions. n126

Active consideration of these competing interests would enable federal courts to maintain their traditional role in policing attorney conduct while also ensuring that state guidelines do not presumptively trump federal rules and laws merely because the state standards are termed "ethics rules." The merging of ethics with substantive, procedural, and investigative aspects of the law requires careful judicial consideration of what federal interests are at stake whenever courts must adjudicate claims of prosecutorial misconduct. Although the line between "ethics" and uniquely federal concerns has become increasingly difficult to draw, a distinction can and should be made to protect important federal interests.

Legal Topics:

For related research and practice materials, see the following legal topics:
Criminal Law & ProcedureCriminal OffensesMiscellaneous OffensesResisting ArrestElementsGovernmentsCourtsRule Application & InterpretationLegal EthicsProsecutorial Conduct

FOOTNOTES:

n1. Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. No. 105-277, 112 Stat. 2681 (1998).

n2. The Amendment took its name from its chief sponsor in the U.S. House of Representatives, Congressman Joseph McDade (R-Pa.). See Ethical Standards for Federal Prosecutors Act of 1996: Hearing on H.R. 3386 Before the Subcomm. on Courts and Intellectual Property of the House Comm. on the Judiciary, 104th Cong. 2 (1996) [hereinafter McDade Hearing] (statement of Rep. Carlos J. Moorhead, Chairman).

n3. Ethical Standards for Attorneys for the Government, Pub. L. No. 105-277, sec. 801, 530B, 112 Stat. 2681-118 (1998) (codified at 28 U.S.C.A. 530B (1999)).

n4. See, e.g., United States v. Hammad, 846 F.2d 854, 857-58 (2d Cir. 1988) (upholding federal courts' power to enforce professional responsibility standards against government attorneys); McDade Hearing, supra note 2, at 64-66 (Resolution XII of the Conf. of Chief Justices on the Proposed Rule Relating to Comms. with Represented Persons) (rejecting the DOJ's claim to exclusive authority to regulate the conduct of federal government attorneys); Memorandum from Richard Thornburgh, Attorney General, to All Justice Department Litigators (June 8, 1989) [hereinafter Thornburgh Memorandum], quoted in In re Doe, 801 F. Supp. 478, 489-90 (D.N.M. 1992) (claiming that "local and state rules" may not be used to "frustrate the lawful operation of the federal government").

n5. See McDade Hearing, supra note 2, at 50.

n6. 28 U.S.C.A. 530B(a) (emphasis added).

n7. See The Effect of State Ethics Rules on Federal Law Enforcement: Hearing Before the Subcomm. on Criminal Justice Oversight of the Senate Comm. on the Judiciary, 106th Cong. 44 (1999) [hereinafter Senate Hearing] (Prepared Statement of Deputy Attorney General Eric H. Holder, Jr.) (asserting that federal prosecutors' practice "necessarily crosses state lines" and requires them to "supervise investigations that span a dozen or more states").

n8. See, e.g., Model Rules of Professional Conduct Rule 3.3(d) (1998) [hereinafter Model Rules] (regulating attorney conduct before grand juries); Mass. Rules of Profes-sional Conduct Rule 3.8(f) (1997) (regulating prosecutors' ability to subpoena other attorneys).

n9. See, e.g., United States v. Lopez, 4 F.3d 1455, 1463-64 (9th Cir. 1993) (recognizing a district court's power to dismiss an otherwise valid indictment for a prosecutor's subversion of established state ethical guidelines).

n10. See David R. Papke, The Legal Profession and Its Ethical Responsibilities: A History, in Ethics and the Legal Profession 29, 35-46 (Michael Davis & Frederick A. Elliston eds., 1986).

n11. Model ethics rules promulgated by the ABA bind attorneys only when adopted by a jurisdiction's legislature or court. See John Wesley Hall, Jr., Professional Responsibility of the Criminal Lawyer 3-4 (2d ed. 1996). Federal statutory provisions, rules of procedure, and common law permit federal courts to "make and amend rules governing [their] practice." Fed. R. Crim. P. 57(a)(1). See also 28 U.S.C. 2071(a) (1994) ("The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business."); United States v. Hasting, 461 U.S. 499, 505 (1983) (recognizing that courts "may, within limits, formulate procedural rules not specifically required by the Constitution or the Congress").

n12. Murray L. Schwartz, The Death and Regeneration of Ethics, 1980 Am. B. Found. Res. J. 953, 953-54.

n13. See, e.g., In re Stern, 682 N.E.2d 867, 873-74 (Mass. 1997) (disbarring an attorney).

n14. See, e.g., United States v. Hammad, 858 F.2d 834, 840-41 (2d Cir. 1988) (affirming a district court's authority to exclude evidence for ethics violations).

n15. See, e.g., United States v. Lopez, 4 F.3d 1455, 1463 (9th Cir. 1993) (affirming a district court's authority to dismiss charges).

n16. See Papke, supra note 10, at 36-37.

n17. See Canons of Professional Ethics Preamble (1908) [hereinafter Canons] ("The following canons of ethics are adopted ... as a general guide ....").

n18. See Geoffrey C. Hazard, Jr., Ethics in the Practice of Law 19 (1978).

n19. See id.

n20. See id. By 1972, 40 states had already adopted the Model Code as binding law, see 97 ABA Ann. Rep. 268 (1972), and by 1978 all 50 states had adopted the Code, albeit with some local variations, see Walter P. Armstrong, Jr., Codes of Professional Responsibility, in Professional Responsibility: A Guide for Attorneys 1, 4 (Davidson Ream ed., 1978).

n21. Model Code of Professional Responsibility Preliminary Statement (1969) [hereinafter Model Code]; see also Geoffrey C. Hazard, Jr., The Future of Legal Ethics, 100 Yale L.J. 1239, 1251 (1991) (noting that the Disciplinary Rules "functioned as a statute defining the legal contours of a vocation").

n22. See Model Code Disciplinary Rule (DR) 7-104(A)(1).

n23. See id. DR 5-103(A).

n24. See id. DR 7-102(A)(4).

n25. See Model Rules Preface (1998).

n26. See Hazard, supra note 21, at 1254.

n27. See Ellen S. Podgor, Criminal Misconduct: Ethical Rule Usage Leads to Regulation of the Legal Profession, 61 Temp. L. Rev. 1323, 1328 (1988). For example, whereas the Model Code only briefly touched upon prosecutors' duties, the Model Rules specifically prohibit subpoenaing lawyers and withholding evidence. Compare Model Code DR 7-103, with Model Rules 3.3, 3.8.

n28. Model Rules Scope P18 (1984).

n29. See United States v. Lopez, 4 F.3d 1455, 1463-64 (9th Cir. 1993). But see United States v. Lowery, 166 F.3d 1119, 1124 (11th Cir. 1999) (holding that "a state rule of professional conduct cannot provide an adequate basis for a federal court to suppress evidence that is otherwise admissible").

n30. See Geoffrey C. Hazard, Jr., Susan P. Koniak & Roger C. Cramton, The Law and Ethics of Lawyering 15 (3d ed. 1999) (noting that 41 states and the District of Columbia had adopted the Model Rules or some version of them as of July 1999).

n31. See Daniel R. Coquillette, Report on Local Rules Regulating Attorney Conduct in the Federal Courts, in Working Papers of the Committee on Rules of Practice and Procedure, Special Studies of Federal Rules Governing Attorney Conduct 1, 4 (1997).

n32. See, e.g., United States v. Hammad, 858 F.2d 834, 837 (2d Cir. 1988). Courts have treated both electronic surveillance (wiretaps) and the use of undercover agents, informants, and cooperating witnesses as "contacts" under Model Rule 4.2. See, e.g., United States v. Ward, 895 F. Supp. 1000, 1001-02 (N.D. Ill. 1995) (wiretap as "contact"); Florida State Bar Ass'n, Fla. Ethics Op. 90-4 (1990) (undercover investigation as "contact").

n33. See, e.g., Whitehouse v. United States Dist. Court for the Dist. of R.I., 53 F.3d 1349, 1362-64 (1st Cir. 1995) (challenging an ethics rule that requires judicial approval for issuance of an attorney subpoena). Some commentators view attorney subpoenas as vital to certain fraud and narcotics investigations. See, e.g., Robert C. Bonner, A Balanced Perspective on Attorney Subpoenas, 36 Emory L.J. 803, 804-06 (1987).

n34. See United States v. Colorado Supreme Court., 87 F.3d 1161, 1164 (10th Cir. 1996).

n35. See Ethical Restraints of the ABA Code of Professional Responsibility on Federal Criminal Investigations, 4B Op. Off. Legal Couns. 576, 576 (1980) [hereinafter OLC Opinion] ("The only restraints on federal law enforcement activities are those established by the Constitution and existing statutes; moreover, authorized federal investigative practices are exempt from DR 7-104 by its own terms."). Postindictment contacts are regulated both by ethics rules and by the Sixth Amendment. See id. at 580-81.

n36. Model Code DR 7-104.

n37. OLC Opinion, supra note 35, at 582.

n38. 28 U.S.C. 547(1) (1994).

n39. See United States v. Hammad, 858 F.2d 834, 838 (2d Cir. 1988).

n40. See id. at 836. The Eastern District of New York, which had jurisdiction over the case, had adopted the Model Code of Professional Responsibility through its local rules process. See id. at 837.

n41. See id. at 842 (finding that "the government should not have its case prejudiced by suppression of its evidence when the law [regarding DR 7-104] was previously unsettled").

n42. See id. at 838 (concluding that there was "no principled basis in the rule to constrain its reach" to post-indictment proceedings).

n43. See id. at 840 ("Notwithstanding requests for a bright-line rule, we decline to list all possible situations that may violate DR 7-104(A)(1).").

n44. See Tom Watson, AG Decrees Prosecutors May Bypass Counsel, Legal Times, Sept. 25, 1989, at 1.

n45. See Thornburgh Memorandum, supra note 4, at 490.

n46. Id. at 489, 493.

n47. Id.

n48. Id. at 489, 492. The Attorney General emphasized that, although federal prosecutors "have an obligation generally to comply with the ethical requirements of their respective state jurisdictions," the "authorized by law" exceptions in the Model Code and Model Rules permit DOJ attorneys to engage in federally approved law enforcement activities. See Dick Thornburgh, Ethics and the Attorney General: The Attorney General Responds, 74 Judicature 290, 291 (1991). Predictably, the memorandum generated a firestorm of criticism from nongovernment lawyers. See, e.g., Watson, supra note 44, at 1.

n49. See Communications with Represented Persons: Final Rule, 59 Fed. Reg. 39,910 (1994) (codified at 28 C.F.R. 77.2(a) (1999)). The regulations, popularly termed the "Reno Regulations," permitted federal prosecutors to contact represented persons as long as the contact comported with DOJ guidelines. The regulations also granted comprehensive enforcement authority to the DOJ, thereby eliminating the threat of a state disciplinary board sanctioning a federal prosecutor. See id. It is debatable whether state ethics adjudicatory boards pose a realistic disciplinary threat to federal prosecutors. Compare United States v. Klubock, 832 F.2d 649, 651 (1st Cir.

1987) [hereinafter Klubock I] (noting that state authorities deferred to the federal court), with Todd S. Schulman, Note, Wisdom Without Power: The Department of Justice's Attempt to Exempt Federal Prosecutors from State No-Contact Rules, 71 N.Y.U. L. Rev. 1067, 1075 & n.43 (1996) (finding that some defense attorneys have aggressively pursued disciplinary solutions against prosecutors in state tribunals).

n50. See United States v. McDonnell Douglas Corp., 132 F.3d 1252, 1257 (8th Cir. 1998).

n51. Id. at 1257.

n52. See id. In United States v. Lopez, 4 F.3d 1455 (9th Cir. 1993), the Ninth Circuit rejected the claim that "general enabling statutes" sanctioned the DOJ's attempt to define which contacts were "authorized by law." Id. at 1461. The court found that only explicit statutory language or common law - not executive decree - could render contacts "authorized." See id.

n53. See Klubock I, 832 F.2d at 650, aff'd en banc, 832 F.2d 664 (1st Cir. 1987) [hereinafter Klubock II].

n54. The ethical rule was known as Prosecutorial Function 15. See id. (quoting the rule).

n55. See id.

n56. The government claimed that the local rule was inconsistent with Federal Rule of Criminal Procedure 17, which did not require judicial approval of such a subpoena. See id. at 655-56.

n57. See id. at 651.

n58. See Klubock II, 832 F.2d at 665. Because the court was equally divided 3-3, the lower court's ruling was affirmed. See id.

n59. See Klubock I, 832 F.2d at 652 & n.7 (citing 28 U.S.C. 2071 (1994)).

n60. See id. at 652 & nn.8-9 (citing Fed. R. Crim. P. 57, which allows district courts to adopt local rules that are not inconsistent with the Federal Rules of Criminal Procedure, and Fed. R. Civ. P. 83, which grants the same power for civil proceedings).

n61. Id. at 653.

n62. Id. The panel determined that the rule was within the court's purview because the change was no more "fundamental" than the establishment of six-person civil juries, which the Supreme Court approved in Colgrove v. Battin, 413 U.S. 149 (1973). See Klubock I, 832 F.2d at 655. Furthermore, the panel held that the ethics rule was not inconsistent with Federal Rule of Criminal Procedure 17(a), which provides that "[a] subpoena shall be issued by the clerk under the seal of the court." Fed. R. Crim. P. 17(a).

n63. See United States v. Colorado Supreme Court, 87 F.3d 1161, 1164 (10th Cir. 1996). This conflict is likely less significant than the first two described in this Note, in part because of the DOJ's position that prosecutors should, in some instances, disclose exculpatory material to the grand jury. See U.S. Dep't of Justice, Attorneys' Manual 9-11.233 (Sept. 1997).

n64. See Model Rule 3.3(d).

n65. See Model Rule 3.8, cmt. 1. Some commentators have also concluded that these ethics regulations directly conflict with both the historical traditions of the grand jury and Supreme Court precedent. See, e.g., Frank O. Bowman, III, A Bludgeon by Any Other Name: The Misuse of "Ethical Rules" Against Prosecutors to Control the Law of the State, 9 Geo. J. Legal Ethics 665, 684 (1996).

n66. 504 U.S. 36 (1992).

n67. Colorado Supreme Court, 87 F.3d at 1165.

n68. See, e.g., United States v. Balter, 91 F.3d 427, 436 (3d Cir. 1996) (holding that preindictment contacts by law enforcement personnel were in fact "authorized by law").

n69. See McDade Hearing, supra note 2, at 64-66 (Resolution XII of the Conf. of Chief Justices on the Proposed Rule Relating to Comms. with Represented Persons).

n70. See id. at 8-10 (prepared statement of Rep. McDade). Perhaps not coincidentally, Congressman McDade was the subject of an eight-year federal criminal investigation. He was ultimately acquitted of all charges. See id. at 9. Few members of Congress supported McDade's measure when it was first introduced, cf. Senate Hearing, supra note 7, at 4 (statement of Sen. Schumer), but it eventually found its way into an omnibus spending bill that was signed by President Clinton in October 1998. See Ethical Standards for Attorneys for the Government, supra note 3, at 801, 112 Stat. at 2681-118-19. Support for the amendment also received a boost from criticism of Independent Counsel Kenneth Starr. After some observers of the Independent Counsel's investigation claimed Starr violated attorney ethics rules, Starr defended his actions on the grounds that they were permitted by DOJ guidelines. See, e.g., Neil A. Lewis, The Case (If Any) Against the Prosecutor, N.Y. Times, Nov. 22, 1998, 4, at 1.

n71. 28 U.S.C.A. 530B(a) (1999).

n72. In particular, section 530B fails to address the difficulties that the DOJ and courts identified regarding no-contact rules and grand jury restrictions. See McDade Hearing, supra note 2, at 12 (statement of Assoc. Deputy Att'y Gen. Seth P. Waxman).

n73. See Subcomm. on Fed. Rules of Att'y Conduct, Admin. Office of the U.S. Courts, Summary for Fall 1999 Advisory Comm. Meetings 2 (1999) (on file with the Harvard Law School Library) [hereinafter Advisory Meeting] (noting that the McDade Amendment "presents manifest problems, arising in part from the unhappy phenomenon that the local Federal court rules often are inconsistent with the state laws and rules").

n74. 28 U.S.C.A. 530B(a).

n75. See Senate Hearing, supra note 7, at 24 (statement of P. Michael Patterson, U.S. Att'y for the N.D. of Fla.).

n76. A more fundamental question is whether the state bar associations that adopt ethics rules ever seriously consider prosecutors' interests. As prosecutors have noted, at "the level of the rulemaking committees ...there is no one who is representing the prosecutorial point of view." Id. at 73.

n77. See Fla. Stat. ch. 27.04 (1997) (allowing state prosecutors to subpoena witnesses independent of a grand jury).

n78. Compare Fla. R. Crim. P. 3.140(a)(2) (permitting charging through "information"), with U.S. Const. amend. V (requiring grand jury indictments for all "capital, or otherwise infamous" crimes).

n79. Federal prosecutors' access to certain investigative resources - such as wiretaps - that are unavailable to some state prosecutors does not weaken the argument that the same ethics rule may lead to different consequences for two different attorneys. In this sense, this Note does not argue that a limit on federal prosecutorial conduct in grand juries is necessarily inappropriate, but merely that reasonable rules are unlikely to issue from legislative or professional bodies that do not specifically consider federal prosecutors.

n80. See, e.g., Task Force on Federalization of Crim. Law, American Bar Ass'n, The Federalization of Criminal Law 48 (1998); cf. Philip B. Heymann & Mark H. Moore, The Federal Role in Dealing with Violent Street Crime: Principles, Questions, and Cautions, 543 Annals Am. Acad. Pol. & Soc. Sci. 103, 105 (1996) (commenting that one of the original justifications for the federalization of criminal law was to "handle effectively ...the criminal enterprises ...that can only be penetrated through the use of sustained and sophisticated investigative techniques").

n81. Compare Select Comm. to Study Undercover Activities of Components of the Dep't of Justice, S. Rep. No. 97-682, at 11 (1982) [hereinafter Undercover Report] (recognizing that undercover techniques are necessary to combat "increasingly powerful and sophisticated criminals"), and John C. Jeffries, Jr. & John Gleeson, The Federalization of Organized Crime: Advantages of Federal Prosecution, 46 Hastings L.J. 1095, 1098 (1995) (noting the advantages of federal prosecutions for organized crime), with N. Gary Holten & Melvin E. Jones, The System of Criminal Justice 155 (2d ed. 1982) (citing a Rand Corporation study that found that a large percentage of state cases would be "cleared ...through simple routine administrative actions"). In addition, unlike federal prosecutions, the vast majority of state prosecutions are not the result of extended investigations involving attorney supervision. See Roberta K. Flowers, A Code of Their Own: Updating the Ethics Codes to Include

the Non-Adversarial Roles of Federal Prosecutors, 37 B.C. L. Rev. 923, 926 (1996) (noting that "state and local prosecutors generally play a less active role in the investigation stage of the criminal case").

n82. See Senate Hearing, supra note 7, at 40-41. Federal prosecutorial contacts through agents, informants, or technology may all fall within the "contacts" prohibited by Model Rule 4.2. See A.B.A. Comm. on Ethics and Professional Responsibility, Formal Op. 95-396, at 19-21 (1995) (concluding that attorneys could not avoid Rule 4.2's prohibitions by directing investigators to contact represented persons).

n83. See, e.g., 18 U.S.C. 2510-2520 (1994) (regulating the use of wiretaps in federal criminal investigations).

n84. See Florida State Bar Ass'n, Fla. Eth. Op. 90-4, 2 (1990) (recognizing that Florida's "rule does not contain the "or is authorized by law' exception that is found in the ABA rule").

n85. See In re Gatti, No. 95-18, slip op. at 3, 6 (Or. Sup. Ct., Trial Panel July 29, 1998) (finding that an ethics rule proscribing lawyer "dishonesty, fraud, deceit or misrepresentation" forbids prosecutorial involvement in sting operations).

n86. See, e.g., Undercover Report, supra note 81, at 11.

n87. See id. (observing that the "use of ... undercover techniques creates serious risks to citizens' property, privacy, and civil liberties").

n88. See Senate Hearing, supra note 7, at 29; see also id. at 94 (responses of Geoffrey C. Hazard, Jr., to questions from Sen. Leahy) (noting that it is "highly desirable that Government lawyers supervise investigations by federal agents" because the lawyers "know the rules better and the risks ...of violating the rules").

n89. See id. at 94 (responses of Geoffrey C. Hazard, Jr., to questions from Sen. Leahy) ("Thus, there is strong practical incentive to avoid supervision of an investigation by Government lawyers ....").

n90. See Fed. R. Crim. P. 57.

n91. See, e.g., Advisory Meeting, supra note 73, at 1 (noting among federal district courts a "stunningly diverse array of local district-court rules that undertake to regulate attorney conduct"); Coquillette, supra note 31, at 27 ("Multiforum federal practice, challenging under ideal conditions, has been made increasingly complex, wasteful, and problematic by the disarray among federal local rules and state ethical standards.").

n92. The multitude of variations between federal courts and the states in which they are located should not be underestimated. See generally Coquillette, supra note 31, at 3-25 (providing a comprehensive analysis of the many inconsistencies).

n93. See, e.g., Senate Hearing, supra note 7, at 20.

n94. See 28 U.S.C.A. 530B(a) (1999).

n95. See Model Rule 8.5.

n96. See Senate Hearing, supra note 7, at 28-29 (statement of Zachary Carter, U.S. Att'y for the E.D.N.Y.); cf. Linda S. Mullenix, Multiforum Federal Practice: Ethics and Erie, 9 Geo. J. Legal Ethics 89, 94 (1995) (noting that "large-scale complex litigation ... typically involves ... multiple jurisdictions").

n97. See Coquillette, supra note 31, at 4; Hazard, supra note 21, at 1252. Moreover, even though some states have the same basic ethics provisions, those provisions have been applied very differently. Compare, e.g., Public Serv. Elec. & Gas Co. v. Associated Elec. & Gas Ins. Servs., 745 F. Supp. 1037, 1041-42 (D.N.J. 1990) (finding that New Jersey's version of Model Rule 4.2 may extend to former employees), with, e.g., D.C. Bar, D.C. Ethics Op. 287 (1999) (finding the opposite). Some organizations have attempted to downplay these differences by relying solely on the relative ubiquity of the Model Code and Model Rules. See, e.g., Senate Hearing, supra note 7, at 83 (letter from the National Conference of [State] Chief Justices) (rejecting the notion that there is "a hodgepodge of inconsistent standards").

n98. The DOJ has sought to minimize the deleterious effects of this aspect of the McDade Amendment with regulations that narrowly define "engaged in one's duties" to include only conduct that is "substantial and continuous." 28 C.F.R. 77.2(j)(2) (1999).

n99. "Dynamic conformity" refers to a federal rule that ensures ongoing conformity between a federal court's local ethics rules and the ethics rules of the state in which that federal court is located. Hence, when a state changes its ethics rules, "dynamic conformity" would guarantee that the associated federal court's local rules would automatically change to reflect the state's modification. See infra p. 2095.

n100. See Federal Prosecutor Ethics Act, S. 250, 106th Cong. (1999) [hereinafter Ethics Act].

n101. 28 U.S.C.A. 530B(a) (1999).

n102. Ethics Act, supra note 100, 2.

n103. Id.

n104. See Professional Standards for Government Attorneys Act of 1999, S. 855, 106th Cong. (1999) [hereinafter Standards Act].

n105. See id. 2(b).

n106. Id. 2(c).

n107. See Advisory Meeting, supra note 73, at 1.

n108. Id. at 2. For a further explanation of "dynamic conformity," see supra note 99.

n109. Memorandum from Daniel R. Coquillette, Reporter to the Comm. on Rules of Practice and Procedure, to the Subcomm. on Att'y Conduct Rules 2 (Sept. 8, 1999) (on file with the Harvard Law School Library).

n110. See supra pp. 2083-84.

n111. See Subcomm. on Fed. Rules of Att'y Conduct, Admin. Office of the U.S. Courts, Draft Minutes for Sept. 29, 1999 Meeting 14-15 (1999) [hereinafter Draft Minutes] (on file with the Harvard Law School Library).

n112. See Ethics Act, supra note 100, 2; Standards Act, supra note 104, 2(b). Although the choice of law provisions of both bills improve on the McDade Amendment's standard, the Leahy bill is marginally preferable for two reasons. First, Leahy's proposal would likely ensure greater consistency in the application of ethics rules to both prosecution and defense, thereby making the proposal more agreeable to nongovernment attorneys. Second, the Hatch proposal would create the bizarre result that two DOJ attorneys licensed in different states, but assigned to the same matter, would be subject to two different ethics requirements. Cf. Subcomm. on Fed. Rules of Att'y Conduct, Admin. Office of the U.S. Courts, Draft Minutes for Feb. 4, 2000 Meeting 20 (2000) (on file with the Harvard Law School Library).

n113. See Ethics Act, supra note 100, 2(a); Standards Act, supra note 104, 2(c).

n114. The Hatch bill's exception may not satisfy opponents because it would apparently still permit the DOJ itself to determine which rules are inconsistent with federal policy.

n115. See Peter G. McCabe, Renewal of the Federal Rulemaking Process, 44 Am. U. L. Rev. 1655, 1664-75 (1995). Congress has the power to reject proposed rules after the Supreme Court adopts them. See 28 U.S.C. 2072 (1994). The Executive Branch participates in the rules process through DOJ membership on the Rules Committee. See McCabe, supra, at 1664-65.

n116. Another bill drafted - but unfiled - by Senator Leahy would require broader recommendations from the Judicial Conference on any area of conflict between federal law enforcement duties and professional ethics standards. See Memorandum from Daniel R. Coquillette, Reporter to the Comm. on Rules of Practice and Procedure, to the Subcomm. on Att'y Conduct Rules and Invited Guests 3 (Jan. 19, 2000) (on file with the Harvard Law School Library).

n117. See supra pp. 2086-87.

n118. See supra p. 2092.

n119. See McDade Hearing, supra note 2, at 1.

n120. The Standing Rules Committee has been considering uniform national rules since 1988. See Draft Minutes, supra note 111, at 2. As of May 2000, hearings have not been held on Senator Leahy's bill.

n121. The First Circuit has recently adopted just such an approach. The court rejected the district court's adoption of the local equivalent of Model Rule 3.8 on the ground that it conflicted with federal law. See Stern v. United States Dist. Court, No. 99-1839, 2000 WL 361662, at *15 (1st Cir. April 12, 2000). Most significantly for this Note's argument, the First Circuit recognized that "Rule 3.8(f) is more than an ethical standard" and that it establishes requirements that should be promulgated "by rules of criminal procedure rather than ...as an ethical norm." Id. at *16.

n122. Cf. Hancock v. Train, 426 U.S. 167, 179 (1976) (noting that state regulation of federal installations is permissible only when Congress has expressed such an intent clearly and unambiguously); Henry J. Friendly, In Praise of Erie - And of the New Federal Common Law, 39 N.Y.U. L. Rev. 383, 421-22 (1964) (recognizing the importance of the crafting of rules of decision by federal courts "on subjects within national legislative power").

n123. See Fed. R. Crim. P. 6.

n124. Compare 18 U.S.C. 2510-2520 (1994) (authorizing use of federal wiretaps), with Gunter v. Virginia State Bar, 385 S.E.2d 597, 599 (Va. 1989) (sanctioning an attorney for recording phone conversations regardless of whether the recordings were made pursuant to state or federal law).

n125. See Undercover Report, supra note 81, at 11-12 (recognizing the need for undercover investigative techniques).

n126. See, e.g., United States v. Lowery, 166 F.3d 1119, 1124 (11th Cir. 1999) (refusing to allow a state ethical rule to trump a federal rule of evidence).

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RECENT CASES:

Statutory Interpretation - Americans with Disabilities Act - Third Circuit Holds That Unemployable Former Employees May Sue Employers. - Ford v. Schering-Plough Corp., 145 F.3d 601 (3d Cir. 1998), cert. denied, 67 U.S.L.W. 3436 (U.S. Jan. 12, 1999) (No. 98-529).

SUMMARY:
... One term that was viewed as largely unambiguous, however, was Title I's requirement that a person protected by the Act be a "qualified individual with a disability." ... Last May, however, in Ford v. Schering-Plough Corp., the Third Circuit held that a disabled individual could sue her former employers for disability benefits under Title I of the ADA, despite her admitted inability to perform essential job functions even with reasonable accommodation. ... The Third Circuit mistakenly concluded that the term "qualified individual with a disability" is ambiguous and that it includes completely disabled former employees. ... Because the language of the ADA's eligibility requirement is clear, the Third Circuit erred in negating the prerequisite that a plaintiff be a "qualified individual" for Title I protection. ... The Act's explication of "qualified individual with a disability" reflects a strong inclination toward excluding former employees who are, at the time of the alleged discrimination, ineligible to work. ... If the Third Circuit had examined the way in which "qualified individual" is used throughout the ADA, as the Robinson Court did with the term "employee" in Title VII, it would have discovered not ambiguity, but clarity. ...

TEXT:
[*1118]

Since the passage of the Americans with Disabilities Act (ADA) in 1990, n1 legislators and commentators have warned that the Act's ambiguous language would result in a flood of costly lawsuits. n2 One term that was viewed as largely unambiguous, however, was Title I's requirement that a person protected by the Act be a "qualified individual with a disability." n3 Until recently, the only circuits that had considered this term interpreted it as explicitly precluding claims by plaintiffs who are unable or unwilling to perform the essential functions of a job. n4 Last May, however, in Ford v. Schering-Plough Corp., n5 the Third Circuit held that a disabled individual could sue her former employers for disability benefits under Title I of the ADA, despite her admitted inability to perform essential job functions even with reasonable accommodation. n6 Although this holding offers decided protections to some disabled individuals, the court's misguided reading of the statute and its misapplication of precedent constitute a questionable foray into quasi-legislative decisionmaking.

From 1975 until 1992, Schering-Plough employed Colleen Ford as a laboratory analyst and operations manager. n7 During her employment, [*1119] Ford participated in a company-sponsored insurance plan consisting of a two-tiered benefits package. n8 The program provided disability benefits for physical disabilities through age sixty-five, but discontinued benefits for mental infirmities after two years unless the disabled individual was hospitalized. n9

In May 1992, a mental disorder rendered Ford unable to work. n10 Because she was not hospitalized, Ford's benefits were discontinued after two years. n11 Ford filed a complaint with the Equal Employment Opportunity Commission (EEOC) in December 1995, and the following month, the EEOC issued a "right-to-sue" letter. n12 Ford then filed suit in federal district court, claiming discrimination in violation of the ADA. n13 The court granted Schering-Plough's motion to dismiss for failure to state a claim, finding that Ford lacked standing under Title I because her inability to work meant that, by definition, she was not a "qualified individual." n14 On appeal, a Third Circuit panel unanimously

affirmed the dismissal on the merits of the case, n15 but disagreed with the district court by finding that Ford was in fact "eligible to file suit under Title I of the ADA." n16

Writing for the court, Judge Cowen n17 first noted that, although standing was not at issue, determining Ford's eligibility to sue under Title I was a prerequisite to addressing the merits of her claim. n18 After explaining that Title I limits the Act's protection to individuals who can perform employment tasks - with or without reasonable accommodation by their employer n19 - the court posited that Ford's inability [*1120] to work n20 and subsequent claim for disability benefits "illuminated an internal contradiction in the ADA itself, namely the disjunction between the ADA's definition of "qualified individual with a disability' and the rights that the ADA confers." n21 The court noted that the very status required to qualify for disability benefits - inability to work - simultaneously bars a potential plaintiff from stating a claim under the ADA. n22 In the court's view, limiting the ADA's protections to individuals able to work with or without accommodation would effectively prevent disabled former employees from contesting discriminatory disability benefits under Title I. n23 To avoid this result, the court concluded that "qualified individual with a disability" should be interpreted to include some individuals who are actually unable to work. n24

Finding the rights to be protected by the ADA and Title I's eligibility requirements discordant, the court deemed the scope of the eligibility requirements ambiguous. n25 In support of this conclusion, the court drew on Robinson v. Shell Oil Co., n26 in which the Supreme Court unanimously held that the term "employees" in Title VII of the Civil Rights Act n27 includes former employees, given that Act's anti-retaliation clause. n28 The Third Circuit panel determined that the ADA should be similarly construed in order to effectuate the Act's purpose. n29 Building on this analogy, Judge Cowen concluded that because Congress intended the ADA to provide a "comprehensive national mandate for the elimination of discrimination against individuals with disabilities," former employees who were fully disabled and unable to work were qualified to sue for disability benefits under Title I. n30

[*1121] The Third Circuit mistakenly concluded that the term "qualified individual with a disability" is ambiguous and that it includes completely disabled former employees. In reaching this conclusion, the Third Circuit incompletely analyzed the statutory language and misapplied precedent that had developed in response to a materially different set of facts. The result of this doubly-flawed analysis is a well-intentioned, but misguided, decision. Instead of extending Title I's protections through questionable legal reasoning, the court should have denied Ford's claim and used her predicament to alert Congress that the current statutory scheme excludes protections for a significant number of disabled litigants. n31

Because the language of the ADA's eligibility requirement is clear, the Third Circuit erred in negating the prerequisite that a plaintiff be a "qualified individual" for Title I protection. n32 The ADA's general aim of providing comprehensive protection to persons with disabilities n33 does not sufficiently counter the statute's unambiguous language. n34 Like other complex statutes that balance competing interests, n35 the ADA intentionally establishes strict qualification requirements to narrow the class of individuals that would otherwise find shelter under its provisions. The Act's explication of "qualified individual with a disability" reflects a strong inclination toward excluding former employees who are, at the time of the alleged discrimination, ineligible to work. The cornerstone of the definition of a "qualified individual" is an employee's ability to perform specific, es [*1122] sential tasks related to an identifiable job. n36 The Third Circuit ignored this core principle of the ADA and instead erroneously embraced the Act's broad, general intent.

Because Title I's eligibility requirements are inherently limiting, the court incorrectly concluded that the ADA is disjunctive because its protections extend to disability benefits but not to a plaintiff in Ford's position. Title I's limited scope indicates that certain individuals who desire to bring a claim concerning subject matter included under the ADA - in this case disability benefits - may nevertheless be unqualified to bring that claim. This limitation does not create an "ambiguity" in the statute, nor does it identify a "disjunction"; it simply specifies which individuals are ultimately protected by the Act. The Act would be disjunctive only if no individuals could ever bring a claim for benefits that the ADA specifically protects. n37 Indeed, the court's assumption that the ADA always protects all disabled individuals seems to ignore the Act's other limitations. n38

The Third Circuit also inappropriately applied the Supreme Court's decision in Robinson to buttress its argument that Title I of the ADA should apply to former, unqualified employees. Instead of carefully applying Robinson's analytical framework to the facts of Ford, the Third Circuit decided simply to import the Supreme Court's conclusion - that former employees were covered under Title VII n39 - to Title I of the ADA. In Robinson, the Supreme Court rigorously examined the varied uses of the term "employee" in Title VII. n40 Only after closely considering the statutory context of the term's multiple uses [*1123] did the Court conclude that the term was ambiguous. n41 If the Third Circuit had examined the way in which "qualified individual" is used throughout the ADA, as the Robinson Court did with

the term "employee" in Title VII, it would have discovered not ambiguity, but clarity. An alternative definition in Title II n42 of the ADA highlights the importance of the use of job requirements in Title I's definition. Here, Congress specifically allows a claim to proceed without considering the plaintiff's ability to perform a particular job. n43 This alternative definition illustrates that had Congress intended for plaintiffs in Ford's position to gain Title I's protection, it could easily have achieved this result by using Title II's definition of "qualified individual."

Ford illuminates a shortcoming in Title I's language that should, under a faithful and honest reading of that language, significantly limit protection from discrimination in disability payments for disabled workers. Because of this language, many disabled individuals will regrettably fail to qualify for relief under Title I's eligibility requirements even though such an exclusion may appear illogical. n44 Nevertheless, this limitation - as unfortunate as it may seem - is dictated by the language of the statute. Whether this is a "desirable" result is a consideration that should not have influenced the panel's decision. n45 Because the Third Circuit's decision makes statutory language elastic when it should be relatively inflexible, it will fuel the fires of those critics who argue that the ADA's language is dangerously malleable.

Legal Topics:

For related research and practice materials, see the following legal topics:
Civil ProcedurePleading & PracticeDefenses, Demurrers, & ObjectionsFailures to State ClaimsCivil ProcedureDismissalsInvoluntary DismissalsFailures to State ClaimsCivil Rights LawProtection of Disabled PersonsAmericans With Disabilities ActAccommodation

FOOTNOTES:

n1. 42 U.S.C. 12101-12213 (1994). Title I of the ADA states that "no covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." Id. 12112(a).

n2. See, e.g., 136 Cong. Rec. H2446 (daily ed. May 17, 1990) (statement of Rep. Hammerschmidt) (supporting the Act, but warning of the "vagueness of the language"); Steven B. Epstein, In Search of a Bright Line: Determining When an Employer's Financial Hardship Becomes "Undue" Under the Americans with Disabilities Act, 48 Vand. L. Rev. 391, 441 (1995) (arguing that the ambiguity of the term "undue hardship" would lead to widespread and costly litigation).

n3. 42 U.S.C. 12112(a) (emphasis added). The ADA defines "qualified individual with a disability" as "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." Id. 12111(8). The debate associated with the term has centered upon whether an individual who can perform some functions is qualified. See Developments in the Law - Employment Discrimination, 109 Harv. L. Rev. 1602, 1610 (1996).

n4. See EEOC v. CNA Ins. Cos., 96 F.3d 1039, 1045 (7th Cir. 1996) (finding that the ADA does not provide relief to a disabled former employee who is no longer able to hold a job); Gonzales v. Garner Food Servs., Inc., 89 F.3d 1523, 1530-31 (11th Cir. 1996) (holding that Title I of the ADA does not protect an individual who is unwilling or unable to work).

n5. 145 F.3d 601 (3d Cir. 1998), cert. denied, 67 U.S.L.W. 3436 (U.S. Jan. 12, 1999) (No. 98-529).

n6. See id. at 608.

n7. See id. at 603; Joint Appendix at 61 (Plaintiff's Charge of Discrimination filed with the Equal Employment Opportunity Commission on Nov. 8, 1995), Ford, 145 F.3d 601 (3d Cir. 1998) (No. 96-5674).

n8. See Ford, 145 F.3d at 603-04.

n9. See id. at 604.

n10. See id. at 603.

n11. See id. at 604.

n12. See Ford, No. 96-5674, slip op. at 2-3 (D.N.J. Sept. 12, 1996). Private parties may not bring suit under the ADA unless the EEOC issues a "right-to-sue" letter. See 42 U.S.C. 12117(b) (1994) (granting administrative agencies the power to "avoid[] duplication of effort and prevent[] imposition of inconsistent or conflicting standards" in implementing the ADA).

n13. See Ford, 145 F.3d at 604.

n14. See id.

n15. Regarding Ford's Title I claim, the court found that, although "the defendants' insurance plan differentiated between types of disabilities, this [was] a far cry from ... differential treatment due to [a] disability" because "no discrimination had occurred." Id. at 608.

n16. Id. at 603.

n17. Judge Mansmann joined Judge Cowen's opinion. Judge Alito, concurring in the judgment, contended that the court should not have reached the more difficult questions raised by Ford's claim under Title I, but should instead have affirmed the dismissal on the ground that the insurance plan in question was "insulated from attack" under Title V of the ADA. Id. at 614-15 (Alito, J., concurring in the judgment).

n18. See Ford, 145 F.3d at 604.

n19. See id. at 605. The court noted that the Act prohibits discrimination regarding the "terms, conditions, and privileges of employment," which includes employer relationships with other organizations that provide fringe benefits to employees. Id. at 604 (quoting 42 U.S.C. 12112(a)-(b) (1994)).

n20. Ford admitted that she was unable to work with or without reasonable accommodation. See id. at 605.

n21. Id. (internal quotation marks omitted).

n22. See id. at 606.

n23. See id.

n24. See id.

n25. See id.

n26. 519 U.S. 337 (1997).

n27. 42 U.S.C. 2000e-2000e-17 (1994).

n28. See Ford, 145 F.3d at 606 (citing Robinson, 519 U.S. at 346).

n29. The interpretation of Title VII is widely viewed as highly probative to interpreting the intent and language of the ADA. See, e.g., EEOC v. Amego, Inc., 110 F.3d 135, 145 n.7 (1st Cir. 1997) (noting that the "ADA is interpreted in a manner similar to Title VII").

n30. Ford, 145 F.3d at 607 (citing 42 U.S.C. 12101(b)(1)-(2)). Although the court recognized that its decision created a circuit split, it noted that both the Seventh and Eleventh Circuits had reached their decisions prior to Robinson. See id. Furthermore, the Third Circuit panel was skeptical of its fellow circuits' legal reasoning. The Ford court criticized the Seventh Circuit's decision in EEOC v. CNA Insurance Cos., 96 F.3d 1039 (7th Cir. 1996), for failing to distinguish between a disabled former employee's standing to sue under Title I and the merits of that employee's claim. See Ford, 145 F.3d at 607. Similarly, the court viewed the Eleventh Circuit decision in Gonzales v. Garner Food Services, Inc., 89 F.3d 1523 (11th Cir. 1996), as having inappropriately ignored the incongruity between the ADA's intended scope of protection and its eligibility requirements. See Ford, 145 F.3d at 607-08.

n31. Justice Frankfurter urged this approach in Ferguson v. Moore-McCormack Lines, 352 U.S. 521 (1957), in which he expressed his preference for pushing Congress to revise a worker's compensation statute by denying judicial relief instead of supporting a strained judicial expansion of the law. See id. at 538-40 (Frankfurter, J., dissenting). Judge Calabresi terms this methodology "judicial blackmail." Guido Calabresi, A Common Law for the Age of Statutes 34 (1982).

n32. See Estate of Cowart v. Nicklos Drilling Co., 505 U.S. 469, 475 (1992) ("In a statutory construction case, the beginning point must be the language of the statute, and when a statute speaks with clarity to an issue judicial inquiry into the statute's meaning, in all but the most extraordinary circumstance, is finished."); Antonin Scalia, Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws, in A Matter of Interpretation 18-22 (Amy Gutmann ed., 1997) (arguing that courts should interpret statutes according to their text and not according to reconstructed legislative intent). But see Behrens v. Pelletier, 516 U.S. 299, 324 (1996) (Breyer, J., dissenting) ("Meaning in law depends upon an understanding of purpose. Law's words, however technical they may sound, are not magic formulas; they must be read in light of their purpose, if we are to avoid essentially arbitrary applications and harmful results.").

n33. See 42 U.S.C. 12101(b)(1) (1994).

n34. See Mertens v. Hewitt Assocs., 508 U.S. 248, 261 (1993) ("Vague notions of a statute's "basic purpose' are nonetheless inadequate to overcome the words of its text regarding the specific issue under consideration.").

n35. Cf. id. at 262 (observing that the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001-1461 (1994), is the type of "enormously complex and detailed statute that resolves innumerable disputes between powerful competing interests - not all in favor of potential plaintiffs").

n36. See supra note 3. If legislative history were an appropriate interpretive source in this context, evidence nonetheless exists indicating that legislators thought the ability to perform job functions was critical to avoid placing an onerous burden on employers. See H.R. Rep. No. 101-485(II), at 55 (1990), reprinted in 1990 U.S.C.C.A.N. 303, 337 (noting that the phrase "qualified individual with a disability" was included to "ensure that employers can continue to require that all applicants and employees, including those with disabilities, are

able to perform the essential ... functions of the job in question"). However, as the Eleventh Circuit noted in Gonzales v. Garner Food Services, Inc., 89 F.3d 1523 (11th Cir. 1996), the persuasiveness of this positive evidence is largely immaterial; "absent clear legislative intent to the contrary," "the plain language of the statute should be conclusive." Id. at 1528 (emphasis added) (citing Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980)).

n37. The Third Circuit failed to consider other scenarios in which a plaintiff would be able to sue for disability benefits. For example, a plaintiff diagnosed with a degenerative condition might have a disability, yet could still be a qualified individual with respect to an employment position. At the same time, in anticipation of a future inability to work, that individual could sue requesting injunctive relief for a discriminatory disability benefits plan.

n38. For example, the Act is not so absolute that it prohibits employers from considering the health and welfare of other employees, see 42 U.S.C. 12113(a)-(b) (1994), or bars religious organizations from requiring applicants to conform to religious tenets - regardless of their disabilities, see id. 12113(c)(2) (1994). The Act also limits an individual's protection from insurance provisions that include differential benefits based on actuarial risk assessments. See id. 12201(c).

n39. See Robinson v. Shell Oil Co., 519 U.S. 337, 346 (1997).

n40. See id. at 341-45.

n41. See id. at 345. Also significant was the nature of the term under consideration. In Robinson, the Court sought to determine if "employee" included former employees under the Act's anti-retaliation clause. See id. at 339. As the Court correctly observed, prohibiting former employees from suing under the anti-retaliation clause would produce a "perverse incentive" for employers to fire employees who brought Title VII complaints as a way for the employer to gain immunity. Id. at 346. With respect to Title I of the ADA, however, no such incentive would exist because the plaintiff's eligibility to sue is unaffected by any actions the employer could take.

n42. 42 U.S.C. 12131(2) (1994).

n43. See id. Instead of using job requirements to define a "qualified individual with a disability," the statute merely requires that a qualified individual be one who "meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." Id. Although Title II applies only to public accommodations, its definition of "qualified individual with a disability" still illustrates how the use of that term in Title I clearly defines a different class of persons.

n44. See Brief of the Equal Employment Opportunity Commission as amicus curiae in Support of the Appellant at 26-27, Ford, 145 F.3d 601 (3d Cir. 1997) (No. 96-5674) (noting that, although the district court's interpretation of the ADA would protect former employees "in some circumstances," it would do so "on the basis of happenstance").

n45. The court could have decided the case on more solid and neutral legal grounds by adopting the position of Judge Alito's concurrence. Judge Alito would have dismissed Ford's claim on the basis of the ADA's insurance "safe harbor" provision and would never have visited the question whether Ford was a "qualified individual" under Title I. See Ford, 145 F.3d at 614-15 (Alito, J., concurring in the judgment); supra note 17.

Statement of Michael Leiter,
Acting Director, National Counterterrorism Center (NCTC)

Before the Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment Committee on Homeland Security

U.S. House of Representatives

March 13, 2008

The Interagency Threat Assessment and Coordination Group (ITACG) brings Federal, State, local and tribal intelligence and law enforcement personnel together to enhance information sharing between the Intelligence Community, State, local, tribal, and private (SLTP) partners. NCTC is focused on meeting the ITACG statutory purpose of "integrating, analyzing, and assisting in the dissemination of Federally-coordinated information within the scope of the information sharing environment, including homeland security information, terrorism information and weapons of mass destruction information, through appropriate channels identified by the ITACG Advisory Council."[1] The ultimate goal, of course, is to better protect the homeland against terrorism through increased information sharing. In our vision, the ITACG will complement, but not supplant, the intelligence production and information sharing efforts of the Department of Homeland Security (DHS), the Federal Bureau of Investigation (FBI), and other executive departments and agencies. Today, I would like to address three principal areas: ITACG operations, improving information flow to SLTP partners, and some of the challenges we expect to face in this area in the coming months and years.

[1] Public Law 110-53-Aug. 3, 2007 Implementing Recommendations of the 9/11 Commission Act of 2007

ITACG OPERATIONS

The ITACG, established both by Presidential Order in December 2006 and by Statute in August 2007, reached initial operating capability at the National Counterterrorism Center (NCTC) in October 2007. ITACG advocates for Federal and non-Federal partners, without duplicating, impeding, or otherwise interfering with existing and established counterterrorism roles, and responsibilities.[2] In its role of providing support to non-Federal partners, the group identifies reporting of potential interest to SLTP partners, ensures that the message is cast appropriately, and that the information is disseminated. In its role of providing support to Federal partners, the ITACG provides the State, local, and tribal perspectives to the National Intelligence Community, and brings non-Federal information to Federal analysts. These actions are intended to increase the probability of appropriate responses to genuine terrorism threats, while diminishing the possibility of disproportionate reactions to terrorism incidents of low or questionable credibility.

A "learn by doing" strategy has been implemented whereby ITACG members interact with elements throughout NCTC and across the Community on behalf of non-Federal partners. And although we continue to learn, ITACG is already fully participating in appropriate interagency fora, reviewing analytical products, ensuring appropriate context, adding comment, facilitating dissemination and, in general, serving as the eyes and ears for State, local and tribal constituents. Our approach to ITACG operations has three core components: (1) ITACG access to a broad range of Federal counterterrorism information; (2) ITACG participation in production of alerts, warnings, and situational awareness reporting for SLTP partners; and (3) ITACG participation in

[2] Guideline 2 – Develop a Common Framework for the Sharing of Information Between and Among Executive Departments and Agencies and State, Local, and Tribal Governments, Law Enforcement Agencies, and the Private Sector

production of finished, "foundational" intelligence for SLTP partners. I address each of these three areas in greater detail below.

1. ITACG access to a broad range of Federal counterterrorism information

A key aspect of the ITACG role is to identify and promote effective dissemination of intelligence products at the lowest possible classification. A foundational aspect of this responsibility is that the ITACG officers have access to a broad range of Federal counterterrorism information. This has been fully accomplished.

The Group—regardless of whether the individual is from a Federal, state, or local agency—has broad access to top secret, special compartmented, collateral, and unclassified Intelligence Community and Federal Law Enforcement systems, databases, reporting, and analysis. This includes access to native DHS, FBI, and NCTC systems. This inclusive access enables the ITACG to review all international terrorism information, and thereby facilitate its release to SLTP partners.

This access to information systems and sensitive databases is further enhanced by the ITACG's attendance at daily Intelligence Community and Law Enforcement briefings. Of note, I would point out that an ITACG officer sits just a few feet from me as I chair the daily, 8 a.m. U.S. Government-wide secure video teleconference that includes 18 different offices—to include the FBI, DHS, CIA, Terrorist Screening Center, Department of Defense, National and Homeland Security Councils, and many others. In addition, the ITACG participates in the FBI

Counterterrorism Watch shift change, the National Joint Terrorism Task Force brief, as well as other similar events.

This high level of access permits ITACG to monitor the assessments made, and actions taken, by the National Intelligence Community and Federal Law Enforcement in response to terrorism-related activities. In addition, and perhaps more important, ITACG can subsequently—as in fact it already has—propose adjustments or additional actions on behalf of SLTP partners, understanding that those decisions regarding what DHS, FBI, or other Executive Departments and Agencies communicate and how to do so, remain exclusively with those organizations. Of note, ITACG recently identified a threat item which may have caused undue concern at the state and local level, given the source and content of the reporting. ITACG reached out to Federal partners and recommended further scrutiny of the threat and source. The product was redrafted, taking ITACG's recommendations into consideration, and delivered to state and local officials.

We at NCTC continue to consider the best "organizational locus" for ITACG within the larger Center. Currently ITACG operates within our Information Sharing and Knowledge Development directorate, and works with the NCTC Directorate of Intelligence and the NCTC Directorate of Operation Support. Due to ITACG's collaboration with the DHS National Operations Center, FBI Counterterrorism Watch, and NCTC Operations Center, I expect the future integration of ITACG in the NCTC Operations Center. From my perspective this arrangement is most likely to ensure the ITACG's fullest access to information. In addition, the Operations Center is already well-positioned to incorporate the ITACG in view of its experience

providing similar specialized support to the Department of Defense through the Defense Information Unit.

2. ITACG participation in production of alert, warning and situational awareness reporting for SLTP partners

The ITACG works with DHS, FBI, and NCTC during the draft phase of counterterrorism "alert, warning and situational awareness" reporting. This early collaboration ensures that terrorism-related products are relevant to SLTP partners, account for the non-Federal perspective, provide suitably characterized source descriptions, and assess the reliability of the information. The intent is to qualify properly reporting which should assist our State, local, and tribal partners in taking the most informed course of action possible, in response to threats to their jurisdictions.

More specifically, a proposal is in front of the ITACG Advisory Council for ITACG to participate in the drafting of a "just the facts" timely product —wherein DHS, FBI, and NCTC alert our non-Federal partners of a significant event, within hours of its occurrence. These "just the facts" reports are planned to be produced at the lowest possible level of classification— "UNCLASSIFIED and FOR OFFICIAL USE ONLY." If these events have an international terrorism nexus, then these products would be the first of many NCTC products being produced enroute to our non-Federal partners.

Also I would like to especially note that the ITACG members will be co-authoring NCTC's daily SECRET-level situational reports (NCTC Secret SITREPs), which will highlight every 24 hours,

significant terrorism-related reporting for our State, local and tribal partners. In disseminating these products, SLTP partners will—albeit at a lower level of classification—be provided with the same situational awareness reporting that is currently relied upon by Federal officials.

3. ITACG participation in production of finished, "foundational" intelligence reporting for SLTP partners

ITACG reviews counterterrorism, homeland security, and weapons of mass destruction finished intelligence—that which might be considered key "foundational" intelligence that is not related to a particular breaking event—to ensure that such intelligence speaks to, and can be accessed by, SLTP partners. More specifically, the ITACG helps to identify reporting of potential interest not already available to SLTP partners, proposes language for the benefit of SLTP partners consumers of intelligence, and facilitates the "classification downgrade" and broadest possible dissemination of such products. In many cases, this may include disseminating reports which have no direct nexus to the homeland, but are pertinent—due to the type of information contained in these products (*e.g.*, terrorist tactics, techniques, and procedures that are beneficial to law enforcement, infrastructure security, and first responders). Of note, ITACG serves this function for both NCTC-specific products as well as products from other parts of the Intelligence Community.

In addition to their involvement with disseminated intelligence products, the ITACG coordinates with intelligence directorates at DHS, FBI, and NCTC during the initial production phase,

enabling the ITACG to provide the state and local perspective to Federal intelligence products prior to dissemination.

With respect to the broad range of finished intelligence produced by NCTC, ITACG reviews all NCTC products, identifies their suitability for broader dissemination, and—working with our analysts in the Directorate of Intelligence—helps prioritize what products should be disseminated via the NCTC Terrorism Information Product Sharing (TIPS) product line. These TIPS are subsequently disseminated at the SECRET, CONFIDENTIAL, and UNCLASSIFIED/FOR OFFICIAL USE ONLY levels, depending on the nature of the material and the utility of lesser classification.

With respect to finished intelligence produced by Intelligence Community components *other than* NCTC, ITACG works on my behalf in my role as the DNI's Counterterrorism Mission Manager. In this regard, the ITACG reviews and comments on DHS and FBI terrorism and homeland security-related products to offer their perspective on how those products might best serve SLTP partners. In addition, and on a daily basis, ITACG reviews in excess of 400 intelligence reports from throughout the Intelligence Community—to include CIA, DOD, and others. Finally, the group also works with the Intelligence Community's primary analytic coordination team that NCTC manages, the Interagency Intelligence Committee on Terrorism (the IICT), to identify new topics of interest or re-visit previous topics of particular interest to State, local and tribal partners.

IMPROVING SLTP PARTNER ACCESS TO COUNTERTERRORISM INFORMATION

Having information access and participating in the production of situational awareness reporting and finished intelligence is only a part of the ITACG's challenge. For regardless of how much intelligence is "pushed" by the ITACG and our interagency partners at FBI and DHS, it is only helpful if it can be accessed by SLTP partners. In this regard, UNCLASSIFIED/FOR OFFICIAL USE ONLY products are vital. But these products, by their very definition, cannot delve into sensitive information. And for these sensitive products—generally at the SECRET and CONFIDENTIAL levels—we must continue to improve delivery to SLTP partners.

In this regard I cannot overstate the importance of NCTC Online Secret (NOL(S)). From my perspective, NOL(S)—a secure, classified website designed to mirror its Top Secret older brother that is used broadly by Federal officials—is a, if not *the*, key access point to counterterrorism information for SLT. I believe this because we have been told repeatedly by senior SLT officials that the information already contained on NOL(S) meets the vast majority of their counterterrorism needs. Thus, from my perspective we must increase the utility of NOL(S) as well as increase SLT awareness of NOL(S). I believe that ITACG must play a key role in both endeavors.

With respect to increasing the utility of NOL(S), ITACG is spearheading an effort to overhaul the look, feel and content of NOL(S) to be more directly relevant to non-Federal actors. Moreover, we are working with our Federal partners to post far more product to NOL(S) to ensure an even richer data set. This will include reporting related to breaking events, daily terrorism related situational reports, as well as an array of foundational reports produced by the

Federal Community. The ITACG is working with the FBI to spread the word of NOL(S) to its field and headquarters personnel. As a result, FBI Field Office products can now be found on NOL(S), and the FBI Headquarters will shortly begin posting its own products to NOL(S).

ITACG has also identified the need for posting NCTC TIPS and other "For Official Use Only" reporting on systems with greater access by State, local, and tribal partners. ITACG has brokered an agreement between production managers at DHS, FBI, and NCTC to post these NCTC products to Law Enforcement Online (LEO) and the recently revamped Homeland Security Information Network-Intelligence (HSIN-I).

To address the overall issue of "marketing", the ITACG is preparing an outreach plan in conjunction with Federal partners, to alert Federal, State, local, tribal and private sector intelligence, law enforcement, and homeland security professionals of the importance of disseminating homeland-related, terrorism information as widely as possible. Part of this effort will be focused on demonstrating the value of NOL(S) as well as providing instructions on how to access the intelligence. As part of the outreach effort ITACG representatives will deliver presentations, provide informational brochures, and solicit feedback on how ITACG can be of even greater value to our non-Federal partners.

Finally, I must note that like all websites, NOL(S) is only accessible if one has the right "pipes"—in this case, DHS, DoD, or FBI SECRET-level networks that connect to our State, local and tribal partners. Although I cannot speak directly to such issues, it is my understanding that such systems are scheduled to be available in nearly all states by the end of the year.

COMPLEXITIES and CHALLENGES

As I hope is readily apparent, NCTC is taking the ITACG effort very seriously and I applaud the FBI and DHS on their collective efforts to support the ITACG. I continue to devote a tremendous amount of time, both that of my senior staff as well as my own, to getting this right. I am personally convinced that the ITACG will "learn by doing." I'm also convinced that the entire Government agrees with the general proposition that the ITACG needs to address issues like consistency and clarity of message, as well as accurate content—and that it must do so while ensuring that reporting is provided to our non-Federal partners in a timely matter.

On the good side, we already have concrete examples of ITACG facilitating the flow of information and enhancing information sharing between Federal and State, local and tribal entities. Much, however, remains to be done. As is the case with any standup effort, we are collectively working through the procedures to accomplish the goals set forth quite clearly in the relevant legislation. But we must recognize that we have no detailed, precise blueprint so, as would be expected, we continue to work through several challenges discussed more fully below.

First, we continue to see that there are competing visions of the ITACG. We have been told that the ITACG needs to be much bigger and that it needs to serve as a stand-alone production and analysis shop. While I believe that the size of the element is about right for now, I reserve judgment as to the long term size of the group. On the latter point, however, I am more adamant. ITACG should not—and in fact cannot—be a stand-alone analytic entity. Rather, the ITACG's

strength flows from its access to information and its involvement in the production of intelligence by existing analytic entities within NCTC and elsewhere. The reason for this is simple: no ITACG, no matter how large or how talented, could *ever* match the expertise that already exists in other parts of the Federal government. Again, my view as noted above focuses on the need for the Group to bring the State, local and tribal perspective to bear and ensure that the Federal Government is leveraged to meet the needs of SLTP partners.

Second, the ITACG must help clarify differing interpretations of language. In the same way that the ITACG needs to explain for our non-Federal partners what we mean by such phrases as "low credibility," we also need to work through a definition of "Federally coordinated" that finds the correct balance between multiple agency participation and timeliness of dissemination. The last thing we want would be "National Intelligence Estimate, NIE-like" timelines associated with pushing time sensitive, situational awareness products.

Third, although ITACG is relatively new, we are already looking at future staffing. As of early March, the ITACG is staffed with four State and Local representatives, six Federal intelligence professionals and contractors, and a part-time tribal representative. As I have already noted, future growth will be dictated by mission needs. Beyond addressing current manning, funding, space and IT issues, we have also begun planning the succession process for our State and Local participants to ensure long term continuity of ITACG operations. Working across Departmental and Agency boundaries, however, invariably brings to the surface a host of administrative issues. The selection process for getting people to NCTC, the disparity in the FBI and DHS fellowship

programs, and the adequate level of support external to NCTC are all issues that we are addressing in order to ensure the long term viability of the program.

Fourth, we need to achieve greater clarity regarding ITACG's scope of responsibility. Under the *Intelligence Reform and Terrorism Prevention Act of 2004* (IRTPA), NCTC has primary responsibility for analysis and integration of terrorism with an international nexus; the ITACG's mission, on the other hand, is potentially greater. A recent example illustrates this challenge. Per the IRTPA, other than noting the event and ruling out an international terrorism nexus, NCTC has no role in the analysis, reporting, or dissemination of intelligence related to the recent arson attacks allegedly conducted by the Earth Liberation Front (ELF). If, however, the ITACG shares a responsibility for producing a Federally-coordinated product about purely domestic terrorist activities such as ELF, ITACG would have a mission broader than NCTC itself. I look forward to further discussions with the Committee on how to best approach this issue.

Finally, I believe the ITACG should not only play an important role in providing advice and counsel to the Federal Community as to what information flows *to* SLTP partners, but also advice and counsel on how information can best flow *from* SLTP partners. Currently, mechanisms to ensure that Suspicious Activity Reporting (SAR) or analytic products emanating from State Fusion Centers are made available to the Federal Intelligence Community are, in my view, less than systematic. Collectively we have a great deal of work to do in this regard and we should, in the future, use the ITACG's expertise to help us develop better approaches.

None of these are insurmountable challenges, and some of them simply stem from a new program. They are, however, real issues with which we are dealing as we attempt to "operationalize" statutory language. I would ask for some indulgence and caution against attempts to be excessively prescriptive about what the ITACG should do or how it will accomplish its mission. I cannot stress too much that we are in absolute agreement on the need to improve the quality of support to our non-Federal partners and we are working extremely hard to achieve this critical goal. And in that respect, I very much look forward to continuing to work closely with the Committee as we move forward.

Thank you and I look forward to your questions.

Remarks Presented to the Washington Institute

by

Michael Leiter

Acting Director

National Counterterrorism Center (NCTC)

"Looming Challenges in the War on Terror"

February 13, 2008

Thank you for the kind introduction and warm welcome to this prestigious forum.

It's a pleasure to be with all of you today. I look forward to having a conversation with you about the "looming challenges in the war on terror." I rarely get a chance to discuss these issues in public since, oddly enough, it turns out that it's not really a popular topic at parties. I bring it up, and suddenly everyone's excusing themselves to go chat with the guy who works for the IRS.

It has been six and a half years since 9/11. More than seven years since the attack on the USS Cole. Almost ten years since the attacks on the U.S. embassies in Kenya and Tanzania. Nearly 15 years since the first attack on the World Trade Center and twenty-five years since the bombing of the U.S. Marine Corps barracks in Beirut. Over that quarter-century, the threat we face from terrorism has constantly mutated, sometimes in tragically unexpected ways. This has compelled us to adapt and evolve as well. Today I would like to speak to you about some components of that evolution—in particular, the enhancements brought about by the creation of my organization, the National Counterterrorism Center or NCTC. I also want to speak to the challenges and changing landscape we anticipate in the future, and what we know we must do going forward to defeat this enemy.

The creation of NCTC was a deliberate break from the government's history of creating "stovepiped" agencies to address what were frequently cross-cutting problems.

Terrorism involves such a range of activities and enablers—from propaganda campaigns to gain new recruits, to organized camps to train terrorists, to smuggling and drug operations to provide funding, to potential suicide bombers that sow fear—that to combat the threat requires leveraging all elements of national power. From domestic intelligence and law enforcement to foreign intelligence and military action, the FBI and CIA, the DEA and DHS, DOD and State, and even seemingly unlikely departments such as Agriculture and the Interior, must work in a coordinated fashion to address the threat. It has not, as you might guess, been an easy task. But it has been a successful one. We have made significant progress and have enjoyed a number of successes—some of which, in fact, I dare say, too many of which, you have seen in the newspaper and on TV. But many other crucial successes must and do go unheard of by the public. Even though I can't tell you what they are, I can tell you what we do at NCTC helps make those success stories happen.

First and foremost, NCTC is the principal organization responsible for terrorism analysis, for ensuring information sharing among federal agencies, for providing terrorism situational awareness for senior policymakers and military commanders, and for overseeing counterterrorism (CT) activities and programs across the Intelligence Community.

Our second mission, on behalf of the President, is to conduct strategic operational planning for the U.S. Government's War on Terror. This planning underpins our country's efforts to defeat terrorists at home and abroad; to prevent terrorists from acquiring weapons of mass destruction, and to counter violent Islamic extremism—the war of ideas.

We are, in short, intended to be a one stop shop for mapping out the terrorism threat and designing a plan for the U.S. Government to counter it —whether it is immediate, emerging, or long-term.

Let me begin by describing NCTC's responsibility for analyzing and integrating all counterterrorism intelligence from across the U.S. Government.

Our analytic capabilities rest on a critical foundation: NCTC's role as the single focal point where all terrorism-related information available to the government comes together. This means NCTC analysts have unprecedented access to an array of classified information networks, databases, and intelligence sources. Using this vast pool of information, NCTC analysts, working closely with their counterparts from throughout the Intelligence Community, produce daily reports and products that focus on both long-term, strategic terrorism analysis to support policy development and tactical threat analysis that supports operations in the field, both overseas and domestically.

As I have already noted, there have been successes. This past year, NCTC worked closely with our national and international partners to disrupt an imminent threat by Islamic extremists in Germany. This was a concerted effort to help our allies uncover, analyze and enumerate complex relationships among the suspects. We produced finished intelligence products to support the Germans, and our policymakers and affected military commanders.

Our intelligence mission extends beyond traditional counterterrorism analysis, to include supporting watchlisting of terrorists. NCTC maintains the government's central data base on known or suspected international terrorists. The database, known as the Terrorist Identities Datamart Environment, or TIDE, contains all-source intelligence information provided by all of the various members of the Intelligence Community, up to the very highest levels of classification. The classified information in TIDE is used to produce an unclassified extract that goes to the FBI's Terrorist Screening Center. That information, in turn, is used to compile the TSA's No-Fly List, the State Department's Visa and Passport Database, DHS's Border System and data for the FBI's National Crime and Information Center. While the system is not yet foolproof or perfect, it represents a major step forward for our government in the effort to solve the problem of disparate, incomplete and disconnected watch lists.

As you may suspect, it's one thing to bring everyone together during a crisis. It's another to bring all elements of national power to bear on a strategic plan. The job of ensuring all Cabinet-level departments and agencies across our government are focused on the counterterrorism mission, falls to NCTC's innovative and, dare I say, revolutionary Directorate of Strategic Operational Planning. This responsibility was assigned to NCTC under the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), which mandated NCTC's role as the government's strategic operational planner and integrator for the war on terror. IRTPA mandates that all elements of national power, not just the intelligence or military elements, be leveraged in the fight.

Our task is to translate U.S. Government-wide counterterrorism policy and strategy into coordinated, actionable tasks for individual departments and agencies. This task is realized in a landmark document, the National Implementation Plan or NIP, produced by NCTC and approved by the President in June 2006. The NIP is the first-ever, comprehensive U.S. Government-wide strategic war plan for countering terrorism. The document lays out who is responsible for what, and ensures accountability for results through an assessment and evaluation process.

It is with this backdrop that we face the challenge of violent extremists, and I regret to say that the Al Qa'ida threat still looms large. I would like, therefore, to offer "looming challenges" on two fronts—first, what the intelligence tells us about al-Qa'ida and related movements, and second, challenges to our side--the government's response to the threat.

And let me just note that while I will focus today on our principal threat—that of al-Qa'ida and al-Qa'ida inspired groups—we need no better reminder of the significant threats posed by violent Shia extremists—most notably Hizballah—than today's reported death of Imad Mughniyeh. Mughniyeh, Hizballah's military leader, was responsible for violence such as the Beirut barracks bombing, the bombing of Jewish targets in Argentina, and the murder of US Navy diver Robert Stethem during the hijacking of a TWA airliner.

The discussion of al-Qa'ida (AQ) must begin in one place—the Federally Administered Tribal Areas (FATA) of Pakistan, where AQ maintains a relatively strong profile. The FATA has provided AQ with a safe haven from which they can recruit, train and send operatives to the West. They also use the relative sanctity of the region in order to produce media statements and maintain the pace of AQ propaganda to the Muslim, and increasingly, Western world. While we have seen al-Qa'ida's ability to find common cause with extremists across the globe, metastasizing itself outside of its traditional safe havens, its most sophisticated plotting against the West is still guided by a smaller cadre of extremists working out of these frontier areas of Pakistan.

Al-Qa'ida proper is not, however, solely in the FATA. As many of you are aware, Al-Qa'ida's global reach has expanded with strategic partnerships across the Middle East and North Africa. Of these partnerships, Iraq remains a focus, even as regional initiatives—a combination of Sunni tribal initiatives, Coalition force actions, and Iraqi Security Forces actions—have reduced al-Qa'ida in Iraq's (AQI) strength and capabilities since late 2006. However, AQI retains the capability to conduct high-profile terrorist attacks. AQ may also seek to leverage the contacts and capabilities of AQI as a visible and capable affiliate and the only one known to have expressed a desire to attack the U.S. homeland.

North Africa is also high on our list of priorities. In November, Ayman al-Zawahiri and now deceased Libyan Islamic Fighting Group (LIFG) leader Abu Layth al-Libi announced LIFG's merger with al-Qa'ida, a largely symbolic gesture designed to reinvigorate the jihad in Libya. This is the second North African group to join with al-Qa'ida in the past year or so. Zawahiri announced in 2006 that al-Qa'ida merged with the Salafist Group for Preaching and Combat (GSPC) and is now called the al-Qa'ida in the Islamic Maghreb (AQIM). In December, AQIM conducted near-simultaneous suicide bombings in Algiers, marking the deadliest attack AQIM has conducted against a foreign entity. AQIM attacked the Algerian Supreme Court and offices of the United Nations; unofficial estimates place the death toll at more than 67, including eight UN employees. We assess that AQIM is capable of more such attacks.

The countries outside Northern Africa have proven to be a very attractive operating environment for a number of foreign and domestic terrorist organizations as well. Many of those countries have poor border security, allowing for recruits, supplies and capital to cross without detection. Since the Ethiopian invasion of Somalia in December 2006, the threat environment in the Horn of Africa has shifted: Ethiopia's military victory has dismantled the political wing of the Council of Islamic Courts (CIC), however other elements of CIC, including the radical wing al-Shabaab militants and their al-Qa'ida associates are largely intact and continue to wage violent jihad.

South East Asia continues to be a concern, although not nearly that which we might have envisioned two or three years ago. Jemaah Islamiya (JI), the region's broadest terrorist network, still has both the capability and interest to carry out attacks in multiple countries. While JI's strategic goal of uniting the region's Muslims under a new caliphate still inspires extremists in Indonesia, the situation in South East Asia continues to be a bright spot in the War on Terror. With one of the largest Sunni Muslim populations in the world, with potential safe havens from which to operate, the governments in the region have been able to effectively counter, deter and incapacitate extremists and their plans.

Of course, violent extremism in Europe remains at the center of our concerns—both for the danger it poses to our European allies and our interests, as well as the potential danger it poses to the United States, as vividly illustrated by the disrupted trans-Atlantic airline plot in 2006.

Recent disrupted European plots were, at the very least, inspired by bin Laden's public call to wage war against the West. A terrorist cell disrupted in Barcelona last month, disrupted terrorists attacks this past summer in Denmark and Germany, and the botched car bomb attacks last year in London and Glasgow are recent examples. In addition, Bin Ladin's recent video message addressed to Europe further reinforces our belief that al-Qa'ida is attempting to divide Europe from America by appealing to the large Islamic émigré population in Europe to pressure their leaders to leave

Afghanistan. In all of the above cases, the bulk of those charged were legal citizens of the countries they allegedly targeted, in stark contrast to the 9/11 bombers.

In contrast to some of the dangers I have just described, the United States is relatively fortunate: our analysts do not assess that we face the same level of threat from al-Qa'ida, or al-Qa'ida-inspired, cells as Europe. The scope of al-Qa'ida and al-Qa'ida-inspired terrorist plotting in countries like the United Kingdom is something we thus far appear to have avoided. That's the good news. This is not, however, to say the United States is uniquely immune to such threats, and we remain vigilant in our efforts to detect either core al-Qa'ida plots or those inspired by its ideology. Above all, the United States remains the top target for al-Qa'ida's operational commanders, who continue to look for ways to smuggle Western-savvy operatives into our borders, or, inspire those already here to act.

Over the past several years we have faced a handful of homegrown plots and, thankfully, these have tended to be less sophisticated than those we have witnessed overseas. They have, however, often been uniquely "American" groups—crossing ethnic and religious lines that mark them as at least partially different from their overseas counterparts. Moreover, we remain concerned that those very few Americans who travel overseas and gain training and connections overseas might return to the United States and apply their skills here.

What I have thus far described is geographically-based threats, but at the center of all of them lies an overarching question—how do we and our allies counter the ideology that supports violent extremism? Our goal in this struggle is, ultimately, to prevent the next generation of terrorists from emerging. This is the long struggle in the fight against ideological extremists. And we must win this struggle not by attacking religious or cultural traditions, but by highlighting the poverty of extremist thought, by working together with mainstream adherents of all faiths, by building a future of justice, security and progress for all people, and by using all our elements of national power—diplomacy, foreign aid, non-government organizations and the like—to show that it is al-Qa'ida, not the West, that is truly at war with Islam.

This global ideological engagement, referred to by some as a "War of Ideas," constitutes a key center of gravity in the battle against al-Qa'ida, its associates, and those that take inspiration from the group. Terrorist leaders aggressively employ messages related to current events, leverage mass media technologies, and use the Internet to engage in a communications war against all who oppose their oppressive and murderous vision of the world. We must engage them on this front with equal vehemence—and we can do so in a way that makes quite clear how bankrupt their ideology is. On this point, let us not forget that it was al-Qa'ida that killed innocent Muslims when it blew up the Golden Mosque in Samarra. It was al-Qa'ida that targeted innocents at a wedding ceremony in Amman. And most recently, it was al-Qa'ida that used suicide bombers with Downs Syndrome in Iraq.

In short, it is clear that al-Qa'ida is—in the end—its own worst enemy. And we have seen at least some indications that there is a growing recognition of this. A Pew Foundation study found that acceptance for targeting civilians fell in countries as diverse as Pakistan, Indonesia, Morocco and Lebanon from previous levels in 2002. Showing the barbarism of groups like al-Qa'ida in the light of truth is, ultimately, our strongest weapon in this "long struggle."

And no barbarism could be greater than the use of WMD by terrorists groups such as al-Qa'ida. In this regard, we must keep in mind al-Qa'ida's stated desire and efforts to acquire WMD. Thus, we must continue to pursue a comprehensive plan that seeks to learn our enemies' plans and capabilities, intelligently harden our borders against the possibility of smuggling a weapon into the United States, and we must continue to work with our allies and adversaries to prevent terrorist acquisition of such a lethal weapon. And we must think imaginatively as to how we can deter the states, facilitators, and terrorists who might be involved in the acquisition of WMD.

Having discussed the threat posed by al-Qa'ida, I also want to touch upon some of the additional challenges we, as a government and as a nation, face in the War on Terror.

One particular organizational challenge we face is effectively sharing information with our partners on the state, local and tribal level. This issue is well-trod ground, but we must continue to find ways to get meaningful information to local officials, as well as to ensure that meaningful information moves from local officials to the federal government. Today, NCTC supports state, local, and tribal counterterrorism officials through the Interagency Threat Assessment and Coordination Group (ITACG), which was created by law this Fall. The unit now serves as the Intelligence Community's focal point, in coordination with DHS and FBI, to guide the creation of federal intelligence products to state, local, tribal and private sector partners. Although we still have a long way to go in this regard, we now have the structure to get our state and local partners the information they need.

It is also often noted in fora such as this that the FBI must undergo a revolution of sorts to become an effective intelligence service. Rather than delving into the relative merits of this view, let me simply note that from my perspective as a former prosecutor, proactive criminal law enforcement is not inconsistent with proactive intelligence work. In fact, many of the tools used in the former can be quite useful in the latter. There is little doubt—and senior leadership at the Bureau has been the first to admit—that the FBI is continuing to change to address effectively the challenges of counterterrorism post-9/11. But let us not think that the absence of attacks in the Homeland since 9/11 is an accident. The Bureau, regardless of where one thinks it is along the spectrum of change, has been—and continues to be—indispensable to keeping our country safe.

FISA reform too is an integral step in fighting terrorism. It is a subject of which both sides are appropriately passionate. Although I will not venture into the intricacies of this very complex subject, let me be clear on a single point—from my vantage it is essential that FISA be modified to keep pace with changing technology as such collection is an indispensable tool in the War on Terror. Without effective FISA reform, we will continue to be hindered in our efforts.

Finally, I want to offer what I believe is a single, overarching challenge—and the one that I believe looms largest: institutionalizing all of the progress we've made in working

across the U.S. Government on counterterrorism. As I touched on in my opening comments, the creation of NCTC was a deliberate break from the government's history of creating "stove-piped" agencies. Terrorism involves such a range of activities and enablers that to combat the threat requires leveraging all elements of national power.

Every day that we move farther from 9/11, however, we run the risk of falling back into old (and I believe in this case, bad) habits. Our greatest challenge, and I hope our greatest success, will therefore be in institutionalizing truly cross-government cooperation and solutions, so that future leaders have the programs and resources they need to work hand-in-hand with their interagency partners for the benefit of the larger U.S. Government—and the American people.

All of this—al-Qa'ida's changes, the actions of groups inspired by al-Qa'ida's message, and the U.S. Government's efforts—means that we are safer. But we are not safe. This will be a long war, fought with the military, intelligence, law enforcement, homeland security, diplomacy, financial measures, international cooperation, and every other element of national power. While we have accomplished much, there is still much more to do. Six plus years after 9/11, I remain optimistic that we are on the right path—but we must also recognize that our path has changed in the past and it will undoubtedly change in the future. We must continue to engage in a thoughtful, national debate on how this war and struggle should be fought so that we can, as a nation, take whatever measures are necessary for us to defeat a determined foe, while simultaneously maintaining the character of our nation that all of us prize so highly.

Thank you for your attention and I welcome your comments and questions.

Statement for the Record
by
Michael Leiter
Principal Deputy Director, the National Counterterrorism Center (NCTC)

to the United States House Committee on Homeland Security;
Subcommittee on Border, Maritime and Global Counterterrorism
October 4, 2007

Chairman Sanchez, Ranking Member Souder, distinguished members of the Committee, thank you for the opportunity to discuss the role of the National Counterterrorism Center (NCTC) in regards to the status of US Government counterterrorism (CT) efforts overseas. My testimony addresses three points: (1) NCTC's overall role in coordinating the US Government's strategic plan for the War on Terror; (2) NCTC's more specific role in coordinating counterterrorism efforts overseas; and (3) how the coordination of Law Enforcement Agencies (LEAs) fits into the U.S. government's larger, counterterrorism efforts overseas.

To begin I would like to summarize very briefly the role NCTC does—and does not—play in coordinating the US Government's efforts in the War on Terror. Doing so is, I believe, especially important given the very innovative and groundbreaking nature of Strategic Operational Planning (SOP)—the rubric under which NCTC operates in this realm.

NCTC, as directed by Congress and the President through the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), is responsible for strategic operational planning and integrating all elements of national power, for the US Government's efforts in the War on Terror (WOT). Our goal is to translate US counterterrorism policy and strategy into coordinated, actionable tasks for individual departments and agencies. The result of our planning is a landmark document—the National Implementation Plan or NIP, which was approved by the President in June 2006—the first-ever US Government-wide strategic war plan for countering terrorism.

This war plan does not stand alone. Rather, it complements two types of planning efforts that have long existed and continue to exist—high-level national strategies directed by the President and the National Security and Homeland Security Councils, and very granular and tactical department and agency-specific implementation plans. By filling this void between high level strategies and the efforts of individual departments and agencies, NCTC's efforts, and the NIP in particular, are designed to fill a gap that previously hindered interagency coordination at a strategic level.

Let me briefly describe five of the most critical characteristics of the NIP. First, the NIP groups all of the nation's efforts into four components: protecting and defending the Homeland and US interest abroad, attacking terrorists and their capacity to operate, countering violent extremism, and preventing terrorists' acquisition or use of weapons of mass destruction.

Second, and of significant importance to both providing a relatively granular "playbook" and requiring accountability, each of these four component capabilities is supported by strategic objectives and specific tasks. Each of the tasks is assigned to a Cabinet-level officer for action and other Cabinet officers for support. Each department or agency is responsible for generating an individual supporting plan, which is to articulate how that element of the Government will execute the individual tasks for which it is assigned a lead role. In the cases where there are lead and supporting agencies, the lead agency is given the task of deconflicting each agency's plan.

Third, our efforts do not stop at the planning stage. Rather, we also seek to ensure the coordination, integration, and synchronization of joint departmental operations, and monitor the combined impact of multiple agencies engaged in implementing the plans and tasks. As part of our responsibility, we assess how our plans are impacting the enemy so we may tailor them accordingly in the future: NCTC oversees a monitoring process requiring lead and partner

departments and agencies to submit status reports on the execution of tasks, the level of interagency coordination, the identification of impediments, and adequacy of resourcing.

Fourth, the NIP helps to guide resource allocation. Specifically, NCTC and the Office of Management and Budget have provided guidance to departments and agencies to ensure their budget requests (for FY-09) align with and will adequately resource priorities identified in the NIP, including a number related to USG efforts to expand foreign partnerships and partner capacity in the War on Terror.

Finally, an important part about what the NIP—and the NCTC more broadly—does not do: Neither directs specific operations. In fact, the IRTPA specifically prohibits the Director of NCTC from "direct[ing] the execution of counterterrorism operations." This final note is of critical importance, for although NCTC is responsible for strategic operational planning, we must ultimately rely on individual departments and agencies—those organizations with explicit statutory authorities and responsibilities, as well as the greatest expertise and experience—to execute the tasks and activities necessary to execute the War on Terror.

With that background, I would like to move to how NCTC participates in the coordination of overseas counterterrorism efforts in general and how we view Law Enforcement Agency (LEA) coordination more specifically.

As the lead agency for coordination, integration, and synchronization of all US Counterterrorism (CT) efforts, NCTC puts the highest priority on the strategic coordination of overseas counterterrorism efforts in order to combat terrorism worldwide and, more specifically, to protect American lives. Although we and our allies have had tremendous successes in the War on Terror, we face a determined enemy. Protecting the homeland from another catastrophic attack

requires more then simply a hardening of our borders; rather, we must work closely and tirelessly with foreign law enforcement, security, and intelligence agencies to identify, deter, detain, and prosecute terrorists operating within their domain.

Last year's foiled United Kingdom aviation plot showed how vital the role of foreign partners are in preventing terrorist attacks on Americans. In that case, it was only with our foreign law enforcement and intelligence partners that we were able to monitor and track effectively terror plotters developing plans against the United States overseas. In the process, our foreign partners must perform a very difficult, but essential, balancing act: providing us with key intelligence on the advancement of plots while allowing for eventual detainment and successful prosecution of the plotters, all while providing the appropriate protection for civil liberties.

The NIP directs both lead and partner departments and agencies to work together in a coordinated, integrated, and synchronized manner in order to cooperate with, and assist foreign partners in, a multitude of diverse ways. Expanding foreign capacity furthers each of the four NIP components. In simpler terms, expanding foreign capacity is a baseline capability that permits each of the four component strategic objectives to be achieved.

Although I cannot go into extensive detail in open session as to the types of tasks that comprise this area within the NIP, I would like to offer several examples where developing foreign capacity is particularly important.

As this Committee is well aware, countering the violent extremist message is of utmost importance to winning the War on Terror. In this regard, the NIP includes several tasks that relate to the need for US departments and agencies to work with foreign partners—LEAs and beyond—to combat extremist messaging and counter radicalization.

The NIP also directs departments and agencies to help foreign partners build their capacity to limit terrorist travel, including crossing international borders. In addition, it seeks to ensure that these capabilities, as they are developed, link appropriately to US capabilities.

Finally, I would note that the NIP highlights the importance of strengthening not only our foreign partners' capabilities, but also the willingness of those foreign governments to use all means at their disposal, to include economic, regulatory, and criminal sanctions. This point may seem obvious, but developing a capability serves little purpose if there is not an accompanying will to use that capability.

Within the broader category of expanding foreign capacity falls a subcategory of activity—coordinating the overseas efforts of LEA's. As is the case with most of the NIP tasks that require overseas activity, the State Department is as a general matter charged with directing, managing, and coordinating all US Government efforts to develop and provide counterterrorism capacity within each host nation. The State Department –partnering with the law enforcement elements of the USG0—is the best positioned department to lead our overseas coordination efforts.

Every country has a unique intelligence and law enforcement structure. Domestic police and intelligence functions may be shared by a single entity or separated in a variety of organizational constructs. Moreover, the different foreign partners and their components have varied preferences as to how they desire to partner with the United States and its law enforcement and intelligence elements. The decision on how to cooperate must literally be made on a country by country basis. State serving as the lead for these tasks ensures that Chiefs of Mission around the world can fully and appropriately guide all US activities within the host nations.

Within the broader mission of working with overseas partners in the War on Terror, the NIP recognizes the importance of US LEAs. Again, the NIP—in many of its specific tasks—gives lead authority to the State Department to coordinate the efforts of organizations like the FBI, DEA, ICE, CBP, and Secret Service to achieve the NIP's strategic goals. For example, the NIP focuses on building partner nation capacity to deny terrorists access to resources that facilitate travel. Thus, several agencies are tasked to work with foreign partners to identify and close down alien smuggling networks and document forgery cells. In this instance, as in most tasks associated with foreign partners, the State Department has the lead, but is partnered with the law enforcement agencies that bring the expertise and resources to carry out the NIP task.

For greater specificity on how various LEAs coordinate their efforts—both overseas and in Washington—I defer to my colleagues here today. Their Departments work together in a variety of contexts on a day-to-day basis, conducting operations and developing foreign partner capacity critical to combating terrorism.

None of what I have said here should be understood to mean that we no longer face real and significant challenges. We recognize the need to continuously monitor our progress, objectively evaluate our success, openly acknowledge our failures, and do all that we must to improve and mature our strategies, plans, and procedures in order to support an enduring counterterrorism capability. This is true for the broad mission of working with foreign partners, as well as the narrower mission of coordinating LEA activity.

In closing, I would reiterate we have come a long way in the last two years. For the first time, we have a cohesive strategic plan that assigns individual cabinet departments action on an enormous array of tasks, many of which focus on working outside of the US with our foreign partners. In doing so, we aim to have

a system wherein US LEAs can, where permitted, pursue operational activity with their foreign partners, as well as help those same foreign partners develop their own capabilities. And as core elements of government power, we at NCTC are committed to ensuring that LEAs—acting under the guidance of Chiefs of Mission all over the world—take coordinated action to protect the US, US interests, and our allies.

Statement for the Record
House Permanent Select Committee on Intelligence
And
House Armed Services Committee

July 25, 2007

Implications of the NIE
The Terrorism Threat to the US Homeland

Edward Gistaro
National Intelligence Officer/Transnational Threats
Office of the Director of National Intelligence
&
Michael Leiter
Principal Deputy Director
National Counterterrorism Center

Statement for the Record
By
Edward Gistaro, National Intelligence Officer on Transnational Threats
and
Michael Leiter, Principal Deputy Director, National Counterterrorism Center
to the
House Permanent Select Committee on Intelligence
and the
House Armed Services Committee
25 July 2007

Chairman Reyes, Chairman Skelton, Ranking Member Hoekstra, Ranking Member Hunter and Members of the House Permanent Select Committee on Intelligence and the House Armed Services Committee, thank you for the invitation to appear before the committees to offer the Intelligence Community's assessment of the terrorist threat to the Homeland and the National Counter Terrorism Center's strategies, capabilities and resources to combat the terrorism threat.

It is my privilege to be accompanied by Michael Leiter, Principal Deputy Director of the National Counterterrorism Center and Peter Verga, Acting Assistant Secretary of Defense for Homeland Defense and America's Security Affairs.

We judge the US Homeland will face a persistent and evolving terrorist threat over the next three years. The main threat comes from Islamic terrorist groups and cells, especially al-Qa'ida, driven by their undiminished intent to attack the Homeland and a continued effort by these terrorist groups to adapt and improve their capabilities.

We assess that greatly increased worldwide counterterrorism efforts over the past five years have constrained the ability of al-Qa'ida to attack the US Homeland again and have led terrorist groups to perceive the Homeland as a harder target to strike than on 9/11. These measures have helped disrupt known plots against the United States since 9/11.

We are concerned, however, that this level of international cooperation may wane as 9/11 becomes a more distant memory and perceptions of the threat diverge.

Al-Qa'ida is and will remain the most serious terrorist threat to the Homeland, as its central leadership continues to plan high-impact plots, while pushing others in extremist Sunni communities to mimic its efforts and to supplement its capabilities. We assess the group has protected or regenerated key elements of its Homeland attack capability, including: a safehaven in the Pakistan Federally Administered Tribal Areas (FATA), operational lieutenants, and its top leadership. Although we have discovered only a handful of individuals in the United States with ties to al-Qa'ida senior leadership since 9/11, we judge that al-Qa'ida will intensify its efforts to put operatives here.

As a result, we judge that the United States currently is in a heightened threat environment.

We assess that al-Qa'ida will continue to enhance its capabilities to attack the Homeland through greater cooperation with regional terrorist groups. Of note, we assess that al-Qa'ida will probably seek to leverage the contacts and capabilities of al-Qa'ida in Iraq (AQI), its most visible and capable affiliate and the only one known to have expressed a desire to attack the Homeland. In addition, we assess that its association with AQI helps al-Qa'ida to energize the broader Sunni extremist community, raise resources, and to recruit and indoctrinate operatives, including for Homeland attacks.

We assess that al-Qa'ida's Homeland plotting is likely to continue to focus on prominent political, economic, and infrastructure targets with the goal of producing mass casualties, visually dramatic destruction, significant economic aftershocks, and/or fear among the US population. The group is proficient with conventional small arms and improvised explosive devices, and is innovative in creating new capabilities and overcoming security obstacles.

We assess that al-Qa'ida will continue to try to acquire and employ chemical, biological, radiological, or nuclear material in attacks and would not hesitate to use them if it develops what it deems is sufficient capability.

We assess Lebanese Hizballah, which has conducted anti-US attacks outside the United States in the past, may be more likely to consider attacking the Homeland over the next three years if it perceives the United States as posing a direct threat to the group or Iran.

We assess that the spread of radical—especially Salafi—Internet sites, increasingly aggressive anti-US rhetoric and actions, and the growing number of radical, self-generating cells in Western countries indicate that the radical and violent segment of the West's Muslim population is expanding, including in the United States. The arrest and prosecution by US law enforcement of a small number of violent Islamic extremists inside the United States—who are becoming more connected ideologically, virtually, and/or in a physical sense to the global extremist movement—points to the possibility that others may become sufficiently radicalized that they will view the use of violence here as legitimate. We assess that this internal Muslim terrorist threat is not likely to be as severe as it is in Europe, however.

We assess that other, non-Muslim terrorist groups—often referred to as "single-issue" groups by the FBI—probably will conduct attacks over the next three years given their violent histories, but we assess this violence is likely to be on a small scale.

We assess that globalization trends and recent technological advances will continue to enable even small numbers of alienated people to find and connect with one another, justify and intensify their anger, and mobilize resources to attack—all without requiring a centralized terrorist organization, training camp, or leader.

- The ability to detect broader and more diverse terrorist plotting in this environment will challenge current US defensive efforts and the tools we use to detect and disrupt plots. It will also require greater understanding of how suspect activities at the local level relate to strategic threat information and how best to identify indicators of terrorist activity in the midst of legitimate interactions.

I would now like to review the role the National Counterterrorism Center (NCTC) is playing and will play in the War on Terror (WOT).

Today, NCTC performs two critical functions in the WOT. Pursuant to the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004, the Director wears two hats. One of those hats is as principal advisor to the Director of National Intelligence on intelligence matters relating to counterterrorism. The second hat is the responsibility for conducting Strategic Operational Planning for the War on Terror for the entire US Government (USG). In that hat, the Director reports to the President, via the National and Homeland Security Councils.

With respect to the first role, that relating to intelligence, IRTPA establishes NCTC "to serve as the primary organization in the USG for analyzing and integrating all intelligence possessed or acquired by the USG pertaining to terrorism and counterterrorism, excepting intelligence pertaining exclusively to domestic terrorists and domestic counterterrorism." The act, makes NCTC both the hub for Community CT analysis and the chief advocate for, and leader of, improvements in CT analysis. Both functions require close collaboration with members of the IC and the Office of the Director of National Intelligence (ODNI). We are pursuing a comprehensive set of actions to meet current and future mission requirements while addressing the long range need to improve our foundational intelligence capabilities.

Organizationally, NCTC is a part of the ODNI, however it's staff includes some 400 detailees from 16 agencies from across the USG, including State, Defense, Homeland Security, FBI, CIA, Energy, HHS, Agriculture, Treasury, and the NRC, among others. This rotational structure is deliberate, enabling NCTC to bring together diverse talents and perspectives to address the mission requirements of our customers.

NCTC is the exemplar of all source, integrated analysis. Our analysts have access to all available CT information through dozens of networks and databases. We focus on everything from threat warning to strategic analysis, both foreign and domestic; and, we serve a broad customer base, including the President, Departments and Agencies, and the Congress.

As a broad forum, the IICT brings together diverse sources of expertise from throughout the USG and is the fulcrum where analytical skills and experience can be leveraged. The IICT helps NCTC optimize CT analysis and production, and supports our strategic planning and assessment of intelligence needs.

Of course, analysts cannot produce critical intelligence without the requisite information. Analysis must drive collection. Therefore, the NCTC Director's role as Mission Manager also encompasses guiding the collection process in close collaboration with the Deputy Director of National Intelligence for Collection (DDNI/C) and the agencies responsible for that collection. NCTC has been working closely with the DDNI/C and Community collectors to ensure efforts are appropriately focused on any and all lead data associated with plots directed against the West, and specifically the U.S. Homeland. NCTC actions include working with the intelligence, defense and law enforcement communities to ensure that lead information is identified and shared as soon as possible.

Information sharing underpins improvements in analysis and government collaboration to prevent future acts of terrorism. Per the IRTPA, the Center has responsibility "to ensure that agencies, as appropriate, have access to and receive all-source intelligence products needed to execute their counterterrorism plans or perform independent, alternative analysis," and "to ensure that such agencies receive intelligence needed to accomplish their assigned activities." Toward these ends, NCTC continues to push information to the broad Community while establishing the means to improve interagency collaboration.

NCTC Online (NOL) continues to prove its value as a classified repository and the gateway to terrorist-related intelligence products and services. NOL reaches the full range of intelligence, law enforcement, defense, homeland security, foreign affairs and other federal organizations involved in the War on Terror. It now hosts over 8,000 authorized users, more than 7 million documents, and contributions from over 60 organizations. This is fundamental change: before 9/11, there was no electronic library of terrorism information available across the US Government. Of critical importance, NOL is also accessible to state and local partners through networks provided by both DHS and the FBI.

The Terrorist Identities Datamart Environment (TIDE) serves as our central knowledge base for all-source information on international terrorist identities. It is made available to the majority of the CT analytic community through NOL. TIDE distributes a "sensitive but unclassified" extract to the Terrorist Screening Center which, in turn, validates this information and provides it to Federal departments and agencies and select foreign governments to use for screening purposes. The establishment and continued refinement of TIDE represents a major accomplishment in our CT efforts. Before 9/11, the US lacked a single database of all known and suspected international terrorists, and our reliance on multiple watchlists, maintained by separate departments, presented a major vulnerability.

Situational awareness of emerging threats and ongoing CT operations is key to the integration of CT efforts. Relevant USG organizations come together three times daily via SVTCs to exchange information and collaborate on response options. This too is a fundamental change: Before 9/11, there was no routine means to maintain situational awareness across the US Government.

I will now turn to NCTC's second function, Strategic Operational Planning (SOP), which involves a wide spectrum of planning functions. It bridges the gap between coordinated interagency policy and strategy, and tactical operations by Departments and Agencies to implement that strategy. Essentially, SOP takes interagency planning to a much more granular level than we have historically undertaken as a government. In this role the NCTC leads an interagency planning effort that brings all elements of national power to bear in the war on terrorism. That includes the full weight of our diplomatic, financial, military, intelligence, homeland security and law enforcement activities.

SOP is new in government. It involves a three-part continuous process: planning, implementation and assessment. NCTC is leading an interagency effort to build processes for all three phases. The NCTC has completed the first phase of planning by the interagency, and is now in the process of building the capability to implement intergovernmental plans and assess their effectiveness.

NCTC's planning efforts span a spectrum from strategic, deliberate planning to the more operational, dynamic planning. At the strategic level is the National Implementation Plan (NIP). The initial planning effort culminated in June, 2006 when it was approved by the President. We are currently at the one-year anniversary mark.

At the more tactical end of the planning process are more dynamic planning efforts, including those established to address specific threat streams. Specific to the current threat picture we face, I chair a newly-formed Interagency Task Force that is developing additional options and measures for disrupting potential terrorist attacks on the Homeland. The ITF is continuously evaluating new intelligence in order to coordinate additional actions to further disrupt the threat. For example, DHS is taking additional steps designed to prevent terrorists from entering the Homeland, and FBI is working closely with state and local law enforcement to increase situational awareness of the threat throughout the country. The ITF is also working closely with intelligence collectors to continue monitoring the activities of our adversaries. The ITF also reports to senior policymakers on a regular basis at the White House.

In closing, we have come a long way over the last two years, as a Center and a Community working collaboratively. We are making substantial progress in improving CT analysis through the Analytic Framework and development and implementation of analytic tradecraft and quality standards. NCTC ensures active collaboration through the IICT and daily SVTC's. NCTC's unique position with access to all CT intelligence information results in our daily review of all significant CT cables, the production of a variety of alert, warning, and in-depth analytic reports, to include pieces for the Presidential Daily Briefs (PDB).

Mr. Chairman, this concludes my remarks and we will take any questions you may have. Thank you.

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5 C.F.R. Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	Reporting Status (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☒	Termination Filer ☐ Termination Date *(If Applicable)(Month, Day, Year)*
Reporting Individual's Name	Last Name: Leiter			First Name and Middle Initial: Michael E	
Position for Which Filing	Title of Position: Director, National Counterterrorism Center			Department or Agency *(If Applicable)*: Office of the Director of National Intelligence	
Location of Present Office (for forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: Liberty Crossing, Washington DC 20505			Telephone No. *(Include Area Code)*: 571 280 6181	
Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held: Acting Director, National Counterterrorism Center (NCTC) (10/07-present); Principal Deputy Director, NCTC (1/07-10/07)				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Select Committee on Intelligence			Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No	
Certification: I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual: M Leiter			Date *(Month, Day, Year)*: 2/13/08	
Other Review (If desired by agency)	Signature of Other Reviewer			Date *(Month, Day, Year)*	
Agency Ethics Official's Opinion: On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/Reviewing Official			Date *(Month, Day, Year)*	
Office of Government Ethics Use Only	Signature			Date *(Month, Day, Year)*	

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if filing extension granted & indicate number of days _____*)* ☐

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Reporting Periods

Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding **two** calendar years and the current calendar year up to the date of filing.

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U.S. Office of Government Ethics

Reporting Individual's Name
Leiter, Michael E

SCHEDULE A

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

Asset	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust
Examples: Central Airlines Common				x											
Examples: Doe Jones & Smith, Hometown, State			x												
Examples: Kempstone Equity Fund					x								x		
Examples: IRA: Heartland 500 Index Fund							x						x		
1 US Treasury STRiP			X												
2 AMGEN			X												
3 Berkshire Hathaway CL B			X												
4 CISCO Systems		X													
5 Citigroup			X												
6 Coca Cola		X													

Asset	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples: Central Airlines Common	x						x										
Examples: Doe Jones & Smith, Hometown, State																Law Partnership Income $1 60,000	
Examples: Kempstone Equity Fund								x									
Examples: IRA: Heartland 500 Index Fund									x								
1 US Treasury STRiP			x		x												
2 AMGEN	x						x										
3 Berkshire Hathaway CL B	x						x										
4 CISCO Systems	x					x											
5 Citigroup	x						x										
6 Coca Cola	x					x											

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name: Leiter, Michael E

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Equity Income Fund -- AT&T		X														X					X											
2	General Electric				X												X			X				X									
3	Intel Corp			X													X					X											
4	IBM			X													X					X											
5	Medcohealth Solutions		X														X					X											
6	Merck			X													X						X										
7	Microsoft			X													X					X											
8	St. Paul Travelers		X														X				X												
9	Dreyfus Premier Value			X										X								X											

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	DWS Global Bond Fund		X											X							X												
2	DWS Global Thematic		X											X								X											
3	DWS Intermediate Tax		X											X							X												
4	DWS International		X											X								X											
5	DWS Large Cap Value			X										X									X										
6	Putnam International Equity Fund		X											X									X										
7	Charles Schwab (cash)		X																X		X												
8	Bank of America Checking		X																X		X												
9	Vanguard Prime Money Market		X											X								X											

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust
1	Vanguard Intermediate Tax Exempt				X									X		
2	Vanguard Wellington Fund Admiral				X									X		
3	Vanguard 500 Index Fund Admiral					X								X		
4	Vanguard Small Cap Index Fund		X											X		
5	Vanguard US Growth Fund		X											X		
6	Vanguard STAR Fund IRA			X										X		
7																
8																
9																

#	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1								X									
2								X									
3									X								
4						X											
5							X										
6								X									
7																	
8																	
9																	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name: Leiter, Michael E

SCHEDULE C

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None [X]

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (X): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			X								
	John Jones, 123 1St., Washington, DC	Promissory note	1999	10%	on demand					X						
1																
2																
3																
4																
5																

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None [X]

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1			
2			
3			
4			
5			
6			

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Reporting Individual's Name	SCHEDULE D	Page Number
Leiter, Michael E		7 of 7

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	Leiter Family Foundation	non-profit family education funding foundation	officer	12/2000	Present
2					
3					
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☒

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1		
2		
3		
4		
5		
6		

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Form Approved:
OMB No. 3209-0001

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Date of Appointment, Candidacy, Election or Nomination (Month, Day, Year)	Reporting Status (Check appropriate boxes)	Incumbent	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate	Termination Filer	Termination Date *(If Applicable) (Month, Day, Year)*
04/11/2007		☒ Incumbent	2006	☐ New Entrant	☐ Termination Filer	

Reporting Individual's Name	Last Name: Leiter	First Name and Middle Initial: Michael E.
Position for Which Filing	Title of Position: Principal Deputy Director	Department or Agency (If Applicable): None
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: National Counterterrorism Center Washington DC 20505	Telephone No. *(Include Area Code)*: 571-280-6181
Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held: Deputy Chief of Staff, ODNI (5/1/05-3/1/07	
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nominator: n/a	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No
Certification I CERTIFY that the statement I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual:	Date *(Month, Day, Year)*: 5/11/07
Other Review (If desired by agency)	Signature of Other Reviewer:	Date *(Month, Day, Year)*:
Agency Ethics Official's Opinion On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/Reviewing Official:	Date *(Month, Day, Year)*:
Office of Government Ethics Use Only	Signature:	Date *(Month, Day, Year)*:

Fee for Late Filing

Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period shall be subject to a $200 fee.

Reporting Periods

Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if filing extension granted & indicated number of days) ☐ C

(Check box if comments are continued on the reverse side) ☐

Schedule D—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only

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Reporting Individual's Name: Leiter, Michael E.

SCHEDULE A

Page Number: 2

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐ None

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				X												X						X										
	Doe Jones & Smith, Hometown, State			X																												Law Partnership Income $130,000	
	Kempstone Equity Fund					X								X										X									
	IRA: Heartland 500 Index Fund							X						X											X								
1	149 N. Carolina Ave. SE Washington, DC							X												X	X												
2	US Treasury STRiP			X															X		X												
3	AMGEN			X																X			X										
4	Berkshire Hathaway CL B			X													X						X										
5	CISCO Systems		X														X					X											

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Reporting Individual's Name
Leiter, Michael E.

SCHEDULE A continued
(Use only if needed)

Page Number: 3

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
9	General Electric				X												X			X				X									
10	Intel Corp			X													X					X											
11	IBM			X													X					X											
12	Medcohealth Solutions		X														X					X											
13	Merck			X													X						X										
14	Microsoft			X													X					X											
15	St Paul Travelers		X														X				X												

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Reporting Individual's Name
Leiter, Michael E.

SCHEDULE A continued
(Use only if needed)

Page Number: 4

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
18	DWS Global Thematic		X																X			X											
19	DWS Intermediate Tax		X																X		X												
20	DWS INternational		X														X					X											
21	DWS Large Cap Value			X													X			X			X										
22	Putnam Int'l Equity Fund		X														X			X			X										
23	Charles Schwab (cash)	X																	X		X												
24	Bank of America		X																X		X												

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Reporting Individual's Name
Leiter, Michael E.

SCHEDULE A continued
(Use only if needed)

Page Number: 5

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
27	Vanguaryd Wellington Fund Admiral				X												X							X									
28	Wellington Fund Admiral				X												X			X				X									
29	500 Index Fund Admiral					X											X			X					X								
30	Small Cap Index Fund		X														X			X		X											
31	US Growth Fund		X														X			X			X										
32	STAR Fund IRA			X													X			X				X									
33																																	

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Do not Complete Schedule B if you are a new entrant, nominee, Vice Presidential or Presidential Candidate

Reporting Individual's Name
Leiter, Michael E.

SCHEDULE B

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☒ None

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	X			2/1/99			X									
1																	
2																	
3																	
4																	
5																	

* This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $305, and (2) travel-related cash reimbursements received from one source totaling more than $305. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $122 or less. See instructions for other exclusions.

None ☐ None

	Source (Name and Address)	Brief Description	Value
Example	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference6/15/99 (personal activity unrelated to duty)	$500
Example	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1	Leiter Family Foundation, Sequim, Washington	Travel related reimbursement for travel to annual charitable foundation board meeting	$735
2			
3			
4			
5			

Reporting Individual's Name
Leiter, Michael E.

SCHEDULE C

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☒ None

	Creditors *(Name and Address)*	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Example:	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
Example:	John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand					x						
1																
2																
3																
4																
5																

* This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401K, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.

See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☒ None

	Source (Name and Address)	Parties	Date
Example:	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00	Doe Jones & Smith, Hometown, State	7/85
1			
2			
3			
4			
5			
6			

Reporting Individual's Name	SCHEDULE D	Page Number: 8
Leiter, Michael E.		

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution.

Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐ None

	Organization *(Name and Address)*	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Example	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
Example	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	Leiter Family Foundation	Family chartible foundation	Offcier	1/06	1/07
2					
3					
4					
5					
6					
7					
8					
9					

Part II: Compensation in Excess of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000.

You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☒ None

	Source (Name and Address)	Brief Description of Duties
Example	Doe Jones & Smith, Hometown, State	Legal Services
Example	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal Services in connection with university construction
1		
2		
3		
4		

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U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	Reporting Status (Check Appropriate Boxes)	Incumbent ☒	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☐	Termination Filer ☐ / Termination Date *(If Applicable)(Month, Day, Year)*
05/16/2005					

Reporting Individual's Name	Last Name: Leiter	First Name and Middle Initial: Michael E
Position for Which Filing	Title of Position: Deputy Chief of Staff	Department or Agency *(If Applicable)*: Office of the DNI
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: Bolling Air Force Base, Washington, DC 20511	Telephone No. *(Include Area Code)*: 202-201-1026
Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held: n/a	
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Not Applicable	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No

Certification: I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual: [signature]	Date *(Month, Day, Year)*: 6/13/06
Other Review (If desired by agency)	Signature of Other Reviewer	Date *(Month, Day, Year)*
Agency Ethics Official's Opinion: On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/Reviewing Official	Date *(Month, Day, Year)*
Office of Government Ethics Use Only	Signature	Date *(Month, Day, Year)*

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if filing extension granted & indicate number of days 30 *)* ☑

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing

Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods

Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only

OGE Use Only

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Reporting Individual's Name: Leiter, Michael E

SCHEDULE A

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

Assets and Income	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples: Central Airlines Common				x												x						x										
Examples: Doe Jones & Smith, Hometown, State			x																												Law Partnership Income $140,000	
Examples: Kempstone Equity Fund					x								x										x									
Examples: IRA: Heartland 500 Index Fund							x						x											x								
1 Blackrock Funds			X															X				X										
2 Bank One Corp Cons NTS			X															X				X										
3 GE Cap Corp Cons NTS			X															X				X										
4 Morgan Stanley Inc DEB			X															X				X										
5 USA Treasury Notes				X														X					X									
6 CT St HSG FIN Auth Rev. Suser D2		X																X				X										

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Prior Editions Cannot Be Used.

OGE/Adobe Acrobat version 1.0.2 (11/01/2001)

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Reporting Individual's Name: Leiter, Michael E

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	PIMCO Foreign Bond Fund		X											X							X												
2	T Row Price Intl FD Inc			X										X								X											
3	Vanguard Fixed Income Secs FD			X										X								X											
4	Cohen and Steers REIT and PR			X										X									X										
5	Cohen and Steers RLTY SHS			X										X								X											
6	Fidelity Inv. Tr. Japan Fund		X											X								X											
7	Ishares MSCI Pacific Ex Jpn			X										X								X											
8	IShares TR Dow Jones Select Divid Index			X										X								X											
9	Ishares S and P Global Energy Select			X										X								X											

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Reporting Individual's Name
Leiter, Michael E

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Ishares TR S and P Latin America 40 Index		X											X								X											
2	Julius Baer Invest Funds Int'l Equity			X										X							X												
3	T Rowe Price Intl MRG Europe			X										X							X												
4	Vanguary US Growth Portfolio			X										X							X												
5	Vanguard selected value			X										X								X											
6	PNC Advisors cash holdings			X										X							X												
7	Vanguard Prime Money Market		X											X								X											
8	Vanguard Inter. Tax Exempt Fund			X										X									X										
9	Vanguard Wellington Admiral					X								X									X										

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Reporting Individual's Name
Leiter, Michael E

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	vanguary 500 index fund investor shares					X								X										X									
2	vanguard small cap index fund investor shares		X											X							X												
3	vanguard us growth investor shares		X											X							X												
4	vanguard star fund - custodian IRA			X										X								X											
5	Bank of America Checking		X																X		X												
6	Schwab Money Market		X											X								X											
7	Scudder Development Fund		X											X							X												
8	Scudder Global fund		X											X							X												
9	vanguard windsor III fund investor shares				X									X										X									

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Reporting Individual's Name: Leiter, Michael E

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	schwab cash holding		X																X		X												
2	schwab value advantage					X								X											X								
3	US treasury STRIP				X														X		X												
4	Scudder global bond fund		X											X							X												
5	scudder intermediate tax AMT free fund		X											X							X												
6	amgen			X													X					X											
7	berkshire hataway				X												X					X											
8	cisco			X													X					X											
9	citigroup				X												X					X											

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Reporting Individual's Name: Leiter, Michael E

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	coca cola		X														X					X											
2	equity income fund - AT&T		X											X								X											
3	GE Company					X											X		X						X								
4	Intel				X												X							X									
5	IBM			X													X						X										
6	MedCo Health Solutions		X														X					X											
7	Merck			X													X					X											
8	Microsoft			X													X						X										
9	St. Pau's Travelers Co.		X														X					X											

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Reporting Individual's Name: Leiter, Michael E

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Dreyfus Premier Value Fund			X										X									X										
2	Putnam International Equity Fund			X										X									X										
3	Scudder Global Fund			X										X									X										
4	Scudder International Fund CL		X											X									X										
5	Scudder Large Cap Value Fund			X										X										X									
6	Torco					X														X	X												
7	Grafton and Upton Rail Road Inc.					X														X	X												
8	Real Estate - Ophir Colorado					X														X	X												
9	Sims Family Trust, Real Estate, telluride, CO							X												X	X												

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Reporting Individual's Name: Leiter, Michael E

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	DC College Savings Plan			X										X			X						X										
2	Natural Resources Defense Council																										X						
3	Colonial Trucking			X																X								X					
4	Templeton Developing Markets Trust, Class A			X										X			X					X											
5	Templeton Foreign Fund Class A				X									X			X			X			X										
6	Templeton Global Opportunities Trust Class A			X										X			X			X			X										
7	Franklin Real Estate Securities Fund Class A			X										X			X			X			X										
8	Fidelity China Region			X										X			X					X											
9	Fidelity New Markets Income			X										X			X			X				X									

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Reporting Individual's Name: Leiter, Michael E

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	fidelity Spartan 500 Index			X										X			X						X										
2	fidelity utilites			X										X			X							X									
3	fidelity real estate investment			X										X			X			X					X								
4	fidelity short term bond			X										X			X					X											
5	fidelity high income			X										X			X			X				X									
6	fidelity inflation protected bond			X										X			X					X											
7	fidelity overseas			X										X			X			X			X										
8	fidelity pacific basin			X										X			X			X			X										
9	fidelity dividend growth			X										X			X						X										

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name: Leiter, Michael E

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	fidelity select energy			X										X			X			X		X											
2	fidelity select energy services		X											X			X					X											
3	fidelity us government reserves		X											X			X				X												
4	centre stage limited partnership			X															X					X									
5																																	
6																																	
7																																	
8																																	
9																																	

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Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name: Leiter, Michael E

SCHEDULE B

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	x			2/1/99			x									
1	General Electric Co. common stock		X		5/1/2005		X										
2	General Electric Co. common stock		X		10/1/2005		X										
3	General Electric Co. common stock		X		12/1/2005		X										
4																	
5																	

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☒

	Source (Name and Address)	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

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Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name: Leiter, Michael E

SCHEDULE B continued
(Use only if needed)

Part I: Transactions

	Identification of Assets	Transaction Type (x)			Date (Mo., Day, Yr.)	Amount of Transaction (x)												
		Purchase	Sale	Exchange		$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
1																	
2																	
3																	
4																	
5																	
6																	
7																	
8																	
9																	
10																	
11																	
12																	
13																	
14																	
15																	
16																	

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

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Reporting Individual's Name: Leiter, Michael E

SCHEDULE C

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	$10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			X								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand					X						
1	Sam and Ben Rubenstein, Marion, MA	Mortgage on property in Telluride, CO	2003	5	demand					X						
2																
3																
4																
5																

Category of Amount or Value (X)

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☒

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1			
2			
3			
4			
5			
6			

Prior Editions Cannot Be Used.

OGE/Adobe Acrobat version 1.0.2 (11/01/2004)

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Reporting Individual's Name	SCHEDULE D	Page Number
Leiter, Michael E		15 of 15

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☒

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1					
2					
3					
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None ☒

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1		
2		
3		
4		
5		
6		

Prior Editions Cannot Be Used.

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Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination (Month, Day, Year): 05/16/2005	Reporting Status (Check Appropriate Boxes): Incumbent ☐	Calendar Year Covered by Report:	New Entrant, Nominee, or Candidate ☒	Termination Filer ☐	Termination Date (If Applicable) (Month, Day, Year):
Reporting Individual's Name	Last Name: Leiter		First Name and Middle Initial: Michael E		
Position for Which Filing	Title of Position: Deputy Chief of Staff		Department or Agency (If Applicable): Office of the Director of National Intelligence		
Location of Present Office (or forwarding address)	Address (Number, Street, City, State, and ZIP Code): NEOB, 725 17th Street, Washington, DC		Telephone No. (Include Area Code): 202-395-2346		
Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held: Deputy General Counsel & Assistant Director, Comm'n on the Intel. Capabilities of the US Regarding WMD Assistant United States Attorney, United States Department of Justice				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Not Applicable		Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No		
Certification: I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual: M Leiter		Date (Month, Day, Year): 7/25/05		
Other Review (If desired by agency)	Signature of Other Reviewer:		Date (Month, Day, Year):		
Agency Ethics Official's Opinion: On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/Reviewing Official: Carol B Stone		Date (Month, Day, Year): 7/25/05		
Office of Government Ethics Use Only	Signature:		Date (Month, Day, Year):		

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

(Check box if filing extension granted & indicate number of days ————) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing
Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods
Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A—The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B—Not applicable.

Schedule C, Part I (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)—Show any agreements or arrangements as of the date of filing.

Schedule D—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only

OGE Use Only

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Reporting Individual's Name: Leiter, Michael E

SCHEDULE A

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

Asset	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust
Examples: Central Airlines Common				x											
Examples: Doe Jones & Smith, Hometown, State			x												
Examples: Keystone Equity Fund					x								x		
Examples: IRA: Heartland 500 Index Fund							x						x		
1 Blackrock Funds			X												
2 Bank One Corp Cons NTS			X												
3 General Electric Cap Corp Cons NTS			X												
4 Morgan Stanley Group Inc DEB			X												
5 USA Treasury Notes (76)				X											
6 Connecticut St HSG FIN Auth Rev Suser D 2		X													

Asset	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples: Central Airlines Common	x						x										
Examples: Doe Jones & Smith, Hometown, State																Law Partnership Income $150,000	
Examples: Keystone Equity Fund								x									
Examples: IRA: Heartland 500 Index Fund									x								
1 Blackrock Funds			X				X										
2 Bank One Corp Cons NTS			X				X										
3 General Electric Cap Corp Cons NTS			X				X										
4 Morgan Stanley Group Inc DEB			X				X										
5 USA Treasury Notes (76)			X						X								
6 Connecticut St HSG FIN Auth Rev Suser D 2			X			X											

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Reporting Individual's Name: Leiter, Michael E

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	PIMCO Foreign Bond Fund		X											X							X												
2	T Rowe Price Intl FD Inc			X										X								X											
3	Vanguard Fixed Income Secs FD			X										X								X											
4	Cohen & Steers REIT & PR			X										X									X										
5	Cohen & Steers RLTY SHS Inc			X										X								X											
6	Fidelity Inv Tr. Japan Fund		X											X								X											
7	IShares MSCI Pacific Ex Jpn			X										X								X											
8	IShares TR Dow Jones Select DIVid Index			X										X								X											
9	Ishares S&P Global Energy Secl			X										X								X											

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Reporting Individual's Name: Leiter, Michael E

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	Amount: $201 - $1,000	Amount: $1,001 - $2,500	Amount: $2,501 - $5,000	Amount: $5,001 - $15,000	Amount: $15,001 - $50,000	Amount: $50,001 - $100,000	Amount: $100,001 - $1,000,000	Amount: Over $1,000,000*	Amount: $1,000,001 - $5,000,000	Amount: Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Ishares TR S&P Latin America 40 INdex		X											X								X											
2	Julius Baer Invest Funds Int'l Equity			X										X							X												
3	T Rowe Price Intl MRG Europe & Med.			X										X							X												
4	Vanguard US Growth Portfolio			X										X							X												
5	Vanguard Selected Value			X										X								X											
6	PNC Advisors - Cash Holdings			X										X							X												
7	Vanguard Prime Money Market		X											X								X											
8	Vanguard Intermediate Tax Exempt Fund Invest. Bonds			X										X										X									
9	Vanguard Wellington Admiral Shares					X								X										X									

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Reporting Individual's Name: Leifer, Michael E

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Vanguard 500 Index Fund Investor Shares					X								X										X									
2	Vamgiard Small Cap Index Fund Investor Shares		X											X							X												
3	Vanguard US Growth Fund Investor Shares		X											X							X												
4	Vanguard STAR Fund - Custodian IRA			X										X								X											
5	Vanguard Windsor II Fund Investor Shares				X									X										X									
6	Bank of America Checking		X																X		X												
7	Schwab Money Market Fund		X											X								X											
8	Scudder Development Fund		X											X							X												
9	Scudder Global Fund		X											X							X												

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name: Leiter, Michael E

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Charles Schwab - Cash Holdings		X																X		X												
2	Schwab Value Advantage					X								X											X								
3	US Treasury STRIP				X														X		X												
4	Scudder Global Bond Fund		X											X							X												
5	Scudder Intermediate Tax AMT Free Fund		X											X							X												
6	Amgen Inc.			X													X					X											
7	Berkshire Hathaway Cl B				X												X					X											
8	Cisco Systems			X													X					X											
9	Citigroup				X												X					X											

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name: Leiter, Michael E

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Coca Cola Co.		X														X					X											
2	Equity Income Fund - AT&T		X											X								X											
3	General Electric Company					X											X			X					X								
4	Intel Corp.				X												X							X									
5	IBM			X													X						X										
6	MedCoHealth Solutions		X														X					X											
7	Merck			X													X					X											
8	Microsoft			X													X						X										
9	St. Pauls Travelers Co.		X														X					X											

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Reporting Individual's Name: Leiter, Michael E

SCHEDULE A continued
(Use only if needed)

Page Number 8 of 15

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Dreyfus Premier Value Fund			X										X									X										
2	Putnam International Equity Fund			X										X									X										
3	Scudder Global Fund			X										X									X										
4	Scudder International Fund CL		X											X									X										
5	Scudder Large Cap Value Fund			X										X										X									
6	Torco Inc.					X														X	X												
7	Grafton & Upton Rail Road Inc.					X														X	X												
8	Real Estate - Ophir, Colorado					X														X	X												
9	Sims Family Trust - Real Estate - Telluride, CO							X												X	X												

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Reporting Individual's Name: Leiter, Michael E

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	DC College Savings Plan			X										X			X						X										
2	Natural Resources Defense Counsel																										X					Spouse's Salary	
3	Colonial Trucking Inc.			X																X								X					
4	Templeton Developing Markets Trust - Class A			X										X			X					X											
5	Templeton Foreign Fund - Class A				X									X			X			X			X										
6	Templeton Global Opportunities Trust - Class A			X										X			X			X			X										
7	Franklin Real Estate Securities Fund - Class A			X										X			X			X			X										
8	Fidelity China Region			X										X			X					X											
9	Fidelity New Markets Income			X										X			X			X				X									

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Reporting Individual's Name: Leiter, Michael E

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Fidelity Spartan 500 Index			X										X			X						X										
2	Fidelity Utilities			X										X			X							X									
3	Fidelity Real Estate Investment			X										X			X			X					X								
4	Fidelity Short Term Bond			X										X			X					X											
5	Fidelity High Income			X										X			X			X				X									
6	Fidelity Inflation Protected Bond			X										X			X					X											
7	Fidelity Overseas			X										X			X			X			X										
8	Fidelity Pacific Basin			X										X			X			X			X										
9	Fidelity Dividend Growth			X										X			X						X										

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Reporting Individual's Name: Leiter, Michael E

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Fidelity Select Energy			X										X			X			X		X											
2	Fidelity Select Energy Service		X											X			X					X											
3	Fidelity US Government Reserves		X											X			X				X												
4	Centre Stage Limited Partnership			X															X					X									
5																																	
6																																	
7																																	
8																																	
9																																	

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Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name: Leifer, Michael E

SCHEDULE B

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	x			2/1/99			x									
1																	
2																	
3																	
4																	
5																	

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source (Name and Address)	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

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U.S. Office of Government Ethics

Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name: Leiter, Michael E

SCHEDULE B continued
(Use only if needed)

Part I: Transactions

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
1																	
2																	
3																	
4																	
5																	
6																	
7																	
8																	
9																	
10																	
11																	
12																	
13																	
14																	
15																	
16																	

* This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

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Reporting Individual's Name: Leiter, Michael E.

SCHEDULE C

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	$10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 St., Washington, DC	Promissory note	1999	10%	on demand					x						
1	Sam & Ben Rubenstein, Marion, MA	Mortgage on property in Telluride, CO	2003	5	demand					X						
2																
3																
4																
5																

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☒

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1			
2			
3			
4			
5			
6			

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Reporting Individual's Name: Leifer, Michael E

SCHEDULE D

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☒

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1					
2					
3					
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None ☒

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1		
2		
3		
4		
5		
6		

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SSCI# 2008 - 1734

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

April 16, 2008

The Honorable John D. Rockefeller, IV
Chairman
Select Committee on Intelligence
United States Senate
Washington, DC 20510-6475

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Michael E. Leiter, who has been nominated by President Bush for the position of Director, National Counterterrorism Center, Office of the Director of National Intelligence.

We have reviewed the report and have also obtained advice from the Office of the Director of National Intelligence concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is a letter dated April 11, 2008, from Mr. Leiter to the agency's ethics official, outlining the steps Mr. Leiter will take to avoid conflicts of interest. Unless a specific date has been agreed to, the nominee must fully comply within three months of his confirmation date with any action he agreed to take in his ethics agreement.

Based thereon, we believe that Mr. Leiter is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Robert I. Cusick
Director

Enclosures

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Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination (Month, Day, Year): 09/31/2008	Reporting Status (Check Appropriate Boxes): Incumbent ☐	Calendar Year Covered by Report:	New Entrant, Nominee, or Candidate ☒	Termination Filer ☐	Termination Date (If Applicable) (Month, Day, Year):
Reporting Individual's Name	Last Name: Leiter		First Name and Middle Initial: Michael E		
Position for Which Filing	Title of Position: Director, National Counterterrorism Ctr.		Department or Agency (If Applicable): Office of the DNI		
Location of Present Office (or forwarding address)	Address (Number, Street, City, State, and ZIP Code): Washington, DC 20505		Telephone No. (Include Area Code): 571-280-6202		
Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held: Acting Director (11/1/07-present); Principal Deputy Director (1/07-10/07)				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Select Committee on Intelligence		Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No		
Certification: I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual: [signature]		Date (Month, Day, Year): April 11, 2008		
Other Review (If conducted by agency)	Signature of Other Reviewer:		Date (Month, Day, Year):		
Agency Ethics Official's Opinion: On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/Reviewing Official: [signature]		Date (Month, Day, Year): 4/11/08		
Office of Government Ethics Use Only	Signature: [signature]		Date (Month, Day, Year): 4/16/08		

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

(Check box if filing extension granted & indicate number of days _____) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing
Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods
Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only

OGE Use Only
APR 14 2008

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Reporting Individual's Name: Leiter, Michael E

SCHEDULE A

Page Number: 2 of 7

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				x												x						x										
	Doe Jones & Smith, Hometown, State			x																												Law Partnership Income $100,000	
	Kensington Equity Fund					x								x										x									
	IRA: Heartland 500 Index Fund							x						x											x								
1	US Treasury STRIP			x															x		x												
2	AMGEN			x													x						x										
3	Berkshire Hathaway Cl. B			x													x						x										
4	CISCO Systems		x														x					x											
5	Citigroup			x													x						x										
6	Coca Cola		x														x					x											

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name: Leiter, Michael E

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Equity Income Fund — AT&T FIRST EXCHANGE SERIES (AT+T)		X											X			X					X											
2	General Electric				X												X			X				X									
3	Intel Corp			X													X					X											
4	IBM			X													X					X											
5	Medcohealth Solutions		X														X					X											
6	Merck			X													X						X										
7	Microsoft			X													X					X											
8	St. Paul Travelers		X														X				X												
9	Dreyfus Premier Value			X										X								X											

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name:

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	DWS Global Bond Fund		X											X							X												
2	DWS Global Thematic		X											X								X											
3	DWS Intermediate Tax		X											X							X												
4	DWS International		X											X								X											
5	DWS Large Cap Value			X										X									X										
6	Putnam International Equity Fund		X											X									X										
7	Charles Schwab (cash)		X																X		X												
8	Bank of America Checking		X																X		X												
9	Vanguard Prime Money Market		X											X								X											

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name:

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (Block A)	Valuation of Assets (Block B): None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Income Type: Dividends	Rent and Royalties	Interest	Capital Gains	Income Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Vanguard Intermediate Tax Exempt				X									X										X									
2	Vanguard Wellington Fund Admiral				X									X										X									
3	Vanguard 500 Index Fund Admiral					X								X											X								
4	Vanguard Small Cap Index Fund		X											X								X											
5	Vanguard US Growth Fund		X											X									X										
6	Vanguard STAR Fund IRA			X										X										X									
7																																	
8																																	
9																																	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name: Leiter, Michael E

SCHEDULE C

Page Number 6 of 7

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None [X]

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	$10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1994	8%	25 yrs.			X								
	John Jones, 123 ES., Washington, DC	Promissory note	1999	10%	on demand					X						
1																
2																
3																
4																
5																

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None [X]

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Joe Jones & Smith, Hometown, State	7/85
1			
2			
3			
4			
5			
6			

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Reporting Individual's Name: Leiter, Michael E

SCHEDULE D

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law Firm	Partner	7/85	1/00
1	Leiter Family Foundation	non-profit family education funding foundation	officer	12/2000	Present
2					
3					
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☒

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1		
2		
3		
4		
5		
6		

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APR. 11. 2008 1:10PM NO. 138 P. 7

April 11, 2008

Corin R. Stone
Designated Agency Ethics Official
Office of the Director of National Intelligence
Washington, DC 20511

Dear Ms. Stone,

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Director of National Counterterrorism Center (NCTC).

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest or in which I know that a person whose interests are imputed to me has a financial interest, if the particular matter has a direct and predictable effect on that interest, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have been advised that the duties of the position of Director of NCTC may involve particular matters affecting the financial interests of IBM. The agency has determined that it is not necessary at this time for me to divest my interests in this entity because my recusal from particular matters in which these interests pose a conflict of interest will not substantially limit my ability to perform the essential duties of the position of Director of NCTC. Accordingly, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of IBM, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208 (b)(2).

I will retain my unpaid position as an officer of the Leiter Family Foundation. I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of the Leiter Family Foundation, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). In order to qualify for the exemption at 5 C.F.R. § 2640.202(c) during my government service, I will not play any role in making

investment decisions for the Leiter Family Foundation, except to the extent that I may participate personally and substantially in decisions to invest in broad categories of investments such as stocks, bonds, or mutual funds.

Please contact me if you have any questions or concerns regarding this agreement.

Sincerely,

Michael E. Leiter