

Statement by Benjamin A. Powell
Before the Senate Select Committee on Intelligence
July 19, 2005

Mr. Chairman, Vice Chairman Rockefeller, I want to thank you and the distinguished members of this Committee for giving me the opportunity to appear before you and for considering my nomination. I want to thank Senator Martinez for introducing me and taking time out of his busy schedule to appear at this hearing. I am honored that the President has nominated me to be the first General Counsel of the Office of the Director of National Intelligence (ODNI).

If confirmed, I will have the privilege to support two of America's finest public servants, Ambassador John Negroponte and General Michael Hayden. The Committee is familiar with the challenges facing the Director of National Intelligence (DNI) and his Principal Deputy. Put simply, we must have better intelligence to protect American lives. Part of making our intelligence better is improving the ways in which the Intelligence Community actually functions as a "community". Many of the responsibilities and authorities provided to the DNI in the Intelligence Reform and Terrorism Prevention Act of 2004 (Intelligence Reform Act) are designed to encourage the Intelligence Community to act as a unified enterprise, from information access issues to personnel policies to the setting of budget priorities. As General Counsel, a key part of my position will be assisting the DNI in carrying out his mandate from the President to fully exercise the authorities granted to the DNI in the Intelligence Reform Act enacted by Congress.

The Intelligence Reform Act states that the General Counsel shall be the "chief legal officer" of the ODNI and perform such other functions as the DNI may prescribe. Ambassador Negroponte stated to the Committee that the General Counsel will play "a critical role in ensuring all employees or contractors assigned to the Office of the Director of National Intelligence comply with U.S. law and any applicable regulations and directives." He expects that "the GC will be a key member of my senior advisory team, provide legal and ethical counsel to ODNI managers and staff members alike, and participate in all significant decisions taken in the Office." If confirmed, one of my highest priorities will be finding highly talented

individuals to work in the General Counsel's Office to ensure the best possible legal support is provided to the DNI and his staff.

Beyond ensuring compliance with applicable law, the General Counsel will need to work closely with the chief legal officials of the elements of the Intelligence Community and the chief legal officials of organizations containing elements of the Community. The DNI must establish policies and mechanisms in numerous areas across the Community in addition to being the principal intelligence adviser to the President. The General Counsel will need to work with other legal officials to coordinate the development of supporting legal mechanisms to facilitate implementation of DNI policies and guidance. If confirmed, I will look closely at how to structure this relationship to ensure all parts of the intelligence legal community are working together to improve our national security.

The Intelligence Community must change to confront the global threats of the 21st Century. The Intelligence Community must have legal support to implement the necessary changes. Legal officials must support the Community in achieving the goal of providing the President, Congress, the armed services, and other organizations accurate, timely, and objective intelligence that protects lives, while safeguarding every Americans' constitutional and statutory rights.

My qualifications for this position include work with the Intelligence Community both in an operational capacity in the military and as a lawyer in a civilian capacity. I have worked as a lawyer in the federal government and in the private sector. I clerked for Judge John M. Walker, Jr. on the United States Court of Appeals for the Second Circuit, and Justice Byron White and Justice John Paul Stevens on the United States Supreme Court. I was an attorney in private practice at the firm Kellogg, Huber, Hansen, Todd & Evans before joining the high-technology sector in Silicon Valley in California as corporate counsel to Vitria Technology, Inc. At Vitria, I handled a wide variety of international legal affairs for the company.

I have a substantial background in national security and technology. I first worked with a component of the Intelligence Community at the Federal Bureau of Investigation. I next worked with the Intelligence Community as an Air Force officer, where I managed programs designing, acquiring, installing, and supporting intelligence data handling systems for the

Intelligence Community. This position brought broad exposure to technology issues confronting the Intelligence Community, including the difficult problems in the area of information access. As an Associate Counsel to the President, I have assisted the President and his senior staff in the implementation of historic reforms to the Intelligence Community. This has required significant interagency coordination across the Intelligence Community and significant, substantive discussions with the President and his national security team.

The position of General Counsel will present many opportunities and challenges. Effective implementation of reform will require continued, sustained support from the Congress and this Committee. If confirmed, I will need to work with Congress as we implement reform and the office will need to consult with the Committee to receive advice from the Committee in many areas. If confirmed, I look forward to a collaborative effort with the Committee to ensure our actions enhance the national security of the country.

Mr. Chairman, I want to thank you and the committee for this opportunity to appear before you and I am prepared to answer any questions you may have.