MEASURE PLACED ON THE CALENDAR—H.R. 980

Mr. REID. Mr. President, I understand that H.R. 980 is at the desk and due for a second reading. Is that right?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. REID. Mr. President, it is my understanding the clerk is going to report the matter.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 980) to provide collective bargaining rights for public safety officers employed by States or their political subdivisions.

Mr. REID. Mr. President, I object to any further proceedings at this time.

The ACTING PRESIDENT pro tempore. Objection is heard.

The bill will be placed on the calendar.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, with Senators permitted to speak for up to 15 minutes each.

The Senator from Utah is recognized.

NAKED SHORT SELLING

Mr. BENNETT. Mr. President, after all the fireworks and contention on some previous issues this week, I rise to speak about something that has very little interest to most Americans but tremendous interest, I believe, to a certain portion of our economy. I want to use this opportunity to call it to the attention of the Senate.

I am talking about a practice that occurs in the stock market that has the very interesting name of naked short selling. That conjures up all kinds of interesting images in many people's minds, but this is what it is: It is a practice where somebody sells short a particular stock and never ever has to cover the sale.

Now, even that may be too much stock-market-type jargon for people to understand what I am talking about. So let me quote from an article that appeared in the Wall Street Journal a few weeks ago.

Mr. President, I ask unanimous consent that the article be printed in the RECORD at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BENNETT. Quoting from the article, it says:

The naked [short selling] debate is a product of the revolution that has occurred in stock trading over the past 40 years. Up to the 1960s, trading involved hundreds of messengers crisscrossing lower Manhattan with bags of stock certificates and checks. As trading volume hit 15 million shares daily, the New York Stock Exchange had to close for part of each week to clear the paperwork backlog.

As an insert in the quotation, I remember those days. I was trading in the stock market at the time, and having the market shut down to clear the back office paperwork was not an unusual experience. Going back to the article:

That led to the creation of DTCC—

Those are initials for the Depository Trust and Clearing Corporation—

which is regulated by the SEC.

If I might, as an aside, I do not think that last statement is true. I am not sure that the SEC has control over the DTCC.

Almost all stock is now kept at the company's central depository and never leaves there. Instead, a stock buyer's brokerage account is electronically credited with a ''securities entitlement.'' This electronic credit can, in turn, be sold to someone else.

Replacing paper with electrons has allowed stock-trading volume to rise to billions of shares daily. The cost of buying or selling stock has fallen to less than 3.5 cents a share, a tenth of paper-era costs.

But to keep trading moving at this pace, the system can provide cover for naked shorting, critics argue. If the stock in a given transaction isn't delivered in the 3-day period, the buyer, who paid his money, is routinely given electronic credit for the stock. While the SEC calls for delivery in three days, the agency has no mechanism to enforce that guideline.

This is where the practice of naked short selling comes in. I did not really understand it until I had some investment bankers—not the kind you find on Wall Street but the more modest kind you find in Salt Lake City—sit me down in front of a screen and show me what happens with stock trading. To put it in the simplest terms, someone who wants to sell short—that is, sell stock he does not own—will place a sale order.

Now, when I first sold short as a participant in the market, my broker gave me this crude little poem to remember. He said: ''He who sells what isn't his'n, must buy it back or go to prison.'' He said: You have to understand, if you sell a stock short, the time is going to come when you are going to have to buy it back to cover that sale by delivering shares. In the days the Wall Street Journal talked about, that meant buying a crinkly piece of paper—a stock certificate—and delivering it so you have covered your short sale.

Today, that is not the case because all of the stock certificates are gone, and the crinkly pieces of paper have been replaced by electronic impulses in a computer. So this is what happens. A short seller enters the market and says: I want to short—I want to sell—1,000 shares of XYZ stock. That means at some point he has to produce 1,000 shares to cover his sale. How do you do that? You borrow the shares, and then you buy them back at some future time.

All right. From whom do you borrow them? The DTCC. They have all the shares on deposit, and so you go to the DTCC and you say: I want to borrow 1,000 shares of XYZ stock. They say: Fine, we have them on deposit. We will lend them to you so you can use them for your short sale.

All right, everything is fine—except in this electronic age, it is possible for you to keep shuffling around the electronic impulses that represent the stock and never ever have to buy it back.

Stop and think about that. That is a pretty good business plan. You can sell as much as you want and never ever have to pay for it. If a stock is trading at $5 a share, you could go in and sell 1,000 shares, and you get paid $5,000 for selling 1,000 shares, and you never have to buy them. Because you are constantly moving around the electronic impulses that represent those shares, you never have to cover.

Now, when you talk to the DTCC people, they say: No, we always make sure there is a delivery. And if there is not, it is not our fault. It is not our responsibility to police this. It is up to the brokerage houses to do this.

The SEC has spent enough time looking at this and enough time talking to me that they issued to me a three-page letter outlining the steps they have taken to stop the practice of naked short selling.

Mr. President, I ask unanimous consent that their letter be included in the RECORD at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 2.)

Mr. BENNETT. I think the SEC letter goes a long way—the SEC actions go a long way. Without getting too technical about it, they have taken a number of steps to prevent what are called ''fails to deliver'' and, therefore, to try to stop the naked short-selling situation.

But I have discovered something that appears to be a way around the SEC rules. Here is the transaction: Broker A shorts 1,000 shares. At the end of 13 days, which is the period he has to produce the shares, he has been unable to find any—probably hasn't even looked—but he has this requirement under the SEC rule to produce 1,000 shares. So he goes to broker B and says quietly: Sell me a thousand shares. Broker B says: I don't have any. Broker A says: It doesn't matter, sell me a thousand shares so I can cover. Broker B: All right. I will sell you a thousand shares so you can cover and there will be no passage of money; this is a deal between the two of us—a rollover. At the end of 13 days, broker B has to deliver a thousand shares, so broker A sells the same 1,000 phantom shares back to broker B, and they ping-pong these back and forth for as long as they want.

So you can have a situation where people are selling shares that don't exist, taking commissions on the sale, and the profits of the sale, and never, ever having to produce the shares.

I think it is serious enough that we ought to have a hearing about this in the Banking Committee. I have spoken to the chairman of the Banking Committee, Senator DODD, and asked him if it wouldn't be possible for us to have such a hearing at some point in the future. He has expressed a willingness to do that. I understand we can't set a time for that right now; there are too many other things going on in the Banking Committee. But I am delighted to know he is willing to cooperate with us in examining this issue.

I would like to suggest several things I would like to discuss at that hearing. First, by the way, I want the officials of the DTCC to have the opportunity to come in and explain how it works. I have seen letters to the editor in the Wall Street Journal, where they say this article is inaccurate, and I don't want to be relying on this article if it is inaccurate. I think a congressional hearing is a good place for those who are running the DTCC to explain to us how it works. I would like the SEC to come in and give us their background and information as to how their rules are working to try to stop the naked short selling. But I have these two additional recommendations that I would hope we could get done by regulation and, if not, I am prepared to introduce legislation to deal with them.

First, I think there should be a rule which says there cannot be borrowing, that brokers cannot borrow for short sales more stock than is on deposit with the DTCC. I think that is obvious. If there are 3 million shares of XYZ Company on deposit at the DTCC, people should not be able to short sell 4 million shares. I have seen the situation where people with these small companies—and all this happens primarily in little companies—people with small companies, in an effort to defend their stock against the short sales that are rolling over, are buying stock, and it is electronically credited to them and end up on paper, or at least on computer, owning more shares than exist. How can that be? If somebody buys the stock for his company and ends up owning 110 percent of the issued stock, and people are still selling that stock, you know you are dealing with phantom shares.

So my first recommendation would be that the DTCC cannot make available as loans for short sellers more stock than they have on deposit. Once they have reached the point that 100 percent of the shares they have on deposit have been loaned out, they can't loan out any more. I think that is an obvious commonsense recommendation, but it doesn't apply now.

Secondly, I think there ought to be a rule which says a broker cannot be paid a commission on a short sale until the shares are delivered. Back to the business model. The broker sells $5,000 worth of stock. He can do it every day. He can get $5,000 every day, without ever having to cover the stock, and he gets a commission on making the sale. So if you say, no, there will be no commissions paid until the stock is delivered, you will have a significant impact on stopping this activity.

Now, people who hear the complaints about naked short selling say: It only represents a tiny percentage of the trillions of dollars' worth of trading activity that goes on in American markets every day. They are right. It is only a tiny percentage. But that is small comfort to those who have gotten a few dollars together, formed a business, gone to the market to try to raise some capital to support the business, put on the marketplace, say, 25 percent of their shares, holding the other 75 percent for themselves, and then getting some support in the market so that the shares edge up from 25 cents to 50 cents to $1, to $1.25 and then suddenly see the short sellers come in and say: OK, we will drive that stock back down from $1.25 to 2.5 cents, and we will do it by selling stock that doesn't exist and in the process we will ruin the company.

The one thing that convinced me this was real was when the investment bankers sat me down in front of a screen and showed me the stock trading of a company that has been out of business for 3 years, and the stock trades regularly, every 13 days. You know exactly what they are doing. The brokers are rolling the stock back and forth every 13 days, so they are meeting the SEC requirements—they are delivering—but the shares they are delivering to each other back and forth do not exist. The company was driven out of business by the short sellers who made it impossible for them to go to the capital markets.

As I said in my opening remarks, this is a tiny matter. It does not involve very many people, but to the people who are involved, it, frankly, can be a matter of life and death. There are enough of them starting businesses and creating entrepreneurial activity in the United States that we owe it to them to find out exactly what is going on with respect to this activity. That is why I have asked Chairman DODD to consider a hearing on this matter to let us hear from the SEC, to let us hear from the DTCC, and to let us hear from those in the marketplace who have actual experience and see if the present SEC rules are sufficient or if we need to do additional things along the lines of the two items I have suggested.

I yield the floor.

[From the Wall Street Journal, July 5, 2007]

EXHIBIT 1

BLAME THE ''STOCK VAULT''?

CLEARINGHOUSE FAULTED ON SHORT-SELLING ABUSE; FINDING THE NAKED TRUTH

(By John R. Emshwiller and Kara Scannell)

Depository Trust & Clearing Corp. is a little-known institution in the nation's stock markets with a seemingly straightforward job: It is the middleman that helps ensure delivery of shares to buyers and money to sellers.

About 99% of the time, trades are completed without incident. But about 1% of the shares valued at about $2.5 billion on a given a day—aren't delivered to the buyer within—the requisite three days, for one reason or another.

These ''failures to deliver'' have put DTCC in the middle of a long-running fight over whether unscrupulous investors are driving down hundreds of small companies' share prices.

At issue is a nefarious twist on short-selling, a legitimate practice that involves trying to profit on a stock's falling price by selling borrowed shares in hopes of later replacing them with cheaper ones. The twist is known as ''naked shorting''—selling shares without borrowing them.

Illegal except in limited circumstances, naked shorting can drive down a stock's price by effectively increasing the supply of shares for the period, some people argue.

There is no dispute that illegal naked shorting happens. The fight is over how prevalent the problem is—and the extent to which DTCC is responsible. Some companies with falling stock prices say it is rampant and blame DTCC as the keepers of the system where it happens. DTCC and others say it isn't widespread enough to be a major concern.

The Securities and Exchange Commission has viewed naked shorting as a serious enough matter to have made two separate efforts to restrict the practice. The latest move came last month, when the SEC further tightened the rules regarding when stock has to be delivered after a sale, But some critics argue: the SEC still hasn't done enough.

The controversy has put an unaccustomed spotlight on DTCC. Several companies have filed suit against DTCC regarding delivery failure. DTCC officials say the attacks are unfounded and being orchestrated by a small group of plaintiffs' lawyers and corporate executives looking to make money from lawsuits and draw attention away from problems at their companies.

HISTORIC ROOTS

The naked-shorting debate is a product of the revolution that has occurred in stock trading over the past 40 years. Up to the 1960s, trading involved hundreds of messengers crisscrossing lower Manhattan with bags of stock certificates and checks. As trading volume hit 15 million shares daily, the New York Stock Exchange had to close for part of each week to clear the paperwork backlog.

That led to the creation of DTCC, which is regulated by the SEC. Almost all stock is now kept at the company's central depository and never leaves there. Instead, a stock buyer's brokerage account is electronically credited with a ''securities entitlement.'' This electronic credit can, in turn, be sold to someone else.

Replacing paper with electrons has allowed stock-trading volume to rise to billions of shares daily. The cost of buying or selling stock has fallen to less than 3.5 cents a share, a tenth of paper-era costs.

But to keep trading moving at this pace, the system can provide cover for naked shorting, critics argue. If the stock in a given transaction isn't delivered in the three-day period, the buyer, who paid his money, is routinely given electronic credit for the stock. While the SEC calls for delivery in three days, the agency has no mechanism to enforce that guideline.

''PHANTOM STOCK''

Some delivery failures linger for weeks or months. Until that failure is resolved, there are effectively additional shares of a company's stock rattling around the trading system in the form of the shares credited to the buyer's account, critics say. This ''phantom stock'' can put downward pressure on a company's share price by increasing the supply.

DTCC officials counter that for each undelivered share there is a corresponding obligation created to deliver stock, which keeps the system in balance. They also say that 80% of the delivery failures are resolved within two business weeks.

There are legitimate reasons for delivery failures, including simple clerical errors. But one illegitimate reason is naked shorting by traders looking to drive down a stock's price.

Critics contend DTCC has turned a blind eye to the naked-shorting problem.

DENVER LAWSUIT

In a lawsuit filed in Nevada state court, Denver-based Nanopierce Technologies Inc. contended that DTCC allowed ''sellers to maintain significant open fail to deliver'' positions of millions of shares of the semiconductor company's stock for extended periods, which helped push down Nanopierce's shares by more than 50%. The small company, which is now called Vyta Corp., trades on the electronic OTC Bulletin Board market. In recent trading, the stock has traded around 40 cents. A Nevada state court judge dismissed the suit, which prompted an appeal by the company.

DTCC says the roughly dozen other cases against it have almost all been dismissed or not pursued by the plaintiffs.

Nanopierce garnered support from the North American Securities Administrators Association, which represents state stock regulators. The group filed a brief arguing that if the company's claims were correct, its shareholders ''have been the victims of fraud and manipulation at the hands of the very entities that should be serving their interest.''

DTCC'S DEFENSE

DTCC General Counsel Larry Thompson calls the Nanopierce claims ''pure invention.'' DTCC officials say the main responsibility for resolving delivery failures lies with the brokerage firms. DTCC nets the brokerage firms' positions but it is the brokerages that manage their individual client accounts and know which client failed to deliver their stock.

DTCC officials say that Nanopierce had internal business problems—including heavy losses—to explain its stock-price drop. DTCC received support in the suit from the SEC, which filed a brief defending the trade-processing system and arguing that federal regulation pre-empted state-court review.

In January 2005, the SEC made an initial swipe at the naked-shorting problem by requiring that if delivery failures in a particular stock reached a high enough level, many of those failures would have to be resolved within 13 business days. But some failures weren't covered by the rule. The SEC action in June aimed to cover those remaining delivery failures. Naked shorting could ''undermine the confidence of investors'' in the stock market, SEC Chairman Christopher Cox says.

However, it doesn't seem likely that the SEC's latest move will end the debate that has been raging in the market for years. While lauding the SEC action, critics are questioning whether it is sufficient. The SEC still hasn't taken all the steps necessary to ensure ''a free and transparent market'' as required under federal securities laws, says James W. Christian, a Houston attorney who represents several companies that claim to have been damaged by naked shorting.

Among other things, authorities need to make public much more trading data related to stock-delivery failures, he says.

Critics contend that DTCC and the SEC have been too secretive with delivery-failure data, depriving the public of important information about where naked shorting might be taking place. Currently, DTCC's delivery-failure data can only be obtained through a Freedom of Information Act request to the SEC, which has released some statistics that are generally two months old.

In light of the controversy, DTCC has proposed making more information available and the SEC says it is looking at releasing aggregate delivery-failure data on a quarterly basis.

EXHIBIT 2

This memorandum has been compiled by the staff of the SEC. This document has not been approved by the Commission and does not necessarily represent the Commission's views.

MEMORANDUM

To: Mike Nielsen, Office of Senator Robert F. Bennett.

From: James A. Brigagliano, Associate Director, Division of Market Regulation; Victoria L. Crane, Special Counsel, Division of Market Regulation.

CC: Josephine Tao, Assistant Director, Division of Market Regulation.

Re: June 20, 2007 Meeting.

Date: July 13, 2007.

I. INTRODUCTION

During our meeting on June 20, 2007 regarding various short sale-related items, Senator Bennett requested that we prepare a memorandum outlining initiatives taken by the Commission and staff of the Commission's Division of Market Regulation (''Division Staff') that we discussed during the meeting. Accordingly, this memorandum discusses: (a) remarks by Chairman Cox at the June 13 Open Commission Meeting regarding rulemaking related to abusive ''naked'' short selling, (b) the expansion of short interest reporting requirements to over-the-counter (''OTC'') equity securities and the increased frequency of short interest reporting, (c) public disclosure by the Commission of fails to deliver data, (d) proposed amendments to eliminate the options market maker exception to the close-out requirements of Rule 203(b)(3) of Regulation SHO, (e) amendments to Rule 105 of Regulation M, and (f) examinations by self-regulatory organization (''SRO'') and Commission staff to ensure that options market makers are complying with the close-out requirements of 203(b)(3) of Regulation SHO.

After you have reviewed the below information, please let us know if there is any additional information you would like us to provide.

II. DISCUSSION

A. Remarks by Chairman Cox at the June 13 Open Commission Meeting

On June 13, 2007 at an Open Commission Meeting at which the Commission considered recommendations by Division Staff related to short selling, Chairman Cox stated that he had ''. . . asked the staff to examine whether the market would benefit from further rulemaking specifically designed to correct the practice of abusive naked short selling. Such a rule holds the potential of streamlining the prosecution of this form of market manipulation and, if today's measures leave any doubt, would direct still more Commission power to stamping out such abuses. With its recommendation, the staff should report the level of fails pre- and post-adoption of the rules we consider today so we can assess their effectiveness.''

Pursuant to Chairman Cox's request, Division Staff is currently examining whether or not the market would benefit from such further rulemaking.

B. Short Interest Reporting

On February 3, 2006 the Commission approved an NASD rule proposal to amend NASD Rule 3360 to expand monthly short interest reporting to OTC equity securities. The approval order is available on the Commission's website at http://www.sec.gov/rules/sro/nasd.shtml, or in the Federal Register at 71 FR 7101.

Recently, on March 6, 2007 the Commission approved rule proposals by the NASD, New York Stock Exchange LLC, and the American Stock Exchange LLC to increase the frequency of short interest reporting requirements from monthly to twice per month. The SROs requested, and the Commission approved, an implementation date of 180 days following Commission approval to allow firms sufficient time to make any necessary systems changes to comply with the new reporting requirements. The approval order is available on the Commission's website at http://www.sec.gov/rules/sro/nasd/2007/34-55406.pdf, or in the Federal Register at 72 FR 4756.

C. Public Disclosure of fails to Deliver Data

In response to requests from the public that the Commission has received regarding disclosure of fails to deliver data, including inquiries from various members of Congress, the Commission is considering whether to post on its website aggregate fails to deliver data that the Commission's Office of Economic Analysis receives from the Depository Trust and Clearing Corp. The data would not include confidential broker information and would likely be on a delayed basis.

D. Proposed Amendments to Eliminate the Options Market Maker Exception

On July 14, 2006, the Commission published proposed amendments to limit the duration of the options market maker exception to the close-out requirements of Rule 203(b)(3) of Regulation SHO. The Commission proposed to narrow the options market maker exception in Regulation SHO because it is concerned about large and persistent fails to deliver in threshold securities attributable, in part, to the options market maker exception, and concerns that such fails to deliver might have a negative effect on the market in these securities.

Based, in part, on commenters' concerns that they would be unable to comply with the amendments to the options market maker exception as proposed in the 2006 Proposing Release, and statements indicating that options market makers might be violating the current exception, on June 13, 2007, the Commission approved re-proposed amendments to the options market maker exception that would eliminate that exception to the close-out requirements of Regulation SHO. In addition, the proposed amendments seek comment on two alternative proposals to elimination of the options market maker exception that would provide a narrow options market maker exception that would require excepted fails to deliver to be closed out within specific time-frames.

The proposing release has not yet been published on the Commission's website or in the Federal Register. We anticipate that the release will be publicly available within the next few weeks. The Commission approved a shortened comment period of 30 days from publication of the release in the Federal Register.

E. Amendments to Rule 105 of Regulation M

Rule 105 governs short selling in connection with a public offering. It is a prophylactic anti-manipulation rule that promotes a market environment that is free from manipulative influences around the time that offerings are priced. The rule fosters pricing integrity by prohibiting activity that interferes with independent market dynamics prior to pricing offerings, by persons with a heightened incentive to manipulate.

The current rule prohibits persons from covering a short sale with offering securities if the short sale occurred during a defined restricted period (usually five days) prior to pricing. The Commission is aware of strategies to conceal the prohibited covering and persistent noncompliance with the rule. Thus, in December 2006, the Commission proposed amendments that would have prohibited a person selling short during the Rule 105 restricted period from purchasing securities in the offering.

On June 20, 2007 the Commission approved amendments that would generally make it unlawful for a person to purchase in an offering covered by Rule 105 if the person sold short during the restricted period unless they made a bona fide pre-pricing purchase meeting certain conditions. The amendments will be effective 30 days from the date of publication of the release in the Federal Register.

F. Options Market Makers and the Close-Out Requirement of Regulation SHO

As we discussed in more detail during our meeting, SRO and Commission staff are currently examining options market makers for compliance with the close-out requirements of Rule 203(b)(3) of Regulation SHO.

Should you have additional questions, please do not hesitate to contact Matt Shimkus in our Office of Legislative and Intergovernmental Affairs at (202) 551–2010.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from North Dakota is recognized for up to 30 minutes.

IRAQ

Mr. DORGAN. Mr. President, on Wednesday morning of this week, following a discussion and debate—and we had a fairly robust debate—about the issue of Iraq and the war in Iraq, on Wednesday morning of this week, the President's Homeland Security Adviser, Frances Townsend, was on the ABC ''Good Morning America'' program, and she said some things about al-Qaida, about terrorists, that reminded me of a period several years ago, prior to the start of the Iraq war. It reminded me of being in a room where top secret, classified briefings are given to Members of Congress—briefings by the now Secretary of State, briefings by the Vice President, briefings by the head of the CIA. Condoleezza Rice, Mr. Tenet, Vice President CHENEY, and others participated in these top secret briefings.

They told us things in those top secret briefings leading up to the decision about the authorization to use force against Iraq. They told us things we now know not to have been true.

Did they know that when they told us? I don't know. We now know, of course, that their claim that Saddam Hussein was trying to acquire yellow cake from Niger for nuclear weapons was bogus. Their claim that he was acquiring aluminum tubes to reconstitute a nuclear threat was not accurate. Their claim that he had mobile chemical weapons labs was not accurate.

By the way, on that one, it only had a single source, a man we later learned who had the code name of ''Curve Ball.'' We also later learned that he was a fabricator and an alcoholic. Their claim was based on a single source we now discover to have been a fabricator. He was a former taxicab driver, for God's sake, in Baghdad. A single source gave rise to the description to the world and to this Congress in top secret, classified briefings that there were mobile chemical weapons laboratories in Iraq.

The list of baseless or unsupported claims goes on. The reconstitution of nuclear weapons, weapons of mass destruction, connections with al-Qaida, we now know, of course, the facts were at odds with what we were being told about these and the other claims they used to support going to war.

The reason I mention this is that at Wednesday's appearance by the President's Homeland Security Adviser, Frances Townsend, on the morning show on ABC, reminded me a bit of what we experienced several years ago from this administration. A description by Frances Townsend about terrorism and the terrorist threat and al-Qaida is completely, and was completely, at odds with what we know to be the truth.

Let me go through a bit of what the President's Homeland Security Adviser said when she was being interviewed about the National Intelligence Report issued this week.

First, the report said al-Qaida is rebuilding, retraining, and getting ready to strike in the United States again. In light of that report, Ms. Townsend was asked if she still believed the United States is winning the war against al-Qaida and terrorism. ''Absolutely,'' she said. ''Absolutely, we are winning.''

She was asked about Pakistan and, specifically, about allowing al-Qaida to have a safe haven in the country of Pakistan. She said: Well, it is a sovereign country, and the President of Pakistan has been a good partner in our war against terrorism.

When asked, she said: The United States is ''safer'' today against al-Qaida because, she said: ''We have challenged them and we are on the offensive and the game is overseas.''

It is almost as if the President and his top homeland security adviser failed to read the National Intelligence Estimate. It made clear that al-Qaida is rebuilding its operational capacity and terrorism is the number one threat to our homeland. Those are the facts. That's reality.

But even if she failed to read the NIE, perhaps she could have been expected to read the newspapers, because they too have made it clear for a long time that al-Qaida is rebuilding and that the terrorists are getting ready to strike us again.

Let me go through a couple of examples.

On July 16, if one was reading in recent days, one would read an article by Joshua Partlow in the Washington Post. It said sectarian violence, a civil war, was the war in Iraq, not al-Qaida. It spelled this out with facts:

> The western Baghdad district of west Rashid confounds the prevailing narrative from the top U.S. military officials that the Sunni insurgent group al-Qaida in Iraq is the city's most formidable and disruptive force. Over the past several months, the [Shiite] Mahdi Army has transformed the composition of the district's neighborhoods by ruthlessly killing and driving out Sunnis and denying basic services to residents who remain.

Pretty clear. Shiite and Sunni violence, not al-Qaida.

One might have read the newspaper reports on June 26, in the McClatchy papers:

> While the U.S. presses its war against insurgents linked to al-Qaida in Iraq, Osama bin Laden's group is recruiting, regrouping, and rebuilding in a new sanctuary along the border between Afghanistan and Pakistan, senior military intelligence and law enforcement officials said. The threat from radical Islamic enclaves in Waziristan is more dangerous than that from Iraq, which President Bush and his aides called the ''central front'' of the war on terrorism, said some current and former U.S. officials and experts. Bin Laden himself is believed to be hiding in the region, guiding a new generation of lieutenants and inspiring allied extremist groups in Iraq and other parts of the world.

That is unbelievable. Al-Qaida is alive and well in Pakistan and Afghanistan. Let me say that again: It is ''recruiting, regrouping and rebuilding'' in this area. And bin Laden himself is believed to be hiding there, in that sanctuary. This is not Iraq, Mr. President. Did the President or his homeland security advisor read this article?

Or perhaps one could go back to a New York Times article in February entitled ''Senior leaders of al-Qaida operating from Pakistan.''

> Over the past year terrorists have set up a band of training camps in the tribal regions near the Afghan border, according to American intelligence and counterterrorism officials. American officials said there is mounting evidence that Osama bin Laden and his deputy, al-Zawahiri, have been steadily building an operations hub in the mountainous Pakistani tribal area of north Waziristan.

Bin Laden and al-Qaida are ''steadily building an operations hub'' in Pakistan is the report.

Now, to the adviser to the President in the White House on terrorism issues, let me say this to her: August 2001, the Presidential Daily Briefing Report put in the hands of President George W. Bush one month before the attacks of September 11, the title was: ''Bin Laden Determined to Strike in U.S.''

That was in August of 2001, the PDB, put in the President's hands.

What was the report in July 2007? The intelligence assessment from the