

February 15, 2016

Mark Langer, Clerk
United States Court of Appeals for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Ave., N.W.
Washington, DC 20001

Re: *ACLU v. CIA*, No. 15-5217 (Oral argument scheduled February 17, 2016)

Dear Mr. Langer:

Plaintiffs write pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure because they learned late last week that a book written by General Michael Hayden, who directed the CIA between May 2006 and February 2009, will be published next week. Plaintiffs have not seen the book, but the publisher's description, which is attached, indicates that General Hayden addresses the CIA's role in the targeted-killing campaign, the expansion of the campaign after 2008, and the purported effectiveness of the campaign. *See* Publisher's Description ("This was a time of great crisis at CIA, and some agency veterans have credited Hayden with actually saving the agency. He himself won't go that far, but he freely acknowledges that CIA helped turn the American security establishment into the most effective killing machine in the history of armed conflict."). The book was presumably subject to pre-publication review by the CIA.

While Plaintiffs do not contend that the publisher's description of General Hayden's book constitutes an "official acknowledgement," Plaintiffs submit that General Hayden's disclosures about the targeted-killing campaign—like the disclosures of other former government officials—are, at the very least, part of the backdrop against which the Court should evaluate the agency's claims that the disclosures Plaintiffs seek in this case would cause identifiable harm to national security. *Cf. N.Y. Times Co. v. Dep't of Justice*, 756 F.3d 100, 115 (2d Cir. 2014) ("Even if these statements assuring the public of the lawfulness of targeted killings are not themselves sufficiently detailed to establish waiver of the secrecy of the legal analysis . . . , they establish the context in which [other disclosures] should be evaluated.").

Respectfully submitted,

/s/ Jameel Jaffer
Jameel Jaffer

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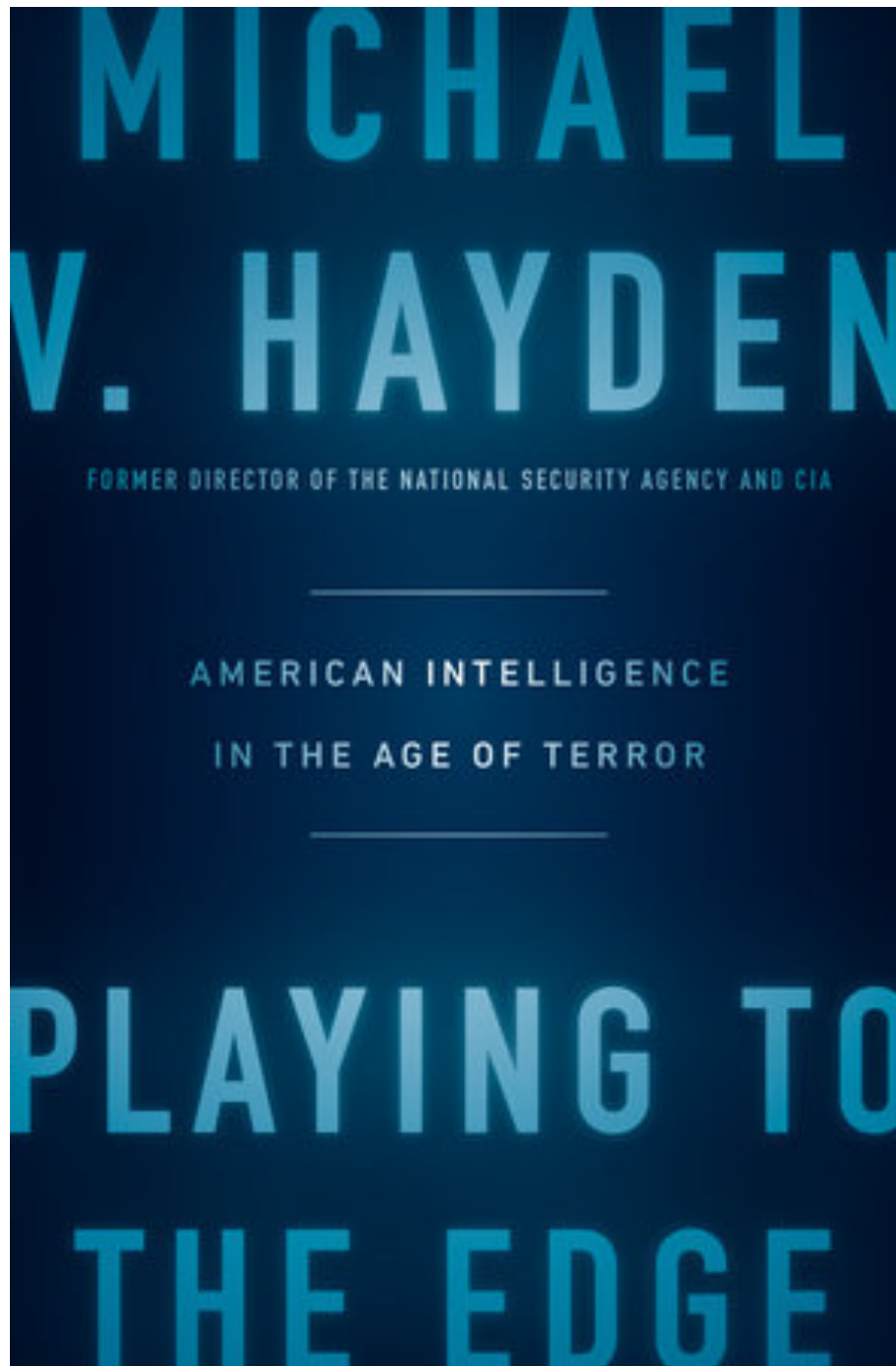


Playing to the Edge

AMERICAN INTELLIGENCE IN THE AGE OF TERROR

By **MICHAEL V. HAYDEN** On Tour

Category: Biography & Memoir | Politics | 21st Century U.S. History



ABOUT *PLAYING TO THE EDGE*

An unprecedented high-level master narrative of America's intelligence wars, from the only person ever to helm both CIA and NSA, at a time of heinous new threats and wrenching change

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For General Michael Hayden, playing to the edge means playing so close to the line that you get chalk dust on your cleats. Otherwise, by playing back, you may protect yourself, but you will be less successful in protecting America. "Play to the edge" was Hayden's guiding principle when he ran the National Security Agency, and it remained so when he ran CIA. In his view, many shortsighted and uninformed people are quick to criticize, and this book will give them much to chew on but little easy comfort; it is an unapologetic insider's look told from the perspective of the people who faced awesome responsibilities head on, in the moment.

How did American intelligence respond to terrorism, a major war and the most sweeping technological revolution in the last 500 years? What was NSA before 9/11 and how did it change in its aftermath? Why did NSA begin the controversial terrorist surveillance program that included the acquisition of domestic phone records? What else was set in motion during this period that formed the backdrop for the infamous Snowden revelations in 2013?

As Director of CIA in the last three years of the Bush administration, Hayden had to deal with the rendition, detention and interrogation program as bequeathed to him by his predecessors. He also had to ramp up the agency to support its role in the targeted killing program that began to dramatically increase in July 2008. This was a time of great crisis at CIA, and some agency veterans have credited Hayden with actually saving the agency. He himself won't go that far, but he freely acknowledges that CIA helped turn the American security establishment into the most effective killing machine in the history of armed conflict.

For 10 years, then, General Michael Hayden was a participant in some of the most telling events in the annals of American national security. General Hayden's goals in writing this book are simple and unwavering: No apologies. No excuses. Just what happened. And why. As he writes, "There is a story here that deserves to be told, without varnish and without spin. My view is my view, and others will certainly have different perspectives, but this view deserves to be told to create as complete a history as possible of these turbulent times. I bear no grudges, or at least not many, but I do want this to be a straightforward and readable history for that slice of the American population who depend on and appreciate intelligence, but who do not have the time to master its many obscure characteristics."

ABOUT MICHAEL V. HAYDEN

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Michael Hayden is a retired United States Air Force four-star general and former Director of the National Security Agency, Principal Deputy Director of National Intelligence, and Director of the Central Intelligence Agency. He is currently a principal at the Chertoff... [More about Michael V. Hayden](#)
