Thank you, Mr. Chairman.

And thank you for your testimony. I do want to say that in many

cases I have heard certainly you today, but the administration try

to justify sort of the ends—or the means for the end. I know that

you have talked a little bit about Libya and Qadhafi and your handling

of this. I just want to say that those are two very, very separate

issues, and I am sure that up here there are people who have

very differing opinions about our involvement in Libya but still

have strong concerns about the way the administration has handled

the actual process itself. So I do not think it is very helpful

to try to meld the two together, and I think it really waters down

the issue at hand.

I will say then that I find it humorous sitting here on the Foreign

Relations Committee, the most deliberative body in the world

some say, and basically you guys have not provided witnesses from

the Department of Justice or the Pentagon. We seem to take that

as a humorous thing. You know, the administration has basically

said there is no reason for us to get any kind of resolution from

Congress, and yet the Senate today in its urge to be ‘‘relevant’’ is

rushing to give the administration a resolution even though it is

basically saying in this case the Senate is irrelevant.

So I would ask you this one question. Now that you have taken

this argument and seen the response that you have gotten from

people on both sides of the aisle, are you still glad that you traveled

this route as it relates to making the argument you have made

about the War Powers Act?

I did not ask that. Are you glad that you basically

created an issue where no issue had to exist by taking this

narrowly defined route and basically sticking a stick in the eye of

Congress? I mean, is that something that you are glad you have

done?

We are making ourselves irrelevant.

Let me do this. This is a long answer. I would like to have just

a—I wanted to give you the respect of answering. I did not really

want you to answer everything I just said, but since you have, I

would like to have a couple extra minutes. Do you want to say any

more regarding my opening comments?

Well, I do not think we are really making any

decisions than are different than what you are carrying out. So we

are rushing to make ourselves irrelevant this afternoon by virtue

of passing something out that basically says—you know what it

says.

So let me ask you this. The chairman mentioned that since no

American is being shot, there are no hostilities. Of course, by that

reasoning, we could drop a nuclear bomb on Tripoli and we would

not be involved in hostilities. It just goes to the sort of preposterous

argument that is being made.

But I do think one of the issues of precedence that you are setting

is that Predators now—and I do want to remind you the Justice

Department of this administration has spent lots of time trying

to deal with people’s rights as it relates to terrorism and that kind

of thing. And yet, basically what you all are doing by arguing this

narrow case is saying that any President of the United States,

Republican or Democrat, can order Predator strikes in any country

and that is not hostilities. And of course, we know what Predators

do. I think you know what they do, and lots of times human beings

are not alive after they finish their work.

So basically what you are doing is arguing that a President can

order Predator strikes in any place in the world by virtue of this

narrow argument that you have taken and that is not hostilities

and Congress plays no role in that.

I think you have established a precedent. This

administration has established a precedent for this country by taking

this argument that any President, Republican or Democrat, can

use Predators in any country they wish because that is limited

hostilities without Congress being involved.

I am going to probably come to a close quicker than I wanted to

because of the time.

But we do have aircraft flying over Libyan airspace. Do we not?

That is yes or no.

And we do know that there are numbers of

types of weapons that they have that could, in fact, take down our

aircraft that are not necessarily in fixed positions. Is that correct?

So to say that our men and women in uniform

are not in a position to encounter hostilities or involved hostilities

is really pretty incredible.

You know, you cite the fact that hostilities has never been defined.

I went back and read the House conference which basically

reported out the War Powers Act. As a matter of fact, they tried

to make it a lesser level. They started out with ‘‘armed conflict,’’

and then they used the word ‘‘hostilities.’’ And they did so in such

a manner to certainly talk about the kinds of conditions that exist

today on the ground. So when you say that these are not hostilities,

that is just patently not the intent of Congress when they passed

the War Powers Act.

Now, you have introduced something unique, a mathematical

formula. And I am sure future Presidents will use a mathematical

formula. In other words, if we are only doing X percent of the

bombing, then we are not involved in hostilities. But I find that not

in any way to jibe with what the House sent out in its reporting

language.

I am just going to close with this because my time is up, and I

know the chairman is getting impatient.

I did not support your nomination. I thought you are a very intelligent

person obviously, very well learned. But I felt that you had

the likelihood to subject U.S. law or to cause it to be lesser important

than international law. And while I made no statement to that

effect publicly, I told you that privately when we met in our office.

And that is exactly what you have done. You basically said the

United Nations has authorized this and there is no need for Congress

to act and we are going to narrowly define hostilities.

I would guess at night, however people of your category give high

fives, you are talking to other academics about this cute argument

that has been utilized. But I would say to you that I think you

have undermined the credibility of this administration. I think you

have undermined the integrity of the War Powers Act. And I think

by taking this very narrow approach, you have done a great disservice

to our country.

And I do hope—I do hope—that at some point we will look at the

War Powers Act in light of new technology, in light of new conflicts,

and define it in a way that someone using these narrow and what

I would call cute arguments does not have the ability to work

around Congress.

Thank you, Mr. Chairman.

I did not argue that. So that is not a fact——

Well, I am being very honest, and I think that

parsing words——

And I have the ability to express my opinion

just like you do and to use facts just like you do. And if you want

to get into a debate about this right now, I am glad to do that. I

would like——

Well, Mr. Chairman, I would just respond that

I think the central element of my argument to Mr. Koh who, by

the way, I very much respect his intellect—I do not respect his

judgment in this particular case. My argument is around the issue

of hostilities. That is what the focus of my argument was, and by

narrowly defining that or being cute where you say I support the

constitutionality of the War Powers Act, but on the other hand,

since we are not really involved in hostilities—wink, wink—we

really do not need to deal with Congress. That is the part. That

just happened on the 15th.

I do not think anybody in this body had any idea that the President

would take such a narrow, narrow interpretation of hostilities.

I do not think anybody knew that. I think it has been a shock to

all. I think the President wishes he had handled this differently

because what has happened is by being cute, they have introduced

a whole other debate here that should not be taking place. And my

guess is they might have gotten overwhelming support for a limited

operation, whether I support it or not. What they have done by trying

to have it both ways, which is what they did with the June 15

letter, is interject a debate that has to do with credibility, has to

do with integrity, and to me is a great disservice to this country.

So I stand by what I just said. It is factual. And I will be glad

to debate this all day long.