

NOMINATIONS

TUESDAY, MARCH 23, 2010

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The committee met, pursuant to notice, at 9:37 p.m. in room SH-216, Hart Senate Office Building, Senator Carl Levin (chairman), presiding.

Committee members present: Senators Levin, Akaka, Udall, Hagan, Begich, McCain, Inhofe, Sessions, Chambliss, and Thune.

Other Senator present: Senator John Warner.

Committee staff members present: Richard D. DeBobes, staff director; and Leah C. Brewer, nominations and hearings clerk.

Majority staff members present: Creighton Greene, professional staff member; Gerald J. Leeling, counsel; Peter K. Levine, general counsel; Jason W. Maroney, counsel; Roy F. Phillips, professional staff member; John H. Quirk V, professional staff member; Russell L. Shaffer, counsel; and William K. Sutey, professional staff member.

Minority staff members present: Joseph W. Bowab, Republican staff director; Adam J. Barker, professional staff member; David M. Morriss, minority counsel; Lucian L. Niemeyer, professional staff member; and Richard F. Walsh, minority counsel.

Staff assistants present: Jennifer R. Knowles and Brian F. Sebold.

Committee members' assistants present: James Tuite, assistant to Senator Byrd; Gordon I. Peterson, assistant to Senator Webb; Jennifer Barrett, assistant to Senator Udall; and Lindsay Kavanaugh, assistant to Senator Begich; Anthony J. Lazarski, assistant to Senator Inhofe; Lenwood Landrum and Sandra Luff, assistants to Senator Sessions; Clyde A. Taylor IV, assistant to Senator Chambliss, and Chris Joyner, assistant to Senator Burr.

OPENING STATEMENT OF SENATOR CARL LEVIN, CHAIRMAN

Chairman LEVIN. Good morning, everybody.

The committee meets today to consider the nominations of Elizabeth McGrath to be deputy chief management officer of the Department of Defense; Michael J. McCord to be Principal Deputy Under Secretary of Defense (Comptroller); Sharon Burke to be director of operations energy plans and programs; Solomon Watson IV to be general counsel of the Department of the Army; and Katherine Hammack to be Assistant Secretary of the Army for Installations and Environment.

I'm going to interrupt my opening comments to call upon the Senator Akaka, who must leave, but he has a introduction that he wants to make. And we call upon Senator Akaka for that purpose.

STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM THE STATE OF HAWAII

Senator AKAKA. Thank you very much, Mr. Chairman and members of the committee.

Since I will not be able to remain at this hearing, I want to thank the Chairman and the Ranking Member for permitting me this time and honor to briefly introduce and congratulate two nominees.

And I ask, Mr. Chairman, that my full introductory statement be included in the record.

Chairman LEVIN. It will be.

[The information referred to follows:]

Senator AKAKA. I want to add my welcome to our close and—brother and friend Senator Warner. Good to see you back here and—as well as our nominees who are at the table today.

I'm here, and I'm delighted, to speak on the nomination of Elizabeth McGrath to be Department of Defense's first deputy chief management officer. And I'd like to introduce, also, her family, Beth McGrath's son, James, and her daughter, Christine, and her mom and dad, who are also here, and welcome them.

As you may know, I was a strong advocate for the creation of a chief management officer at DOD. I first encountered Beth McGrath through my Oversight and Government Management Subcommittee's work on DOD's Security Clearance Program, which has been on the Government Accountability Office's high-risk list since 2005. Beth now serves as the vice chair of a joint reform team, led by ONB, reforming the clearance process. She has testified and worked with my subcommittee extensively. That group has made tremendous progress on modernizing the clearance process, in large part due to Beth's hard work and expertise.

Ms. McGrath is an example of an individual who has dedicated her professional career to civil service and has advanced through the ranks. She has served as a logistics and acquisition manager, a deputy director in the Defense Finance Accounting Service, and Assistant Principal Deputy Under Secretary, and now as Assistant and Deputy Chief Management Officer.

I will not go further with her qualifications, except to say that my working with her—in my working with her, I have found her to be professional and knowledgeable, and I think she will be extremely valuable to the Department in this role.

And again, I congratulate you, Beth, on your nomination to this position.

I also want to add my congratulations to Mike McCord, who is the nominee to the Principal Deputy Under Secretary of Defense. I had the distinct pleasure to work with him, when I was chairman of the Readiness and Management Subcommittee. As a senior staff member of the committee, his expertise, dedication, and counsel were invaluable. Mike has an unparalleled wealth of experience, a deep understanding of defense issues and the budget process, and he will excel in his position.

He is the best person, and the right person, for the job. I want to wish him well.

Mr. Chairman, I thank you again for giving me this time to speak on these nominees. Thank you very much.

Chairman LEVIN. Thank you very much, Senator Akaka. I know how important it is to our nominees that you are here to help introduce them. And I know they're grateful, and so are we, for your comments.

We welcome our nominees, today, their families. We appreciate the long hours and the other sacrifices that our nominees are willing to make to serve our country. Their families also deserve our thanks for the support that they provide. This is essential support to the success of these officials.

All of our nominees are qualified for the positions to which they have been nominated.

Ms. McGrath is a career civil servant who has worked in management positions in the Department of Defense for the last 20 years. We heard some details about her career from Senator Akaka, so I will not repeat that. But, I do believe that Ms. McGrath's rise through the ranks of the Department of Defense, and the basis of her qualifications and achievements, sends an important message, to the entire civilian workforce of the Department, that their dedication and their hard work can be rewarded.

Mr. McCord has been a dedicated public servant for more than 25 years, including more than 10 years on the staff of this committee. We view Mike not only as a friend, but as a member of the Senate Arms Services Committee family. We're proud—we were proud of his achievement, when Mike was appointed Principal Under Deputy—Principal Deputy Under Secretary of Defense (Comptroller), last January.

We were so proud of you, Mike, that we changed the law to ensure that you could come back here today as the President's nominee for the very same position.

I just can't imagine anybody who is better qualified for this job than Mike McCord.

Ms. Burke is a dedicated public servant. She spent 3 years at the Department of State, 7 years at the Department of Defense, 3 years at the old Congressional Office of Technology Assessment, before taking a series of jobs at nonprofit think tanks. And she's currently vice president of the National—of—for national security at the Center for New American Security. And she's going to be introduced, later on, by a dear friend, who all of us on this committee—we have a couple of new members, perhaps, who have not yet met Senator John Warner. But, for those of us who worked with him, lived with him, laughed with him, cried with him, believe in him, and his great wife, Jeanie, it's a—it's just a—

It's always a treat to see you, John.

And the fact that you have brought Senator Warner with you, Ms. Burke, for this introduction, says a—speaks volumes about you, but it also gives us an opportunity just to give an old friend a couple of hugs and a couple laughs.

Senator WARNER. Thank you, Mr. Chairman.

Chairman LEVIN. Mr. Watson has had a 35-year legal career at the New York Times, in the course of which he's been awarded,

among other honors, the Media Law Resource Center's First Amendment Leadership Award, the NAACP Legal Defense Education—Legal Defense and Education Fund National Equal Justice Award, and the American Corporate Counsel Associate Distinguished Service Award.

Ms. Hammack has spent more than 25 years of experience as an energy and sustainability professional with private industry. Currently, she is a senior manager at Ernst & Young, where she has developed an expertise in the evaluation of energy conservation projects, energy efficiency strategies, demand-side management programs, and marketing electricity in deregulated markets.

If confirmed, our nominees will all play critical roles in helping to manage the Department of Defense at a time when we are fighting two wars, when we face a wide array of difficult acquisition, management, and financial challenges. So, we look forward to the testimony of our nominees, to their speedy confirmation, hopefully.

I'll now call upon Senator McCain.

STATEMENT OF SENATOR JOHN MCCAIN

Senator MCCAIN. Thank you, Mr. Chairman.

I welcome all the nominees and their families who accompany them today. And, of course, I—special welcome to our dear and beloved friend Senator Warner, who is here today to introduce, I believe, Ms. Burke. Is that—

Senator WARNER. Correct.

Senator MCCAIN. Correct. And, we won't hold that against you, Ms. Burke, for—

[Laughter.]

Senator MCCAIN. And, of course, Elizabeth McGrath, as you mentioned, Mr. Chairman, to be deputy chief management officer of the Department of Defense; Michael McCord, to be Principal Deputy Under Secretary of Defense; Solomon Watson, to be general counsel of the Department of the Army; and Katherine Hammack, to be Assistant Secretary of the Army for Installations and Environment.

Mr. Solomon Watson IV has been nominated to be General Counsel of the Department of the Army. Mr. Watson served from 1966 to 1968 as an Active Duty lieutenant in the U.S. Army Military Police Corps. He performed distinguished military service in Vietnam, and subsequently commenced his long career with the New York Times Company, from which he retired in December 2006.

Mr. Watson served as senior vice president and general counsel in New York Times Company from 1996 to 2005, and in December 2005 he was named senior vice president and chief legal officer. During his employment in these capacities, the New York Times published two stories, which revealed highly classified information, which I intend to discuss further in connection with Mr. Watson's nomination.

The first, which was published on December 15th, 2005, revealed the existence of what became known as the Terrorist Surveillance Program. This highly classified program was authorized by President Bush shortly after the attacks of September 11, 2001. It targeted communications where one party was outside the United States and reasonable grounds existed to believe that at least one

party to the communication was a member or agent of al Qaeda or an affiliated terrorist organization. Although the White House asked the New York Times not to publish this article, arguing that it could jeopardize continuing investigations and alert would-be terrorists that they might be under scrutiny, the Times, after delaying publication, chose to run the story.

As a result of the disclosure of the Terrorist Surveillance Program, then-CIA Director Porter Goss testified before the Senate Intelligence Committee in February 2006, and I quote, “The damage has been very severe to our capabilities to carry out our mission.” And emphasize that he used the term “very severe” intentionally. He also testified that the story had rendered intelligence sources, quote, “no longer viable or usable, or less effective by a large degree.”

The second story, published on June 23, 2006, which also appeared while Mr. Watson was chief legal officer, revealed a secret government surveillance program about the Society for Worldwide Interbank Financial Telecommunication, or SWIFT program. The New York Times article disclosed that, shortly after September 11, 2001, SWIFT lawfully began providing the U.S. Government with financial information about possible terrorist-related transfers. Despite pleas to the New York Times by National Intelligence Director John Negroponte, Treasury Secretary John Snow, and by the cochairman of the 9/11 Commission, Thomas Keane and Lee Hamilton not to publish information about the SWIFT surveillance program, the New York Times chose to disregard those pleas and published the story. Subsequently, even the Times’ own public editor, Byron Calame—C-a-l-a-m-e—criticized the decision to publish the story.

After the committee received Mr. Watson’s nomination, I sent a number of questions to him by letter about his involvement and evaluation of the publication of these stories, and Mr. Watson responded by letter on January 7th.

Mr. Chairman, I ask these letters be made a part of today’s record.

Chairman LEVIN. They will be.

[The information referred to follows:]

Senator McCAIN. I will ask him some additional questions today, in view of his nomination for this important Department of Defense position, about his views regarding the release of this information and how he, as chief legal officer of the Department in the Army, would respond to public disclosures that endanger U.S. citizens, neutralize the effectiveness of classified defense programs, and harm national security.

I acknowledge the government service and private-sector accomplishments of Mr. McCord, Ms. McGrath, Ms. Burke, and Ms. Hammack, and, again, thank them for their willingness to serve in these important positions in the Department of Defense.

Thank you, Mr. Chairman.

[The prepared statement of Senator McCain follows:]

[COMMITTEE INSERT]

Chairman LEVIN. Thank you very much, Senator McCain.

Senator Warner, we’re going to call on you first, for your introduction so that you can be excused and go about your work.

**STATEMENT OF HON. JOHN WARNER, FORMER U.S. SENATOR
FROM THE STATE OF VIRGINIA**

Senator WARNER. I'm required to take the oath of office. [Laughter.]

Chairman LEVIN. I think for us to administer an oath of office to you, Senator Warner, would suggest—

Senator WARNER. The law requires you to—[Laughter.]

Chairman LEVIN. If you could share what the oath is with me, I'd be happy to—[Laughter.]

Senator WARNER. The whole truth and nothing but the truth, so help you God.

Chairman LEVIN. I do. [Laughter.]

Senator WARNER. I thank you, distinguished Chairman. It's an unusual framework of laws that will greet you when you depart the U.S. Senate, but I've lived by them very careful, as each of you have.

Chairman LEVIN. As always, you abide by the law. Frankly, I was not aware of that. Now we're going to have to look it up. But, we're glad that you pointed it out to us, because it's important that we abide by law. You're known for that, and we admire you for that, and we thank you for doing what your duty requires you to do this morning.

Senator WARNER. Well, Mr. Chairman, needless to say, it's a very moving experience for me to appear in this capacity before this distinguished committee. I thank you and my dear friend for so many years, Senator John McCain.

We go way back, Senator.

Senator Inhofe, I duly report again to you and remember member your distinguished Committee on Environment and Public Works. Senator Chambliss, Senator Thune.

And, to our new members, you don't really, really appreciate, at this juncture, how fortunate you are to be a member of this committee. This committee has an extraordinary reputation, long in the history of the Senate, for its ability to handle issues of national security in the best interests of this country. And I commend each of you and wish you well in the future.

I shall be brief, and I'll ask to—unanimous consent that my statement be included in the record.

Chairman LEVIN. It will be, of course.

[The prepared statement of Senator John Warner follows:]

[COMMITTEE INSERT]

Senator WARNER. I'm privileged to introduce this very fine professional to be the director of operational energy plans and programs. And I commend these committees, the military committees, for creating this new position, because if there's one issue that's important to this Nation today, I know of no greater than the subject of energy. The Department of Defense is the single largest user of energy of any entity, not only in the United States, but the entire world. And to be a good shepherd of this responsibility in the Department is important. And this position was created for that purpose.

What the public may not know—and I say this with a sense of humility—is the extraordinary record of the Department of Defense and the military departments, in the past several years, to be in

the very forefront of all issues related to energy. When a member of this committee and the Environment Committee, I followed the leadership shown by the Department, and have continued to keep myself informed in the ensuing years.

I first met this very fine professional, when she, in the capacity as the vice president of her distinguished organization, held an extensive dinner meeting for about 25 individuals, from the National Guard to every department of the military, to listen to them—what they're trying to do in the area of energy and, indeed, some on climate security. And you may recall, Mr. Chairman, that I was privileged to join the distinguished former Senator, now Secretary of State, Mrs. Clinton, in sponsoring the legislation directing the Secretary of Defense to, in the forthcoming QDR, make certain provisions for these subjects, and I commend her in—for that foresight that Senator Clinton had at that time. And the Department has moved out. The announcement of the QDR has a distinct provision in it on these subjects.

So, the Department's record is a great story of public service. And I would urge the committee—it may be an opportunity to make that public. But, there's much more to be done, and this fine nominee, if confirmed, will give that leadership. She's ideally and uniquely qualified, to the credit of the President that he selected this candidate, where she's been working in the private sector to promote many of the varied goals on energy that DOD today is attaining and planning for the future. On a number of occasions, I've had the privilege to be with her when this candidate has publicly addressed a wide range of energy issues and, most significantly, come up with some suggested solutions.

She's widely respected by her peer group of nongovernmental organizations, as well as being admired and trusted on her views by government leaders. Her exceptional career had its roots with membership on the staffs of two very—former, distinguished members of the

United States Senate, Senator Paul Sarbanes and Senator Chuck Hagel. As you stated, Mr. Chairman, she's currently the vice president of the Center for New American Security, where she directs the Center's work on the National Security implications of global energy security. She held appointed positions in the U.S. Government as a member of the policy planning staff at the Department of State and as a country director in DOD's Office of Near Eastern and South Asian affairs. She also served on the staff of a former member of this committee, our esteemed friend, former Secretary of Defense William Cohen.

Understandably, this exceptional professional, has been awarded many recognitions by both public and private institutions for her distinguished accomplishments, and I'm sure that's part of the record.

If confirmed, she will become a national leader in the field of energy and add another chapter to her distinguished public service for the greater benefit of the American public.

Thank the chair, the ranking member, members of the committee.

Chairman LEVIN. Thank you so much, Senator Warner. Thanks for coming here for that introduction. I know how important it is to the nominee and to us, and just always great seeing you.

Senator WARNER. I thank you.

Chairman LEVIN. Now, we're going to ask all of you standard questions, and you can answer them all together.

Have you adhered to applicable laws and regulations governing conflicts of interests?

[All five nominees answered in the affirmative.]

Chairman LEVIN. Have you assumed any duties, or undertaken any actions, which would appear to presume the outcome of this confirmation process?

[All five nominees answered in the negative.]

Chairman LEVIN. Will you ensure your staff complies with deadlines established for requested communications, including questions for the record in hearings?

[All five nominees answered in the affirmative.]

Chairman LEVIN. Will you cooperate in providing witnesses and briefers in response to congressional requests?

[All five nominees answered in the affirmative.]

Chairman LEVIN. Will those witnesses be protected from reprisal for their testimony or briefings?

[All five nominees answered in the affirmative.]

Chairman LEVIN. Do you agree, if confirmed, to appear and testify, upon request, before this committee?

[All five nominees answered in the affirmative.]

Chairman LEVIN. Do you agree to provide documents, including copies of electronic forms of communication, in a timely manner, when requested by a duly constituted committee, or to consult with the committee regarding the basis for any good faith delay, or denial, in providing such documents?

[All five nominees answered in the affirmative.]

Chairman LEVIN. Thank you very much.

And as we call upon each of you, we'll call upon you in the order that you're listed on the amended notice here. Please feel free to introduce members of your family or friends who have accompanied you here today.

So, first we'll call upon Elizabeth McGrath, who has been nominated to be deputy chief management officer of the Department of Defense.

Ms. McGrath.

STATEMENT OF ELIZABETH A. McGRATH, NOMINEE TO BE DEPUTY CHIEF MANAGEMENT OFFICER OF THE DEPARTMENT OF DEFENSE

Ms. McGRATH. Mr. Chairman, thank you and good morning. Ranking Member, McCain, distinguished members of the Armed Services Committee, I'm truly honored to be here today, humbled to be nominated by the President as the Department's first deputy chief management officer, and deeply appreciative of both Secretary Gates' and Deputy Secretary Lynn's support for my nomination.

I want to extend a special thanks to Senator Akaka for his kind introduction. I've enjoyed our partnership on this committee and on

others, and I look forward to continuing to pursue our shared goal of serving the needs of the American people.

I also want to thank the members of this committee for all you have done for the troops and their families, whose efforts and sacrifice preserve the freedoms we enjoy today. If confirmed, I will work in partnership with this committee to ensure their mission is supported and enabled, the best it can be.

I'm grateful to have my family here with me this morning, supporting me today, as they have done throughout my life. I would like to introduce to you my parents, Jim and Liz Bullock, and my two children, James and Christine. My father is a 1960 graduate of the United States Naval Academy. His 20 years' dedicated service as a surface warfare officer instilled in me a deep respect for public service which inspires me to this day. I'm also pleased for James and Christine to have this chance to see our Federal Government in action. I'm certain they are happy to be here too, and not only because it's a day off of school.

The committee's emphatic work in establishing the positions of both chief and deputy chief management officer highlights the challenges the Department faces in managing the business of defense. Current contingency operations and projections of complex future operating environments require processes and institutions that are more agile, innovative, and streamlined. The Department faces a clear mandate to modernize its business systems, and supporting processes, as part of an enterprisewide approach to business transformation. This is an enormous undertaking.

To successfully modernize the business of defense, we must energize not only those who work in the business areas, but also other key leaders of the Department. In my 20-plus years working various business disciplines across DOD, I have observed that clear goals and sustained leadership commitment are critical to success. If confirmed, I would ensure that our business goals were well understood and that leadership engagement was sustained.

The breadth and complexity of the Department's business operations would challenge the most qualified executive. Yet, despite their scope and scale, our business operations must efficiently and effectively enable the larger national security mission.

DOD has the responsibility to secure our Nation, enable our warfighters, and steward the taxpayers' dollars. I'm keenly aware that defense dollars spent on duplicative, inefficient efforts is money not available to take care of our people, to win the wars we're in, and improve our capabilities. If confirmed, I would be honored to serve in the position of the deputy chief management officer, doing everything in my abilities to make the business of defense better.

Mr. Chairman, members of the committee, I'd be pleased to answer your questions.

[The prepared statement of Ms. McGrath follows:]

Chairman LEVIN. Thank you very much.

Mike McCord. Mike?

STATEMENT OF MICHAEL J. McCORD, NOMINEE TO BE PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE (CONTROLLER)

Mr. McCORD. Thank you, Chairman Levin, Senator McCain, and members of the committee. It's a pleasure to be back here with the committee, where I served for so many years and had the opportunity to learn from the outstanding public servants who have led the full committee as chairman and ranking member during my time here, such as Chairman Levin and Senator McCain today, and former Chairman Sam Nunn and John Warner, as well as those who served as my chairman and ranking member on the Readiness Subcommittee, Senator Akaka, and former Senators John Glenn and Chuck Robb.

And I thank Senator Akaka for his kind words, which are so characteristic of him.

I also want to recognize my friends and colleagues on the staff, including those who continue today to uphold the committee's high standards, such as Rick DeBobes and Chris Cowart, as well as their predecessors over the years, including especially people like David Lyles and John Hamre, who took the time to mentor me when I was new here, quite awhile ago now.

Whether we serve in the executive or legislative branch, I think we all feel that sense of shared responsibility for our National security. During my career, I have often felt that the two common images, of partisanship or ineffectiveness, that serve as caricatures of Washington, bore little, if any, resemblance to what I saw here inside the committee.

It's impossible for me to do justice today to all those that I've worked with or for, or what this committee has accomplished during all those years, but I would pick just one thing, and that's the opportunity to work with former Senator John Glenn, who was my first subcommittee ranking member when Senator McCain was chairman of the Readiness subcommittee in the 1990s. John Glenn was a hero to so many—is a hero to so many Americans, but especially to those of us, like my mother and I, who grew up in Ohio. So, to have had the opportunity to work with such a dedicated public servant and wonderful human being was a treat I never could have imagined when I graduated from Ohio State, years ago.

I would like to introduce my family. My mother, Anne, has come from Ohio to be with me today, and I'm grateful for her guidance and support. I'm especially pleased that both my wonderful daughters could be here with me today, Alejandra, who's here from Boston, and Meredith, from Virginia. They grew up during my career on the Armed Services Committee, and although that path was my choice, and not theirs, they shared in the sacrifice that the long hours, required on the committee, imposes on a family. And I thank them for their understanding.

I'm grateful to the President for appointing me, last year, to the position I currently hold, and then for nominating me to that same position after which changed to a confirmable one by last year's authorization bill. I'm proud to be part of the team serving under the President, Vice President Biden, Secretary Gates, and Deputy Secretary Lynn.

And it's a great pleasure to serve under the comptroller, Bob Hale, who was confirmed by this committee last year. We in the comptroller family are fortunate to have a boss of his caliber.

There's a strong sense of mission in the Department of Defense that I've felt since I've been there. You cannot help but feel it when you're in the presence of Secretary Gates or with your—when you're with our men and women in uniform, especially those who are in harm's way, and I think that sense flows from the troops to our Secretary and back again.

The staff of the comptroller team that Bob and I are privileged to lead are very capable and work extremely hard to do their part to ensure the Department can accomplish its missions; in particular, to respond to the ever-changing needs of the military at war. We have no shortage of challenges.

Should I be confirmed, I will continue to do my best to support our military, the comptroller organization that supports them, our Secretary, our Commander in Chief, and our Constitution.

Thank you.

[The prepared statement of Mr. McCord follows:]

Chairman LEVIN. Thank you very much, Mr. McCord.

Ms. Burke.

**STATEMENT OF SHARON E. BURKE, NOMINEE TO BE
DIRECTOR OF OPERATIONS ENERGY PLANS AND PROGRAMS**

Ms. BURKE. Thank you, Mr. Chairman, Senator McCain, members of the committee. I very much appreciate the opportunity to be—to appear before you today and that you will consider my nomination to be the director of operational energy plans and programs at the Department of Defense.

I'm grateful for the confidence that President Obama has shown in me by nominating me for this position, and I thank Secretary Gates, Deputy Secretary Lynn, and Under Secretary Carter for their support for my nomination.

And, of course, I owe special gratitude to Senator Warner. You know, he had a remarkable career here in the Senate, and it's even more remarkable that he continues his service to the Nation as a private citizen. And I'm very grateful to him for all of his support.

I also deeply appreciate the encouragement and enthusiasm of my family, and especially, my husband Paul Fagiolo, and my sons, Anthony and Thomas, who are here today; along with my father-in-law, Romeo Fagiolo; he's here today, as well. And his service to the Nation in the Rainbow Division during World War II continues to be a great inspiration to me, along with that of my own late father, Tom Burke, who was a marine in the Cold War. In fact, I hope that, if I am confirmed in this position, that my service to the Nation will make them as proud of me as I am of them.

This committee and Congress have shown an acute interest in the issues of operational energy by creating this new position for which you are considering me today. The President and the Secretary of Defense have, likewise, placed a very high priority on the energy security of the Nation, and specifically to energy posture of the Department of Defense. And I believe that my experience in national security, energy security, and in the Office of the Secretary of Defense have prepared me well to help advance these pri-

orities. And if I am confirmed, I will be tremendously honored to work with this committee, with the Congress, as well as partners across the defense enterprise and in the private sector, to address and advance these important issues.

And I thank you again for the opportunity to appear here today.

[The prepared statement of Ms. Burke follows:]

Chairman LEVIN. Thank you very much, Ms. Burke.

Mr. Watson.

**STATEMENT OF SOLOMON B. WATSON IV, NOMINEE TO BE
GENERAL COUNSEL OF THE DEPARTMENT OF THE ARMY**

Mr. WATSON. Thank you, Mr. Chairman, Ranking Member McCain, and distinguished members of the Senate Armed Services Committee. It's a great honor to have been nominated by President Obama to be general counsel of the Army, and to be before this committee today.

I'm also very grateful for the confidence and support of Secretary of the Army McHugh.

I also want to thank my extended family for their support. Brenda Watson, my wife of 25 years, is with me today, and I want to introduce her and to note my appreciation for her. My twin daughters are here, along with their husbands and children. I note that my 4-year-old twin granddaughters are going to recite the Pledge of Allegiance in their pre-K school. Two sisters, a brother, and a nephew round out the family contingent. All together, they are a great and supportive unit, and I owe them a debt of gratitude for the patience that they've shown me over the years.

I have had an almost lifelong affinity for the Army, starting out by seeing photos of our father, an Army veteran, in uniform. Two of my brothers served the military honorably. One of my brothers, a marine, paid the ultimate sacrifice, resulting in our mother's being among the Gold Star Mothers.

My formal relationship with the Army began with advance ROTC at Howard University. After graduating in 1966, I entered the Army as a 2nd Lieutenant. I did a tour in Vietnam during 1967 and '68. And while there, I met Captain Steve Swartz and Lieutenant Michael Cahill. It was Swartz that persuaded me to go to law school. It was Cahill who served with me in the 9th Division MP Company, and I'm honored that my colleagues are here with me today.

I've been a lawyer in the private sector for 35 years. Anyone who has worked with me know that the Army and its soldiers are not far from my heart or from my mind. Indeed, I have always maintained that my military experience was very important in my success as a lawyer and an executive.

Our Army, the world's greatest, is undergoing a substantial transformation as it fights two contingency operations and deals with the many changes and challenges of the 21st century. Throughout my career, I have worked successfully in challenging and changing legal, regulatory, and business environments. I'm here today as a volunteer, because, if confirmed, I would like to make a contribution, in any way I can, to support our Army's efforts. If confirmed, I pledge to work with the outstanding civilian and military lawyers in the Department to ensure the provision of

quality, candid legal advice. And, if confirmed, I will put the interests of our country, our Army, and the rule of law, above all others.

Thank you for the opportunity to be here today. I look forward to your questions.

[The prepared statement of Mr. Watson follows:]

Chairman LEVIN. Thank you, Mr. Watson.

Ms. Hammack. Am I pronouncing your name correctly?

Ms. HAMMACK. Yes, sir, you are.

Chairman LEVIN. Thank you.

STATEMENT OF KATHERINE G. HAMMACK, NOMINEE TO BE ASSISTANT SECRETARY OF THE ARMY FOR INSTALLATIONS AND ENVIRONMENT

Ms. HAMMACK. Mr. Chairman, Ranking Member McCain, and distinguished members of the Senate Armed Services Committee, it is an honor and a privilege to appear before you today. I am humbled and deeply honored that President Obama had the confidence and Secretary McHugh supported my nomination to be Assistant Secretary of the Army for Installations and the Environment.

Before I go much further, I would like to recognize my family and friends who have joined me here today. First of all, my son, Alex, who is going to Arizona State University, majoring in sustainability, and also skipping school today. My mother, Mary Kate Dellett, also traveled here from Arizona, and my brother, Steve Dellett, traveled here from Illinois. Three friends have also joined me—Rebecca Truelove, Gopika Parikah, and David Matthew. I'm very honored and grateful for their encouragement and their support.

Coming to Washington, DC, will be a return to the place where I was born. My father, who is now deceased, was a captain in the Air Force, stationed at Fort Meyer while my mother worked in Washington, DC, at the State Department. I was born after my father left the Air Force and was studying law at George Washington University College of Law.

The Army is tackling many challenges today. First of all, there's a need to complete the BRAC process in a timely manner while still supporting our troops' unit readiness in an era of persistent conflict. Providing quality housing for soldiers, wounded warriors, and their families is critical to restoring a sense of balance in the Army. In addition, the 2010 Quadrennial Defense Review highlighted the importance of crafting a strategic approach to climate and energy. The White House, in addition, has identified a goal of a 28-percent reduction in greenhouse gas emissions by 2020, as called for in Executive Order 13514, and an objective of zero net energy in all new Federal facilities by 2030.

I have almost 30 years of experience in energy and the environment in the private sector. In the varieties of experience I've had over my career, I've obtained many lessons learned and seen best practices. It is the application of those best practices, leadership experience, and the knowledge gained, that I look forward to bringing to the role of Assistant Secretary of the Army for Installations and the Environment.

Over the weekend, I was able to take my son to Arlington Cemetery to view the burial place for both of my grandparents. And while there, we visited the JFK Memorial, where we saw the quote that—"Ask not what your country can do for you, but what you can do for your country." I'm here today to ask for the confirmation of my role to serve my country as Assistant Secretary of the Army for Installations and the Environment.

Thank you very much.

[The prepared statement of Ms. Hammack follows:]

Chairman LEVIN. Thank you very much, Ms. Hammack.

Let's—got a lot of nominees, but let's try 8 minutes for our first round, and—probably have time, hopefully, for a second round, should that be needed.

First, Ms. McGrath, let me ask you this question. Over the decades, we have made many, many efforts to get the Department of Defense's business systems to function efficiently and in a coordinated way. It seems that almost every time we try to acquire a new business system which could operate that way for the Department, it is over budget, comes in behind schedule, doesn't meet user expectations. The Defense Integrated Military Human Resources System, known as DIMHRS, is just the latest example of that failure. What, in your judgment, Ms. McGrath, are the most important steps that the Department needs to take to get better results out of business systems acquisitions?

Ms. MCGRATH. Sir, thank you for the question. DIMHRS, I would agree, is an example of our latest ability to not—proving our ability not to deliver on-time, large-scale, IT implementations. A lot of the issues associated with the IT of acquisitions stem from the lack of business process reengineering. In the 2010 NDAA, specifically Section 1072, now provides that requirement for us in the Department to ensure that we conduct appropriate level of business process reengineering. That will be paramount to ensuring effective delivery.

Requirements creep, or appetites suppressant in terms of requirements, is also an area that we have struggled with. Our IT implementations tend to look 10—or 5 to 7, 10 years toward final implementation. A different approach, focused on a—more near-term, incremental improvements—18 months is what industry typically fields—is absolutely necessary to ensure the user gets what they want, that they stay closer to the budget, as planned, and that we actually have an effective IT solution.

Chairman LEVIN. It's important that you keep in touch with this committee. This is—frankly, been a long and very frustrating road. We've appropriated a lot of money, authorized a lot of money, in the case of this committee, to put together some business processes which work, and we've, so far, really not had much success. So, would you, if confirmed, get back to this committee with a report, within 60 days, as to progress that you're making, what the challenges are, what your plans are, and also tell us whether or not you have consulted with some of the great IT geniuses that we have in this country? Obviously, they can't be part of companies which would bid on anything, so you'd have to be talking to people who would not have that kind of a conflict of interest. But, we've got such incredible geniuses in America in this area, the idea that we've been unable to get the job done inside the Defense Depart-

ment's business systems, to me, is totally unacceptable. So, will you get back to us within 60 days?

Ms. MCGRATH. Yes, sir, if confirmed, I'd be happy—

Chairman LEVIN. Thank you.

Ms. MCGRATH.—to do that.

Chairman LEVIN. Mr. McCord, let me talk to you about a similar problem. In last year's authorization bill, we required the Defense Department to work towards an audible—auditable financial statement by the end of 2017—if my eyes are not deceiving me, 2017. What is the Department going to need to do to accomplish that objective, which seems awfully minimal, nominal? What role are you going to play, when you're confirmed, in this effort?

Mr. MCCORD. Thank you, Mr. Chairman. Yes, the date in the—is 2017. In my view, there's three things you need to achieve that. You need correct data, you need the systems that produce that data, and you need people who are trained—trained people. And I think you can't do it with just two or three, you need all three.

Mr. Hale, the comptroller, has laid out his priorities for how to get there. And his focus is to concentrate on the information that people in the Department use to manage most—is most used by managers. And that information is particularly in what's called the Statement of Budgetary Resources. So, that's his priority of how to start down the path to get there. If confirmed, my role would be to support Mr. Hale, who is the chief financial officer, and our deputy chief financial officer and his team. That part—the so-called DCFO, deputy chief financial officer—part of our comptroller organization plays the lead role in that, and I would support them, as Mr. Hale directs.

Chairman LEVIN. Since 9/11, the Department of Defense has paid for much of the cost for the wars in Afghanistan and Iraq through supplemental appropriations. And this is addressed to you, Mr. McCord. The current administration has responded to congressional concerns by submitting full-year funding requests for 2010 and 2011. The budget for 2011 includes a 2010 supplemental request of \$33 billion for an additional 30,000 troops in Afghanistan, bringing the total 2010 funding for overseas contingency operations to \$163 billion. Second, the budget for 2011 includes a full-year war funding request of \$159 billion for fiscal year 2011. And third, a placeholder request of \$50 billion for overseas contingency operations for each year after 2011—50 billion in 2012, 50 billion in 2013, 50 billion in '14, and 50 billion in 2015.

Number one, why is the Department including placeholder war funding total for the out years? Second, why 50 billion? What is the basis for that kind of a placeholder number? Why not 100 billion or some other amount? And—well, I'll leave it at that.

Mr. MCCORD. Thank you, Mr. Chairman. As you said, it has been the practice of the administration to try and budget as accurately as we can for the budget year that's—that we're in and that is before the Congress at any time. And we've done that for fiscal year 2011, as we did last year. The supplemental to which you referred, for fiscal year 2010, was solely because of the surge, which was a later decision by the President.

The placeholder in the out years was a subject of great debate internally last year. This year, we basically followed the decision

we reached last year, which was to not attempt to forecast with great precision, precision that really was not available to us, what would happen that many years in advance, and to clearly communicate to the public, to the Congress, to—and to people in Afghanistan and Iraq—that we were not making a particular projection, and to clearly state that it was a placeholder that was not intended to make a policy judgment about events of 2012 or 2013 or 2014, today. The number 50, I think that was a decision by the Director of OMB, primarily. As you state, could have been some other number, but we felt that it was important to have it not be zero, as in the past, but to—you know, to not—to make it a hundred would have sent, maybe, a message that was not intended. So, we decided to make it something that was clearly, clearly a placeholder, and to so state in the budget documents of the President.

Chairman LEVIN. Thank you very much, Mr. McCord.

Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman.

Ms. McGrath, how far off is the Department from being able to produce a clean audit?

Ms. MCGRATH. I certainly understand the Department's current projection is the 2017—

Senator MCCAIN. You think they'll make that?

Ms. MCGRATH. I think that, each year, they'll make progress against that goal. And I think that the focus that Mr. Hale has put on, in terms of their prioritization of the efforts and the leadership attention and management controls within that Department, gives them a higher probability than they had previous to that.

Senator MCCAIN. So, you think we'll make the goal.

Ms. MCGRATH. I think that they will make progress against the goal. I think time will tell as to whether or not they're able to hit the 2017 goal. I will also include that it is an aggressive goal and it is tied to the successful implementation of our IT systems, as the question that was previous asked of me. These—enterprise resource planning. And so, the success of the Department lies not only on the internal controls, but the ability of our systems to deliver.

Senator MCCAIN. I think most Americans would be astonished to know that we have never been able to have an audit of the largest expenditure of taxpayers' dollars, a half trillion dollars. So, I hope you work on it and—it's a lot more complicated than we know, including the legacy systems that are not even recording transactions. So, it's a very frustrating thing, and I hope you'll give it a very high priority.

Mr. McCord, the appropriations bill from last year contained a last-minute earmark that was air-dropped in, in the final days of the conference, for \$300 million to be spent by the Department of Defense for, quote, "medical transportation infrastructure." Are you familiar with that earmark?

Mr. MCCORD. Yes, Senator.

Senator MCCAIN. And yet, I understand the general counsel says it doesn't allow the Department to expend those monies as directed by the legislation. Is that true?

Mr. MCCORD. The Department believes it cannot execute the money, as written currently, that is correct.

Senator MCCAIN. So, you are aware of the situation. Is there anyone—are you aware of anyone in DOD who is working with the Appropriations Committee to find a way to spend these monies?

Mr. MCCORD. I believe the Deputy Secretary met with some Members of Congress last week, including members of the Appropriations Committee, to discuss the problem, that the money could not be executed as spent.

Senator MCCAIN. In other words, they're trying to spend the money.

Mr. MCCORD. They—the member—the—some members from the House—I—yes—I mean—I think that—the Congress enacted the funds, and, as with most funds, I think Congress intended them to be spent as enacted. Yes.

Senator MCCAIN. Have you figured out what “medical transportation infrastructure” means, except that it has to be spent in Maryland and Virginia?

Mr. MCCORD. Well, the statute does not speak to Maryland, Virginia, or any other place. But “medical”—I think “medical infrastructure”—“transportation infrastructure” is generally taken to mean roads.

Senator MCCAIN. I think you ought to double check. I think that is earmarked for Maryland and Virginia, Mr. McCord. But, do you know what it means, “\$300 million for medical transportation infrastructure”?

Mr. MCCORD. Well, again, I think “transportation infrastructure” is—generally, in the United States, means roads, which is the primary mean of transportation in this country. But, it could be—you know, transportation encompasses buses and public—you know, subways and things, as well. I'm not—

Senator MCCAIN. So, we throw \$300 million at “medical transportation infrastructure.” No wonder—no wonder Americans are steamed.

Mr. WATSON, in your response to my letter, you cited the rationale for publication that was given by the executive editor of the New York Times, whom you stated made the decision to publish these stories, the Terrorist Surveillance Program and the SWIFT program. I'd like to know your personal opinion, today, with the benefit of hindsight, about whether publication of these stories was justified.

Mr. WATSON. Thank you, Senator. I think it's important for me to state for this committee that, as a public citizen and a defender—former defender of this country, that I do not like to see information based on classified information in the public domain. And that relates both to our National security and our military intelligence processes.

Senator MCCAIN. Well, I'd—again, I'd appreciate it if you'd answer the question. Do you believe that the publication of these stories was justified?

Mr. WATSON. Senator, that—the publications of those stories were consistent with the law as it stood at the time they were published. There was not a violation of the law to publish those stories.

Senator MCCAIN. I'd ask one more time. Your personal opinion, with the benefit of hindsight, do you believe that the publication of these stories was justified?

Mr. WATSON. Senator, that puts me in a sensitive position of commenting on discussions related to a story that I'm responsible for the lawyering on, and I have a—somewhat of a tough legal line to tow on that. But, I wish that you would—wish I could make—I wish I could emphasize sufficiently my concern and—to state that, were I fortunate enough to be confirmed in this position, I would take an aggressive action against anyone in the Department of the Army who leaked classified information.

Senator MCCAIN. Mr. Watson, when we have hearings here for nominees to the administration, whether—no matter what the administration is, we ask for people's personal opinion on issues. I don't see any reason why you couldn't respond to the question, and I'll ask it for the fourth time. I'd like to know, in your personal opinion, with the benefit of hindsight, about whether publication of these stories was justified. I'm simply asking for your personal opinion.

Mr. WATSON. Senator, my opinion is that the decision to publish them was justified. Were it my decision to make, I would not have made that decision. So, I take that as to say that, "No."

Senator MCCAIN. I thank you. And you'd—did you have any role or responsibility for decisions made by the New York Times—since you were the—in the role of general counsel, did you have any role or responsibility for decisions, made by the New York Times, which involved disclosure of classified national security information?

Mr. WATSON. The role of the general counsel is merely to provide legal advice to the newsroom department which makes an editorial decision. I'm responsible for—as the general counsel, I'd be responsible for the legal advice that was given. And in connection with reviewing such a story, I'm sure that there would be a discussion about the potential impacts of that story on national security, sir.

Senator MCCAIN. So, your role—you had a role and responsibility for these decisions?

Mr. WATSON. Not for these specific decisions. I was not involved in reviewing these particular stories. The person responsible for reviewing these stories was the deputy general counsel, who succeeded me as general counsel.

Senator MCCAIN. Well, I say with great respect, I would think that a decision of this impact, two highly classified programs, that perhaps the general counsel would have at least played an advisory role. But, I thank you.

And I thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator McCain.

Senator Hagan.

Senator HAGAN. Thank you, Mr. Chairman.

I just wanted to thank each of you for your willingness to take these jobs and these nominations. And I appreciate your time here, and I appreciate all of your family members being here with you today.

And, Ms. Burke, I wanted to also mention that one of my nephews recently had you in a class, and said that you were an excellent professor. So, I just thought I'd share that with you.

But, what I wanted to ask about—Secretary Mabus has committed that—the Navy and the Marine Corps to a series of—to a—serious ambitious goals that are aimed at reducing the energy foot-

print of our Nation's expeditionary forces. And I think Senator Warner, in his opening comments, made the comment about how much energy that our military uses across the world.

And, Ms. Burke, as director of operational energy plans and programs, what contributions will you be able to make in assisting the Navy and Marine Corps towards reaching these objectives?

Ms. BURKE. Thank you, Senator. And I can say that your nephew Tyler was also an excellent student. So.

The director of operational energy plans and programs, by statute, has a role in coordinating and overseeing and helping to manage all of the services in their energy postures and—on the operational side. So, if I were confirmed in this job, it would be my job to oversee all of their planning in this area, and also to be the lead agent for an operational energy strategy for the Department of Defense. So, I would have oversight and would help them define better what the mutual goals are. And I think the challenge there is to make sure that it works across the services and also differentiates for the different roles and missions.

Senator HAGAN. Do you have any specifics, that you could share with us today, that you would like to see beginning to be implemented?

Ms. BURKE. Yes, Senator. I'd—my—one of my top priorities, if I'm confirmed, is to make sure that deployed forces are—have the opportunity to be as effective as possible in their missions. And I believe that right now energy is a vulnerability and a constraint on our deployed forces, and that we can do better in that area.

Senator HAGAN. A followup on that—meaning, the energy for the deployed forces—can you give me an example of what you're talking about?

Ms. BURKE. Sure. For example, forces who are deployed in Afghanistan have a long fuel supply line. And the convoys that are taking out are either run by contractors or by forces—a required version of combat forces for protection. It's a burden on the force, and also it can compromise mission effectiveness if you're not able to get the fuel you need. And these are very fuel-intensive operations.

So, I think our first mission in this job, if confirmed, is to make sure that our deployed forces have better options available to them.

We also need to look at the business processes of the Department, make sure that they account for the full cost and the full burden of energy.

Senator HAGAN. One other question. There are currently a number of offices within the Department of Defense, as well as the Department of Energy and the National Labs, that have an interest in capturing the benefits associated with any innovation that we have in energy research. And, if confirmed, do you envision your office playing a leadership role within the Department of Defense in research, development, and advancement of alternative energy technologies? And how do you expect to reconcile the efforts of your office with those of the other stakeholders?

Ms. BURKE. Senator, even—by statute—again, my office is—by statute, would have a lead role, if I'm confirmed, in that regard. And I believe it will be very important to work with Ms. Hammack, if she's confirmed, and with all of her colleagues, to leverage the

expertise and the experience that we already have in the Department and across the government in these issues. But, what's missing—there was a Defense Science Board report in 2008 on this topic, and it identified as one of the major missing elements in the Department's energy posture is leadership. And I believe that the Congress was very smart in creating this job so that it could catalyze the leadership necessary, and that's what, if confirmed, I would look forward to providing.

Senator HAGAN. Thank you.

Ms. Hammack, I served for 10 years in the State senate in North Carolina, and during those years we were obviously involved in the BRAC work. And we were concerned about the encroachment of development taking place around military bases. And we wanted to be sure to do whatever we could to protect those areas, so that they weren't developed, so that our military bases had room to conduct the training and exercises that needed to be done at our bases. If confirmed, what measures do you intend to pursue in order to address the pressures of encroachment at our military installations?

Ms. HAMMACK. Thank you, Senator. I understand that there are several measures that the Army is already taking on encroachment. Some of them have to do with alternative uses, so that the land around it is put to a usable purpose, yet is defined as not available for development. And so, I think some of those are successful, and, if confirmed, I look forward to expanding those programs and investigating other alternatives.

Senator HAGAN. And how about the funding stream?

Ms. HAMMACK. Some of the funding streams could be through the enhanced-use lease or through other mechanisms already in place. But, that certainly is a challenge that I will look into, if confirmed. Thank you.

Senator HAGAN. And, Mr. Watson, in your response to the committee's advance questions regarding whether or not the Uniform Code of Military Justice provides appropriate jurisdiction over alleged criminal actions in areas of combat operations, you noted that both the Department of Justice and the Department of Defense play a role in determining appropriate jurisdiction. With respect to contractor employees in areas of combat operations, what do you believe to be the determining factors for whether the Department of Defense or the Department of Justice should exercise jurisdiction?

Mr. WATSON. Thank you, Senator. I've not studied that at—area in depth, but would do so, if confirmed. My view is that the decision would have to be made on a case-by-case basis, perhaps depending on the nature of the allegation, the jurisdiction that the allegation took place in, and the kinds of issues that it would raise, either consistent with those which had been tried under the UCMJ or those which had been handled by the Department of Justice.

Senator HAGAN. Thank you, Mr. Chairman.

Chairman LEVIN. Thank you very much, Senator Hagan.

Senator Inhofe.

Senator INHOFE. Thank you, Mr. Chairman.

Ms. Burke, in my office we talked a little bit about alternative fuel sources, the—that we have to continue the research in the cellulosic and algae landfill waste and other biofuel options. And I

voiced my concern that we must, in the near term, in the mid-term, develop and produce alternative fuels using proven technologies. Now, I'm talking about your gas-to-liquid and your coal-to-liquid. Unfortunately, that Section 526 puts—it creates a cloud over some of the abilities of—Federal agencies from entering into a contract for an alternative or synthetic fuel of any mobility-related use, other than for research. In other words, to actually use in combat. When asked about potential impact on national security in the near and mid-term, if this country did not develop—start the development of the organic production capabilities of alternative fuels—you stated, twice, that you didn't see—now, correct me if I'm wrong on what you stated twice—that you didn't see that we're going to have a supply problem. Is that correct? Or, that we do not have a supply problem?

Ms. BURKE. Senator, I would say that we have volatility problems with our supply, and certainly tactical issues with supplies, with deployed forces that are actually independent of any alternative fuels. Our supply problems on the front have nothing to do with any alternatives. As for whether or not we have a supply problem, I believe what I said, if I recall correctly, is that I believe our military forces will not have a supply problem in the near to mid-term, regardless of what happens in the larger market. That does not mean that we shouldn't be concerned about volatility and other issues with supplies, but I don't believe our military forces will—

Senator INHOFE. All right, in the fiscal year 2010, of our authorization bill, our conference report, the conferees acknowledged that Section 526 was not intended to preclude DOD from purchasing the fuel it needs, and that clarification is required. Do you think clarification is required?

Ms. BURKE. Senator, I would have to study that and also would want to look at that, if confirmed, in the context of what people at the Department of Defense think.

Senator INHOFE. Okay, do you believe, Ms. Burke, that importing the majority of our oil supplies put this country at risk?

Ms. BURKE. I—

Senator INHOFE. Our dependency?

Ms. BURKE. Senator, I do. I think it's a security risk.

Senator INHOFE. Yeah, and I agree. I agree with that.

Now, in October of this past year, 2009, a report from the Congressional Research Service revealed that America's combined recoverable natural gas, oil, and coal endowment is the largest on Earth, larger than Saudi Arabia, China, and Canada, combined. Now, I'd be in a position to make a statement, and back it up, that if we did not restrict our own development of our own resources, that between Canada and United States we would have—we would not have to import oil from other countries. Right now, in terms of natural gas at the rate of use, we have enough natural gas to meet our demand for the next 90 years. We have all of these opportunities. Right now in Canada, in 2008, they had 1.3 million barrels a day; it should be up around 2 and a half million barrels a day today. So, coming to that conclusion, along with compressed natural gas and what we're doing, I believe that we would—we could

be energy independent from outside of the North American continent today. Do you agree with that?

Ms. BURKE. Senator, first of all, I would say that our military forces will not be energy independent, because we do procure our fuel where the forces are deployed, so that's—my focus, if I'm confirmed in this job, is our military forces.

Second, I know that you and I have a difference of opinion on this, but I consider the security risks of added greenhouse gases to be important, as well, and would not promote the use of fuels that are carbon intensive.

Senator INHOFE. Well, we had a job description. Part of your job is to look after our national security, in terms of having an adequate oil supply. The—I'm going to read what the DOD stated just recently, "Finally, even a narrow interpretation of 526, in an effort to reduce the uncertainty and the scope of Section 526, could still limit the Department's flexibility in making emergency fuel purchases—overseas fuel purchases and purchases at commercial stations and airports. Currently, there is no method to determine whether fuel purchased at these locations meet the requirements of Section 526."

I guess the question I'd say—ask you is, How could they know? How could they know that they would meet the requirements?

Ms. BURKE. Senator, I think it's an excellent question that I'm not able to answer at this time, and would certainly want to look into, to find out whether or not Section 526 restricts military operations in that way.

Senator INHOFE. Okay. Well, why don't you do that, because in the event that it does restrict the—that there's no way that they can know, because—well, number one, we know that they have to purchase fuel in places where they don't—they can't really determine in advance—could be South Africa, it could be any place else. And we know that there are no means of making a determination as to whether or not these fuels that they purchase are consistent with the requirements of 526. So, the question I would have of you is, Assuming that's true, would you have any problem authorizing the use of fuels, where you don't know for certain whether or not they comply with 526?

Ms. BURKE. Senator, I would have to look into that, to be able to answer that question better. But, I will say that, if I'm confirmed in this job, I see my top priority would be mission effectiveness of our force. So, that would certainly be a guiding principle. But, as to the specific question, I would have to find out the answer to that.

Senator INHOFE. All right. Okay, on the—in your written statement, you said, "One of my job priorities would be force protection in these area—and a global operations against terrorist organizations." So, I would assume, then, that you believe that national defense is one of your top priorities, in terms of the availability of fuel to carry out the missions that we have to carry out.

Ms. BURKE. Yes, Senator, I believe that this job, as it's defined in the statute—its role is to improve the mission effectiveness of U.S. forces.

Senator INHOFE. Okay—

Ms. BURKE. Both the future force and the current force.

Senator INHOFE. All right.

Mr. Watson, I was trying to follow along here, and I—I'm looking at your background. You were with the New York Times for how many years?

Mr. WATSON. Thirty-two, Senator.

Senator INHOFE. Thirty-two years. And you were general counsel from 1989 to 2005. Is that correct?

Mr. WATSON. Yes, Senator.

Senator INHOFE. And it was during that timeframe that we had a lot of problems that came up, that surfaced, where the New York Times was notified, in terms of some of the things that they were using, and what they were reporting, that this could be a problem with our security, specifically talking about the Terrorist Surveillance Program, TSP, and other classified materials. You're aware that you—that the New York Times, during that period of time, was notified by the Department of Defense, or the Pentagon—I'm not sure who actually did it—that this could be—that the release of this information could impair our National security. Is that correct?

Mr. WATSON. Yes, Senator.

Senator INHOFE. And you—with your job—you're not stating, I don't believe, that you could not have stopped this, as the general counsel for the New York Times during that same timeframe. Is that—you're not saying that, are you?

Mr. WATSON. Senator, I think it would be helpful if I could explain how the organization worked. It was the New York Times newspaper, which is kind of a separate organization, with its own culture and with its own protocol and its own chain of command. There is the corporate side of the business, which I worked on. And the process, which has always been the case at the New York Times, as—when an executive editor, a senior editor, believes that there's a story that's going to run with a legal issue, lawyers are brought in to give their legal advice on the story, and the decision—the final decision, if running the story is not, on its face, illegal, is made by, in this case, the publisher and/or the executive editor.

Senator INHOFE. When you say “lawyers are brought in,” were you brought in at that point?

Mr. WATSON. No, we had—the way we were organized is that we have experts in various subject-matter areas. I had, at that time, three experts in the First Amendment area, including the deputy general counsel. They were the lawyers who engaged in what we call “prepublication review.” They had responsibility for that from the publisher and from me. I'm responsible for the legal advice that is given.

Senator INHOFE. Well, okay.

Mr. WATSON. Thank you.

Senator INHOFE. My time has expired. But, I am going to ask that you put down in writing for us, for the record, just exactly what your role was, and was not, during those specific inquiries that were made by DOD.

Mr. WATSON. I'll do that, Senator.

[The information referred to follows:]

Chairman LEVIN. Thank you. Thank you, Senator Inhofe.

Senator Begich.

Senator BEGICH. Thank you, Mr. Chairman.

Thank you all for your willingness to serve.

And I want to actually follow up on what Senator Inhofe was bringing forward, Ms. Burke. And first I want to remind—I appreciate he mentioned Canada, but don't forget Alaska and that mix that we provide. We have one-third of the gas reserves of this country, still untapped and full. And I know we both have talked about this, we recognize that it's an important asset for this country.

But, Ms. Burke, your comment, which I thought was interesting—I want to make sure we have a little followup—and that is, you slipped in a comment that you're also concerned about greenhouse gases. So, I recognize that. Alaska is ground zero, when it comes to this issue, so we understand this. But, we're also the— one of the largest producers of oil and gas, so we care—we understand the balance that's necessary. Does that mean that—I mean, gas is, in my view, one of the best alternative fuels, in the sense of moving—as we move to alternative fuels, the transition fuel. Is—are you looking at, or will you be looking at, within the Department of Defense, how to utilize gas in a much more aggressive way as a part of the equation?

Ms. BURKE. Senator, I think natural gas is a very important bridge fuel, especially for this country and for the world. And I think that for—the responsibilities of this position I'm being considered for is operational energy, and that natural gas, in general, is probably not going to be very appropriate for those purposes, for deployed forces and tactical uses. Certainly worth looking at, and I think we should explore all options. And I do believe that, on the facility side, that we have been looking at opportunities there to bring in more natural gas.

Senator BEGICH. How do you—if you can expand a little bit—and when you talk about operational energy plans that you'll be responsible for in developing, how do you see the Department of Defense moving from where they are now, which is the largest consumer of fuel, both in structure as well as mobile operations—how do you see, and what do you see—if you could measure 5 years from now or 10 years from now—where are we at?

Ms. BURKE. Senator, I think that on the facilities side, as Senator Warner indicated, we've had a lot of success in cutting fuel use and in being more efficient. And I'm sure we'll have a great deal more if we're fortunate enough to have Ms. Hammack confirmed. So, I think we have lessons we can learn there that we can transfer over.

On the operational side, as you know, DOD has not been subject to executive orders or directives or laws in cutting energy use there. And I think there are a number of opportunities in weapons platforms, in tactical vehicles, in how we're deployed in using alternative energy sources, renewable fuels. I think, particularly for deployed forces, there are some very interesting opportunities. I think, in the way that we—our business processes run and the requirements process, in the acquisition process, that we could be considering energy use as a performance parameter and incorporating it into how we do business, and cutting energy use without compromising performance at all. And I think there are a lot

of opportunities for doing that, and there are a number of people in the Department who are willing to do so. And what we need, at this point, is just the momentum and a way to tie it all together. So, I'm very optimistic that, in 5 years, we'll see some improvements.

Senator BEGICH. Do you think that the committee, at some point—I mean, I—we talk about energy probably every other committee meeting, in some form or another; someone has some issues, or so forth. Do you think we should have an opportunity for you, as well as mobile but stationary operations, to lay out, kind of, what you are planning to do and how that would impact? Because, in reality, where DOD goes in this effort is a huge market force. And just as we know, with the solar panel work that the military is doing, the Air Force is doing, and others, that where you go could drive the economy, one way or another, into a new clean-energy economy. Is that a worthwhile discussion that we should have, specifically around this area, to elevate the importance of it within DOD?

Ms. BURKE. Senator, I think, to be fair, you've already done that by creating this position. And we will have a discussion about it, I hope. I believe that, if confirmed, I have 180 days to produce a strategy with goals—near-, mid-, and long-term goals—which will be, I think, a good point of discussion, as well as the metrics for measuring success. So, we will have something to talk about, if I'm confirmed.

And I do think that the Department can provide important demand pull and innovation pull, particularly when the Department is solving its own problems. So, when we look at what we need, in terms of our military forces, I believe we have tremendous ability to affect research development and commercial development, as well.

Senator BEGICH. Very good.

Let me—if I can, Ms. McGrath, I want to go back to you, in regards to the payroll system and some of the business systems. And just so I understand, you know, to be honest with you, I'm new to the committee, a year-plus. When I heard the discussion—I think Senator Burris brought it up one day—and the comment was, you know, "We killed off the program because it wasn't working or wasn't—didn't do what it needed to do, after spending at least a half a billion dollars, maybe more." You know, I have great questions. You know, for me, that's just outrageous, to be very frank with you, and I'm trying to rationalize, my mind, how we deal with this.

I know, in your written testimony, you talked about kind of the "core IT base of it," and I'm not sure exactly the right phrase, but some of it might be utilized in the process of each area doing their own payroll development or their own business systems. How much of the—how much of that work do you really believe will be utilized? And if—do it on a percent scale.

Ms. MCGRATH. Each of the military departments—actually, the services are pursuing their integrated military pay and personnel solution for their respective service. The Marine Corps will continue to utilize their existing system, which is the Marine Corps

Total Force system. So, today, I don't expect the Marine Corps to adopt any of—

Senator BEGICH. Any of that.

Ms. MCGRATH.—any of that. However, that said, I do know that the Department of the Navy, which includes both services, is looking at how to best integrate pay and personnel for their entire department, focusing first on the Navy, because they don't have an integrated solution within the Navy.

Senator BEGICH. But give me—out the 100 percent we spent, 10 percent of that might be used?

Ms. MCGRATH. So, I think that each are in their own—a different stage, if you will, of assessing the—what I refer to as the Core IT Solution, which is the, sort of, pay-related and entitlements that affect pay.

The Department of the Army has come on the wire to indicate that they intend to utilize the Core IT investment; and, according to their numbers, they are approximately 86 percent fit, if you will, with the Core. What they're doing is, then, doing the analysis surrounding the rest of their environment to then determine, you know, if they could use more.

And I—if I'll just—to be complete, the Air Force is doing an analysis of alternatives using the Core IT investment as the basis of that.

Senator BEGICH. When you, in one of your written responses, you—this is, I think, how you—I just pulled it out here, it says, “Unfortunately, many of these communities and organizations were reluctant to adopt the uniform processes and business rules with the commercial off-the-shelf product,” so forth, so on. What do you think drove the communities or organizations not to—what drove that decision? Was it—

Ms. MCGRATH. Not—

Senator BEGICH.—just that they were ingrained in a certain way of doing business, or that, you know, change is not of interest to them?

Ms. MCGRATH. So, I really think that it's—whenever you're trying to adopt a sort of COTS out of the box, it's a commercial product that certainly would be foreign to the Department of Defense. But, recall, that particular solution was trying to get every military service aligned completely, and then utilize the COTS. So, not only did you have the enormous culture challenge—getting all four services and millions of people to adopt the same approach to military personnel and pay—but then, you also had a new IT solution, which required us to then do things more commercial-like. So, I think it was a combination of the two.

Senator BEGICH. Let me end there. I have plenty more questions, but I'll stop, and just leave you with one question.

Who do you think was—at what point—who was at fault for waiting so long? I mean, half a billion dollars, to me—I don't know, maybe to DOD, is not a lot of money, but to me, it seems like a lot of money. Why wait that long until the decision's made to say, “Pull the plug”?

Ms. MCGRATH. Well, I think—

Senator BEGICH. Some cases, up to a billion dollars. I'm not sure what the right number is, but it's somewhere in there.

Ms. MCGRATH. Well, I think each program is different, and there are certainly decision points, in every acquisition program, where a—

Senator BEGICH. Do you think DOD had a responsibility here to pull the plug earlier?

Ms. MCGRATH. I think DOD made the decision to terminate the program, the—again, the large-scale program, when the determination was made that it was not going to go well.

Senator BEGICH. Okay.

Let me end there, Mr. Chairman.

Senator LEVIN. Thank you, Senator Begich.

Senator Chambliss.

Senator CHAMBLISS. Thank you, Mr. Chairman.

And, to each of you, we thank you for your willingness to serve your country in this capacity. Some of you, obviously, have been involved in public service. We thank you for that. But, to all of you, going forward, we're appreciative of your willingness to serve.

Ms. Hammack, you may or may not be aware of the fact that at Fort Benning we're undergoing a significant expansion as a result of the BRAC process. It's critical that our armor training elements be able to make a smooth transition from Fort Knox to Fort Benning so that we can prepare our second lieutenants, basic trainees, and mid-career leaders for future battles and maneuver warfare.

Recently, there's been one slight problem with this transition, and it involves an ESA issue regarding the red cockaded woodpecker. Don't have those in many places in the country, but we've got them in South Georgia. Although I am told that both the Sierra Club and the Southern Environmental Law Center are satisfied with Fort Benning's efforts to accommodate this rare and important bird with the mitigation process that they have gone through and will continue to go through, I'd simply like your assurance that, if confirmed, you will do everything you can to ensure our infantry and Army units have adequate space to conduct critical training exercises on their tanks and Bradleys, and also with their individual and crew-served weapons, and that the integration of the armor and infantry schools at Fort Benning is not delayed due to any environmental or habitat-related issues.

Ms. HAMMACK. Yes.

Senator CHAMBLISS. Thank you.

Ms. Burke, in your testimony to the Senate Foreign Relations Committee last year, on July the 21st, you stated that any recovery in Afghanistan would depend on the restoration of natural resources and that achieving U.S. goals in the region my well depend on our ability to tie natural resources into national security. In your opinion, how important is military success in Afghanistan, in comparison to the restoration of natural resources there? And do you think economic, civil, and political restoration in the region should rank above that of the concerns of climate change and biodiversity laws?

Ms. BURKE. Senator, the goals that we have for Afghanistan right now for stabilizing the country to the point where terrorists organizations would no longer find a hospitable home there, that will require some economic development in the country. And it is

a very agricultural country. In order to restore those lands, it is going to require some restoration of the soils and some improvement in the conditions. And those are studies that have been done by the United Nations and also here in the United States. So, we know that that's an important part of our effort to help stabilize the country and keep us safe.

As for the question about whether those sorts of issues are more important than climate change, I will say—I would say that they're all linked together and that anything we do to strengthen our hand, relative to future climate changes, should also strengthen our hand, relative to water use, to our energy use, to minerals—strategic minerals—all of those things. That it should—those all should be consistent. They should not be in opposition.

Senator CHAMBLISS. Are you aware of any issues, relative to climate change, that are being studied or undertaken by DOD within Afghanistan?

Ms. BURKE. I am not.

Senator CHAMBLISS. Okay.

If confirmed, what role, if any, would you suggest the military play in confronting these global environmental threats?

Ms. BURKE. Senator, I think the Quadrennial Defense Review—the 2010 Quadrennial Defense Review—does a very good job of laying out an appropriate role for military forces, and I think that it ranges from things like partnerships with other countries to develop capacities to develop military forces that can do disaster relief in their own countries, to also being prepared for effects that we may see on our own coastal installations. And I think the QDR does a very good job of laying out a very credible and reasonable role for the—for U.S. Forces in that arena.

Senator CHAMBLISS. In this new position that you've—that's been created and that you've been nominated for, what specific goals would you set for the military, in terms of mitigating any potential climate change factors?

Ms. BURKE. That's not actually in the statute for this job, Senator, so I would be doing the job that is statutorily defined, which is improving the operational energy security of military forces. I believe, if we do it right, that will be one of the results, that we will be cutting greenhouse gas emissions. But, that's not the role of this job.

Senator CHAMBLISS. Do you have an opinion, relative to whether or not the Department of Defense should be engaged in research and development on the use of alternative fuels?

Ms. BURKE. Senator, yes. I believe the Department of Defense should be, and I—to my knowledge, is involved in such R&D.

Senator CHAMBLISS. Okay.

As the largest user of energy, whether it's gasoline or electricity for that matter, the Department of Defense is going to be key in our ability to wean ourselves, in this country, off the importation of foreign oil. What is your opinion, relative to any actions that should be taken by the Department to move us in that direction?

Ms. BURKE. Senator, I believe that we have a number of actions that we could be taking, including some that are required in the law that created the position, such as implementing the fully-burdened cost of fuel and the Energy Efficiency Key Performance Pa-

rameter, which are mechanisms that can help the Department of Defense appropriately value energy in its business processes, from the requirements in war planning, to acquisition and procurement. I believe that that would go a long way towards helping, and that we can improve the efficiency of our platforms and our people and our operations, and we can also look into alternatives that will improve our mission effectiveness.

Senator CHAMBLISS. Okay. Thank you.

Mr. Watson, as a member of the Intelligence Committee, I—I think you can understand that I was very much troubled by the New York Times article—both the one in 2005, again the one in 2006—and the revelations of some very sensitive programs that were disclosed. And I concur with what Admiral Mullen said, relative to those disclosures, that it not only had the potential for American lives to be lost, but may have, in fact, caused that.

You were the top lawyer at the New York Times Company, and I can appreciate the fact—as a lawyer, I can appreciate the fact that you had other lawyers working for you who were giving opinions, relative to significant issues, whether they were First Amendment, or whatever. But, Mr. Watson, at the end of the day, the buck stopped with you, and you readily state that in your responses to Senator McCain, in your letter dated January 7, 2010.

What troubles me about your responses in that letter, and again today, are the fact that once this article was written in the New York Times, it received worldwide attention. It was a very explosive story; the one about the TSP program particularly. And as I understand what you've said, you did not know anything about that story being published, until after the fact, and that, basically, even after the fact, when you became aware of that story and the information released in that story, that, as a top lawyer at the New York Times Company, you were not involved in any discussions relative to how you go forward, which also meant that you were not involved in the decision of whether or not to publish the SWIFT article in 2006. Am I correct there? And can you explain your involvement, or your lack of involvement, but yet, lawyers under you were making very critical decisions to the National security of the United States?

Mr. WATSON. Thank you, Senator, I would like to try to explain that the way we were organized was that the deputy general counsel, who was my designated successor, was the person in our chain of command, both on the corporate side and on the newspaper side, with respect to the publisher, who was empowered and authorized to make those decisions. At the time of the TSP story, for example, he was the lead lawyer on reviewing that; he's a nationally known expert. I became aware of it after the fact. We had some discussion about it. I presumed that there was discussion with the newsroom about how to deal these—deal with these particular matters. But, at that time, the state of the law was that if a newspaper had information which was newsworthy, which was truthful and accurate, and the newspaper itself had not violated the law in acquiring that information, that it was not illegal to publish that information. Once the decision was made that it was not illegal, it would have been, to my experience, impossible for a lawyer to stop the publica-

tion of that story, because to publish or not is the decision which was made by the publisher and the executive editor.

Senator CHAMBLISS. Well, I understand that's what you said in response to Senator McCain, but I'll have to tell you, it really does trouble me, particularly when the TSP article was delayed for months. I don't remember the exact time period, but I do remember that the previous administration went to the New York Times and asked them not to publish that article, and there was a period of time when they agreed that it was too sensitive to be published. And it bothers me, as a top lawyer in that firm, so to speak, that you weren't engaged and weren't involved in the decisionmaking process on that. And now you're going to be in a position to be the top lawyer at the Army, and you're going to be the—on the other side of the issue; you're going to be charged with making sure that no secrets are released. And I have grave concerns about the fact that you weren't engaged with your subordinates and—to the point to where you weren't involved. And are you going to be engaged with your subordinates, your other lawyers that are under you at the Department of the Army, to make sure that this type of story does not get released in the future? You can comment, or not, but I—

Mr. WATSON. No, Senator, I very much appreciate your question, because it's one that seems to be circulating. I'm here because I believe in the Army. I believe in national security. I'm a patriot. I do not, as a professional, abide people leaking classified information. I certainly wouldn't be a leaker, if that's a question for me. As general counsel of the Army, I certainly wouldn't abide anyone within my jurisdiction leaking classified information. My view is that there are rules, regulations, and the laws against it, and that those rules, regulations should be enforced. There should be no question about that in the mind of anyone here. If I'm confirmed, Senator, that would be my view.

I also want to state that in my career as a lieutenant, I have had access to classified information. My first duty station, at a classified Michigan—mission. I will also state, for the record, that when I was a Military Police lieutenant, in 1967, I took a group of volunteers out on a highway in Vietnam to retrieve classified information from some soldiers who had been killed.

I am committed—I can't emphasize enough how committed I would be, if confirmed, to providing my personal duty and my professional loyalty to the mission of the Army.

Thank you, Senator, for your question.

Senator CHAMBLISS. Thank you.

Thanks, Mr. Chairman.

Senator LEVIN. Thank you, Senator Chambliss.

Senator SESSIONS.

Mr. Watson, I had the unfortunate duty—I—it seemed to me—to be on Judiciary Committee and Armed Services Committee, and to deal with leaks and laws and matters for the last 4 years. And I have—believe that aspects of the media and aspects of Congress did not conduct themselves with high standards in this process. And you've repeated—and what I think you wrote Senator McCain—that the article in New York Times revealing the existence of the highly important and classified Terrorist

Surveillance Program was, quote, “truthful and accurate, based on information not illegally obtained by them, and was written and published by individuals who were acting to fulfill the newspaper’s constitutional duty of informing the public about a very newsworthy subject,” close quote.

How would you evaluate the Espionage Act, written—Title 18 Section 798—1917 law—provides that, quote, “Whoever knowingly and willfully publishes, in any manner prejudicial to the safety or interests of the United States, any classified information concerning the communication of intelligence activities of the United States shall be fined, imprisoned, or both”?

How is it that you would contend that this action wouldn’t violate that statute?

Mr. WATSON. Thank you, Senator. I—that was my opinion. I read the story. I read the statute. I don’t have either one of them in front of me, but I—my reading of the story and my reading of the statute led me to believe that there was an arguable position, a defensible position, that the statute was not violated.

Senator SESSIONS. Well, you—okay.

Mr. WATSON. If I may. I understand that there are reasonable people who disagree. I understand that there are reasonable lawyers who disagree. In the final analysis, in our situation, whether there was a violation or not is a judgment for a judge and/or a jury. I do understand that there were some investigations with respect to who may have leaked or maybe even whether there should be a prosecution after the publication of the stories. But, there was no publication, to—no prosecution, to my knowledge.

Senator SESSIONS. Well, the statute says, “If you knowingly publish, in any manner prejudicial to the safety or interest of the United States, classified information concerning the communication, intelligence activities of the United States shall be fined or imprisoned.” But, you say, as long as it’s truthful and accurate, based on information not illegally obtained, and written and published by individuals who are fulfilling the newspaper’s constitutional duty of informing the public about a very newsworthy subject, that’s an excuse—or that’s the standard. Which one is the standard, your statement, or the statute of the United States?

Mr. WATSON. The statute is the final determinant on that, but the state of the law, as announced by the Supreme Court, is what was stated in my letter. And there’s not, to my knowledge, been a case prosecuting a newspaper under 798. And there’s clearly, Senator, I agree with you, a tension between those two matters. But, in our system of freedom of the press, and in our system of classifying defense information, there is a tension there. And I’m on the side—I want to make it clear—I’m on the side of protecting—as a citizen and, if confirmed, as the general counsel of the Army—I’m on the side of protecting classified information.

Senator SESSIONS. Well, I believe that you were the chief counsel of New York Times when all of this occurred, and they were not on that side. And once it’s leaked and—it’s hard for the government to do anything about it—whether they want to go back and try to prosecute it or not, it’s a very difficult thing to take on folks who buy ink by the barrel. This was not a happy day in our country, I’ve got to tell you.

So, do you—having said this, do you believe that you can be an effective advocate for defending the legitimate covert activities of the Department of Army?

Mr. WATSON. Oh, Senator, without question. Without question.

Senator SESSIONS. Forgive me if I have concerns about it. Did you ever express concerns to the New York Times about what they were doing and the policies they were executing, and advise against it?

Mr. WATSON. I was not involved in these particular stories, but my views, I think, are relatively well known, that I'm a strong—throughout the New York Times Company—that I'm a strong defender of the military and national security.

Senator SESSIONS. But, were you ever part of a discussion—any internal lawyer meetings in which you—questions were raised about the wisdom of publishing these stories?

Mr. WATSON. We—there were discussions within the legal department, yes.

Senator SESSIONS. And were you in on those—

Mr. WATSON. Yes, sir.

Senator SESSIONS.—some of those?

Mr. WATSON. Yes, Senator.

Senator SESSIONS. Did you say, "I vote to go ahead," or did you say, "I don't think we should publish this"?

Mr. WATSON. My—the discussions I participated in were after the fact, after the TSP story was published.

As I've said before, I—from my personal view, I don't like to see that kind of information in the public domain, and that, if I were the—I wouldn't have done it.

Senator SESSIONS. Well, you know, they say you have the fox guarding the henhouse. I mean, you were the leading lawyer for the institution that is a leading advocate of going the other way. Now, that's a fact. And now you're seeking to be the top lawyer for the Army and—which I think should have a different view.

Thank you for your testimony.

Thank you, all of you, for your willingness to serve.

We've got a great Defense Department. It has tremendous challenges, is exceedingly large. It's difficult to manage it well. I hope all of you will seek to manage it—get the best value for the warfighter, and do it in a way that's—protects our interests.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you very much, Senator Sessions.

Let me just ask a couple questions of you, Mr. Watson, separate and apart from these two matters which have been raised, those two particular publications.

As your—as counsel to the New York Times, was it your duty—and, again, I'm not asking about any particular article, including these two—but, was it your duty to give advice to the New York Times as to what was legal, to the best of your ability?

Mr. WATSON. Yes, Senator, that was the responsibility of the general counsel.

Chairman LEVIN. And it was—as I understand your testimony, it was not your job as to advise the New York Times as to what should legal or what should be published.

Mr. WATSON. That's correct. The decision on whether to publish a story or not was not a legal decision. It's always been a decision made by—in extreme cases or serious cases—the executive editor and the publisher.

Chairman LEVIN. I just have a few more questions.

And, Senator Begich, I don't know if—you have a few more? Good.

Ms. Burke, I have a longstanding interest and concern about the Department's failure to fully develop renewable energy resources on military installations. What is your understanding as to who has the lead role on that issue at the Department of the Defense—Department of Defense level? Would it be you or would it be the Deputy Under Secretary for Installations and Environment?

Ms. BURKE. Senator, for fixed installations—well, first of all, the—Under Secretary Carter has responsibility for both offices. So, he would be the senior official of record. But, for fixed installations, Dr. Robyn, who is currently the Deputy Under Secretary for Installations and Energy, would have the lead role.

Chairman LEVIN. Mr. Watson, the Defense Task Force on Sexual Assault in the Military Services recently recommended enactment of a comprehensive military justice privilege for communications between victim advocates and victims of sexual assault.

The Task Force found that some victims of sexual assault were reluctant to use the services of a victim advocate, because their communications with the victim advocate could be available to the defense in criminal prosecutions.

Now, if you're confirmed, would you carefully consider the value of a comprehensive military justice privilege for communications between a victim advocate and a victim of sexual assault?

Mr. WATSON. Yes, if confirmed, Senator, I would.

Chairman LEVIN. Ms. Hammack, finally, the statutory deadline for completing all work on BRAC recommendations is September 15th, 2011. And that deadline is fast approaching, but only 28, I believe, of 222 recommendations have been certified as complete. Now, obviously there's many that are not yet complete; they're in the process. But, nonetheless, that is worrisome to me. What is your view as to the acceptability of missing the deadline for BRAC recommendations?

Ms. HAMMACK. Senator, I don't believe it is acceptable to miss the deadline. And certainly, completing BRAC in a timely manner will be a priority.

Chairman LEVIN. We thank you all.

I'm going to turn this over to Senator Begich, for his questions and then to close it out, if he is willing to do that, because I must leave.

But, I just want to close with, again, thanks to all of you for your service, your prior service, your future service.

We hope to get these nominations up to a vote at—before the committee as soon as we can.

We, again, thank your families. We particularly thank the younger kids and those middle-aged kids who have sat through this fairly long hearing, trying to look very, very interested at all times, but, in any event, being extremely patient. And we're—we always like to see the kids here. I think it adds a great deal to the hear-

ings. And I think it also will have an impact on their lives—hopefully, a positive impact—when they government at work and they see their relatives or their friends testifying before a democratically-elected Senate body.

And for those parents who are here, for those parents who can't be here because they're either gone or otherwise, we thank them for their interest and their support of their children.

And we now turn this over to Senator Begich.

Senator BEGICH. Thank you, Mr. Chairman.

Again, I want to echo the comments. Thank you all for your willingness to serve and being part of the Federal Government in the process of helping us move this country forward, especially in the DOD.

Let me, if I can—Mr. Watson, I just want to follow up and—you know, I appreciate your comments. I think—again, I'm new to this whole process. I'm—no disrespect to lawyers. I'm not a lawyer. Don't intend to be one. I come from a very commonsense approach of how I look at things. What I hear you saying is that you've given advice. The publisher makes the final call.

Mr. WATSON. That's correct, Senator.

Senator BEGICH. It's no different than me, as when I was mayor; managed 3,000 people for 5 years. That's why I also encourage my colleagues—no disrespect to them—that they should all be mayor just once in a lifetime, rather than just legislators, because it gives you a good balance of managing people, and how it works.

And I think, in my case, for example, I had a municipal attorney, who I appointed, but he was in charge of criminal and civil division. Rarely did he get engaged—rarely—and I mean rarely—engaged in the criminal division section, even though he was the top dog; he was in charge of it. He depended on his deputy to handle that and make decisions on very high-profile legal cases which ended up in the paper, sometimes to my chagrin of how they were handling it, but that's the way it worked. Would that be the same process you went through in the New York Times?

Mr. WATSON. Very similar.

Senator BEGICH. Also, the comment that was made earlier about "the fox guarding the henhouse." You know, here's what I did when I was mayor: I had a sergeant, who was the head of the police union, complained a lot about how the police department operated. What do you think I did? He became my deputy police chief, and then later, the chief of police. We had a 28-year low, in the history of our city, in crime. We had the most police officers hired. Very little, if any, corruption of any kind.

So, you kind of sometimes want to grab, just like I did with the president of the NAACP—she always complained to me when I was on the Assembly, so she ended up in charge of the Equal Rights—Equal Office of Opportunity, and incredible scores that we got, nationally, because of that. So, I don't have any problem with that. Sometimes you want to grab from the other side as quickly as possible. And so, I—I'm looking forward to your work in the Army and DOD, and doing what's right as an attorney. You have an oath that you follow, and your new client would be the U.S. Government. Is that fair to say?

Mr. WATSON. Yes, Senator. Thank you for your comments.

Senator BEGICH. You bet. I—you know, again, I sit here a lot and listen patiently to a lot of the politicking that goes on, and it does bother me at times, because—you know, to be frank with you, you're associated with the New York Times. Some people don't like their opinions. My view is, they'll have their opinions. Some days I like them, some days I don't. But, that is life. We select this job we're in, and we get subjected to those opinions as they come forward.

So, again, thank you for your willingness to serve.

I do just have—I—that wasn't—I actually had one question here, which I'm going to submit to the record for you, because I don't want to burn any more of your time. It's on a whole 'nother issue, but it just kind of bothered me, some of the questioning that was going on.

[The information referred to follows:]

Senator BEGICH. But, Ms. Hammack, I want to ask you, if I can, a separate question. In the authorization bill last year, I proposed, along with my colleagues, a kind of evaluation of the housing stock that exists in the military bases. Because also what goes on here is, everyone tries to grab a piece of the pie for their own district when they may need it or not. But, I believe housing stock in the military is substandard in some areas and very high quality in others. And so, I've asked for a report to be done so we can manage this process a more rational way, rather than just who has the muscle and who has the political clout.

So, as we move forward, I know, in our State, we have some very high quality, but we also have—up in the north section, we have, for example, 200 relocatables for housing and offices, in an arctic climate, which, I will tell you, is good for a short period, not good for a long period.

So, would you have any comment in regards to this issue of housing stock and how we go about this in a very systematic way to actually do it right, rather than just who can pull the lever the hardest?

Ms. HAMMACK. At this point in time, Senator, it's my understanding the two-thirds of the family housing has already been improved and privatized, and there's an evaluation of the balance. I have also been led to believe that there's an evaluation going on, on the barracks and the other housing, and that is something that is going to get my attention, if confirmed.

Senator BEGICH. Very good. We had a timetable within the authorization report. I forget when it actually expires. But, I would like, if you do get selected—or confirmed—that you could give us just a feedback on how you see that going and the timetable on that. Because it goes to those issues you just brought up.

Let me end there. I'm not going to take up any more of your time. You've been very patient.

And again, I appreciate all of you being here today.

And, with that, the meeting is adjourned.

[Whereupon, at 11:31 a.m., the committee adjourned.]