

TO CONSIDER THE NOMINATIONS OF HONORABLE STEPHEN W. PRESTON TO BE GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE; HONORABLE JON T. RYMER TO BE INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE; SUSAN J. RABERN TO BE ASSISTANT SECRETARY OF THE NAVY FOR FINANCIAL MANAGEMENT AND CONTROLLER; AND DENNIS V. MCGINN TO BE ASSISTANT SECRETARY OF THE NAVY FOR ENERGY, INSTALLATIONS, AND ENVIRONMENT

THURSDAY, JULY 25, 2013

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

The committee met, pursuant to notice, at 9:36 a.m. in room SH-216, Hart Senate Office Building, Senator Carl Levin (chairman) presiding.

Committee members present: Senators Levin, Udall, Manchin, Shaheen, Blumenthal, Donnelly, Kaine, and Inhofe.

Also present: Senator John Warner, R-VA (Ret.)

Committee staff members present: Peter K. Levine, staff director; and Leah C. Brewer, nominations and hearings clerk.

Majority staff members present: Jonathan D. Clark, counsel; Michael J. Kuiken, professional staff member; Gerald J. Leeling, general counsel; Jason W. Maroney, counsel; Mariah K. McNamara, special assistant to the staff director; William G.P. Monahan, counsel; Michael J. Noblet, professional staff member; Roy F. Phillips, professional staff member; John H. Quirk V, professional staff member; and Russell L. Shaffer, counsel.

Minority staff members present: John A. Bonsell, minority staff director; Daniel C. Adams, minority associate counsel; Steven M. Barney, minority counsel; William S. Castle, minority general counsel; Samantha L. Clark, minority associate counsel; Natalie M. Nicolas, minority staff assistant; and Lucian L. Niemeyer, professional staff member.

Staff assistants present: Daniel J. Harder and John L. Principato.

Committee members' assistants present: Jeff Fatora, assistant to Senator Nelson; Casey Howard, assistant to Senator Udall; Mara Boggs and David LaPorte, assistants to Senator Manchin; Patrick Day, assistant to Senator Shaheen; Moran Banai, assistant to Senator Gillibrand; Ethan Saxon, assistant to Senator Blumenthal; Marta McLellan Ross, assistant to Senator Donnelly; Karen Courington, assistant to Senator Kaine; Steve Smith, assistant to Senator King; Alex Herrgott, assistant to Senator Inhofe; Lenwood Landrum, assistant to Senator Sessions; Todd Harmer, assistant to Senator Chambliss; Craig Abele, assistant to Senator Graham; and Peter Blair, assistant to Senator Lee.

OPENING STATEMENT OF SENATOR CARL LEVIN, CHAIRMAN

Chairman LEVIN. Good morning, everybody. The committee meets, this morning, to consider nominations for a number of important and challenging positions and assignments.

We welcome Steve Preston, who's nominated to be the Department of Defense General Counsel; Jon Rymer, nominated to the Department of Defense Inspector General; Susan Rabern, nominated to be the Department of the Navy's Assistant Secretary for Financial Management and Comptroller; Retired Vice Admiral Dennis McGinn, nominated to be the Department of the Navy's Assistant Secretary for Energy, Installations, and Environment.

We appreciate your being here today. And we appreciate, also, your willingness to serve in these positions which have such great responsibility.

We welcome your family members this morning. The committee is keenly aware of how important families are, in terms of supporting the family members who take these positions, and to the success of our civilian leaders. And we very much appreciate those family members who are able to join us today. And our witnesses should feel free, during their opening remarks, to introduce family members or others who may be with them here this morning.

We're especially pleased to welcome back to our committee a dear, dear friend. I won't call him an old friend, although he is an old friend. John Warner is a true giant, a modern giant of the U.S. Senate. And I don't want to say we miss him every day, because that might suggest something about my Ranking Member, which I don't want to suggest. [Laughter.]

But, we miss you every day around here. The contribution that you made to this body and to our country, the ability that you have to bring people together, to look at issues in a clear and a clean way, free from a lot of parochial or partisan manner, is something which we treasure in our memory and we wish we could replicate here in the Senate today.

So, John, we just love to see you here. And I know every member of this committee treasures our relationship with you, but I particularly treasure the long, long relationship that we had.

Senator INHOFE. Can I say something about—

Chairman LEVIN. Please.

Senator INHOFE. Let me also echo a few things about Senator Warner. He—we've been good friends for many, many years. He does have some frailties, however. I always remember, when you were out in Oklahoma and my staff, which, staff, which, under my

supervision, generally drives pretty fast, and I always remember your statement. You said, "I've been through two wars, I've been through there, and I'm not going to die on this highway. Slow down." [Laughter.]

And he did. He—John spoke, and speaks, with authority, and people listen.

It's nice to have you back, John.

Chairman LEVIN. Well, I've got a lot of memories. I ought to share one, at least, since my ranking member shared one. And I have so many. But, the love of life that Senator Warner has, the lust for life—when we were traveling together, and he would—we'd be eating in a restaurant, and he would have something, which he had special gusto for and fondness for, some food. And, after we were done, he'd walk into the kitchen, in his commanding way, and say, "Can you pack up about 20 of those dinners for my crew? I'm taking 'em to the airplane and handing 'em out to people on the way." He always took care of the men and women who traveled with us. It was always in his mind to do that.

But, the way in which John Warner gives a zest to life is something we also ought to emulate. And we treasure the many, many memories. And I won't go into them more than that, but we will call on Senator Warner to defend himself in a couple of minutes, when he introduces Admiral McGinn.

The positions to which our witnesses have been nominated are vital to the effective and the efficient operation of the Department of Defense. Two of the positions—the DOD General Counsel and the DOD Inspector General—are direct advisors to the Secretary of Defense and to the Deputy Secretary of Defense, and they are the senior most civilian positions in the legal and oversight functions of the Department.

The DOD General Counsel is the chief legal advisor in the Defense Department and is involved in many of the most important and complex issues facing the Department of Defense in the military services. The Office of General Counsel handles a broad portfolio, including international law, real estate, environmental law, contracts, personnel law, ethics, and legislation. Mr. Preston is highly qualified for this position, having served previously as Principal Deputy General Counsel and as the Navy's General Counsel. Currently, he is the General Counsel at the CIA, a position he assumed following Senate confirmation in 2009.

The Department of Defense Inspector General is a senior independent agency official who provides oversight related to the programs and operations of the Department. The IG's mission is to promote integrity, accountability, and improvement of DOD personnel, programs, and operations to support the Department's mission and to serve the public interest. Mr. Rymer, a recently retired Army Reserve soldier, is currently the IG at the Federal Deposit Insurance Corporation, the FDIC, and he's held that position since 2006. If confirmed as the DOD Inspector General, he'll be required to maintain his independence and exercise strong oversight of critical programs within the Department.

The two nominees for positions within the Department of the Navy will also, if confirmed, have important responsibility.

The Assistant Secretary of the Navy for Financial Management and Comptroller is responsible for managing the Navy's budget and for keeping the Navy on the path to an auditable financial statement. Ms. Rabern has a distinguished background. She served for 20 years in the United States Navy and has held the position of Chief Financial Officer at the Federal Bureau of Investigation, the U.S. Customs Service, and the U.S. Agency for International Development. She is currently the Director of the Virginia Military Institute Center for Leadership and Ethics.

The Assistant Secretary of the Navy for Energy, Installations, and Environment is responsible for, among other things, enhancing energy security of the Navy and Marine Corps forces, construction and maintenance of installations, family housing, and environmental protection. These issues are critical to the readiness of our sailors and marines, and the welfare of their families. And Retired Vice Admiral McGinn, having served 35 years in the Navy, has considerable experience with Navy programs and policies. Most recently, he has led the American Council on Renewable Energy.

So, again, we welcome all of our nominees. We look forward to your testimony.

And I'll now call on Senator Inhofe.

STATEMENT OF SENATOR JAMES M. INHOFE

Senator INHOFE. Thank you, Mr. Chairman.

The—and I join you in welcoming, not just our friend John, but the whole panel.

Mr. Preston, you've been nominated to serve as General Counsel for the Department. The General Counsel serves as a chief legal officer in the Department. Therefore, I believe it's absolutely necessary to understand what your role was and what actions you took as the General Counsel of the CIA after the attack on our facility in Benghazi on September 11. In addition, if confirmed, you will provide a vital role in determining the future of Guantanamo Bay. Therefore, gaining a better understanding of your thoughts on this matter will be important to this committee's consideration.

Finally, the General Counsel plays a significant role in the conduct of the Defense Department activities all around the world, including ongoing counterterrorism activities. As the threat from global terrorism continues to evolve, it's important that we have the strong legal foundations that provides our military with the tools necessary to keep the Nation safe.

Mr. Rymer, you have been nominated to serve as Inspector General of the Department. If confirmed, you will step into an organization that has not had a confirmed inspection—Inspector General since December 2011. There's a lot of work to be done, especially in oversight of activities that will lead to financial audit readiness in the Department of Defense, in providing intelligence, oversight, and, in an area of particular importance to this committee, conducting senior official investigations. The Department urgently needs an Inspector General who can lead this important role to promote the accountability and integrity.

And, Vice Admiral McGinn, after a distinguished 35-year career in the Navy, you've been nominated to serve as the Assistant Secretary of the Navy for Energy, Installations, and Environment. I

note that, since 2011, you've been the president of the American Council on Renewable Energy, which is no surprise to me, and you are no stranger to the lime light, having testified before Congress on the perils of the national security of human activity and climate change. As you know, we completely disagree on these issues, but, thankfully, implementing a national policy for climate change will not be one of your core responsibilities if you are confirmed. Instead, you'll be tasked with helping the Navy navigate a complex range of installation and environmental issues, as well as its fiscally responsible pursuit of the green fleet.

Additionally, I look forward to hearing your views on the relocation of Marines in the Pacific theater. I just got back from there, and I see now, with sequestration, the really serious problems that we're having. And certainly, Senator Warner, you've been following this, too. The need to expand Marine Corps ranges and protect the sea ranges—mostly importantly, the devastating impact of sequestration on the Navy's ability to maintain shore facilities, depots, and shipyards. This is something that is very current. We have a problem that's looming out there, we'll have a chance to talk about during the course of this hearing.

And, Ms. Rabern, you've been nominated to serve as Assistant Secretary for the Navy for Financial Management and Comptroller. The Navy, like all of our military services, is suffering greatly as a result of the drastic budget cuts and the prolonged fiscal uncertainty. Additionally, the inability of the Department of the Military Services to achieve full financial audit readiness is concerning to many of us in Congress.

So, I thank the very distinguished panel and look forward to your testimony.

Chairman LEVIN. Thank you very much, Senator Inhofe.

I think what we'll do is go a little bit out of order, here, to give Senator Warner an opportunity to introduce Admiral McGinn, and—because you may have to leave, Senator Warner, in which case you, obviously, are free to do so after your introduction, and then we will go back to the other end of the table after you introduce Admiral McGinn.

So, again, a very warm welcome, John, and please proceed.

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

Senator WARNER. Thank you, Mr. Chairman and the distinguished ranking member from Oklahoma.

It was a moving experience for me to come up here today and be in this room in the presence of two individuals that enabled me to achieve the career, such as I did, for 30 years in this body.

Senator Levin, you and I came together, and Senator Inhofe joined us shortly after that. And, through our joint efforts, and, most importantly, through a trust and friendship we both had for each other, I was able to finish up and look back with a sense of pride and accomplishment. And I thank you both, and the other members of this distinguished committee. I wish them well, particularly some of the new members. It's a great experience in life, and it's absolutely essential for this country.

I'll be very brief, Mr. Chairman, because the nominee is well known. But, before I proceed to the nominee, may I say, I studied, with great interest and care, all four of the resumes of these individuals. And it's extraordinary to see generations who have done public service, go into the private sector, then willing to forego many of the benefits of private sector and return to serve their Nation and the public. And, judging from my own experience, these four resumes constitute an extraordinary body of knowledge needed in these respective positions and needed by our country at a critical time.

So, I wish them each well, and specifically my good friend, Admiral Dennis McGinn. Again, the Navy's been an important part of my life for over a half century. And I've known many persons in the Navy Department, having served as Secretary for many years. But, this is an unusual individual.

We were put together in the context of organizations that were seeking to do public policy dissemination in a very nonpartisan way. The Center for Naval Analysis, where Admiral McGinn was vice chairman of the Military Advisory Board, that organization is sort of an integral part of the old naval secretariat. It has grown into a much larger and more effective entity now, and just serving the public on issues of great importance, particularly those related to national security. Very able leadership, and the Admiral's, I'd say, was the vice chairman of the Military Advisory Board. And I was with the Pew Charitable Trust. And those two organizations collaborated to put on the road, years ago when I first left the Senate, a team to go out and just talk and listen to the general public, gather facts, and come back, promulgating no special message, except that key one related to the nexus, the linkage between national security, between national security, national defense, environment, and our global standing in this competitive economic world.

And particularly, our job was to visit military bases and go out and relate to the general public of the remarkable job being done by the men and women in uniform to address, particularly, the questions of energy, how their own creativity, their own innovations, contributed; the feedback that they gave through their respective commands and centralized back in the Department of Defense. Its remarkable story as energy loomed on the horizon as such a vital part of our overall security, they were the—some of the leaders, and continue to be.

So, the Admiral and I gave many appearances together for town councils, universities, colleges, and all types of things, over a period of several years, and we got to know each other well.

And I say to you, he is a true American story, from midshipman at the Academy, 30-plus years with the fleet and the sailors, and then Deputy Chief of Naval Operations. It's all in the record, but it's an extraordinary story of accomplishment of a professional in our National security system.

And his hallmark, if I were to pick one out, is humility. Surprisingly, humility. Now, he's a naval aviator, and that is extraordinarily difficult for that particular class of individual—been my experience. But, he had it. And he was in full afterburn, and, most of the time when we were speaking and I had to lean over gently,

as you've done to me many times, both you, tapping me, "That's enough." [Laughter.]

But, I have coached him to be brief and to the point and to follow orders of the Commander in Chief and of the Secretary of the Navy, and he has pledged to do that, to me, and I'm certain he would do the same for you.

And he's accompanied today by a very lovely Navy wife, and he will introduce her at an appropriate time.

So, with that, I once again thank this committee for its work, and wish you well, because these are troubled times for our country. But, it appears to me, with all due respect to the confirmation process, a very vital part of

the function of the U.S. Senate, we've got fine people. And this country is greatly strengthened by the will of such people to step forward and do, time and time again, public service.

I thank you very much, Mr. Chairman.

Chairman LEVIN. Well, thank you so much. And, before you leave, Senator Warner, one of the new members that you looked over to and referred to is Senator Kaine, who is, of course, a Virginian—a proud Virginian who brings a huge amount of background experience to this committee. And I'm just wondering whether he might—and I know he does—want to say a word or two to you before you leave.

So, let me recognize our new member from Virginia, Senator Kaine.

Senator WARNER. Thank you.

Senator Kaine. Thank you, Mr. Chair, for letting the guy at the end of the aisle go a little bit out of order, here.

But, I want to thank my friend Senator Warner. As some of my colleagues know, my father-in-law and Senator Warner returned from being in the Navy in World War II in the Pacific, not serving together, but they returned together to be students and finish their college education at W&L. And the families have been close friends. My father-in-law, who turns 90 on the 21st of September, former Governor of Virginia, Linwood Holton, considers John Warner as one of his dearest friends. They ran against each other for the Senate in a Republican nominating contest in 1978, and this was the victor. But, my father-in-law has always so admired Senator Warner. There's no public official who's served Virginia in the last century who is as admired, by Virginians of all political persuasions, than Senator Warner. And to be able to be a member of this committee, member of this committee, even in this junior role, and know that this Senator preceded me in fantastic service here, is a very humbling thing.

So, it is great to be with you, as always, Senator. And it's so nice that the Chair let me say those words.

Senator WARNER. I thank you very much, my good friend and colleague. Indeed, your father, former Governor of Virginia, is a dear and valued friend.

And I wish to give you a little bit of hope. I once occupied that seat. [Laughter.]

Senator WARNER. And, through the years, Senator Levin, who's over there, we merged together as these two great giants of Senators up there today.

So, good luck to each and every one of you, and to the importance of the confirmation process.

I thank the Chair and——

Chairman LEVIN. Thank you.

Senator WARNER.—the ranking member.

Chairman LEVIN. Thank you so much, Senator.

Senator WARNER. And I say to Dennis McGinn, you're on your own now. [Laughter.]

Chairman LEVIN. I quote Senator Warner with that farewell all the time, "You're on your own."

So, you're all on your own now, except your families are behind you, which means you're not at all on your own.

And let me start with you, Mr. Preston, and then we'll go in regular order.

**STATEMENT OF HON. STEPHEN W. PRESTON, NOMINEE TO BE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE**

Mr. PRESTON. Thank you, Mr. Chairman——

Chairman LEVIN. You can leave your mics on. I think they all can stay on.

Mr. PRESTON. Thank you, Mr. Chairman and Senator Inhofe, members of the committee. It's a great honor for me to be here as the President's nominee to be General Counsel in the Department of Defense.

I wouldn't be doing this, but for the support of my family, with us here this morning. And, if I may, my wife, Mary, my daughter, Julia, and my son—our son—our daughter, Julia, and our son, Collet—I'm pleased and very proud to be able to introduce them to you this morning.

Let me also pause to express my appreciation to President Obama and Secretary Hagel for their confidence in me.

This is my third appearance before a committee of the U.S. Senate as a nominee seeking confirmation. I was examined by the Intelligence Committee, a little more than 4 years ago, in connection with my current appointment as General Counsel of the Central Intelligence Agency. And, back in September 1998, I appeared before this honorable committee prior to my appointment as General Counsel of the Counsel of the Department of the Navy.

Now, I must say, I have found that the temptation to open with a lengthy statement diminishes dramatically from one of these hearings to the next, so——[Laughter.]

I assure you, I'll be brief with my opening.

Much has changed in the world and at DOD since I first came before this committee, almost 15 years ago. That was before September 11. It was even before the attack on USS *Cole*. Much has changed, but much remains the same, in terms of the role of a general counsel and what I will pledge to you, if confirmed.

If confirmed, I will pledge my continued personal commitment to the rule of law, and will work to ensure that the Department remains in full compliance with all applicable law. I will also pledge always to keep in mind the importance of the mission—protecting our country from threats to the national security—and will work to help find lawful paths to achieve mission objectives. Following the Secretary's lead, I will pledge my best efforts to ensure that the

Armed Services Committees are kept properly informed, in furtherance of their critical oversight responsibilities. And finally and most important, as General Counsel, I will pledge to serve the people who serve people who serve us, the fine men and women of the United States Armed Forces.

I want to thank you again for this opportunity to be heard. I look forward to your questions.

[The prepared statement of Mr. Preston follows:]

Chairman LEVIN. Thank you so much, Mr. Preston.

Mr. Rymer.

**STATEMENT OF HON. JON T. RYMER, NOMINEE TO BE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE**

Mr. RYMER. Chairman Levin, Ranking Member Inhofe, distinguished members of the committee, I'm honored to appear before you today as President Obama's nominee to serve as the Inspector General of the Department of Defense. I would like to thank the President and Secretary Hagel for their expression of confidence in me.

On a personal note, I want to offer my heartfelt thanks to my wife, Deb, and my son, Thomson, who are both with me here today, for their commitment and support during my career.

Mr. Chairman, I'm humbled by the magnitude of this position and the challenges it presents. If confirmed, I'm committed to ensuring efficient, effective, transparent, and independent oversight of this dynamic Department.

The Inspector General Act of 1978, as amended, requires the Inspector General to supervise and coordinate audit and investigation activities; to promote economy, efficiency, and effectiveness in agency operations; and to prevent and detect fraud in agency programs. The IG Act also requires the Inspector General to keep both the Congress and the Secretary informed of problems and deficiencies in the Department. At the Department of Defense, these responsibilities take on an even greater importance, as they importance, as they relate to the safety and security of the brave men and women who serve our country.

If confirmed, I believe my background and experience will serve me well as the DOD IG. First of all, I'm mindful of the importance that an IG plays in the Federal Government, having served 7 years at the FDIC as the Inspector General and for a 9-month concurrent period as the Interim Inspector General at the Securities and Exchange Commission. I've been an active member of the IG community, serving as the chair of the CIGIE Audit Committee and a member of the CIGIE Executive Council since 2008. I've also represented the community on several audit standard-settings bodies.

Second, given my 30-plus years of Active and Reserve service in the United States Army, I have a profound respect for the members of the military. Having retired from the military service last month, it would be an honor for me to continue to serve with our troops, albeit in a different capacity, as the IG.

Finally, my private-sector experience includes over 20 years as a banker, a management consultant, and internal auditor. If confirmed, I will capitalize on my past experiences and commit to pro-

viding the strong leadership needed to manage this important office.

I look forward to working with the Congress, Secretary Hagel, and the Department's leadership to provide independent, relevant, and timely oversight at this—that is critical to supporting the warfighter and promoting accountability, integrity, and efficiency. I also look forward to working with Principal Deputy Inspector General Lynne Halbrooks and the nearly 1600 employees who are committed to fulfilling the responsibilities of the IG Act at the Department of Defense. Finally, I welcome the opportunity to work with my counterparts in the Department oversight community.

Mr. Chairman, thank you and members of the committee for your time and for your attention and for your allowing me to appear here today.

This concludes my—concludes my prepared statement. I'll be happy to respond to your questions.

Thank you.

[The prepared statement of Mr. Rymer follows:]

Chairman LEVIN. Thank you, Mr. Rymer.

Dr. Rabern.

STATEMENT OF SUSAN J. RABERN, NOMINEE TO BE ASSISTANT SECRETARY OF THE NAVY FOR FINANCIAL MANAGEMENT AND COMPTROLLER

Dr. RABERN. Mr. Chairman, Senator Inhofe, distinguished members of the committee, I'm honored to have the privilege of appearing before you today as the President's nominee for your consideration to be the next Assistant Secretary of the Navy, Financial Management and Comptroller.

The Navy has been an important part of my life since I was a small child, growing up in the wheat fields of Kansas, listening to my father's stories of his service during World War II.

I would like to express my deep appreciation to Secretary Mabus for his confidence in me. My husband, David, can't be here today because of preexisting commitments at work, but I am forever indebted to him for his unfailing and steadfast support. My daughters, Stacy, Allison, and Megan, have made many sacrifices throughout their lives because of my career. I want to formally recognize and thank them for their love, support, and enthusiasm, even though they can't be with us today.

Government service in any capacity, but especially during these difficult times, is an enormous responsibility. The responsibilities of the Assistant Secretary of the Secretary of the Navy, Financial Management and Comptroller, are especially significant. I'm aware of the daunting challenges associated with financial operations and financial management in the Department.

I have been honored to serve in the U.S. Navy, the Federal Bureau of Investigation, the former U.S. Customs Service, and the U.S. Agency for International Development in financial management positions. In each position, I have been grounded in a daily recognition that my stewardship over resources and people is rooted in the public trust. I believe there is no greater responsibility.

If confirmed, I will work within the Department and with the Under Secretary of Defense Comptroller to ensure that the Depart-

ment of Navy is properly and efficiently resourced. I will strive to ensure that we're taking care of our most precious resource: our sailors, marines, and the civilians who support them. I will work as hard as I can to ensure they have the platforms, equipment, tools, and training they need to guarantee their ability to perform their vital role in our Nation's security, and that it is never in doubt. I will ensure that we develop and execute balanced budgets that are the result of thorough and timely analysis and in support of the goals and initiatives that Secretary Mabus has established for the Department. Department.

I am deeply honored to have been nominated for this position. If confirmed, I pledge to you that I will do my best to serve the Nation and the men and women of the Department of the Navy to the utmost of my ability.

Thank you.

[The prepared statement of Dr. Rabern follows:]

Chairman LEVIN. Thank you, Dr. Rabern.

Admiral McGinn.

STATEMENT OF DENNIS V. MCGINN, NOMINEE TO BE ASSISTANT SECRETARY OF THE NAVY FOR ENERGY, INSTALLATIONS, AND ENVIRONMENT

Admiral MCGINN. Thank you, Mr. Chairman, Senator Inhofe, and distinguished members of the committee. It is a privilege for me to appear before you today, and I am deeply honored to be nominated by President Obama as Assistant Secretary of the Navy for Energy, Installations, and Environment. I'm thankful for the support of Secretary Hagel and Secretary Mabus.

And I am especially grateful to Senator John Warner for being here today with a strong vote of confidence and his unfailing wise counsel. He exemplifies the ideal of service to nation, and, throughout his many decades of that service, has consistently defined what it means to be a true statesman. I am humbled by his generous support.

On a personal note, I am most grateful for the love and unwavering support of my wonderful wife, Kelly, who is with me today, and for the support of our four children, three grandchildren, and that of our entire extended family. They are the very center of my life and happiness. Thoughts about their future security and well being, and that of all Americans, are why I seek the opportunity to continue to serve our Nation.

Having proudly worn the uniform of our Navy for more than 35 years in peace and war, I am keenly aware of the momentous challenges facing the Department of the Navy—indeed, facing all of our military services—during these times of great change. Among these are the need to maintain high mission readiness in an uncertain world, to build future capabilities in an environment of reduced budgetary resources, and, most importantly, to care for our sailors and marines and their families.

If confirmed, I'll look forward to leading a highly talented, dedicated, and hardworking team in our military and civilian workforce to ensure that the mission of the Department of the Navy is well served and supported. I pledge to wisely apply available resources to increase the availability and efficient use of all of our energy

sources, to maintain our installations and training ranges in a high state of readiness, to preserve a high quality of life for our sailors, marines, and their families, to fully meet our obligation as good stewards of the environment, and to enhance safety in every aspect of our overall mission.

If confirmed, I pledge to carry out the policies and directives of the President, the Congress, the Secretary of Defense, and the Secretary of the Navy. My day-in and day-out priorities will be driven by the unwavering goal of fully supporting the combat effectiveness and operational efficiency of our Navy and Marine Corps team. In developing and applying these priorities, I look forward to working closely with the Congress and with this committee.

Thank you.

[The prepared statement of Admiral McGinn follows:]

Chairman LEVIN. Thank you so much, Admiral.

Now let me ask you all the standard questions which we ask of all our nominees. In order to exercise our legislative and oversight responsibilities, these are the questions that we ask.

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

[All four witnesses answered in the affirmative.]

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

[All four witnesses answered in the negative.]

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

[All four witnesses answered in the affirmative.]

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

[All four witnesses answered in the affirmative.]

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

[All four witnesses answered in the affirmative.]

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

[All four witnesses answered in the affirmative.]

Chairman LEVIN. And, finally, do you agree to provide—excuse me.

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 four witnesses answered in the affirmative.]

Chairman LEVIN. Thank you.

Okay, let's try a 8-minute round this morning for our first round, and, if we need a second round, we'll, of course, do that.

Let me ask you, first, Mr. Preston. We have approved a 2014 authorization bill in committee. It's not yet gone to the floor, but in committee. We included a number of changes to the procedures for transfers of detainees from Guantanamo:

We would provide greater flexibility to the Secretary of Defense to transfer Guantanamo detainees to foreign countries, if the Secretary determines doing so is in our national security interest and that steps have been, or will be, taken to substantially mitigate any risk of the transferred individual reengaging in terrorist activity.

Our provision would also give the Secretary of Defense authority to allow the transfer of Guantanamo detainees to the United States for detention and for trial, if determined to be in the U.S. national interest and if it can be done safely.

And we would allow the temporary transfer of Guantanamo detainees to a DOD medical facility to prevent death or significant imminent harm.

Mr. Preston, are you familiar with these provisions? And, if so, what are your views on increasing the flexibility of the Department of Defense and the administration in handling detainees at Guantanamo?

Mr. PRESTON. Mr. Chairman, I will have to admit I'm a bit more familiar with the existing law, section 1028. I am aware of the legislative provision to which you're referring. As my current responsibilities don't include direct responsibility for detainee operations and the transfer process, I'm not as intimately familiar with it as perhaps others are.

I believe that—I understand the—certainly, the policy of the administration is to favor transferring these detainees, and I support the administration's policy. I think a critical element of the existing law and of proposed legislation would be to facilitate transfer in a fashion that ensures the protection of the national security.

I'm afraid, beyond that, I don't have developed views, or sufficiently informed, to comment on the legislative proposal.

Chairman LEVIN. All right, thank you.

Mr. Preston, during the hearing on your nomination to be the CIA General Counsel, you were asked about so-called "enhanced interrogation techniques," and specifically whether you believed waterboarding was torture. And I'd like to ask you that question here, in connection with your nomination to be the DOD General Counsel. Do you believe that waterboarding is torture?

Mr. PRESTON. Mr. Chairman, I believe, under current law, waterboarding is torture. The—I will say that, in the course of my duties, by virtue of the cessation of the program by executive order in 2009, I have not had occasion to independently examine that question with reference to agency activities since January of 2009. But, I believe that the state of the law is clear. In addition to the President, the Attorney General, the Nation's chief legal officer, has determined that waterboarding is torture. That's the law, in my view. I support the President's decision to ban waterboarding and the other so-called "enhanced interrogation techniques."

If I might add, though, at the time that the waterboard was used in connection with the former Detention and Interrogation Program, my understanding is that agency personnel relied on what was the authoritative statement of the law at the time, the opinions issued by the Department of Justice. Of course, those opinions have since been disavowed and withdrawn.

Chairman LEVIN. The Senate Intelligence Committee has completed a report on the CIA Detention and Interrogation Program. And recently, the CIA provided a written response to the Intelligence Committee's report. As the CIA General Counsel, were you involved in the preparation of the agency's response?

Mr. PRESTON. I did have some involvement. I did not direct the effort.

Chairman LEVIN. And are there any portions of that response that you disagreed with?

Mr. PRESTON. Sir, I think the agency's comments are an appropriate response to the SSCI report. For my part, I don't believe there's anything legally objectionable. That's the determination I need to make.

I must say, I have to rely on those with far greater familiarity with the report and the record when it comes to facts and findings. But, I accept the conclusions and support the recommendations, and I support the Director's decision to forward these comments to the committee. And, frankly, it's my hope that they will be useful to the committee as it considers—continues to consider the matter.

Chairman LEVIN. Well, for the record, there are some significant differences between at least many members of the committee and that response, and it's very possible that there's going to be some additional questions for you about your awareness of the response and your agreement or disagreement with certain statements that are in that response. But, we'll save that for the record.

Mr. PRESTON. Very well.

Chairman LEVIN. The—there's been considerable discussion inside and outside Congress about the scope of detention authority pursuant to the authorization for the use of military force, particularly as it pertains to U.S. citizens. In your view, if a U.S. citizen joins a foreign army, a foreign military force, and is captured while engaged in combat against our forces, do we have the authority, under the Law of Armed Conflict, to hold that person in military custody?

Mr. PRESTON. In terms of the availability of indefinite Law of War detention for a U.S. citizen captured on U.S. soil, I believe that the law is unsettled, but the President has made clear that it is not his intent to authorize any such Law of War detention for U.S. citizens captured on U.S. soil.

Chairman LEVIN. If that citizen is involved with a foreign army in attacking a U.S., say, a Navy base, is that person detainable under the Law of War?

Mr. PRESTON. Well, ordinarily, an enemy combatant is, but I understand that this has been the subject of litigation and that the issue hasn't been resolved by the courts.

Chairman LEVIN. And if an American citizen is captured in combat, having joined a foreign army outside of the United States, under the Law of War, may he or she be detained?

Mr. PRESTON. Again, I believe, as an enemy combatant, he or she could. I, frankly, don't know whether there's remaining doubt, in terms of litigation of that issue.

Chairman LEVIN. What is your understanding of what constitutes an "associated force" that is subject to the use of military force under the 2001 authorization? And what is your opinion,

also—I'll ask two questions, here; it'll be my last one—what is your opinion about the impact of the end of combat operations in Afghanistan on the application of the authorization for the use of force to al Qaeda and its associates elsewhere than Afghanistan?

Mr. PRESTON. I'd be happy to answer both of those, sir, starting with the first.

Of course, the language of the AUMF refers to groups and individuals responsible for the September 11 attacks and those who harbored them. And, as you well know, that has been interpreted—that has obviously been applied to al Qaeda and the Taliban and interpreted also to reach associated forces.

My understanding of the concept of associated forces is that it is quite narrow. It has been described as requiring an organized armed group that has entered the fight alongside al Qaeda and as a cobelligerent with al Qaeda in hostilities against the United States and its coalition partners. So, it's not any group that is ideologically aligned with al Qaeda. It would not be any group that poses a threat to the U.S. without having joined the fight with al Qaeda. But, it does reach groups that have joined the fight with al Qaeda and against the United States.

Chairman LEVIN. Wherever they may be.

Mr. PRESTON. I believe that is correct.

Chairman LEVIN. Thank you.

Senator Inhofe.

Mr. PRESTON. If I—

Chairman LEVIN. The—

Mr. PRESTON. Would you like me to answer your second question, or shall I—

Chairman LEVIN. Please. That's—yes, if you could do it briefly.

Mr. PRESTON. Just only to—I'm sorry, Senator—only to say that the end of the U.S. combat role in Afghanistan will not necessarily mark the defeat of al Qaeda and the end of the conflict with al Qaeda. It may well, I think, draw additional attention to the state of the conflict. But, the withdrawal of forces from Afghanistan does not in any per-se way mark the end of the conflict.

Chairman LEVIN. Thank you.

Senator Inhofe.

Senator INHOFE. Thank you, Mr. Chairman.

I—when Admiral McGinn made his opening statement, I was reminded of something. And while Senator Warner is still here, I'll repeat it.

I—I'm impressed, your children and grandchildren. However, I have 20 children and grandchildren. [Laughter.]

Admiral MCGINN. I'll work on it, Senator.

Senator INHOFE. Well, you've got some time, before you're my age—

Admiral MCGINN. Yes, sir.

Senator INHOFE.—to do that. But, I can remember, I'd always take pictures—candid pictures, and we had a Christmas card that would come out every year. Warner, over over there, said, "You know, you're the only one who sends a card out where you have 22 members of the family, and not any two are looking the same direction." [Laughter.]

So, you don't want to make that mistake.

Let me share with you, Mr. Preston, my feeling. And I won't ask the—well, I will ask if you agree with it. I don't think you will. But, during the Benghazi thing, I was very much concerned about that. Chris Stevens, the Ambassador that was—who was killed—was a friend of mine, was in my office a very short period of time before that happened. He talked about the threats that were there, the dangers in that general area. During that time, of course, that the September 11 attack took place, I don't think anyone is really certain as to whether that was an organized terrorist attack at that time. However, when the Annex, that was the next morning, took place, I think there's unanimity—in fact, I know there was, because we have this from the individuals—I would say that Mr. Clapper, who was, at that time, the Director of Intelligence, made the statement. He used the word “unequivocal.” It was unequivocal—this is the morning after September 11, during the Annex attack—that it was committed by organized terrorists at that time. After we had hearings, in this had hearings, in this room, with many other members, I asked the same question to other individuals. They all agreed.

Now, I think one of the reasons was the equipment that was used, the six mortar rounds and all of that; it became very convincing. Anyway, these individuals all said that it was unequivocal that it was a—an organized attack.

The first question I'd ask you. What was your position during September 11, at that time?

Mr. PRESTON. Of last year, sir?

Senator INHOFE. Yes.

Mr. PRESTON. I was General Counsel at CIA.

Senator INHOFE. All right. Did you have—what was your role in the Benghazi matter?

Mr. PRESTON. Sir, first, let me just mention what first comes to mind when you raise Benghazi, and that is that it was a terrible tragedy for our country. We lost four good Americans.

My role in the aftermath of Benghazi was extremely limited. I had—

Senator INHOFE. Okay, I'm really sorry to cut you off. I have to do it, because of the time constraints—

Mr. PRESTON. Yes, sir.

Senator INHOFE.—that we have up here.

And I think I know the answer to this question. Did you compose, edit, or modify, in any way, the talking-points information which were used by Ambassador Rice and the White House?

Mr. PRESTON. No, sir.

Senator INHOFE. No, I didn't think you did.

But, nonetheless, I look at this, and I know that this sounds like an extreme position, but I'm familiar with coverups in the history of this country—and I'm talking about the Pentagon papers, the Iran-Contra, the Watergate, and all of that—I just can't think of one that is more egregious than this. This is my opinion. Because 5 days before she was sent to the American people, on that Sunday, all of the intelligence people that we have talked to before that knew, at the time, that it was an organized terrorist attack and not an attack—not a—have anything to do with the video.

And I say this because we have to keep talking about this. It's something that everyone's hoping will go away, and it's not going to go away.

And the question I would have, I think you've already answered—in fact, you have, to my satisfaction, in terms of your role—your lack of role.

Now, on Guantanamo Bay, the Chairman had several questions. I, again, have what is considered by some a pretty extreme position in GTMO. For one thing, it's one of the few good deals that we have in government. I think we pay \$4,000 a year, and Castro doesn't collect, about half the time. And this facility down there, it's hard to go down and see what we have and ask the question, Why is it we're not using that? What is this aversion to keeping people down there that this administration has?

Now, I bring this up because, obviously, you will be dealing with this. I have statements that you've made, on military commissions. Quote, you said, "Military commissions are an appropriate forum for trying offenses against the law and order. Military commissions provide an appropriate process—processes for the trial of alien underprivileged enemy belligerents." Quote, "I am not aware of any need for changes in the—to the 2009 Military Commissions Act."

Now, these are statements that you've made in the past. Do you agree with these statements today?

Mr. PRESTON. I do.

Senator INHOFE. Okay. Well, I do, too.

And when I look at the—and I'm not a lawyer, and I'm—and so, I feel a little insecure talking about this in a lot of detail to someone who is, and who is a professional. But, when I look at—I do know what an expeditionary legal complex is. And I've been through this down there, and I've seen the advantages that we have there. And I also there. And I also recall that, 4 years ago, when this President—it may have been, actually, before he took office—talked about the fact that we need to transfer these people to the United States, one of the suggested locations happened to be in my State of Oklahoma. It was in Fort Sill. I went down and I talked to a sergeant major down there by the name of Jackson, and she told me—she said, "What is wrong with the people in Washington?" She had had two or three deployments to GTMO and said, "We have the ideal situation there." Other than the fact that the terrorists and many people who are our enemies think that this is something that we should not keep open, can you think of any reason why we're not using that today to its fullest capacity for detention and for trials?

Mr. PRESTON. Well, sir, I think you make a good point in what has been an ongoing and, I think, at times, intense policy debate. For my part, if I'm confirmed, it'll be my duty and honor and burden to see to the proper application of the law as it relates to detainee operations and as it relates to the military commissions process.

Senator INHOFE. Okay. I do want to follow up with you in some detail, as time goes by, and reconsider some of the decisions that have been made, in a—in private conversations.

Mr. PRESTON. I would welcome that.

Senator INHOFE. Admiral McGinn, you and I were together and fought the—unsuccessfully—the Battle of Vieques—

Admiral MCGINN. Yes, sir.

Senator INHOFE.—some 12 years ago or—well, yes, I—

Admiral MCGINN. Yes, sir.

Senator INHOFE.—guess it was. And I can recall, at that time the entire Navy was very helpful to me. We had Vieques, a place where we could use for joint training. The Marines—you remember this, John—the Marines and the Navy were—and because there was one—an unfortunate thing that took place, and a lot of the environmentalists said, “No, we can’t use this.” I can remember going over to Puerto Rico and saying, “If you guys insist on closing this thing down, it’s going to have an economic effect on Puerto Rico, on Roosevelt Roads and all of these things.”

But, anyway, you were on my side on that. As I recall, we went to San Clemente, and you were with me at that time—maybe some other places. But, I also went all the way around the world, trying to find a place—we couldn’t find a place that could replicate that type of training. So, I appreciate that.

And I bring this up for two reasons. One is an issue that’s taking place right now in—at 29 Palms. And I know that perhaps if I were from California, I might have different feelings about this—no, I doubt if I would, because that’s a facility that our marines use that I don’t think we can replicate anyplace else. And can you tell me any justification for not taking the option—and we know the three options that are out there; you’re familiar—

Admiral MCGINN. Right.

Senator INHOFE.—with these—of expanding that area and the capability of our Navy to train there?

Admiral MCGINN. Based on my knowledge of Twentynine Palms and my experience, having fired rockets and dropped bombs on Twentynine Palms when I was getting ready for combat, I recognize the critical need to do live-fire training and to train like you fight. That is what the marines want to do, and that’s why we need to expand the training range at Twentynine Palms—

Senator INHOFE. Okay. Okay, I—and I agree with that. And I know my time has expired. Just one last thing.

An area where we don’t agree is in the use of a lot of our funds, that would otherwise be used for readiness and for defense purposes, for biofuels and these other things. We’ll have a chance to talk about this in the future, and we have in the past.

Admiral MCGINN. I look forward to it, Senator.

Senator INHOFE. Thank you, sir.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Inhofe.

Senator Udall.

Senator UDALL. Thank you, Mr. Chairman.

Good morning. Thank you all for your willingness to serve.

I’d like to start off, this morning, by saying I can think of no better nominee for the position of Assistant Secretary of the Navy for Energy, Installations, and Environment than Admiral McGinn.

Admiral, you’ve served 35 years in uniform, and you’ve been a steadfast advocate for our sailors, and you’ve been leader on the national security issues, writ large, and you’ve earned my deepest

respect, and I think everybody on the committee's. And I'm not alone in that regard, and I have a letter from the CNA Military Advisory Board, an organization which consists of some of our finest retired three- and four-star admirals and generals, Mr. Chairman, and they've written to the committee in strong support of the Vice Admiral's nomination, and I'd agree with them completely. I'd like to submit the letter for the record, if I might.

Chairman LEVIN. Admitted. It will be made part of the record.

[The information referred to follows:]

[COMMITTEE INSERT]

Senator UDALL. Thank you for that.

And again, Admiral, I look forward to working with you, as does the committee, when you're confirmed.

If I could, I'd like to direct my questions to Mr. Preston, to start. In your current role as General Counsel for the Central Intelligence Agency, you've been at the table when some important decisions have been made. And I sit on both this committee and the Intelligence Committee, and I have some concerns that I would like you to consider addressing.

In your prehearing questions for your 2009 nomination hearing to be the CIA General Counsel, you said the following, referring to the Justice Department's Office of Legal Counsel and the CIA's Office of General Counsel, and I want to—I'll quote back to you what you said, "Where OLC's analysis will depend heavily on factual circumstances, as represented by the Agency, it is important that the OGC ensure that the information provided is as complete and accurate and current as possible. I am not aware of any material deficiencies in this regard, but wish to underscore the importance."

Do you still agree with this view? And what do you believe a General Counsel's responsibility is if he discovers that his Department or Agency provided inaccurate information? If the resulting OLC opinion, based on inaccurate information, became public, do you see a need to correct the public record?

Mr. PRESTON. Senator Udall, I think this is a very important question. I believe that the description of the responsibility, from my earlier question from 2009, would still obtain. If anything, I have a much richer understanding and appreciation for the importance of the communication between Agency counsel and OLC. My own experience has been, particularly for the most sensitive matters at the Agency, to have near-continuous communication and one that's characterized by ensuring that the factual basis that my colleagues at OLC need in order to best inform and advise decision-making and their own opinions is provided.

I think one of the things that the Agency has focused on in recent years is an effort, not only to practice that, but to try to institutionalize it in some fashion, with respect to our most sensitive programs, to make sure that there is a periodic—a purposeful effort to ensure that opinions that we may be relying on, that the factual basis for that opinion has not materially changed.

Senator UDALL. This is a very important topic, as you know and you've referenced. I may want to follow up with some additional questions for the record, but I appreciate your initial comments.

Let me turn to the difference between covert action and secret military operations. As I mentioned, I sit on this committee, I sit

on the Intelligence Committee, as well, and I wanted to run through a series of questions and then ask you to respond to them all at once. So, let me start here.

In your view, when does a secret military operation meet the statutory definition of "covert action" and require a finding, and when does it not?

Then, my second question: If the military refuses to answer the public's questions about a reported operation, does it become a covert action? If not, what is the basis for that denial? And, as an example, why are unacknowledged 1208 assistance programs not covert action?

And then, finally, in this easy set of questions for you—finally, under what circumstances can a secret military program, as distinct from a particular tactical operation, be briefed only to the chairman and ranking member?

I know that's a big list of questions. I'm happy to restate them, if necessary, but I'd like to hear your answers.

Mr. PRESTON. Let me start at the—with the first question, and at a general level.

What makes, I think, an action a covert action is laid out in the National Security Act of 1947, as amended, where action is taken for the purposes of influencing certain conditions abroad and done in a fashion that is neither apparent—where the role of the United States Government is neither apparent nor acknowledged. Of course, with respect to covert action, it's done pursuant to a finding, and that's, historically, in an area in which the CIA operates. So, I'm perhaps most familiar with the application of those concepts to operations pursuant to finding, at least the historical practices there.

Your questions raise, I think, an important issue about what is secretive or clandestine military operations and the extent to which they are neither apparent nor attributed to the Government and would properly be under covert action authorities. As I'm sure you know, that same provision of the National Security Act does accept traditional military activities, and there's quite a bit of law and lore that has gone into, as I understand, what we consider traditional military activities as an exception to covert action and the requirement of proceeding under those authorities.

This is an issue I'm obviously familiar with in my current position, but I haven't, to tell you the truth, really wrestled with how one would advise the U.S. military on the precise parameters of that concept and the precise concept of attribution in the military context. This is an area that I would expect to focus on early and intensely, if I have the privilege of being confirmed.

Senator UDALL. Thank you, Mr. Preston. What I think I'll do is review your responses, and, if necessary, submit some additional questions to you for the record.

Mr. PRESTON. Thank you.

Senator UDALL. In the remaining time I have, I want to turn to Admiral McGinn and just give him an opportunity to talk about what would be your top priority as Assistant Secretary of the Navy.

Admiral MCGINN. Yes, sir.

As the title implies, it involves energy, installations, and environment. And not in the title, but part of the responsibilities are safe-

ty for operations afloat and ashore. And I want to make sure that the Navy meets near-term warfighting readiness goals. We have a very, very fine group of men and women in the Navy and Marine Corps that are out there on the tip of the spear, as we say, and we've got make sure that they are well supported, and those following them are fully ready to go out there and relieve them. That's job one, that is the lens through which I want to look at all of those areas of responsibility.

We also have an obligation, I believe, to look to the future, to try to create strategic and operational options for our forces. This has been the primary focus area of Secretary Mabus in establishing his energy goals. And I intend to look at that whole program intently to make sure that we are making the right investments to balance the near-term—the compelling needs of near-term readiness with the compelling needs of looking over at the strategic environment of the future and making sure that we have the capability to fight the way we'll need to.

Senator UDALL. Thank you, Admiral.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Udall.

Senator Donnelly.

Senator DONNELLY. Thank you, Mr. Chairman.

I want to thank all of you for your service to the Nation, and to your families, for everything you have done for our country.

Mr. Rymer, I would just like to ask you about a recent DOD IG audit of sexual assault cases—discovered that more than 10 percent of the cases contain flawed investigations. And, you know, are you concerned about that error rate? And how do you think you'd change that, moving forward?

Mr. RYMER. Yes, sir, I am very concerned about it. I think the issues of sexual assault are certainly something the IG has to pay more attention to than perhaps they have in the—the office has in the past. That particular report did—was completed pursuant to the IG's responsibility to provide oversight over the military criminal investigative organizations. That's the CID, NCIS, and the Air Force Security Service.

My concern is that there are—I suppose, as I read that, 10 percent is a high number. Perhaps more concerning, though, is the variations in process and procedure used among the different services to investigate sexual assault crimes. I think the role of the IG is to encourage consistency and identification of best practices, and that's something I would try to do very strongly with those organizations.

Senator DONNELLY. Yeah, that's what—I was just going to follow up with the best-practices point that you just made. Are—do you intend to look and say, “This is working, this is producing the best-quality information we could possibly have, the best, most accurate information,” and share it with each of the different branches?

Mr. RYMER. Yes, sir. I think that report contains—it's a lengthy report—contains a lot of statistics and a lot of information that could help us—help identify, coach, and counsel, which of those investigative techniques may be the best. Yes, sir.

Senator DONNELLY. Thank you very much.

And, Vice Admiral McGinn, in Indiana, our Active military base is Crane Naval Warfare Center. And one of the things that we do at Crane is, it is shared with the Army ammunition activity, and it is shared in order to maintain the infrastructure, reduce costs by sharing costs, such as roads, power, distribution, security, et cetera. And I was wondering what your thoughts are on joint basing as—

Admiral MCGINN. Yes, sir.

Senator DONNELLY.—a means to mitigate costs for the Navy.

Admiral MCGINN. I think, where it makes sense, Senator, we need to look at joint base—basing. I have visited Crane several times during my time on Active Duty, and even since then, and it is a national asset. The work that goes on there—in addition to being a weapons storage and processing area, they are what I would describe as a world-class battery forensics facility, there's direct support for our Navy SEALs and their technology needs. And I would view any future organization of Crane through that ability—with the criteria of the ability to not detract from the key missions that are being undertaken on a daily basis by the folks at Crane.

Senator DONNELLY. Well, we look forward to your confirmation. Once you are confirmed, we would like to invite you back. And a time that might be ideal is—IU is playing Navy in football, in Bloomington—

Admiral MCGINN. Yes, sir.

Senator DONNELLY.—just about 15 miles away, on September 7th. And so, the Friday before, I assume everyone will be busy at work at Crane—

Admiral MCGINN. Yes, sir. My on response would be, “Go Navy.” [Laughter.]

Senator DONNELLY. I'm—I thought it would be.

Mr. Rymer, again, one of the things that this whole panel has been working on, but that I have passionately tried to dig into, has been suicide prevention for our military. And we have programs in place. And I was wondering what oversight you intend to provide on the suicide prevention programs we have in place.

Mr. RYMER. Sir, I have—that's certainly something that I have added to the list of priorities, if confirmed. It's something that's—it's a very important issue for me. Having experience with that in the military, I'm very familiar with the programs, at least that the Army has in place, to—for suicide prevention. I think the role of the IG, perhaps, could be to do an evaluation of the effectiveness of the programs, and the money spent on each of the three—in each of the services, to compare those. So, there is some oversight role, in terms of effectiveness—program effectiveness.

Senator DONNELLY. And I know you know this statistic, but we lost more servicemembers to suicide last year than—

Mr. RYMER. Yes, sir.

Senator DONNELLY.—we did in combat.

Mr. RYMER. Yes, sir. It's a national tragedy. Yes, sir.

Senator DONNELLY. Mr. Preston, in regards to looking forward and what we're dealing with in Syria at the present time, and we see the al Nusra Front, which has—certainly has not gotten weaker, may be picking up strength. And I was wondering your views

in regards to the AUMF and its application to al Nusra, in that—do they directly affect the United States, or do you think that the AUMF applies to al Nusra Front in Syria?

Mr. PRESTON. Senator, let me refrain from revealing any current discussions—

Senator DONNELLY. Understood.

Mr. PRESTON.—on that score. I think the question would be whether al Nusra is al Qaeda or is an associated force within the confines of how that term has been applied. That is a judgment that DOD would make internally. I internally. I haven't previously participated in that judgment, so I'm ill-equipped to provide a personal view. But, again, I expect this is an area that I would be focusing on, early and intensely.

Senator DONNELLY. Well, I appreciate that. The committee itself is very focused on the Syrian issue and the challenges we face there, and we look forward to your participation.

And, to all of you, thank you very, very much for your service to the country. We look forward to continuing to work with you in the years ahead.

Mr. Chairman?

Chairman LEVIN. Thank you.

Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Mr. Chairman.

I want to begin by joining my colleague, Senator Donnelly, in thanking you for your service. A number of you have records of military service, and appreciate the sacrifices that you've made, all of you, in the course of your public service.

You will have positions that may not make you household names. We frequently confirm people, here, who are in the headlines, but your jobs are as important as any to our National security and national defense, and you know and we know that we couldn't do the job that we do in the farflung farflung places of the world without the support that you give them, day in and day out. And that goes for the many hardworking people who will be under you, under your command, as well as your colleagues in the Pentagon and throughout this country in our National defense. So, in thanking you, I thank them, and I think my views are shared widely.

And, Mr. Preston, to begin with an area that I think is very important to all of our men and women in uniform, the issue of sexual assault in the military, you were asked, in the questions that were submitted to you about this subject, and particularly about taking the decisionmaking authority in beginning prosecutions—the charging authority or convening authority—out of the chain of command and having it go to a specially-trained and independent prosecutor. Can you give me your view, as an attorney and as one who may not have been a prosecutor, but certainly is familiar with the skills and training and expertise that's required—wouldn't it make sense to have these decisions made by an individual who has a wealth of experience, who's tried cases, who knows what the evidence is going to be and has to be, and knows what the evidentiary issues—doesn't that make sense to you, as an attorney?

Mr. PRESTON. Well, let me say that I appreciate the salutary intent behind the idea. I have to say that I'm not sufficiently informed on the various legislative proposals to have formed a fixed

personal view on it. I think the concern that has been expressed about that relates to the role of the military justice system as an integral part of the command structure. And there's a reason for that, because the military justice system is one of the instruments by which command maintains military—

Senator BLUMENTHAL. And I understand that point—

Mr. PRESTON. Yes.

Senator BLUMENTHAL.—where you know a lot about the Uniformed Code of Military Justice, I am certain, and I know that you don't have a fixed personal view. Maybe you have a flexible personal view. But, I'm really asking about a more abstract question. I know that one of the arguments against taking it out of the chain of command is the good order and discipline of the military unit, and the cohesion of the military unit. And I respect that argument. But, simply as an attorney, as the General Counsel of the Department of Defense, wouldn't you value the experience of a trained prosecutor in making these decisions?

Mr. PRESTON. I think that experience would be valuable, either in the decisionmaker or in someone who is advising the decisionmaker. So, I think you're right that that experience base would have value.

Senator BLUMENTHAL. Well, I'd like you to examine these issues, and perhaps supplement your response that you've given, which is, "I am not now in a position to express a personal view," much as you've just said right now, and perhaps articulate, in a little bit more detail, what your views would be on the proposals that are pending before the Congress and that are likely to be considered when the National defense authorization bill reaches the floor. I would appreciate that.

Mr. PRESTON. I'd be happy to take a crack at that. I know this is a complex issue, and an incredibly important one. What I hesitate to do is to express, as an informed, fixed view, something that I haven't had, really, an opportunity to formulate. But, I would be happy to try to be as responsive as possible.

[The information referred to follows:]

[COMMITTEE INSERT]

Senator BLUMENTHAL. Thank you.

Turning to Mr. Rymer, if I may, Are you familiar with the Special Inspector General report on the MI-17 helicopter sale by the Russian export agency, Rosoboronexport, to the Afghan government, paid for by American taxpayer dollars?

Mr. RYMER. Sir, I'm sorry, I'm not, other than just what I've read in the press. I think that—if I—if I'm correct, I believe that report was done by the Special Inspector General for Afghanistan Reconstruction, an office separate and independent from the Department of Defense Office of Inspector General. So, I'm not, sir, other than just what I've read in the press.

Senator BLUMENTHAL. Well, I would appreciate your reviewing that report. My view is that there is absolutely no justification for the purchase of Russian helicopters, when there are no Afghan pilots trained to fly them, no mechanics trained to repair them. The United States will spend, eventually, more than a billion dollars. We've already spent half a billion, and we've just contracted for another half billion. If there are any helicopters to be purchased and

there is sufficient justification, my view is, they ought to be American helicopters. But, the first question is whether that sale of helicopters to the Afghans makes any sense at all, in terms of the national defense issues that are raised by the sale, and particularly no justification for purchase of helicopters from a Russian-controlled export agency that is also selling arms to Syria, used for the slaughter of its own people by a dictator whom we have vowed to overthrow. So, we are, in effect, supporting Bashar Assad.

I would appreciate your reviewing that report and giving us your views of it, in writing.

Mr. RYMER. Yes, sir.

[The information referred to follows:]

[COMMITTEE INSERT]

Senator BLUMENTHAL. And since my time is expired, I want to simply thank you again, every one of you, for your service to our Nation. And I look forward to working with you.

Chairman LEVIN. Thank you very much, Senator Blumenthal.

We're going to have a 3-minute round. And if we need more than that, we'll have a third round.

Dr. Rabern, in your responses to the committee's advance policy questions, you said that, while you recognize the importance of having the Navy's book auditable by 2017, that you're not familiar with the Navy's progress toward achieving the statutory deadline of 2014 for a statement of budgetary resources or of 2017 for auditability. Now, this committee's great—placed a great deal of emphasis on having the Department—indeed, all of our Departments—meet these deadlines. If confirmed, will you commit to quickly becoming more familiar with the Navy's progress towards these important deadlines? Will you come back, within 60 days of your confirmation, to report on the Navy's progress and any areas that need improvement or attention?

Dr. RABERN. Yes, Mr. Chairman, I would be happy to do that. If confirmed, sustained audit readiness will be one of my highest priorities. It is critical in making sound fiscal and readiness decisions. I will rely on the expertise of the military and civilian personnel who have that experience on the staff within the Department of the Navy, in addition to my own experience in other government agencies. I look very much forward to working with you and your staff in meeting these audit readiness requirements.

Chairman LEVIN. Thank you.

And, Mr. Rymer, the Office of Inspector General receives many requests from congressional committees and from Members of Congress for audits and investigation of matters of public interest. Will you ensure that the Office of Inspector General continues to respond to congressional requests for audits or investigations in a prompt manner and—

Mr. RYMER. Yes, sir, I—

Chairman LEVIN.—and in a manner consistent with past practices?

Mr. RYMER. Yes, sir, I will.

Chairman LEVIN. And, under what circumstances do you believe it's appropriate for the Office of Inspector General to redact some of the contents of any information contained in a report provided to Congress?

Mr. RYMER. Well, sir, I think the process that's in place now, it's not redacted if the request is from the Chairman or the Ranking Member, if it's in the capacity. I think there are—it's treated—if it's from an individual member, I believe it's treated as a release to the public, and there are redactions.

Chairman LEVIN. But, to the Ranking Member and to the Chairman, it is unredacted. Is that—

Mr. RYMER. It's my understanding, yes, sir.

Chairman LEVIN. Thank you.

In October 2012, the President issued a policy directive relating to the protection of whistleblowers who have access to classified information. This directive is designed to ensure that employees serving in the Intelligence Community or who are eligible for access to classified information can effectively report waste, fraud, and abuse while protecting classified national security information. Are you familiar with this directive? And what do you understand will be your role, if confirmed, in implementing it within the DOD?

Mr. RYMER. Yes, sir, I am somewhat familiar with it. The role, as I understand the Inspector General, is to—if complaints are received—principally, the role of an Inspector General in the whistleblower process is to investigate any claims or concerns about retaliation. And that's—that would be my main concern, sir.

Chairman LEVIN. All right. But, if classified information is presented to those of us that have clearance, clearance, which is all of us, do you see any problem with the whistleblower presenting to a person with clearance, including Members of Congress, that information?

Mr. RYMER. I think that the process, sir, as I understand it, the information comes to the IG, the IG tries to make a determination. Certainly, is it classified? Is it an urgent need? And then I believe there's a role for the Secretary of Defense to release the information to the Congress. Or, I may be confusing that with—

Chairman LEVIN. Well, you can clarify that for the record—

Mr. RYMER. Yes, sir, I will.

[The information referred to follows:]

[COMMITTEE INSERT]

Chairman LEVIN. Senator Inhofe.

Senator INHOFE. Thank you, Mr. Chairman.

Let me—yeah, I was going to get into this, and so just briefly let me touch on it.

Mr. Preston, the—apparently—and I—I'm only—I wasn't there, and I haven't talked to him, but there was a—Congressman Ruppertsberger made a request for information from you, back—getting back to the Benghazi thing. And you—I think your response was, “In light of the criminal investigation, we are not to generate statements with assessments as to who did this, et cetera, even internally, not to mention for public release.”

The question would be, Why would you try to prevent intelligence information to go to the Vice Chairman of the House Intelligence Committee? Now, it's possible to do that in a classified way. And I—it would seem to me—well, first of all, I would question that there's an investigation going on, unless you were referring to the FBI investigation. Is that what you were referring to?

Mr. PRESTON. Yes, sir. Sir, I'm pleased to respond to that.

As I indicated in your earlier question, I had no substantive involvement with respect to the talking points that—that is to say, the preparation and the interagency coordination of the talking points that the HPSCI Ranking had requested from the Agency. There is the one email that I would like to flag in that regard, which is to say, in the course of the Agency's responding to that HPSCI request, it came to my attention, and I sent an email to the folks working on it, essentially reminding them that there was a criminal investigation pending and that we had been admonished not to generate material that could complicate that investigation.

Typically, when you're in an evolving situation and there's a criminal investigation been launched, you want to avoid—

Senator INHOFE. Was there a criminal investigation launched?

Mr. PRESTON. That's my understanding, is that the—

Senator INHOFE. The only investigation that I heard—and I'm asking this, because I don't know, Mr. Preston—was the FBI investigation. And, of course, they weren't even there for—til 15 days after this took place. Is there an investigation, other than that, or was there one, going on?

Mr. PRESTON. No, it's the investigation initiated by the FBI in the immediate aftermath of the attacks. We were informed of that investigation and instructed that the FBI was investigating, other agencies were not to investigate, not to do anything that would interfere, generate material that would complicate the investigation.

This is not atypical. When you have an investigation, early on in a evolving situation, you want to avoid speculation or tentative things that may complicate a later prosecution. You want to avoid witness—taking witness statements; let the investigators do that.

Senator INHOFE. But—

Mr. PRESTON. What I was doing with this email was just alerting people that we have been told there's an investigation, we've been admonished not to generate material that would complicate it, let's slow down and make sure that what we're doing is not inconsistent with the guidance we've gotten.

Senator INHOFE. Well, considering that this individual is the—or was—I guess still is—the Vice Chairman of Intel over there, and made the request, do you see any reason that you couldn't, even in a classified form, respond to his questions, either now or if something should happen in the future during your future—

Mr. PRESTON. I should think that we could respond in a classified form. These were public talking points, and my email was only directed to this particular item that was being—

Senator INHOFE. So—

Mr. PRESTON.—prepared.

Senator INHOFE. So, if he were to re-ask you that question, even if—as I say, in a classified form, could you respond to it?

Mr. PRESTON. If that request came from the Ranking to the Agency, I expect they would respond.

Senator INHOFE. Okay. That's fine.

The—and getting back, Mr. McGinn, and—

Admiral MCGINN. Sir.

Senator INHOFE.—you know, we'll be talking about this in the future. I—there was a statement that was attributed to Secretary

Hagel in—it appeared in Greenwire, I believe it was, one of the publications—he said, “Secretary Hagel recently asked why, in the face of the devastating cuts in civilian workers, carrier deployments, military training, and equipment maintenance, the Defense Department would still contribute \$170 million to a massive Federal giveaway to private biofuels companies to aid the construction of a commercial biofuel refinery.” And then it said, “He was told by the White House to stand down.”

And I guess—and you can do this for the record, if you’d like, unless you’d like to address it now—you know, the same \$170 million could have been used by the Air Force to prevent the 16 squadrons of refraining from flying or could have saved some 60,000 civilians from being furloughed. And I have a list of things that could be done with that \$170 million.

And I just—I guess what I want to get from you—I know what’s happened in the past. And you and I have disagreed on the whole green fleet and all of that.

Admiral MCGINN. Yes, sir.

Senator INHOFE. But, that’s an honest disagreement, and I understand that. But, we also have a Department of Energy. And when the—I was—I remember when that was set up. It was set up just for such purposes as experimenting to see what we could have.

Now, when people use the excuse that we are not energy sufficient, you know, I want to hasten to say, we could be, and we will be, and—when we can change our policies in this country. But, nonetheless, in the meantime, don’t you think that those dollars, that are so scarce right now of going into defending America, should be used just for that purpose, for defense, and let the Department of Energy carry on their function? What’s your thought about that?

Admiral MCGINN. Based on my prior experience in uniform, especially as Deputy Chief of Naval Operations for Warfare Requirements, I’m somewhat familiar with the process of having to make choices to recognize that there are not only direct costs for investments, but there are opportunity costs. If you spend it on one thing, you’re not going to be not going to be able to spend it on other things. And I look forward, if confirmed, to really looking into all of our programs, including our energy programs, to make sure that, not only the direct costs, but the opportunity costs are carefully considered in making those investments.

Senator INHOFE. Well, that’s—in this case—and you can recall, because I—we’ve actually used this, talking about the \$26 a gallon that could have been done for less. In specific instances like that, I would request this, if you are confirmed, that, when you see things like that, that might be coming up, that we, on this committee, could be a part of that decision, and it not just be done in a vacuum. That would be a request that I would have.

Admiral MCGINN. Yes, sir. Across the board, all of my portfolio, if confirmed, I look forward to working with the committee, and, indeed, the entire Congress.

Senator INHOFE. All right. Well, thank you very much for that answer.

Admiral MCGINN. Yes, sir.

Senator INHOFE. Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Inhofe.

I have an additional question or two.

Admiral, before the committee authorizes appropriations for a military construction project, that project has typically been reviewed by the relevant service and has—and has—the service, when they designate that project as a priority, they then submit it to Congress as part of the budget. Now, the committee's recent review of overseas basing found that it is not the case for projects built with in-kind payments from foreign governments. And this inquiry of our committee found that the in-kind payments from Germany, South Korea, and Japan have been used to fund questionable military construction projects. Are you familiar with our investigation?

Admiral MCGINN. No, sir. I am familiar that there is an investigation, but not all of the details.

Chairman LEVIN. All right. We—if you would, after you're confirmed, promptly read the report and make sure that in-kind payments are utilized only for identified U.S. priorities to offset costs that the Department of the Navy would otherwise pay with appropriated funds, we would appreciate it.

Admiral MCGINN. Yes, sir. And I would just like to state that, no matter what the source of precious resources, we've got to make sure that they're spent wisely. And it doesn't matter whether it comes from the support from some of our allies or from our own appropriated funds. We have an obligation to spend them to the best effect possible.

Chairman LEVIN. Or whether they're in-kind payments.

Admiral MCGINN. Yes, sir.

Chairman LEVIN. Okay.

Now, the committee, or at least many members, are very concerned about the plans for the relocation of Marines from Okinawa to other locations in the Pacific; specifically, not the idea of it, but more the affordability and the sustainability and the operational viability of those plans. In response to prehearing policy questions, you indicated that Guam construction issues were among the most significant challenges facing the next Assistant Secretary of the Navy for Energy, Installations, and Environment.

Now, the Marine Corps estimates its realignment plan would cost \$12.1 billion, but the GAO recently reported that this estimate is not reliable; it's based on limited data and will not be reliable until environmental analyses and host-nation negotiations have concluded.

Admiral, do you have—are you familiar with the GAO report?

Admiral MCGINN. Not the details, but that there is a report, Mr. Chairman.

Chairman LEVIN. Will you, after you're confirmed, which we hope will be prompt—will you give us a report about your level of confidence in the reliability of that 12.1-billion cost estimate put forward by the Marines?

Admiral MCGINN. Yes, I will.

Chairman LEVIN. And also, will you let us know, in your report, whether or not we should be funding military construction projects to support the movement of marines to Guam before we have com-

mitments from host nations, in terms of their participation in those costs?

Admiral MCGINN. Yes, sir.

Chairman LEVIN. Will you let us know that at the same time?

Admiral MCGINN. I will.

Chairman LEVIN. Senator—

Senator INHOFE. Just—

Chairman LEVIN. Sure.

Senator INHOFE.—real briefly.

Chairman LEVIN. Sure.

Senator INHOFE. Let me correct the record. I had used the wrong name. The sergeant major at Fort Sill that is—was really somewhat of an expert in this area—name was Carter. And I used the wrong name. And so, to—I wanted to make sure I got that correction.

One last thing. Mr. Preston, you—in statements that I read that were statements that you had made about military commissions, have you been to GTMO and looked at the expeditionary legal complex down there?

Mr. PRESTON. I've been down there once. Yes, sir.

Senator INHOFE. Did you examine—go through this complex that they have down there?

Mr. PRESTON. I went to some of the facilities down there.

Senator INHOFE. Yes. Well, they had one major one. As I recall, it was about a \$15-million thing that they put together down there. And you're more familiar with it than I am—but I am not a lawyer, as I've pointed out—with the difference between that military—the tribunals and the normal trials that we would have here. And, in terms of security of information and all of that, would you do this, would you just reexamine that particular facility that—and then maybe visit with me about any justification for not using that—I don't know of one anywhere that is just like that, that is designed for that purpose. Would you do that, and just look at that and visit with me about it? I need to be educated a little bit more.

Mr. PRESTON. Sir, if I'm confirmed, I would be happy to do that.

Senator INHOFE. Yes, all right.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you.

We have indicated that there are going to be questions for the record, which we're going to need to get promptly answered, particularly to you, Mr. Preston. I think that—I don't know if other—if there are other nominees that we had questions for, or might have questions for, but I know there are some for you, Mr. Preston. And some of those are going to be in a classified form and may reply classified answers, particularly relative to that response from the CIA to the Intelligence Committee about the intelligence investigation that I referred to—Intelligence Committee investigation.

We will try to get those questions to you, if we can, as early as tomorrow. And, if so, you would then be able, both, where appropriate, in a unclassified manner, but, where necessary, in a classified manner, please get us your answers within a matter of days, because that'll speed up your—the consideration of your nomination. And that goes for any other questions for any of the other nominees, as well.

If there are no additional questions, we will stand adjourned,
again with thanks to you and your families.
[Whereupon, at 11:12 a.m., the committee adjourned.]