

Stenographic Transcript  
Before the

COMMITTEE ON  
ARMED SERVICES

# **UNITED STATES SENATE**

Nominations

Thursday, November 19, 2015

Washington, D.C.

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1 HEARING TO CONSIDER THE NOMINATIONS OF  
2 JOHN CONGER TO BE PRINCIPAL DEPUTY UNDER SECRETARY  
3 OF DEFENSE, COMPTROLLER;  
4 STEPHEN P. WELBY TO BE ASSISTANT SECRETARY  
5 OF DEFENSE FOR RESEARCH AND ENGINEERING;  
6 ALISSA M. STARZAK TO BE GENERAL COUNSEL  
7 OF THE DEPARTMENT OF THE ARMY; AND  
8 FRANKLIN R. PARKER TO BE ASSISTANT SECRETARY  
9 OF THE NAVY FOR MANPOWER AND RESERVE AFFAIRS

10

11 Thursday, November 19, 2015

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13 U.S. Senate  
14 Committee on Armed Services  
15 Washington, D.C.

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17 The committee met, pursuant to notice, at 9:33 a.m. in  
18 Room SD-G50, Dirksen Senate Office Building, Hon. John  
19 McCain, chairman of the committee, presiding.

20 Committee Members Present: Senators McCain  
21 [presiding], Inhofe, Ayotte, Fischer, Cotton, Rounds, Ernst,  
22 Tillis, Sullivan, Reed, Gillibrand, Donnelly, Kaine, King,  
23 and Heinrich.

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1           OPENING STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR  
2 FROM ARIZONA

3           Chairman McCain: Good morning. The Senate Armed  
4 Services Committee meets this morning to consider the  
5 nominations of Ms. Alissa M. Starzak to be General Counsel  
6 of the Department of Army; Mr. Franklin R. Parker to be  
7 Assistant Secretary of the Navy for Manpower and Reserve  
8 Affairs; Mr. John Conger to be the Principal Deputy Under  
9 Secretary of Defense, Comptroller; and Mr. Stephen P. Welby  
10 to be Assistant Secretary of Defense for Research and  
11 Engineering.

12          We welcome all of you here this morning, as well as  
13 members of your families. As is our tradition, at the  
14 beginning of your testimony, we welcome you to introduce  
15 those members of your family joining you this morning.

16          Ms. Starzak is currently the Deputy General Counsel at  
17 the Department of Defense. She has also served as counsel  
18 and a professional staff member on the Senate Select  
19 Committee on Intelligence and as Assistant General Counsel  
20 at the Central Intelligence Agency. I look forward to your  
21 testimony on a number of pressing issues inside Army and the  
22 Department of Defense.

23          Mr. Parker is currently Chief Counsel of the Maritime  
24 Administration in the Department of the Transportation. The  
25 Navy office of Manpower and Reserve Affairs has the great

1 responsibility of taking care of our sailors, marines, and  
2 their families and the Navy's civilian employees. I look  
3 forward to your testimony on how you plan to support the  
4 most important part of the Navy, its people.

5       Mr. Conger is currently the Assistant Deputy Under  
6 Secretary for Installations and Environment. The  
7 Comptroller's office, where he has been nominated to serve  
8 has a critical role to play at this time of budgetary  
9 challenges. The Department of Defense spends more than half  
10 a trillion dollars a year, but after years and years of  
11 effort, it still cannot pass an audit. The Department is  
12 alone among Federal agencies in being unable to provide the  
13 Congress or the American taxpayer assurances that their  
14 dollars are spent as appropriated. It is hardly surprising  
15 that according to the Government Accountability Office, the  
16 Department of Defense is at high risk for waste, fraud, and  
17 abuse due to decades of financial mismanagement.

18       After 2 decades of empty promises, many of us are  
19 extremely skeptical that the Department will be able to  
20 audit its financial statements in 2017 as the law requires.  
21 While the organization of the Comptroller is also dual-  
22 hatted to serve as the Chief Financial Officer, those  
23 financial management duties are often dominated by the  
24 annual work of creating and defending the budget. Mr.  
25 Conger, this committee is interested in hearing what steps

1 could be taken now to begin reversing this trend.

2 Finally, Mr. Welby is currently the Deputy Assistant  
3 Secretary for Systems Engineering at the Department of  
4 Defense. The position of Assistant Secretary of Defense for  
5 Research and Engineering has long been vacant. So we are  
6 eager to have the position filled on a permanent basis. As  
7 you know, defense research and innovation is essential to  
8 maintaining the cutting-edge technologies that provide  
9 superior capabilities and protection for our warfighters.

10 I have concerns regarding the ability of the Defense  
11 Department to transition technologies from the laboratory to  
12 the warfighter in an effective, efficient, and timely  
13 manner. At the same time, the Department is chasing  
14 innovative companies in places like Silicon Valley, but it  
15 does not appear to be making the necessary changes to its  
16 research, contracting, and acquisition policies that would  
17 allow us to take advantage of commercial innovation. The  
18 challenges faced by the Defense Innovation Unit  
19 Experimental, which Secretary Carter launched to better  
20 connect the Department with Silicon Valley, is one  
21 embodiment of these concerns. I look forward to your  
22 testimony on how you plan to lead the defense research  
23 enterprise and how you will accelerate defense innovation  
24 and technology transition.

25 I thank the witnesses for their willingness to serve

1     and I look forward to their testimony.

2             Senator Reed?

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1           STATEMENT OF HON. JACK REED, U.S. SENATOR FROM RHODE  
2 ISLAND

3           Senator Reed: Well, thank you very much, Mr. Chairman.

4           And thank you, witnesses, for your willingness to serve  
5 and your service to date. Thank you very much. And I join  
6 the chairman in welcoming you here to this hearing to fill  
7 these important vacancies in the Department of Defense. As  
8 we heard during the hearing we held earlier this week,  
9 managing an organization as large as the Department of  
10 Defense can be very challenging and requires strong  
11 leadership. And if confirmed, I am confident that the  
12 nominees before us will have that strong leadership profile.

13          Mr. Conger, who has been nominated to be the Principal  
14 Deputy Under Secretary of Defense for Comptroller, has  
15 extensive experience working on national security issues.  
16 As a congressional staff, Mr. Conger worked on budget and  
17 appropriations matters and has a deep appreciation for how  
18 the annual budget process works. In addition, Mr. Conger  
19 has overseen the Energy, Installations, and Environmental  
20 portfolio at the Department, providing oversight management  
21 of the Department's \$850 billion real property portfolio.  
22 Mr. Conger's knowledge and experience will be critical in an  
23 era of constrained budget resources, as well as ensuring the  
24 Department finally achieves a clean audit of its financial  
25 statements, as the chairman has indicated.

1           Mr. Welby, who has been nominated to be the Assistant  
2   Secretary of Defense for Research and Engineering, serves as  
3   the Deputy for that position. Mr. Welby is well positioned  
4   for this job, given his strong technical background and  
5   experience both in government and industry. If confirmed,  
6   he will be responsible for ensuring that our research  
7   programs and institutions that perform cutting-edge R&D,  
8   like the defense labs and DARPA, are as innovative and  
9   effective as possible. I want to hear his plans to advocate  
10  for and champion those labs, their people, and the important  
11  advanced technology products that they produce for our  
12  warfighters.

13           Ms. Starzak, who has been nominated for the position of  
14  the Army General Counsel, has extensive legal experience in  
15  positions that have prepared her well for this position.  
16  After her private sector experience, Ms. Starzak has worked  
17  in the Office of the CIA General Counsel, she served as  
18  counsel on the Senate Select Committee on Intelligence and  
19  currently serves as the Deputy General Counsel in the DOD's  
20  General Counsel's Office. Ms. Starzak will be joining a new  
21  command team with a new Army Secretary and Chief of Staff  
22  where they will work together to address the many challenges  
23  that the Army faces.

24           Mr. Parker, who has been nominated for the position of  
25  Assistant Secretary of the Navy for Manpower and Reserve



1     Affairs, appears well suited to lead Navy personnel  
2     programs. His experience in the Navy General Counsel's  
3     Office and as Chief Counsel for the Maritime Administration,  
4     as well as his private sector experience, will give him a  
5     unique perspective to apply to the many important challenges  
6     he will face.

7             Again, I thank you, Mr. Chairman, for holding this  
8     hearing and I look forward to hearing from the witnesses.

9             Chairman McCain: There are standard questions that are  
10    asked of all nominations, and I will go through these  
11    questions and you can respond by simply saying "I do" or  
12    responding in the negative.

13            In order to exercise its legislative and oversight  
14    responsibilities, it is important that this committee and  
15    other appropriate committees of the Congress are able to  
16    receive testimony, briefings, and other communications of  
17    information. Have you adhered to the applicable laws and  
18    regulations governing conflicts of interest?

19            Mr. Conger: Yes.

20            Mr. Welby: Yes.

21            Ms. Starzak: Yes.

22            Mr. Parker: Yes.

23            Chairman McCain: Have you assumed any duties or  
24    undertaken any actions which would appear to presume the  
25    outcome of the confirmation process?

1           Mr. Conger:   No.

2           Mr. Welby:   No.

3           Ms. Starzak:   No.

4           Mr. Parker:   No.

5           Chairman McCain:   Will you ensure that your staff

6           complies with deadlines established for requested

7           communications, including questions for the record in

8           hearings?

9           Mr. Conger:   Yes.

10          Mr. Welby:   Yes.

11          Ms. Starzak:   Yes.

12          Mr. Parker:   Yes.

13          Chairman McCain:   Will you cooperate in providing

14          witnesses and briefers in response to congressional

15          requests?

16          Mr. Conger:   Yes.

17          Mr. Welby:   Yes.

18          Ms. Starzak:   Yes.

19          Mr. Parker:   Yes.

20          Chairman McCain:   Will those witnesses be protected

21          from reprisal for their testimony or briefings?

22          Mr. Conger:   Yes.

23          Mr. Welby:   Yes.

24          Ms. Starzak:   Yes.

25          Mr. Parker:   Yes.

1 Chairman McCain: Do you agree, if confirmed, to appear  
2 and testify upon request before this committee?

3 Mr. Conger: Yes.

4 Mr. Welby: Yes.

5 Ms. Starzak: Yes.

6 Mr. Parker: Yes.

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

12 Mr. Conger: Yes.

13 Mr. Welby: Yes.

14 Ms. Starzak: Yes.

15 Mr. Parker: Yes.

16 Chairman McCain: Mr. Conger, we will begin with you.  
17 Welcome.

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1           STATEMENT OF JOHN CONGER TO BE PRINCIPAL DEPUTY UNDER  
2       SECRETARY OF DEFENSE, COMPTROLLER

3           Mr. Conger: Thank you, Mr. Chairman, Senator Reed,  
4       members of the committee. It is a privilege to be here to  
5       answer your questions regarding my nomination to the  
6       position of Principal Deputy Under Secretary of Defense for  
7       Comptroller. I am humbled and honored by the support I have  
8       received from President Obama --

9           Chairman McCain: Would you like to mention a family  
10      member who is here?

11          Mr. Conger: Absolutely. I would like to introduce and  
12      offer my deepest appreciation for my wife, Kristine Minami.  
13      I could not set out on this demanding path without her love  
14      and strong support.

15          Chairman McCain: Welcome.

16          Mr. Conger: I would also like to recognize my son,  
17      Conner Minami, who is only 4 and not here today.

18          Chairman McCain: He will miss it.

19          [Laughter.]

20          Mr. Conger: Yes.

21          I appreciate the support that I have received from the  
22      President, from Secretary Carter, who originally hired me  
23      into the Pentagon in 2009 when he was the Under Secretary  
24      for Acquisition, Technology and Logistics, the support I  
25      received from Deputy Secretary Work and Under Secretary

1 McCord.

2 I would also like to recognize my dad who, along with  
3 my grandfather and my uncle, served in the U.S. Navy and set  
4 a strong example of public service.

5 For more than 20 years, I have worked national security  
6 issues, both as a congressional staffer, most of that  
7 working appropriations and budget issue, and in senior  
8 Pentagon positions overseeing the Department's  
9 Installations, Environment and Energy portfolio. Each has  
10 taught me important lessons that, if confirmed, I would  
11 bring to this new and challenging role.

12 Mr. Chairman, the defense budget details a carefully  
13 balanced set of priorities and risk with clearly more risk  
14 than any of us desire. The Department has worked to balance  
15 readiness to meet today's complex security challenges with  
16 the need to ensure that we are investing in future  
17 capabilities. As you have articulated well, the risk would  
18 be unacceptable if we were forced to adhere to the caps in  
19 the Budget Control Act. And I am glad to see that we have  
20 achieved a reprieve from those limits for 2016 and 2017.

21 The DOD Comptroller has a critical role in providing  
22 the justification to Congress why the funds we have  
23 requested are critical to meeting to our strategy. This  
24 office has the unique capability and responsibility to  
25 associate resource decisions with their real world impacts

1 to better inform Congress as it deliberates.

2 As you know, this case is made more difficult by the  
3 fact that the DOD has not passed a financial audit. Without  
4 a clean audit, it is harder to make the case that we are  
5 efficiently using all of the funds Congress has provided us,  
6 even as we request more. In this environment, I believe it  
7 is absolutely critical that we dedicate ourselves to passing  
8 this audit, both for the improvement to financial management  
9 that it promises and for the credibility that it will  
10 provide to our requests for more funding.

11 If confirmed, I will work tirelessly to assist Under  
12 Secretary McCord and the Department's leadership in meeting  
13 these challenges. I am grateful for your consideration, and  
14 I look forward to your questions.

15 [The prepared statement of Mr. Conger follows:]

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1 Chairman McCain: Thank you.  
2 Mr. Welby?  
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1           STATEMENT OF STEPHEN P. WELBY TO BE ASSISTANT  
2           SECRETARY OF DEFENSE FOR RESEARCH AND ENGINEERING

3           Mr. Welby: Mr. Chairman, Senator Reed, members of the  
4           committee, it is an honor to appear before you this morning  
5           as the nominee to serve as the Assistant Secretary of  
6           Defense for Research and Engineering. I wish to thank the  
7           President and Secretary Carter for their support of my  
8           nomination.

9           And, Chairman, I would like to also take a moment to  
10          thank my wife Kimberly, my son Bradan, and my daughter  
11          Claire, who are here today.

12          Chairman McCain: Welcome.

13          Mr. Welby: And I would also like to particularly  
14          acknowledge my father, Patrick Welby, who is behind me whose  
15          service in the Army and whose service as a New York City  
16          fire officer, until he was injured in the line of duty,  
17          really taught me the true meaning of public service.

18          Chairman McCain: Welcome, sir.

19          Mr. Welby: Our military technology advantage is  
20          essential to supporting our Nation's ability to deter  
21          aggression and to succeed in conflict. Today our technology  
22          edge is challenged by the globalization of technology the  
23          globalization of technical talent and the emergence of  
24          foreign military capabilities particularly intended to  
25          directly counter our own military strengths. This



1 increasingly competitive global technology environment  
2 demands more agile approaches to technology delivery and  
3 development and faster adoption of new, innovative solutions  
4 that can offset the growing technical capabilities of  
5 potential threats. The Department needs to commit to  
6 continuously refreshing the core technologies that sustain  
7 our defense and that mitigate technological surprise and  
8 that support our modernization efforts. The Department also  
9 needs to focus on the effectiveness and efficiency of our  
10 research and engineering establishment to ensure that the  
11 delivery of advanced capabilities can be conducted in a  
12 fiscally constrained environment.

13       If confirmed, I am committed to ensuring that our  
14 defense research and engineering enterprise remains focused  
15 on sustaining the technological superiority of U.S. forces,  
16 both addressing the demands of our current conflicts and  
17 addressing the needs of the evolving security environment,  
18 by accelerating the delivery of advanced capabilities that  
19 can make a critical difference from laboratory to  
20 battlefield.

21       I thank you, Mr. Chairman and members of the committee,  
22 for your time and attention, and I look forward to answering  
23 your questions this morning.

24       [The prepared statement of Mr. Welby follows:]

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1 Chairman McCain: Ms. Starzak?  
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1           STATEMENT OF ALISSA M. STARZAK TO BE GENERAL COUNSEL  
2   OF THE DEPARTMENT OF THE ARMY

3           Ms. Starzak: Good morning, Mr. Chairman, Ranking  
4   Member Reed, and members of the committee. I am honored to  
5   appear before you today. I would like to begin by  
6   expressing my gratitude to President Obama for my  
7   nomination, as well as to Secretary Carter for his support.

8           I would not be here today if it were not for the  
9   family, friends, and coworkers who have supported me over  
10   the years. I especially want to thank my wonderful family,  
11   including my husband, Andrew Ferguson, who is here with me  
12   today, and my sister, Jocelyn Starzak, who is also here.

13          Chairman McCain: Welcome.

14          Ms. Starzak: I also want to thank my parents and my  
15   two amazing children who are 3 and 6 and therefore not here  
16   today. Throughout my life, my family has taught me the  
17   value --

18          Chairman McCain: Next time it will be required  
19   attendance for all children.

20          [Laughter.]

21          Ms. Starzak: Throughout my life, my family has taught  
22   me the value of serving others. My goal has always been to  
23   live up to the expectations that they have set.

24          I also want to thank those, both civilian and military,  
25   that I have had the privilege of working with during the 4

1 and a half years I have spent serving in the Department of  
2 Defense Office of General Counsel. Their commitment to  
3 protecting America and improving the lives of the dedicated  
4 men and women who serve all of us by putting themselves in  
5 harm's way for our country inspires me every day.

6 The role of the Army General Counsel is, first and  
7 foremost, to provide solid and timely legal advice to Army  
8 senior leadership. If confirmed, that would be my first  
9 priority. I believe my background and experience in the  
10 executive branch, the Congress, and the private sector have  
11 well prepared me to serve this function.

12 If confirmed as the Army General Counsel, I am  
13 committed to working closely with the Army Judge Advocate  
14 leadership to address the legal challenges facing the Army.  
15 I strongly believe in the value of having civilian and  
16 military lawyers work together to offer the best possible  
17 legal advice to our clients.

18 If confirmed, I will make every effort to live up to  
19 the confidence that has been placed in me.

20 I am grateful for your consideration, and I look  
21 forward to your questions.

22 [The prepared statement of Ms. Starzak follows:]  
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1 Chairman McCain: Thank you.  
2 Mr. Parker? Welcome.  
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1           STATEMENT OF FRANKLIN R. PARKER TO BE ASSISTANT  
2           SECRETARY OF THE NAVY FOR MANPOWER AND RESERVE AFFAIRS

3           Mr. Parker: Thank you, Mr. Chairman, Senator Reed, and  
4           members of the committee. It is an honor and a privilege to  
5           be here before you today.

6           Joining me today, I am honored to have a wide swath of  
7           my family, my wife Ann, my son Franklin. His little sister  
8           Diana was not able to be here today, and it is probably a  
9           good thing for everyone. My mother Janice, my father  
10          Franklin, my sister Lisa, my uncle Glynn, my cousin Frank,  
11          my sister-in-law Luong, and my good friend, Steve Raden.

12          Chairman McCain: Is there anyone who could not make  
13          it?

14          [Laughter.]

15          Mr. Parker: There were a couple.

16          Chairman McCain: Welcome to all of you. I know this  
17          is a proud moment for you.

18          Mr. Parker: I am honored and privileged to be here  
19          today regarding my nomination for the position of Assistant  
20          Secretary of the Navy for Manpower and Reserve Affairs.

21          Before we begin, I would like to thank President Obama,  
22          Secretary Carter, and Secretary Mabus for their support of  
23          my nomination. I would also wish to express my sincere  
24          appreciation to my colleagues, both past and present,  
25          specifically those at the Departments of the Navy and

1     Transportation and at the Maritime Administration, for whom  
2     I hold the greatest respect.

3             I thanked my family previously, but in particular, I  
4     would like to recognize my father, Franklin Parker; my  
5     uncle, Glynn Parker; and my cousin, Frank Harris, whose  
6     service in the Air Force and Army and whose experiences as  
7     Vietnam veterans instilled in me the deepest appreciation  
8     for our service members and the sacrifices and contributions  
9     that they routinely make for our Nation. It is on the  
10    shoulders of these men and women that we all truly stand.

11            Lastly, I wish to acknowledge with deepest gratitude my  
12    grandfather, Fred Curls, who passed away earlier this year  
13    at the age of 96. I thanked him not only for his service in  
14    the National Guard but also for serving as my inspiration to  
15    enter public service and for teaching me that anything is  
16    possible in our great Nation.

17            Mr. Chairman and members of the committee, it is a  
18    privilege to be considered for this opportunity to serve our  
19    men and women in uniform, as well as our civilian personnel  
20    who share their mission and complement their efforts to  
21    uphold our defense. Their commitment to our Nation deserves  
22    not only our respect but a corresponding obligation to them  
23    and their families that we make every possible effort to  
24    honor and support their service.

25            Over the course of my career, I have worked in the

1 private sector, as well as in both defense and civilian  
2 agencies. I have performed legal and nonlegal roles. I  
3 have served as an action officer, a manager, a senior  
4 executive, and as a member of agency leadership. In every  
5 context, however, the one constant has been the primacy of  
6 people. Our people conceive, create, enable, and execute  
7 everything we do. People are our greatest and most powerful  
8 asset, and this is no truer than for those who serve in our  
9 Nation's defense.

10 In this realm, it is critical that our decisions always  
11 support readiness, that we bolster the morale of our force,  
12 that we seek to create an environment that is free from  
13 harassment and abuse, and that we ensure that our personnel  
14 have the tools they need to be successful in the field and  
15 healthy at home. These needs are even more pronounced as we  
16 continue to manage multiple conflicts and threats in a  
17 highly constrained fiscal environment.

18 If confirmed, my highest priority will be to ensure  
19 that our manpower and reserve policies and practices meet  
20 the standards that the men and women of our Navy and Marine  
21 Corps deserve. I view this not only as an honor but as an  
22 obligation.

23 If confirmed, I look forward to working with this  
24 committee and the Congress to provide the best for our  
25 service members and civilian personnel. In so doing, I will



1 make every effort to reward the faith you have placed in me  
2 and that our men and women who serve have placed in us. I  
3 am truly grateful for your consideration of our my  
4 nomination, and I look forward to your questions. Thank  
5 you.

6 [The prepared statement of Mr. Parker follows:]

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1 Chairman McCain: Thank you.

2 Mr. Conger, we talked about an audit. For 15 years, we  
3 have been talking about an audit. For 15 years, we have  
4 legislated the requirement for an audit. For 15 years, we  
5 have not gotten one. What do you think the chances are of  
6 getting one this time around?

7 Mr. Conger: So the progress that the Department has  
8 made and the new thing that has happened even this year is  
9 that the service budgets are under audit right now. They  
10 are not necessarily going to pass an audit this year, but  
11 they are under audit for the first time. The Marine Corps  
12 has been under audit for several years. And so there has  
13 been a considerable amount of progress.

14 Chairman McCain: There was a recognition of failure of  
15 the Marine Corps audit as well.

16 Mr. Conger: Yes. So the Marine Corps audit that had  
17 originally received a clean audit but then later that was  
18 retracted was because of an anomaly that was discovered and  
19 appropriately retracted. But that actually helps the rest  
20 of the audit --

21 Chairman McCain: So the answer to my question is do  
22 you think we will have an audit this year.

23 Mr. Conger: I think that the budgets of the services  
24 are under audit, but they are not necessarily going to pass.  
25 Experience shows that --

1 Chairman McCain: When do you think we will have an  
2 audit, a complete audit just like every other branch of  
3 government has undergone?

4 Mr. Conger: It is hard to predict when we will pass an  
5 audit.

6 Chairman McCain: It certainly is. You really put your  
7 finger on it. It is hard to predict especially after 15  
8 years of failure.

9 Mr. Conger: But the difference now is that we are  
10 being audited, and that process will point out what needs to  
11 be fixed. Those corrective actions will improve our chances  
12 each year, each subsequent year --

13 Chairman McCain: Each year?

14 Mr. Conger: Yes. Yes, sir.

15 Chairman McCain: I can tell you that is not  
16 exhilarating to me saying "each year," after 15 years of  
17 failure, Mr. Conger. I am sorry that I sound so  
18 pessimistic. The taxpayers of America, after all these  
19 years, still cannot get an audit, and you are telling me  
20 that each year we will get better.

21 Mr. Conger: Yes, sir.

22 Chairman McCain: I want you to do better. Okay? That  
23 is what I want. That is what the Congress and the American  
24 people want. We want an audit that the American people and  
25 this committee and the Members of Congress can look at and

1 then make the right decisions. Without us knowing those  
2 fundamental facts, it is very hard for us to legislate on  
3 behalf of the American people.

4 Mr. Conger: I agree, Mr. Chairman.

5 Chairman McCain: Ms. Starzak, Congress, as you know,  
6 for years now and in the latest authorization bill, which we  
7 are told the President will be signing today or tomorrow or  
8 very soon, specifically prohibited the transfer of  
9 Guantanamo detainees to the United States in both the  
10 authorization bill and the defense appropriations bill.

11 Does the Constitution in your view authorize the  
12 President to act contrary to the law, including laws he  
13 signed as President? And I am specifically referring to the  
14 recurring rumor that is banging around out there that the  
15 President will act by executive order to close Guantanamo.  
16 Now, in your view, does the President have that  
17 constitutional authority?

18 Ms. Starzak: Senator, I do not believe that issue  
19 would come before me as Army General Counsel, but I have no  
20 reason to question the constitutionality of those  
21 restrictions.

22 Chairman McCain: I am not asking whether you question  
23 it. I am asking whether you believe that the President has  
24 the constitutional authority to act by executive order to  
25 close Guantanamo Bay. I just read you a list of the

1 requirements when you come before this committee.

2 Ms. Starzak: Senator, as I think the Attorney General  
3 testified earlier this week, I believe the statutory  
4 restrictions would prohibit transferring detainees to the  
5 United States.

6 Chairman McCain: Mr. Parker, same question.

7 Mr. Parker: Senator McCain, this is not an issue that  
8 I have worked on.

9 Chairman McCain: I understand that, Mr. Parker. It is  
10 the right of this committee to ask questions that we feel  
11 are important.

12 Mr. Parker: Absolutely, Senator McCain. I just am not  
13 in a position to provide an answer on this particular  
14 question. It is not one that I have looked into and really  
15 have --

16 Chairman McCain: Then we will await your written  
17 answer while you look into it.

18 [The information referred to follows:]

19 [COMMITTEE INSERT]

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1 Chairman McCain: Mr. Welby?

2 Mr. Welby: Chairman, I am neither a lawyer nor have  
3 any particular experience in this matter. So I would have  
4 to go with the advice of others on this topic.

5 Chairman McCain: I understand.

6 Mr. Conger?

7 Mr. Conger: Sir, I am not a lawyer, nor have I looked  
8 into this particular issue. I would have to get back to  
9 you, sir.

10 [The information referred to follows:]

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1 Chairman McCain: Mr. Parker, the Marines recently  
2 released the results of their major research study on combat  
3 integration. Before reviewing the report, Secretary Mabus  
4 indicated he will not support any exceptions to policy to  
5 close any ground combat elements to women, and he also said  
6 that he would not even review the conclusions of the Marines  
7 study.

8 Are you familiar with the Department of the Marine  
9 Corps' Ground Combat Element Integrated Task Force report?

10 Mr. Parker: I am aware of the report, Senator.

11 Chairman McCain: Would you have made the same decision  
12 as Secretary Mabus before conducting a review of the report?

13 Mr. Parker: Senator McCain, I am aware of the report,  
14 but I have not had an opportunity to review the report and I  
15 have not spoken with Secretary Mabus. And so without having  
16 reviewed the report and its analysis and its findings,  
17 without having spoken with the Secretary about his thought  
18 process, I cannot offer an opinion on whether or not I would  
19 have made the same decision as Secretary Mabus.

20 Chairman McCain: Would you agree that this will be in  
21 your area of responsibility?

22 Mr. Parker: Absolutely, Senator McCain. Once a  
23 decision is made by the Department of the Secretary of  
24 Defense -- by the Office of the Secretary of Defense, I will  
25 be closely involved in implementation of whatever decision

1 is made.

2 Chairman McCain: Well, we would want to know your view  
3 on this issue, Mr. Parker. So I would hope that you would  
4 take a look at this task force report and get back to us as  
5 to your views on it.

6 [The information referred to follows:]

7 [COMMITTEE INSERT]

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1 Chairman McCain: Finally, Mr. Conger, would you agree  
2 that we have a lot of work to do in accounting for both the  
3 number of personnel, as well as the expenses associated with  
4 our responsibilities? For example, we do not know how many  
5 civilian employees we have. We do not know how many  
6 contract employees we have. We are thinking about a mandate  
7 on end strength for both civilian personnel such as we have  
8 for uniformed personnel. What do you think about that?

9 Mr. Conger: I think that it is critically important to  
10 know how many people we have in the Department and that the  
11 personnel office should have that information in order for  
12 us to be able to budget appropriately.

13 Chairman McCain: I thank you. I thank the witnesses.

14 Senator Reed: Thank you very much, Mr. Chairman.

15 Mr. Conger, we have had a series of very thoughtful  
16 hearings at the direction of the chairman about revisions at  
17 the Department of Defense, Goldwater-Nichols. This week we  
18 had former GAO Director David Walker. We had General Punaro  
19 and others.

20 I will quickly reveal my lack of accounting knowledge  
21 by asking -- I got the impression that one way might be to  
22 get our arms around the audit is to not do it individually  
23 by service by service but start at the Department of Defense  
24 level because their materiality issues are much different  
25 than in the particular services. Again, this is a real

1 question.

2 Is there a different approach to the audit process that  
3 we could take that would be more effective than what we have  
4 been doing the last several years in terms of trying to get  
5 the services to do audits to then build on them to do a DOD  
6 audit?

7 Mr. Conger: So I appreciate the approach that you are  
8 suggesting or contemplating, and I understand the  
9 differences in materiality that evolve from looking at the  
10 larger enterprise. The Department has a strategy that has  
11 been moving the ball forward. We have been giving regular  
12 updates to this committee on the progress on that. And I do  
13 not believe that the Department is planning on changing its  
14 strategy.

15 Senator Reed: Again, I am reflecting what the chairman  
16 has said and what we have all known. This is a strategy  
17 that is being pursued for 15 years resulting in the  
18 inability to produce the audit. I think it would be useful  
19 if at least you could sort of, as you push this along, think  
20 there might be an alternate way to do this. Again, these  
21 are really talented individuals who made the suggestions.

22 Mr. Conger: Yes. If confirmed, I would be happy to  
23 look at alternative strategies and try and figure out more  
24 effective ways to accomplish this.

25 Senator Reed: Thank you.

1           Mr. Welby, thank you for your service and thank you for  
2           your father's service. Thank you, sir.

3           One of the aspects of your responsibilities are the  
4           government laboratories. They play a key role. And at  
5           times, we get complaints or comments that they are  
6           antiquated in terms of equipment, management, in terms of  
7           their ability to function as they have in the past as real  
8           incubators for change and innovation. Can you give us some  
9           thoughts about your particular approach to the laboratories  
10          and how we can engage them better?

11          Mr. Welby: Senator, thank you.

12          I began my career as an intern in an Army research  
13          laboratory here in Maryland and spent a decade kind of  
14          working on cutting-edge problems that really made a  
15          difference, early GPS activities, early work on unmanned air  
16          vehicles, some of the roots of some of the artificial  
17          intelligence briefings that are going on today. I think the  
18          energy and excitement that I see in the workforce in our  
19          laboratories is critical to ensuring that we are on the  
20          cutting edge of getting capabilities that matter to our  
21          warfighters. The laboratories have served as an incubator  
22          of technology and as a coupler to take advanced technology  
23          and drive it towards military needs.

24          If confirmed, I do intend to very closely look at the  
25          state of our laboratories, the state of their capital

1 equipment, but most importantly, I am concerned with the  
2 state of our people to ensure that we have the right mix of  
3 talent, the right mix of skills in our laboratories. I am  
4 particularly concerned with the graying of our laboratory  
5 workforce, and I want to make sure that we refresh the  
6 talent that will serve us in the future in the laboratories.

7 Senator Reed: Thank you, Mr. Welby.

8 Ms. Starzak, one of the roles you will have to play is  
9 to work very closely with the Judge Advocate General of the  
10 Army, the uniformed individual that is your counterpart.  
11 You have had extensive experience at the CIA, Department of  
12 Defense, et cetera. Can you give us sort of a notion of how  
13 you intend to work and share responsibilities and emphasis?

14 Ms. Starzak: Senator, my understanding is that the  
15 Army TJAG General Darpino has a number of separate  
16 responsibilities, as well as our joint responsibilities. I  
17 think it is very important that she be able to provide  
18 independent advice to the Secretary on the issues that are  
19 in her jurisdiction. I think we would work together very  
20 well. I know General Darpino. She is terrific.

21 Senator Reed: She has been very helpful to this  
22 committee on a host of issues. Again, I think the  
23 combination of the two, you will be very effective for the  
24 Secretary of the Army.

25 Just a final question, Mr. Parker, and that is, again,

1 in the hearings that the chairman has, I think, very  
2 thoughtfully put together, the Goldwater-Nichols issues have  
3 come up again and again. One aspect -- and he has alluded  
4 to it -- is civilian personnel. Your responsibilities will  
5 include sort of the incentives for, the number of, looking  
6 at how they are integrated with active duty military  
7 personnel. Can you give us any ideas, as you begin, of what  
8 insights or what approaches you might take to deal more  
9 effectively with civilian personnel?

10 Mr. Parker: Senator Reed, that is an extremely  
11 important issue, and that is one that will be one of the top  
12 priorities, if confirmed, for me, really taking a look at  
13 the existing authorities and how best we can make sure that  
14 we modernize them in order to attract, recruit, and retain  
15 the highest quality workforce that we possibly can. I know  
16 there are a number of efforts ongoing as we speak, both in  
17 terms of looking at existing authorities, also in terms of  
18 talent management, and I would continue to work, if  
19 confirmed, in those areas, and I would be open to and I  
20 would work with the committee as well in seeking the input  
21 of the committee and the Congress for ways to best implement  
22 solutions to some of these issues.

23 I think one last aspect that is extremely important,  
24 however, is that whatever reforms are made, that we do not  
25 compromise readiness in the process. And so maintaining

1     that important balance is something else that I would make  
2     sure to prioritize, if confirmed.

3             Senator Reed: Thank you.

4             Thank you, Mr. Chairman.

5             Chairman McCain: Senator Cotton?

6             Senator Cotton: Ms. Starzak, you were a lead  
7     investigator for the Senate Intelligence Committee majority  
8     staff study into the CIA's rendition, detention, and  
9     interrogation practices. In your time as a lead  
10    investigator, did you access and review a set of documents  
11    known as the Panetta Review?

12            Ms. Starzak: Senator, I had access to materials at the  
13    CIA facility that they provided. That includes what I  
14    believe to be the Panetta Review, although it was not called  
15    that when I was on the committee. I left for the Department  
16    in 2011.

17            Senator Cotton: Did you access and review the Panetta  
18    Review more than once?

19            Ms. Starzak: Senator, I believe I had access to it. I  
20    do not remember at this point, 4 and a half years later, how  
21    often I accessed it.

22            Senator Cotton: Do you believe that computer forensic  
23    analysis would indicate how many times it was accessed?

24            Ms. Starzak: Senator, I am sorry. I am not a computer  
25    expert. I do not know.

1           Senator Cotton: Do you recall recording, making use  
2 of, or taking notes about the content of the Panetta Review?

3           Ms. Starzak: Senator, I do not recall doing that.

4           Senator Cotton: As you know, the CIA believes the  
5 Intelligence Committee staff should never have had access to  
6 the Panetta Review. Are you aware of how or why the CIA  
7 computer system set up for committee staff to review CIA  
8 documents included the Panetta Review?

9           Ms. Starzak: Senator, I have no idea. My  
10 understanding is that the computer system was set up for the  
11 committee's access, and the committee staff accessed all  
12 documents through the system that was set up.

13          Senator Cotton: Did you ever speak to any current or  
14 former CIA official's staff or contractors about making the  
15 Panetta Review accessible on this computer system?

16          Ms. Starzak: Senator, I had no discussions about that  
17 particular document.

18          Senator Cotton: None whatsoever.

19          Ms. Starzak: None with the CIA staff, no.

20          Senator Cotton: Are you aware of other Intelligence  
21 Committee staffers who spoke to any current or former CIA  
22 official's staff or contractors about making the Panetta  
23 Review accessible on that computer system?

24          Ms. Starzak: Senator, I just do not know.

25          Senator Cotton: A committee staff member or members

1 printed out a hard copy of the Panetta Review and removed it  
2 from the secure CIA document review facility and transported  
3 it to committee offices. Under the procedures agreed to by  
4 the committee and the CIA at the time, were committee  
5 investigators free to remove hard copies of any document  
6 they wished from the secure facility without consultation  
7 and authorization by the CIA?

8 Ms. Starzak: Senator, as I mentioned, I left the  
9 committee in 2011. I believe, based on media reports, that  
10 that incident happened long after I had left the committee.  
11 I am not familiar with the circumstances of that  
12 arrangement.

13 Senator Cotton: So you do not recall the agreement  
14 that the committee had with the CIA about all access to any  
15 document, not just the Panetta Review?

16 Ms. Starzak: Senator, my understanding is that issues  
17 were supposed to be worked out with the CIA, but again, I do  
18 not know the specifics of that particular document.

19 Senator Cotton: Was there an agreed upon process by  
20 which the CIA could authorize the removal of certain hard  
21 copies of documents from that facility?

22 Ms. Starzak: Senator, the CIA did clear documents to  
23 be brought back to the committee SCIF. That was certainly  
24 something that had happened. That was how the review was  
25 brought back. It was brought back through the CIA.



1           Senator Cotton: Are you aware if the committee gained  
2 such authorization from the CIA to remove the hard copy of  
3 the Panetta Review?

4           Ms. Starzak: Senator, as I mentioned, I was not at the  
5 committee at the time that it was reviewed, or at least  
6 media reports suggest it was reviewed. So I just do not  
7 know.

8           Senator Cotton: Media reports suggest that it was  
9 reviewed for the first time in 2010 when you were at the  
10 committee and a lead investigator there.

11          Ms. Starzak: Senator, you asked when it was removed.  
12 Maybe I misspoke. I meant when it was removed from the CIA  
13 facility.

14          Senator Cotton: When is it your understanding that it  
15 was removed from the CIA facility?

16          Ms. Starzak: Senator, I do not know. I know it was  
17 not removed at the time I was at the committee.

18          Senator Cotton: Are you aware of the identity of the  
19 committee staff members who took part in printing and  
20 removing the Panetta Review?

21          Senator Cotton: Senator, as I mentioned, I was not at  
22 the committee at the time. All I have seen are the same  
23 media reports that everyone has seen.

24          Senator Cotton: Okay. I want to call your attention  
25 to a poster.

1 [The information referred to follows:]  
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1           Senator Cotton: The first page of each document in the  
2 Panetta Review contains a lengthy step as shown there. In  
3 relevant part, it reads, this classified document should not  
4 be distributed without express permission from DRG-RDI or  
5 CIA's Office of General Counsel. This document also  
6 contains material protected by the attorney-client and  
7 attorney-work product privileges. Furthermore, this  
8 document constitutes deliberative work product protected by  
9 the deliberative process privilege. It should not be relied  
10 upon by persons outside of DRG-RDI.

11           Do you recall seeing this stamp on the Panetta Review?

12           Ms. Starzak: Senator, it is probably more than 5 years  
13 since I would have seen it. I do not remember it at this  
14 time.

15           Senator Cotton: Do you recall speaking with anyone in  
16 the CIA or on the Intelligence Committee staff about seeing  
17 a stamp such as this on the Panetta Review?

18           Ms. Starzak: Senator, I do not remember discussing it.

19           Senator Cotton: You are a member of the D.C. Bar and  
20 the California Bar during the relevant times?

21           Ms. Starzak: Senator, I am inactive in California, but  
22 I am a member of the D.C. Bar and inactive in California.

23           Senator Cotton: At the time in 2010 and 2011?

24           Ms. Starzak: Yes, Senator.

25           Senator Cotton: Were you aware that the D.C. and

1 California professional responsibility rules regarding  
2 proper handling of privileged documents that may have been  
3 inadvertently disclosed by the CIA to committee staff?

4 Ms. Starzak: Senator, I believe that the inadvertent  
5 disclosure applies to litigation issues. I think  
6 congressional oversight is significantly different. In  
7 fact, with respect to that statement, I would note that  
8 Congress actually does not recognize deliberative process  
9 privilege as being something that protects disclosure from  
10 Congress. So, for example, this committee has requested a  
11 number of documents that are protected -- that could  
12 arguably be protected by deliberative work product. The  
13 Department of Defense provides them -- has provided  
14 documents as recently as this week that would be potentially  
15 subject to that privilege from outside disclosure.

16 Senator Cotton: And it will be your position, if  
17 confirmed as General Counsel of Army, that this committee is  
18 entitled to review any material that you or anyone in the  
19 Army inadvertently or unintentionally discloses to Congress?

20 Ms. Starzak: Senator, I think the executive branch and  
21 the Congress do not always agree on the scope of privileges.  
22 I think that is actually an important thing. I think it is  
23 part of the separation of powers. We always expect tension  
24 between the executive branch and Congress on exactly what  
25 material can be disclosed.

1 I think that the important part is comity between the  
2 two. So my understanding with respect to disclosure is  
3 often that the executive branch tries to accommodate  
4 Congress to the maximum extent possible.

5 Certainly in the context of the review, the CIA review,  
6 the committee was provided access to more than 6 million  
7 pages. Many of them were deliberative in nature. Many of  
8 them were prepared by attorneys. There was no indication at  
9 the time that that was inadvertent.

10 Senator Cotton: Thank you, Ms. Starzak.

11 Chairman McCain: Senator Kaine?

12 Senator Kaine: Thank you, Mr. Chair.

13 And thanks to the witnesses for your service.

14 All of you have come up within the kind of Federal  
15 family, DOD certainly but also intel agencies or DARPA or  
16 the DOT.

17 We have just gotten a 2-year budget deal and an NDAA.  
18 The 2-year budget deal also lifts for the second 2-year  
19 budget deal in a row to a significant extent the BCA caps  
20 imposed in August of 2011.

21 In your current positions, talk about what difference  
22 it makes to getting the missions done that we have gotten a  
23 2-year budget deal that lifts the pressure of the BCA caps.  
24 And I will start with Mr. Conger.

25 Mr. Conger: So in my current responsibility set, with

1 oversight over installations, energy, and environment  
2 issues, I think it is most starkly presented in the context  
3 of facility maintenance at our installations. When we are  
4 constrained by the budget and we have choices to make as far  
5 as where to take risk, we take that risk in facility  
6 maintenance over readiness of operational forces. That is  
7 the prudent thing to do. Facilities degrade slower than  
8 readiness does.

9       However, when there is more flexibility provided, more  
10 budget available, we are able to perform that maintenance.  
11 And frankly, it is better in the long run to do the  
12 maintenance upfront. So I think that is probably the  
13 starkest place where the dynamics change.

14       Senator Kaine: Thank you, Mr. Conger.

15       Mr. Welby?

16       Mr. Welby: Senator, quickly just the ability for  
17 stability to allow us to plan I think is critical, and I  
18 appreciate the efforts here to ensure that we have the  
19 stability required to allow us to plan. Science and  
20 technology advancements are made over time. It requires a  
21 continuity of effort and focus. I believe that the  
22 stability that the budget agreement offers allows us to have  
23 that focus at least over the next 2 years.

24       Senator Kaine: Ms. Starzak?

25       Ms. Starzak: Senator, I agree with those comments. I

1 am not an expert in that particular area but I agree.

2 Senator Kaine: Mr. Parker?

3 Mr. Parker: Senator, I agree with those comments as  
4 well. In my current position with the Maritime  
5 Administration at the Department of Transportation, it does  
6 help provide stability especially for our defense sealift  
7 programs like our maritime security program. Being able to  
8 have that certainty for the next couple years definitely  
9 helps to ensure that those programs can continue to operate.

10 Senator Kaine: The chair and ranking on this committee  
11 have really pushed the notion that we need to provide the  
12 certainty. And I would just like to say to all my  
13 colleagues I think what the budget deal does is it starts to  
14 normalize two things: first, 2-year budgets instead of a  
15 1-year budget, which gives all of you a better planning  
16 horizon and enables more stability for the reasons you have  
17 described; and second, the notion that the BCA caps are a  
18 discipline, a starting point, a default but not a  
19 straightjacket. For the second 2-year budget deal in a row,  
20 we have treated BCA caps in that way, and I think that is  
21 very, very positive. And I am interested in your testimony.

22 Ms. Starzak, one of the issues that I am kind of  
23 interested in is when we do the NDAA, we put a lot of policy  
24 into it and a lot of it is legal policy. And so you have  
25 been in the General Counsel's Office in the DOD and now

1 going in the position with the Army, the largest of the  
2 service branches. Maybe the issue that we have talked  
3 about, just to use it as an example, the biggest in terms of  
4 policy is the set of reforms that we have made with respect  
5 to military sexual assault. Talk a little bit about the  
6 challenge of taking those reforms and then implementing them  
7 throughout the DOD or just within the Army. And in the  
8 particular case of the legal reforms with respect to the way  
9 we are trying to treat the sexual assault problem, what is  
10 your assessment of the progress we are making in having  
11 those reforms percolate down through the entire  
12 organization?

13 Ms. Starzak: Senator, there have been significant  
14 reforms in recent years, particularly on the military  
15 justice side. I believe the Department is currently  
16 implementing more than 50 pieces of legislation addressing  
17 military justice and sexual assault. They have been  
18 challenges, honestly. And I think the major reforms, the  
19 article 32, for example, major reforms to article 60, which  
20 relates to the back end of prosecutions have been  
21 significant. The Department has -- they are doing their  
22 best to make changes to the manual for courts martial, for  
23 example, to ensure that there is common understanding of how  
24 those will be applied. But it is incremental. And I think  
25 there has been a lot of change in a very short period of



1 time. So the Department is struggling in some ways to keep  
2 up.

3 Senator Kaine: Mr. Conger, I was interested in your  
4 answer to Senator McCain's questions about the audit because  
5 I hear more recently -- you know, coming in and there is not  
6 an audit, it seems like are you kidding me. But I do not  
7 have the background or the history of we are going to have  
8 an audit for year after year after year. Go into this issue  
9 of who is now under audit. Talk about the four branches,  
10 which branches are under audit, and how long have they been  
11 under audit. So did the Marines start before the others?

12 Mr. Conger: Yes. The first year that the Marine Corps  
13 budget was audited was in fiscal year 2012.

14 Senator Kaine: And then tell me about the other  
15 service branches.

16 Mr. Conger: The other service branches will be under  
17 audit for their fiscal year 2015 budget, and that will be  
18 the first time.

19 Senator Kaine: For the first time.

20 So the Marines have been under audit since 2012 but  
21 have not yet gotten a clean audit.

22 Mr. Conger: That is right.

23 Senator Kaine: And you would expect, I guess, that if  
24 the other service branches go under for the first time in  
25 2015, it is not likely that they are going to get a clean

1     audit the first time around?

2             Mr. Conger: Absolutely.

3             Senator Kaine: But the fact was before 2012, nobody  
4     was even under audit. And so I guess the process is you put  
5     them under audit and then you work with the service branches  
6     to get them to not only be under audit but to start to pass  
7     audits.

8             Mr. Conger: Yes, sir. It is not a trivial thing to be  
9     under audit. The auditors expect a certain responsiveness.  
10    When they ask for documentation for a particular  
11    transaction, you are supposed to be able to provide that in  
12    a reasonable amount of time. We just did not have the  
13    systems in place to be responsive at all.

14            Senator Kaine: And is there also then a need for an  
15    audit not just of the service branches but kind of overall?  
16    Again, I am not an accountant, but the overall OSD  
17    enterprise. Are there additional audits that really need to  
18    be done in addition to the four service branches?

19            Mr. Conger: So in addition to the four service  
20    branches, the defense agencies will have their budgets under  
21    audit. In addition to the budget parts of the audit, there  
22    will need to be an audit of inventory, the existence and  
23    completeness. Essentially do you know everything that you  
24    have got whether it is real property, buildings -- and I  
25    work on that piece of it right now -- but also every piece

1 of equipment, every tank, every aircraft carrier. Do you  
2 have that inventory comprehensive? Do you have a value  
3 associated with that? Do you know how much that book value  
4 is of that particular asset? And then documentation of all  
5 the liabilities of the Department.

6 Senator Kaine: I have gone over time, but this is  
7 very, very critical to the committee. If Senator Manchin  
8 was here, he would not follow up and just pile on on this.  
9 It is so important that this be done, and if you can make a  
10 major advance on this audit issue, then we will put a statue  
11 of you up out here.

12 Mr. Conger: Thank you very much, Senator.

13 Senator Reed [presiding]: Senator Tillis, on behalf of  
14 the chairman.

15 Senator Tillis: Thank you, Senator Reed.

16 Ms. Starzak, you said something that made me kind of  
17 look back at the family. You were talking about the tension  
18 between the branches, and I think that is what you are  
19 saying here. If you cannot follow the discussion, just  
20 understand we are kind of doing our fiduciary responsibility  
21 for our roles. For the youngsters here, we are not trying  
22 to be mean.

23 But I do have to ask you some questions about  
24 Guantanamo Bay, and I am going to try to ask them in the  
25 context of the job that you would be moving into. If the

1 President directed the transfer of detainees from Guantanamo  
2 Bay to the United States, in your professional judgment  
3 would the officers of the Department of Army be at legal  
4 risk of violation of the Anti-Deficiency Act?

5 Ms. Starzak: Senator, it is unclear what role the  
6 Department of the Army would have in that, and so I think it  
7 very much depends on that question.

8 Senator Tillis: I am not an attorney, but I know  
9 attorneys move quickly into hypotheticals when you get a  
10 response like that. So hypothetically, if we had Army  
11 officers involved in the transfer of Gitmo detainees, do you  
12 think that they could potentially be in violation of the  
13 Anti-Deficiency Act?

14 Ms. Starzak: Senator, my understanding is that there  
15 are appropriations restrictions that address the transfer of  
16 Guantanamo detainees to the United States. I do not have  
17 any reason to think the Army officers would necessarily be  
18 involved in that effort.

19 Senator Tillis: But it would seem to me in the  
20 hypothetical that in a way you could extend your legal  
21 judgment should the Army be involved to anyone else because  
22 it is going to be one branch of the services. So I think  
23 if, in the hypothetical, they were involved, do you believe  
24 that they would be in violation or potential violation of  
25 the Anti-Deficiency Act?

1           Ms. Starzak: Senator, Anti-Deficiency Act prohibitions  
2   -- if there is a restriction in an appropriations bill, that  
3   potentially leads to an Anti-Deficiency Act violation. So  
4   if something is done inconsistent with a restriction in an  
5   appropriations act, yes, it would be a violation of the  
6   Anti-Deficiency Act.

7           Senator Tillis: And, Ms. Starzak, thank you for that  
8   answer.

9           The administration typically invokes Article II,  
10   Section 3 of the Constitution when they are arguing against  
11   the Anti-Deficiency Act. What is your legal opinion on  
12   whether the Faithful Execution Clause still applies in a  
13   situation where there is an affirmative prohibition against  
14   the use of funds under the law?

15          Ms. Starzak: Senator, I think it is very circumstance-  
16   dependent. I think you have to look at exactly what the law  
17   is, potentially exactly what the constitutional infirmity  
18   might be.

19          Senator Tillis: What we will do is I would like maybe  
20   we can either get another hypothetical or get to the  
21   specific circumstance, and we will submit that for the  
22   record for follow-up questions. Thank you.

23          Mr. Conger, it is amazing to me when you think about  
24   the Department of Defense and every single private sector  
25   company that they work with has to do an audit every year,

1 and they have done it every year for a long, long time. In  
2 fact, it is probably a requirement for them to do business  
3 with the Department of Defense.

4 As somebody who came from an audit firm, it is  
5 remarkable to me that we are having difficulty auditing an  
6 organization that has a half trillion dollar budget. And as  
7 somebody -- if you were thinking about a board of directors  
8 and you came back to the board every year and said, well, we  
9 just cannot get the audit working, you know, what is the  
10 likelihood that they are going to make an investment in an  
11 enterprise that I would like to make more investments in?

12 My question for you is if they fail to meet the audit-  
13 ready status, if any part of the organization fails to meet  
14 the audit-ready status by 2017, who specifically should be  
15 held accountable for that failure?

16 Mr. Conger: So it depends on which part of the  
17 organization is not meeting its responsibilities. People  
18 should be held accountable for those things that they are  
19 responsible for and have the authority to be able to  
20 execute.

21 Senator Tillis: We will submit for the record -- I  
22 want to know the specific person who should lose their job  
23 if they fail again to produce an audit-ready status in 2017.  
24 But instead of putting you on the spot here, we will put you  
25 on the spot in the written questions.

1 [The information referred to follows:]  
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1           Senator Tillis: And this also relates to Guantanamo  
2 Bay. If you are confirmed as the Comptroller, would you  
3 support the use of appropriated funds to execute the  
4 transfer of detainees from Guantanamo Bay to the United  
5 States?

6           Mr. Conger: So not having -- the simple answer,  
7 Senator, is that we should be following the provisions in  
8 the law. And so I would expect us to do that. I would rely  
9 on legal advice to decide exactly how we would apply those  
10 funds.

11          Senator Tillis: Because I know that we will have the  
12 opportunities to submit questions, that is another specific  
13 question that I would like to get your answer to.

14          [The information referred to follows:]

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1           Senator Tillis: I am sensitive to time. Mr. Parker, I  
2 just have a question for you. I will try and get in under  
3 the wire. The Marine Corps recently released the results of  
4 their major research study on combat integration. Are you  
5 familiar with that report?

6           Mr. Parker: I am aware of the report, Senator.

7           Senator Tillis: Are you familiar with the Department  
8 of the Marine Corps' recommendations? And specifically  
9 before I ask that question, given the time, do you support  
10 the decision of Secretary Mabus to not allow the Marine  
11 Corps' recommendation to go before the Secretary of Defense?

12          Mr. Parker: I am aware that the Secretary has provided  
13 a recommendation to the Secretary of Defense, but I am not  
14 aware --

15          Senator Tillis: Do you think it is wise to take the  
16 people who are on the ground that completed this extensive  
17 research to not have that be instructive to the Secretary's  
18 decision-making process?

19          Mr. Parker: I am not aware of the Secretary's  
20 decision-making process.

21          Senator Tillis: So do you or do you not agree with the  
22 decision of Secretary Mabus to not allow the Marine Corps'  
23 recommendation to go forward to the Secretary of Defense?

24          Mr. Parker: I am not aware of what Secretary Mabus  
25 forwarded to the Secretary of Defense. I am not aware of

1     what was --

2             Senator Tillis:  It is my understanding that his  
3     recommendation is not to allow the Marine Corps'  
4     recommendations to go to the Secretary of Defense.  Do you  
5     think that is a good or bad idea?

6             Mr. Parker:  I have not spoken to Secretary Mabus about  
7     his thought process and about his review of the report.

8             Senator Tillis:  We will submit that for the record so  
9     you will have the opportunity to speak with the Secretary.

10            [The information referred to follows:]

11            [COMMITTEE INSERT]

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1           Senator Tillis: This is just another hypothetical  
2 question. If you extend the thought process that I think  
3 Secretary Mabus may have, do you believe that women should  
4 be required to register for the draft?

5           Mr. Parker: You know, that is a complex question  
6 that --

7           Senator Tillis: It is actually a pretty simple  
8 question if you take a look at Secretary Mabus' apparent  
9 policy trajectory. So that is another one we are -- given  
10 that I guess it may be complex, that will be another one we  
11 will submit for the record.

12           [The information referred to follows:]

13           [COMMITTEE INSERT]

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1 Senator Tillis: Thank you, Mr. Chair.

2 Senator Reed: Thank you, Senator Tillis.

3 On behalf of Chairman McCain, let me recognize Senator  
4 King.

5 Senator King: Thank you, Mr. Chair.

6 Ms. Starzak, I just want to clarify the record on this  
7 business of the Panetta Review. When did you leave the  
8 Intelligence Committee?

9 Ms. Starzak: Senator, I left in May of 2011.

10 Senator King: And when was the removal of the document  
11 and taken to the secure facility here in the Senate?

12 Ms. Starzak: Senator, I do not know the exact date. I  
13 was not on the committee at the time. It was certainly  
14 after I left the committee.

15 Senator King: Late 2013. Does that sound correct?

16 Ms. Starzak: That is approximately my understanding  
17 from media reports.

18 Senator King: In other words, you had been gone from  
19 the committee for 2 years when this action took place.

20 Ms. Starzak: Yes, Senator.

21 Senator King: And you had nothing to do with it  
22 whatsoever.

23 Ms. Starzak: No, Senator.

24 Senator King: Thank you. I just was confused by the  
25 prior line of questioning. I wanted to clarify that.

1           Mr. Welby, one of the issues that we are continually  
2 talking about here is how to develop technology and how to  
3 get it into the hands of our military in a timely way. Talk  
4 to me about how we can accelerate the adoption of technology  
5 and handle the whole issue of R&D in the Defense Department.

6           Mr. Welby: Senator, in the commercial sector, time to  
7 market is what drives business success. And I believe  
8 increasingly speed is going to be a critical measure for our  
9 research and development enterprise. I believe that we need  
10 to exercise the Department's muscles in prototyping and  
11 demonstration, the tools that allow us to take capabilities  
12 that are developed in the laboratory, in industry, defense  
13 and non-defense, and put them into a military context, get  
14 operators exposed to those ideas to short circuit the long  
15 requirements process that we have today.

16          Senator King: Specifically, do you intend some kind of  
17 reorganization or restructuring in order to make that  
18 happen? Just saying it here in this committee is not going  
19 to make it happen. If Senator Inhofe was here, he would  
20 tell you that currently it takes 23 years to get a new  
21 airframe from conception to the tarmac and into flight.  
22 That is unacceptable.

23          Mr. Welby: Senator, I entirely agree.

24          Two things that have happened recently that I have had  
25 a hand in that have been working to accelerate that process.

1 We have shifted one of the four offices in ASDR&E and  
2 renamed it to focus it on concept prototyping as a way to  
3 rapidly move technology forward, to accelerate that process  
4 of moving material from the lab into the field.

5 But I think most importantly, we have begun structural  
6 changes to the way we buy. With this committee's support,  
7 the Department has refocused its efforts on modular open  
8 system architectures, on ways that we can plug and play  
9 technologies, new emerging technologies, into existing  
10 systems so we do not have to go through that long lifecycle  
11 with a tightly integrated system. Today if you buy a  
12 computer, you can plug new cards into it to increase its  
13 capability over time. We want our military systems to have  
14 that same kind of plug and play upgradeability to allow us  
15 to insert technology faster over time.

16 Senator King: I would urge you to pursue that  
17 aggressively because it seems to me that is one of the  
18 serious problems. If we are going to build, for example,  
19 the new Ohio class, it is going to have a 40-year life. It  
20 has to be designed in such a way as to be upgradeable.  
21 Otherwise, it is obsolete the day it hits the water.

22 Mr. Welby: I agree entirely.

23 Senator King: The other issue with R&D -- we had a  
24 very interesting hearing here a couple weeks ago about  
25 carriers, and it became apparent through the discussion that

1 the overruns on the new carrier are largely attributable to  
2 the fact that we are doing R&D while we are building the  
3 ship. How do we separate R&D from construction of a new  
4 class of weapon system?

5 Mr. Welby: Senator, I believe that there is a series  
6 of questions that need to be asked at the start of any  
7 modernization program, any acquisition program focused on  
8 risk and particularly the technological risk, the risk  
9 associated with the technologies, with the manufacturing  
10 technology we plan to use, with the technology we would use  
11 to integrate those systems.

12 In 2009, this committee established the Deputy  
13 Assistant Secretary of Defense for Systems Engineering  
14 position, the position I currently hold, to advise the Under  
15 Secretary and Secretary on technical risk on programs, and I  
16 have been doing my best over that period of time to kind of  
17 bring that conversation forward. I think we have done a  
18 much better job over the last 5 years in terms of not  
19 starting programs without a clear understanding of the  
20 maturity of the capabilities that go into them. That  
21 discipline is critical to ensuring that we can manage the  
22 cost and schedule and reliability of our programs.

23 Senator King: Well, you have some challenges with Ohio  
24 class coming, the new strike bomber coming. We are talking  
25 about some major weapon systems. And I hope that you will

1 focus very intensively on time and risk. I think those are  
2 the two factors.

3 Mr. Conger, I am out of time, but I just want to join  
4 my colleagues in saying there is no more important mission  
5 from the financial point of view than getting this audit  
6 system in place. I tell people in Maine that we cannot  
7 audit the Department of Defense, and their jaws drop. We  
8 got to fix that.

9 Mr. Conger: I understand, Senator.

10 Senator King: Yes, sir. Thank you.

11 Senator Reed: Thank you, Senator King.

12 On behalf of the chairman, Senator Sullivan, please.

13 Senator Sullivan: Thank you, Mr. Chair.

14 Ms. Starzak, I just want to kind of follow up and give  
15 you a little more context on the -- you have been getting a  
16 lot of questions on Gitmo. And I think what it does it  
17 reflects, obviously, an area of focus that this committee  
18 has been very interested in, the chairman, Senator Ayotte,  
19 all of us really. There are provisions in the NDAA. It  
20 looks like the President is going to sign that.

21 But I think you see some of the frustration because it  
22 actually represents a broader frustration with an  
23 administration and a White House that sometimes seems to  
24 blatantly, in a lot of our views, ignore the law and do what  
25 they think they can do despite the fact that the law or the



1 Constitution says otherwise. It has been kind of a theme,  
2 and it cross well beyond the military issues.

3 So let me just ask a couple of questions and even a  
4 hypothetical or two that relate to this kind of -- so the  
5 oath of office that the members of the military take, that  
6 actually all of you take -- to whom or to what are you  
7 pledging an oath to?

8 Ms. Starzak: Senator, the oath is to the Constitution  
9 of the United States.

10 Senator Sullivan: Correct. And so all the members of  
11 the military, when they take their oath -- is it to the same  
12 entity?

13 Ms. Starzak: Yes, Senator.

14 Senator Sullivan: So let us say kind of like what the  
15 AG said recently in her testimony that it seems pretty clear  
16 that under the current law and the law that the President is  
17 getting ready to sign, the authority to close Gitmo resides  
18 with the Congress. And I am not going to ask you if you  
19 agree with that or not.

20 But let us say you do agree with that. Let us say you  
21 look and you are a smart lawyer, that you see that you think  
22 that is correct. It seems like the Attorney General of the  
23 United States was leaning that way in testimony. And it  
24 would be good to know, for written testimony, if you can  
25 provide your answer on that, once you look at the NDAA

1 provision. I am not going to ask you here right now.

2 [The information referred to follows:]

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1           Senator Sullivan: But let us assume that you look at  
2 the NDAA provision, you get back to this committee, you say  
3 you think that the authority to close Gitmo firmly resides  
4 with the Congress of the United States. And then the White  
5 House, regardless of that, says they are going to do it  
6 anyway. As the chairman said, there are some rumblings  
7 along those lines. You are the General Counsel of the Army.  
8 What would you do? What would you do? If you came out with  
9 a written opinion, maybe it was not public, but maybe it was  
10 internal, saying you cannot do this, Mr. President, and then  
11 the White House overrules you and says we are doing it  
12 anyway, what would you do as the General Counsel of the  
13 United States Army?

14           Ms. Starzak: Senator, I think, if confirmed as Army  
15 General Counsel, my role would be to mitigate against risk  
16 of legal implications for the Army. So I would specifically  
17 look at the legal implications for the Army. I think that  
18 would be a significant challenge, obviously, if there was a  
19 disagreement. Ultimately, though, I would point out --

20           Senator Sullivan: If you thought the President was  
21 violating the law or the Constitution and you had in a  
22 written statement stated that either publicly or to the  
23 White House and they said, hey, forget it, we are doing it  
24 anyway, what would you do?

25           Ms. Starzak: Senator, like I said, I think that the

1 importance would be from my written legal advice to apply to  
2 the Army. There are internal ways to ensure that your legal  
3 opinion is heard. Ultimately, though, the lawyer for the  
4 executive branch is the Department of Justice. So it is  
5 really up to the Attorney General to make a final  
6 determination on interpretation of legal provisions or on --

7 Senator Sullivan: So you would not resign if you  
8 thought that the White House was undertaking actions that  
9 were clearly contrary to the law or the Constitution?

10 Ms. Starzak: Senator, I think you would have to look  
11 very carefully at the circumstances. It is very hard to  
12 talk about that as a hypothetical issue. It is hard to  
13 determine what would happen.

14 Senator Sullivan: Okay. So just for the record, in  
15 terms of your written comments, if you could get back to us  
16 on -- take a look at the NDAA provision, take a look at what  
17 the Attorney General is saying, and if you can directly  
18 answer the question, does the President of the United  
19 States, in light of the NDAA, have the authority to  
20 unilaterally without any congressional authorization shut  
21 down Gitmo. Can you get back to us on that?

22 Ms. Starzak: Senator, I will look at that.

23 Senator Sullivan: Can you get back to us?

24 Ms. Starzak: Yes. Yes, Senator.

25 Senator Sullivan: Mr. Parker, you know, one of the big

1 issues that I know probably recognize -- it is an issue that  
2 all of us are concerned about -- are the high rates of  
3 suicide among military members, among our veterans. I know  
4 that you talked about in your testimony that you support  
5 efforts to encourage resilience among sailors and marines  
6 and their families. I appreciate that. Do you have any  
7 specific initiatives or ideas to help prevent suicide among  
8 active duty members or members of the Reserve?

9 I am a reservist in the Marines. Like a lot of members  
10 in the military, I have seen the devastation that suicide  
11 can have with regard to units. And are you familiar with  
12 the Clay Hunt Suicide Prevention Act that the Congress  
13 passed at the beginning of this year?

14 Mr. Parker: Senator, every suicide is a tragedy. And  
15 I understand that the Department is working very hard to try  
16 to do what it can to reduce the numbers of suicides. I know  
17 there are a number of programs in place that it is currently  
18 administering to really help individuals come forward and  
19 seek help, to help others to intervene when they see that  
20 there is a situation that might lead down that road. And I  
21 know it is something that, if confirmed -- it is something I  
22 will take extremely seriously. I will try to continue to  
23 implement and work through the programs that exist and also  
24 see if there are other ways to help address this terrible  
25 issue. And I will be happy to work with the committee as

1 well and seeking the committee's ideas on how best to  
2 address it also.

3 Senator Sullivan: Great. Thank you.

4 Thank you, Mr. Chairman.

5 Senator Reed: Thank you very much, Senator Sullivan.

6 On behalf of Chairman McCain, Senator Donnelly, please.

7 Senator Donnelly: Thank you, Mr. Chairman.

8 And to the entire group, to Mr. Parker and to everybody  
9 else, we have been working on this suicide issue for a long  
10 time now, for a number of years. Last year we were able to  
11 get in the NDAA that every service member can get a mental  
12 health assessment. This year's NDAA -- I worked together  
13 with Joni Ernst and Roger Wicker and John Boozman. We were  
14 able to get additional mental health assistance through what  
15 is called the care package. For private practitioners,  
16 mental health professionals, they can get special training  
17 to make them service member-friendly. Physician assistants  
18 we have been talking about as well. So if you will keep  
19 this on the front of the burner because we lost over 400  
20 young men and women last year to suicide that were active  
21 duty, Guard, and Reserve combined. It is critically  
22 important for each one of them. That is a brother or a  
23 sister, mom or dad, son or daughter who is gone and lives  
24 have been turned completely upside down.

25 So you all work in different areas. You are the

1     Comptroller.  You are Manpower and Reserve.  But it will  
2     touch each and every one of you each and every day.  And we  
3     appreciate your efforts to stay on top of that.

4             Mr. Welby, I wanted to ask you specifically in regards  
5     to your efforts, the importance of DOD's R&D efforts to  
6     maintain our military's technological edge.  As we work to  
7     improve collaboration across government, academic, and  
8     private sector enterprises -- and this is something that I  
9     know is critical to -- well, to our whole country but also  
10    to Mr. Heinrich because of his home State.  How do you view  
11    the role and the value of our military labs in the long  
12    term?  And to my State too because of the labs there.

13            Mr. Welby:  Of course.  And, Senator, I believe the DOD  
14    labs are a critical resource for the Department.  I believe  
15    that they represent the key engine by which we map  
16    technology from the larger academic and private sector into  
17    those domains that are militarily critical.  There are  
18    things in our laboratories that no one else will do, the key  
19    efforts we have in propulsion, in energetics, the military-  
20    specific IT work that goes on, our biomedical teams.  It is  
21    an amazing caliber of people and talent in our laboratories.  
22    I think it is critical that we preserve those.  I think it  
23    is critical that we couple them to operational needs.  And  
24    it is critical to connect to them to a much larger community  
25    globally and in academia to ensure that we are getting

1 talent and ideas flowing to our laboratories.

2 Senator Donnelly: One of the things we have seen  
3 recently is the sale of IBM's semiconductor manufacturing  
4 business to a foreign-held company. It pretty much threw a  
5 wrench into our Trusted Foundry Program. And so what I am  
6 wondering is where we are with the strategy to manage supply  
7 chain risk for microelectronics going forward.

8 Mr. Welby: Senator, the Department reacted to the  
9 concern over the sale of the IBM Trusted Foundry to the  
10 GlobalFoundries group. And we have built a series of  
11 mitigations to the loss of that capability, a near-term  
12 mitigation that ensures that the trusted facility remains  
13 available to the Department for a period of time, that  
14 allows us to make lifetime buys of critical parts that come  
15 off that line. It preserves the security context in which  
16 we ensure trust in that facility at least for the near term.

17 In the long term, we need to recognize that the  
18 globalization of the microelectronics sector,  
19 microelectronics being so critical to our defense technology  
20 -- it is going to require us to adapt the way we do business  
21 in microelectronics. We are going to need to be smarter  
22 about how we ensure the integrity of the devices we buy.

23 Senator Donnelly: One of the other areas we will  
24 probably have to continue to increase on is detection of  
25 counterfeit and similar things. Is it not?



1           Mr. Welby: I agree and that is part of our strategy,  
2   to ensure that the parts that we do buy are in fact  
3   trustworthy. And our efforts with the Joint Federated  
4   Analysis Center, the work going on at places like Crane or  
5   at Sandia National Labs that are supporting this nationwide  
6   network that allows us to look into electronics and ensure  
7   that they do only the things that we want them to do is  
8   going to be critical to that long-term strategy.

9           Senator Donnelly: Thank you.

10          I am just about out of time, but I want to ask Mr.  
11   Conger. You know the issue of audits is critical to us.  
12   You have heard it. You have heard it from other members as  
13   well. Do you have an audit game plan, a list of metrics,  
14   that we can follow whether we are on target, whether you  
15   have the people you need to do the work you need to create  
16   this audit culture across the board that by this year, we  
17   expect to be at this point, by the following year, we expect  
18   to be at this point so we have a road map as opposed to just  
19   hoping that we can get somewhere on this?

20          Mr. Conger: Yes. The Department does have such a  
21   plan. It provided an update on that plan on Monday I  
22   believe to this committee, and we can certainly provide  
23   that --

24          Senator Donnelly: And will you update that if you are  
25   in that position?

1           Mr. Conger: Absolutely. I would be intimately  
2 involved in updating that plan regularly.

3           Senator Donnelly: Thank you very much.

4           Thank you, Mr. Chairman.

5           Senator Reed: Thank you.

6           Senator Ayotte, on behalf of Chairman McCain.

7           Senator Ayotte: I thank the chair.

8           I want to thank all of you for being here and your  
9 family as well.

10          Mr. Conger, I wanted to ask you. You are currently  
11 performing the duties of Assistant Secretary of Defense for  
12 Energy, Installations and Environment. In that capacity,  
13 you are responsible for oversight of DOD's environmental  
14 cleanup programs. As you know, in 2014 chemicals used in  
15 Air Force fire fighting foam were discovered in the well  
16 water in Portsmouth, New Hampshire. And this is a very  
17 concerning issue for my constituents in that area. The so-  
18 called PFCs have been associated with certain types of  
19 cancer. Together with Senator Shaheen, I have worked  
20 closely with the Air Force, the EPA, the Agency for Toxic  
21 Substances and Disease Registry to ensure the Air Force  
22 cleans up the mess it made and the Federal Government  
23 provides full support to the local community.

24          Mr. Conger, do you agree that it is important for the  
25 Air Force to clean up the mess that was created in the

1 Portsmouth area in the well water and make every effort to  
2 notify personnel who may have been exposed to these PFCs and  
3 provide necessary support for the local community?

4 Mr. Conger: Senator, I absolutely agree that that is  
5 important. I have been in regular contact with Miranda  
6 Ballentine, my Air Force counterpart, who has been working  
7 very hard on this issue personally and has gone up and, I  
8 think, done town halls up in the community as well.

9 Senator Ayotte: Well, I appreciate that, and when you  
10 are confirmed for this new position, I would appreciate your  
11 continued focus and attention on making sure the people of  
12 Portsmouth are fully supported, people are notified that may  
13 have been exposed to PFCs, including military personnel, and  
14 that we do all we can to ensure that obviously the mess is  
15 cleaned up and that anyone who needs any assistance on the  
16 health end gets it.

17 Mr. Conger: Yes, Senator.

18 Senator Ayotte: Thank you very much.

19 So, Ms. Starzak, I wanted to just clarify one thing.  
20 You have been Deputy General Counsel for legislation at the  
21 Department of Defense since May of 2011. Is that right?

22 Ms. Starzak: That is correct, Senator.

23 Senator Ayotte: And in that capacity since you have  
24 been in that position, the law has really been the same with  
25 regard to transfers from Guantanamo. The defense

1 authorization, at least since I have been on this committee  
2 and since you have been Deputy General Counsel, has said  
3 that it does prohibit transfers from Guantanamo to the  
4 United States of America. Would you agree with that?

5 Ms. Starzak: Senator, yes. With respect to domestic  
6 transfers, the law has not significantly changed.

7 Senator Ayotte: Right. Obviously, there has been  
8 changes on the international transfers. And also on the  
9 military construction appropriation, the provision has  
10 essentially been the same, which is prohibiting resources  
11 going toward modification or construction in the United  
12 States of America?

13 Ms. Starzak: That is correct, Senator.

14 Senator Ayotte: So I know that Senator Sullivan had  
15 asked you -- we are going to give you some time to review  
16 the provisions, but you have already been Deputy General  
17 Counsel. The provisions are what the provisions have been.  
18 So I want to make sure I understand. Do you believe those  
19 provisions are constitutional?

20 Ms. Starzak: Senator, as I said to Senator McCain, I  
21 have no reason to doubt the constitutionality of those  
22 provisions. As you mentioned, the restrictions have been in  
23 place for some time. We have abided by them to date.

24 Senator Ayotte: I think that is what we all really  
25 want to be assured of. I know as the General Counsel for

1 the Army -- the reality is I was just in Guantanamo and most  
2 of the guards there are in the Army. So this is going to be  
3 a direct issue for you to face as Army General Counsel if  
4 the President makes the decision that he is not going to  
5 follow this law. Would you recommend that the President  
6 follow the law?

7 Ms. Starzak: Senator, my understanding is that the  
8 Department is -- certainly the Department but the  
9 administration at large is looking to work with Congress on  
10 those provisions. I think as the Attorney General stated,  
11 it is very important to follow the law.

12 Senator Ayotte: Well, I appreciate that.

13 I do have a question. So on May 31st of 2014, there  
14 was the so-called Taliban Five transfer that occurred. And  
15 you were Deputy General Counsel at that point for  
16 legislation. And the law at that time provided -- in clear  
17 violation of the law, Congress was not given 30 days  
18 notification of the transfers of those five very dangerous  
19 individuals in exchange for one of the prisoners of war,  
20 Bowe Bergdahl. So I wanted to ask you were you aware of  
21 that transfer in advance, and did you advise both the  
22 Secretary of Defense and anyone in the White House of what  
23 the law was and what the law they were supposed to follow at  
24 the time in notifying us?

25 Ms. Starzak: Senator, I was not involved in the legal

1 determination about whether the 30-day notice would apply at  
2 that time.

3 Senator Ayotte: In any way?

4 Ms. Starzak: I was not involved in the legal analysis  
5 on that point.

6 Senator Ayotte: Were you aware of the transfer in  
7 advance?

8 Ms. Starzak: Very shortly in advance, not at the time  
9 -- the day before basically.

10 Senator Ayotte: And so you did not raise the issue of  
11 the law?

12 Ms. Starzak: Senator, I think at that point, the  
13 Department of Justice had issued or had concluded that the  
14 30-day notice did not apply in the very specific  
15 circumstances of that case because it was an attempt to save  
16 the life of Sergeant Bergdahl.

17 Senator Ayotte: Well, it is not how I read the  
18 provision. But I do appreciate your answer on it. Thank  
19 you.

20 Senator Reed: Thank you very much, Senator Ayotte.

21 Senator Heinrich, please.

22 Senator Heinrich: Thank you.

23 Mr. Welby, welcome. I have a couple of questions for  
24 you. First, I wanted to get your thoughts on the direction  
25 of directed energy in the coming years. I started my career

1 in directed energy at Air Force Research Labs, then Philips  
2 Labs a couple of decades ago let us say. But a lot has  
3 changed and in some very positive ways in recent years. And  
4 I think this is an area where we are once again really  
5 seeing a great focus and some real opportunities. So I just  
6 wanted to get your thoughts on where you see those  
7 opportunities and what specific programs within directed  
8 energy that you would be advocating for in this position.

9 Mr. Welby: Senator, I have also had a long engagement  
10 and very effective engagement with the folks out at Kirtland  
11 on directed energy of course. And it has always been one of  
12 these technologies that is just another 10 years away, but I  
13 think it is here. I think we now are realizing the  
14 opportunities of those years of investment in this  
15 capability.

16 I point to the Navy's deployment on the Ponce of a  
17 directed energy system as a prototype for close-in defense.  
18 The Navy has been talking about that demonstration publicly.  
19 I think it is an example of the near-term viability of  
20 directed energy as a real game changer for future military  
21 operations.

22 I am very excited about the ability of solid state  
23 lasers today to scale in interesting ways, the ability for  
24 fiber laser technology to really now begin to see its  
25 fruition, and quite frankly also the technology of solid

1 state bar lasers and what is happening in those areas. I  
2 think that we are only limited by imagination and how it  
3 might apply in these technologies. I think many of the  
4 power challenges, diode brightness challenges are now being  
5 resolved. So I am very excited about it. And I think that  
6 we have teams that are thinking not only about the  
7 technology now but thinking about their application, and I  
8 think that is a very exciting time for directed energy.

9 Senator Heinrich: I could not agree more, and I look  
10 forward to working with you through this transition because,  
11 as you said, historically it has always been something that  
12 is a few years away, and now we are seeing real  
13 opportunities for application. I think it is important that  
14 we make that transition and start fielding these  
15 technologies in ways that can really support our  
16 warfighters.

17 The Milcon process has done, I think, an incredible job  
18 of making sure that we adequately modernize our bases around  
19 the country even at times when resources have been  
20 relatively limited. I want to ask you about the  
21 prioritization of the Milcon towards our DOD labs. Are we  
22 doing enough there to make sure that our labs are actually  
23 modernizing at the pace to support their missions?

24 Mr. Welby: Senator, I recognize the many competing  
25 demands for the pool of military construction dollars. And



1 often, of course, operational requirements challenge the  
2 long-term investment in our research facilities. I do  
3 believe that the provisions that allow us to reallocate a  
4 certain fraction of RDT&E investment into near-term  
5 modernization and maintenance provides an excellent  
6 mechanism to allow laboratory directors to cover those most  
7 critical needs. But I expect that as we start to think  
8 about the future of our laboratories, we will be identifying  
9 opportunities where we will see challenges in terms of our  
10 facilities and the need to think about the new capabilities,  
11 new test facilities, new experimental facilities. And we  
12 need to be thinking about how we balance that in the overall  
13 request.

14 Senator Heinrich: Thank you very much.

15 I will yield back, Chairman.

16 Senator Reed: Well, thank you very much, Senator  
17 Heinrich.

18 The situation is that Senator McCain will not be  
19 returning. I have to go to the floor for the beginning of  
20 the debate on the flood bill. So I am proposing unanimous  
21 consent that at the conclusion of Senator Gillibrand's  
22 testimony -- Senator King has already an opportunity --  
23 excuse me -- her questioning that the hearing be adjourned.  
24 Is there any opposition?

25 [No response.]

1           Senator Reed: Hearing no opposition, Senator  
2 Gillibrand.

3           Senator King: Is there not something mischievous we  
4 could do while McCain is not here?

5           [Laughter.]

6           Senator Reed: I am trying to keep my title as the most  
7 boring person in the United States Senate. There is no  
8 mischief allowed.

9           [Laughter.]

10          Senator Gillibrand: Yes, sir.

11          Ms. Starzak, there was a report issued yesterday, I do  
12 not know if you saw it. It was published by the Associated  
13 Press, and it was criticizing the military justice system  
14 for concealing cases of child sexual abuse. This report  
15 found that just over half of sex offenders in military  
16 prisons were child sex offenders, and many of them are  
17 serving lesser prison terms as a result of lenient plea  
18 deals. More needs to be done to protect children from  
19 sexual predators.

20          Additionally, this report highlights the lack of  
21 transparency in court martial proceedings. For example,  
22 transcripts and pretrial agreements are only available  
23 through FOIA requests, which is obviously not the case for  
24 civilian courts.

25          What can be done to improve our military justice system

1 in trying to punish child sex offenders, and how can we  
2 increase transparency in the military justice system such as  
3 moving it to PACER or a PACER-like system that we have in  
4 the civilian world? And why does a military judge have no  
5 knowledge of or no ability to impact plea deals? Would you  
6 support changing that?

7 Ms. Starzak: Senator, I am aware of the article. I  
8 did read it. Obviously, any incidents of child sexual abuse  
9 is absolutely horrific. I think the Department needs to do  
10 all it can to ensure that we do not have that problem, that  
11 we prevent it in the first instance. And I think the  
12 Department is certainly interested in pursuing changes, if  
13 necessary, to ensure that.

14 With respect to your question on transparency, that is  
15 something the Department has been looking at very closely  
16 over the past few months. I anticipate that the Department  
17 is likely to have a recommendation on that front that will  
18 come to Congress hopefully in the near future.

19 Senator Gillibrand: How do you think we can increase  
20 our confidence in the military justice system? In the  
21 context of military sexual assault, you have a 62 percent  
22 retaliation rate for people who do actually have the courage  
23 to come forward and report that they have been sexually  
24 assaulted. What do you think the best approach is to stop  
25 retaliation and change the climate?

1           Ms. Starzak: Senator, I think, unfortunately,  
2 retaliation is a very difficult problem to tackle. I do not  
3 think it is entirely military justice-oriented. I think it  
4 is very important to change climate with respect to  
5 retaliation. I think one of the main issues that the  
6 Department has been looking at are ways to get at that  
7 problem, and I think 62 percent is, obviously, completely  
8 unacceptable. Victims have to have a voice in the process.  
9 They have to feel like they can come forward. That is  
10 critical just for the integrity of the military.

11           So I certainly share your concerns with respect to  
12 that. I think the Department has been looking at the  
13 retaliation problem very closely and hopefully we will come  
14 up with some recommendations on that issue.

15           Senator Gillibrand: And some have used the argument  
16 that there are insufficient numbers of military lawyers to  
17 implement the Military Justice Improvement Act. And you  
18 appear to agree that more lawyers are needed in your advance  
19 policy questions where you said to address emerging  
20 requirements, including special victim capabilities and  
21 special victims counsel, the Army JAG Corps is planning to  
22 grow.

23           How do you reconcile this plan to grow the JAG Corps to  
24 address what we all agree is a top concern for the military  
25 with claims that there are insufficient numbers of judge

1 advocates to implement MJIA?

2 Ms. Starzak: Senator, my understanding is that the  
3 Military Justice Improvement Act requires attorneys at the  
4 O6 level, which is very high in the military justice world.  
5 So I think that there are not the numbers of O6's necessary.  
6 So I do not think those two are necessarily inconsistent. I  
7 think the growth that we are seeing is at the prosecutor  
8 level, the people who are actually in court level, not at  
9 the O6 level.

10 Senator Gillibrand: I think that the bill only says  
11 the decision-maker has to be O6 or above, which is not  
12 dissimilar to the current decision-making for non-lawyers  
13 who are commanders, but the people involved in these cases  
14 can be more junior.

15 But there seems to be a need to professionalize the  
16 lawyers within the military so that they actually get some  
17 specialized training. In the civilian world, for example,  
18 only very rare DAs' offices have successful records for  
19 prosecuting rape cases such as the Manhattan DA's office  
20 where they have had a victims crime unit since the 1970s.  
21 Because they have specialized, because they have allowed  
22 seniority to develop amongst their prosecutors, they  
23 actually can take some of the hardest cases and actually get  
24 convictions.

25 Have you considered a way to professionalize the

1 prosecutor's office within the military so that we can get  
2 better conviction rates and get better prosecution of these  
3 very tough cases?

4 Ms. Starzak: Senator, one of the changes that we have  
5 seen in recent years is the implementation of a special  
6 victims prosecutor program in the Army. So I understand  
7 that there is now a set of prosecutors in the Army who are  
8 more experienced who oversee the prosecution of sexual  
9 assault cases. They tend to be people with significantly  
10 more experience in military justice, and they also, during  
11 the course of their training, do a 2-week detail to a DA's  
12 office to learn specifically how special victims units work.  
13 So I think that that is an important thing to look at. I  
14 think they certainly have been developing in that area.

15 Senator Gillibrand: So I would like you, for the  
16 record, to give me some recommendations for how we can  
17 professionalize all of the services' prosecution units so  
18 that we can really make the military the state of the art in  
19 terms of being able to prosecute effectively violent crimes  
20 in the military. Thank you.

21 [The information referred to follows:]

22 [COMMITTEE INSERT]

23

24

25

1 Chairman McCain [presiding]: Senator King, did you  
2 have any additional --

3 Senator King: No. Thank you.

4 Chairman McCain: Good.

5 Ms. Starzak, I just had to leave to go to a hearing on  
6 a Permanent Subcommittee on Investigations, of which I am a  
7 member, and the issue is child abuse and sexual  
8 exploitation. Thanks to technology, it has become a much  
9 more serious issue. So it is not part of the military, but  
10 it is an issue that because we are an all-volunteer force  
11 spills over into the military. So I hope you will have a  
12 look at that issue and ways that it may apply to the United  
13 States Army. It is a very unpleasant subject to discuss,  
14 and some of us shy away from it. But it is a growing  
15 problem in America and the world rather than one that is  
16 getting smaller. So I hope you will take the time to look  
17 at that and how it relates to the men and women who are in  
18 the military.

19 And by the way, on the issue of sexual assaults, I hope  
20 you will look at a number of the measures that we have  
21 already put in this year's defense authorization bill, a  
22 number of measures over the last 2 years. If you think  
23 those measures are inadequate, we would be more than happy  
24 to listen to any recommendations that you have to improve.  
25 I am very happy with the work of particularly Senator

1 Lindsey Graham, who was a JAG lawyer for some 33 years, who  
2 I think struck the right balance in the legislation that we  
3 passed. Senator Gillibrand has been heavily involved in  
4 this issue as well. So we look forward to working with you.

5 We thank all the witnesses. There may be some follow-  
6 up questions that hopefully we can get in before the end of  
7 the week when Congress takes a well deserved rest for a  
8 week. And we will try to -- our incompetent and  
9 insubordinate staff seems to be amused by that comment.

10 [Laughter.]

11 Chairman McCain: And we will try to get -- when we get  
12 back, reporting -- your nominations reported out of the  
13 committee and to the floor of the Senate as soon as we get  
14 back. Hopefully we can get that done and let you get to  
15 work.

16 So I thank the witnesses. I especially thank all the  
17 family members who have come here today. And I know that it  
18 is a moment of great pride for them as you were nominated by  
19 the President of the United States to assume great positions  
20 of responsibility and authority. So I thank you for your  
21 willingness to serve and do not think you are going to enjoy  
22 coming before this committee. Thank you.

23 This hearing is adjourned.

24 [Whereupon, at 11:03 a.m., the hearing was adjourned.]

25