

**HEARING TO CONSIDER THE NOMINATIONS  
OF MICHAEL A. SHEEHAN TO BE ASSISTANT  
SECRETARY OF DEFENSE FOR SPECIAL OP-  
ERATIONS AND LOW INTENSITY CONFLICT;  
MARK W. LIPPERT TO BE ASSISTANT SEC-  
RETARY OF DEFENSE FOR ASIAN AND PA-  
CIFIC SECURITY AFFAIRS; BRAD R. CARSON  
TO BE GENERAL COUNSEL OF THE DE-  
PARTMENT OF THE ARMY; AND KEVIN A.  
OHLSON TO BE A JUDGE OF THE U.S.  
COURT OF APPEALS FOR THE ARMED  
FORCES**

---

**THURSDAY, NOVEMBER 17, 2011**

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

The committee met, pursuant to notice, at 9:38 a.m. in room SD-50, Dirksen Senate Office Building, Senator Carl Levin (chairman) presiding.

Committee members present: Senators Levin, Webb, McCain, Inhofe, Graham, and Cornyn.

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

Majority staff members present: Michael J. Kuiken, professional staff member; Gerald J. Leeling, counsel; Peter K. Levine, general counsel; William G.P. Monahan, counsel; Michael J. Noblet, professional staff member; and Russell L. Shaffer, counsel.

Minority staff members present: David M. Morriss, minority staff director; Adam J. Barker, professional staff member; Michael J. Sistik, research assistant; and Richard F. Walsh, minority counsel.

Staff assistants present: Jennifer R. Knowles and Kathleen A. Kulenkampff.

Committee members' assistants present: Gordon Peterson, assistant to Senator Webb; Chad Kreikemeier, assistant to Senator Shaheen; Anthony Lazarski, assistant to Senator Inhofe; Sergio Sarkany, assistant to Senator Graham; and Dave Hanke, assistant to Senator Cornyn.

**OPENING STATEMENT OF SENATOR CARL LEVIN, CHAIRMAN**

Chairman LEVIN. Good morning, everybody.

The committee meets today to consider the nominations of Mark Lippert to be Assistant Secretary of Defense for Asian and Pacific Security Affairs, Michael Sheehan to be Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, Brad Carson to be General Counsel of the Army, and Kevin Ohlson to be a judge of the U.S. Court of Appeals for the Armed Forces. We welcome our witnesses and our nominees and their families to today's hearing.

The long hours and the other sacrifices that our nominees are willing to make to serve our country are appreciated by us, and as they know full well, they could not happen without the support of their families.

Each of our nominees has a distinguished record of public service.

Mr. Lippert worked in the Senate for the better part of 10 years serving as an advisor to a number of Senators and as a professional staff member for the Senate Appropriations Committee before joining the National Security Council staff in 2009. In the same period, he has somehow found time to serve two tours on active duty as a naval intelligence officer, earning a Bronze Star in Iraq in 2008.

Mr. Sheehan is currently the president of Lexington Security Group. He previously served on the National Security Council staff under the first President Bush and under President Clinton as coordinator for counterterrorism in the State Department, as Assistant Secretary General of the United Nations, as a deputy commissioner of counterterrorism for the New York City Police Department. Mr. Sheehan is a West Point graduate with a distinguished 20-year career in the Army.

Mr. Carson served as a Congressman from Oklahoma from 2001 to 2005. In 2008 and 2009, Mr. Carson served on active duty with an explosive ordnance disposal battalion in Iraq where he was awarded the Bronze Star. Mr. Carson is currently the director of the National Energy Policy Institute and an associate professor of law and business at the University of Tulsa.

Mr. Ohlson served as the chief of staff to the Attorney General from 2009 to 2011 and chief of staff to the Deputy Attorney General from 1997 to 2001. Before that, he served as a judge advocate in the Army and was awarded a Bronze Star for his role in the first Gulf War. Mr. Ohlson is currently the chief of the Professional Misconduct Review Unit at the Department of Justice.

If confirmed, Mr. Sheehan and Mr. Lippert would play a key role in guiding DOD policy as the Department works to address continuing threats to our national security in an austere budget environment, while Mr. Carson and Mr. Ohlson would be among the most senior legal officials in the Department of Defense.

We look forward to the testimony of our nominees and hopefully to their confirmation.

Senator McCain.

#### **STATEMENT OF SENATOR JOHN MCCAIN**

Senator MCCAIN. Thank you, Mr. Chairman. I join you in welcoming our nominees and their families today, and I congratulate them on their nominations.

As you mentioned, Mr. Sheehan has been nominated to be the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict. He has an extensive background in counter-terrorism having served as a special forces officer in the Army and subsequently as coordinator for counter-terrorism in the Department of State during the Clinton administration and as Assistant Secretary General at the United Nations in the Department of Peacekeeping Operations during the Bush administration.

Mr. Sheehan, if confirmed, you will have a critical, important role given the importance of our Special Operations Forces counter-terrorism efforts around the globe. Al Qaeda and associated organizations are becoming increasingly decentralized in nature and remain a serious threat. Prolonged instability in places like Yemen and Somalia continue to provide safe havens for these groups allowing them greater areas of operation to organize and plan attacks against America's allies, interests, and homeland.

Mr. Lippert has been nominated to be the Assistant Secretary Defense for Asian and Pacific Security Affairs. Since graduating in college in 1997, he has gained national security policy experience on Capitol Hill, the administration, and without question his service as an intelligence officer with the Navy Reserve has added to his understanding. The next few years are critical to this broader and strategic endeavor. Mr. Lippert appears to be qualified, and I praise his service in uniform.

I have serious concerns regarding his nomination. In a meeting in my office, I asked Mr. Lippert his views on the success of the surge in Iraq, and I find his answers to be less than satisfactory. I would like to follow up on that matter this morning.

Mr. Carson has been nominated to be the Army's General Counsel and is well qualified to be a key advisor to Secretary McHugh and General Odierno. He possesses extensive experience in the public and private sectors, including representing the Second District of Oklahoma in the House of Representatives in the 107th and 108th Congresses. Mr. Carson's military service as a mobilized Navy Reserve intelligence officer serving with the 84th Explosive Ordnance Disposal Battalion in Iraq in 2008 and 2009 is particularly noteworthy.

Finally, Mr. Ohlson has been nominated to be a judge on the U.S. Court of Appeals for the Armed Forces, the civilian appellate court that oversees our military justice system. The court that you will serve on, if confirmed, is a key element in guaranteeing that the goals of the Uniform Code of Military Justice legislation enacted 60 years ago continue to be realized.

Mr. Ohlson, your military service as a judge advocate in the Army and your years of service in the Department of Justice in a variety of capacities demonstrate your qualifications. However, your assignment from 2009 to 2011 as Attorney General Eric Holder's chief of staff and counselor during the period in which the Justice Department managed Operation Fast and Furious raised serious concerns. As a result, I am very troubled. Operation Fast and Furious, as we now know, resulted in over 2,000 weapons walking into Mexico where they have been connected to the slaying of U.S. Border Patrol Agent Brian Terry and U.S. Immigration and Customs Enforcement Special Agent Jaime Zapata. On November 10,

I submitted to you in writing a series of questions on this matter. I find your answers to be problematic.

Without objection, I ask that my letter, Mr. Chairman, and Mr. Ohlson's response be made part of today's record. In other words, Mr. Ohlson's answer was he did not know a thing about it. I wonder why. I wonder why as chief of staff to Eric Holder, he does not know a thing about an operation of the scope and size resulting in the death of one of the citizens of my State, a killing with weapons that he did not know a thing about it.

Chairman LEVIN. Those letters will be made part of the record. [The information follows:]

[COMMITTEE INSERT]

Chairman LEVIN. Now, let me call on Senator Inhofe first, and then we are going to welcome Senator Leahy to our committee for their comments on one of these or two of these nominees. Senator Inhofe?

**STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM THE STATE OF OKLAHOMA**

Senator INHOFE. Yes, thank you, Mr. Chairman. I was going to introduce my friend, Brad Carson, and I have been crossing off the list things that have already been mentioned. So let me just say that he actually, Senator McCain, was born in Arizona in Winslow, and he had the good judgment to come to Oklahoma and spend the rest of his—up to this time there. He graduated from Jenks High School in Tulsa and attended Baylor and Trinity College and then ultimately the University of Oklahoma College of Law.

He has been a friend of mine for a long period of time. We have disagreed on some of the political issues, but I can tell you right now, when he was first nominated and I discussed him with our mutual friend, Secretary McHugh, I went back and looked to refresh my memory and found that his voting record on our defense issues is right down the line where I think it should be for the position that he is in. So I am looking forward to supporting his nomination, serving with him.

And I want to say that unfortunately we have a 10 o'clock meeting in this building of the Environment and Public Works Committee where my attendance is mandatory since I am ranking member. So I have to leave a little bit early and I apologize for that, Mr. Carson.

Chairman LEVIN. Thank you, Senator Inhofe.

Senator Leahy, we are delighted to have you with us. You are the dear friend to all of the members of this committee, all the other Senators that serve with you, and your presence here will make an important statement on behalf of the nominee that you are here for. Senator Leahy?

**STATEMENT OF HON. PATRICK LEAHY, U.S. SENATOR FROM THE STATE OF VERMONT**

Senator LEAHY. Well, thank you, Mr. Chairman. I appreciate being here. Earlier I wished Senator Inhofe a happy birthday and I will do it again publicly. It will be with you and Senator McCain and Senator Webb. And like Senator Inhofe, I have to leave to the Judiciary Committee right after this.

But I really wanted to be here to introduce Mark Lippert. He is a personal friend but he is also a former member of my staff. The President has nominated him to be Assistant Secretary of Defense for Asian and Pacific Security Affairs. I told the President I thought that was a great nomination. I have known him for years. I know what a lifelong public servant he is. He was raised in Ohio, Stanford University, undergraduate degree, then a master's in international relations in 1997.

When he joined my office 10 years ago—11 years ago in the year 2000, he quickly was promoted through the ranks. I promoted him to be a professional staff member for the Appropriations Subcommittee on State and Foreign Operations where all of the State Department appropriations and all of our international programs go. He assisted me with U.S. foreign and policy and assistance programs with a focus on East Asia. He traveled there a number of times. He learned the history, the culture, the people. And his advice was very valuable to both Democrats and Republicans on the subcommittee because we knew how professional it was and how non-political it was. And he spoke with the highest integrity, but also with great analytical abilities and exceptional intellectual abilities. I hated to see him leave when he went to join then Senator Barack Obama as his chief foreign policy advisor, but then remained with the President as one of his top foreign policy experts, ultimately the chief of staff for the National Security Council.

But then he decided to leave the White House. He had joined the Navy while working in my office. He told me that his commission—I asked him why. He said it was a result of his lifelong dream to serve as a military officer. I remember how proud we all were to see him as a naval officer. And he left the White House post. He did it to return to active duty in the Navy, including the posting, as you have already indicated, Mr. Chairman, in Afghanistan.

Throughout all this, I have seen nothing but integrity, intelligence, and a willingness, perhaps a desire to serve the United States of America, and I think this is a great appointment.

I should note that Mark's wife Robin is here, as well as his parents. Robin was a staff member in my office when she and Mark first met. So I take full credit for the successful marriage. She herself is somebody of great accomplishment.

So I will put my full statement in the record.

But, Mr. Chairman, those of us who are either chairs or ranking members of various authorizing committees have a great responsibility, along with the other members, in passing on nominees. I can assure you this is one nominee that you can vote to confirm and you will not find a reason to second-guess your decision.

I thank the chair and I thank the ranking member.

[The prepared statement of Senator Leahy follows:]

[COMMITTEE INSERT]

Chairman LEVIN. Thank you so much, Senator Leahy, and we know that you, like Senator Inhofe, have to leave us and we totally understand.

Senator Inhofe, apparently today is your birthday.

Senator INHOFE. It is.

Chairman LEVIN. The little birdie just said that, Senator Leahy. So Happy Birthday.

Thank you very much, Senator Leahy.

We will now move to our nominees. The defense authorization bill is on the floor beginning at 11 o'clock, so we may have to do some scrambling if we are not done by then.

Please introduce any family or any other people who are here with you. Feel free to do that. And we will start with Mr. Sheehan.

**STATEMENT OF MICHAEL A. SHEEHAN TO BE ASSISTANT SECRETARY OF DEFENSE FOR SPECIAL OPERATIONS AND LOW INTENSITY CONFLICT**

Mr. SHEEHAN. Thank you, Mr. Chairman, Chairman Levin, Ranking Member McCain, and members of the Senate Armed Services Committee. Thank you for the opportunity to appear before your committee today. I am grateful of the confidence that President Obama has shown by nominating me be Assistant Secretary of Defense for Special Operations and Low Intensity Conflict. I also want to thank Secretary Panetta, Deputy Secretary Carter, Under Secretary Flournoy for their support of my nomination. If confirmed, I will be deeply honored to serve.

Given that SOLIC was created by the U.S. Congress, there has always been a unique and valuable relationship between this committee and the office for which I have been nominated. Your support and that of the American people for our Special Operations Forces continues to be one of the key enablers of our success. So thank you for that.

I also want to thank my family for my support. My wife Sita Vissan is with me this morning and my son Michael right directly behind me. Thank you for their great support during my career and their being with me today.

I believe that my policy background, as mentioned before, at the State Department, the U.N., and at NYPD has well prepared me for this nomination, as well as my operational experience as an active duty special forces officer in both the counter-terrorism unit as the assault team leader for our special forces A team in Panama and also as a counter-insurgency advisor in Central America for many years.

If the Senate confirms me in this position, I will make every effort to live up to the confidence placed in me and the excellence demonstrated by our Special Operations Forces around the world every day.

Thank you very much.

[The prepared statement of Mr. Sheehan follows:]

[COMMITTEE INSERT]

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

Now Mr. Lippert.

**STATEMENT OF MARK W. LIPPERT TO BE ASSISTANT SECRETARY OF DEFENSE FOR ASIAN AND PACIFIC SECURITY AFFAIRS**

Mr. LIPPERT. Thank you, Mr. Chairman. Senator McCain, members of the committee, thank you for the opportunity to appear before you this morning.

I have to admit that after working for 10 years on Capitol Hill as a staff member, it is much more intimidating to sit on this side of the dais.

I would also like to thank my former boss, Senator Leahy, for his gracious introduction. From past experience, I know how busy he is every Thursday morning with his responsibilities as chairman of the Judiciary Committee, and I very much appreciate his time.

I wish to thank President Obama, Secretary Panetta, and Under Secretary Flournoy for their support of my nomination.

Please let me say a few words about my family. I would like to introduce my wife, Robin Lippert, whom I met while working, as Senator Leahy mentioned, together on Capitol Hill. She has been the best partner that anyone could ask for and has patiently put up with military deployments to Iraq, Afghanistan, and elsewhere, long hours at the National Security Council, and the grind of the State and Foreign Operations Subcommittee.

My mother and father, Susan and Jim Lippert, have made the trip from home, Cincinnati, Ohio, and I am deeply grateful for their lifetime of support.

I would also be remiss if I did not introduce Captain John Burnham and Master Chief Bubba Dodson, two friends and mentors from my time on active duty at Naval Special Warfare Development Group.

Members of the committee, from the fight to disrupt, dismantle, and defeat al Qaeda in Afghanistan and Pakistan to maintaining and enhancing our force posture with treaty allies and partners in East and Southeast Asia to engaging emerging powers such as India and China and preventing the proliferation of weapons of mass destruction, the challenges of this dynamic and important portfolio are self-evident. Accordingly, in the interest of time, I will simply say that these are among the greatest challenges that our Nation faces today and could face well into the future.

And if confirmed, I look forward to working with the committee and Congress as a whole to help address these challenges in an effective and bipartisan way to keep America safe, secure, and prosperous, ensuring it continues to be the greatest country on earth.

Thank you.

[The prepared statement of Mr. Lippert follows:]

[COMMITTEE INSERT]

Chairman LEVIN. Thank you very much.

Next we will call on Brad Carson. We welcome you particularly as a former colleague. Mr. Carson?

#### **STATEMENT OF BRAD R. CARSON TO BE GENERAL COUNSEL OF THE DEPARTMENT OF THE ARMY**

Mr. CARSON. Thank you, Senator Levin. Mr. Chairman, Senator McCain, Senator Webb, Senator Cornyn, other members of the committee, I do appreciate the opportunity to appear before you today. I would like to thank President Obama for nominating me to the position of General Counsel of the Army. I would also like to thank Secretary McHugh for his support of my nomination, Senator Inhofe and his very kind words. If confirmed, I will be honored to serve as General Counsel of the Army.

My wife Julie is here with me today. She has always been an unflinching supporter of mine. Also present is Karen Kuhlman who is a dear friend and the former legislative director of my office when I served at the U.S. House of Representatives.

I believe that my background in law, education, business, and politics well prepare me to meet the extraordinary challenges facing the U.S. Army today. If the Senate confirms me to this position, I will make every effort to live up to the confidence placed in me. I am grateful for your consideration, and I look forward to your questions.

[The prepared statement of Mr. Carson follows:]

[COMMITTEE INSERT]

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

Mr. Ohlson?

**STATEMENT OF KEVIN A. OHLSON TO BE JUDGE OF THE U.S.  
COURT OF APPEALS FOR THE ARMED FORCES**

Mr. OHLSON. Thank you, Senator Levin. Mr. Chairman, it is a great privilege to appear before this committee as the President's nominee to be a judge on the U.S. Court of Appeals for the Armed Forces.

I would like to thank you, Mr. Chairman, and the members of this committee for convening this hearing today and for considering me for this important post.

I would also like to thank the President for his expression of confidence in me by nominating me for this position. If confirmed, I promise to do my level best to vindicate that trust.

And of course, I would like to thank my wife Carolyn and our two children, Matthew and Katherine, who are in school today. It is clear to me that I would not be sitting here today if it were not for their enduring love and support.

Mr. Chairman, during my entire professional career, I have experienced no greater honor than serving as an officer in the U.S. Army. I was privileged to serve in the Judge Advocate Generals Corps and to prosecute a number of cases as a trial counsel, as well as to provide legal advice to commanders and their staff on a wide range of legal issues.

But beyond that, during my time in the Army, I was privileged to become personally familiar with the men, women, mission, and ethos of the United States military and to see firsthand the exceptional quality of our Armed Forces. I will always treasure the opportunities I had to rappel out of helicopters at Air Assault School, to jump out of airplanes during my tour of duty at Fort Bragg, and to serve our Nation during Operation Desert Storm. If confirmed, I will bring to bear on my duties as a judge on the United States Court of Appeals for the Armed Forces all of these experiences that I have had in the military.

But in addition to this, if I am confirmed, I will also keep in mind my family's long tradition of serving as citizen soldiers at the hour of our Nation's greatest need. I have had relatives serve in virtually every armed conflict that our country has engaged in during the last century. As just a few examples, my grandfather, Leo Gauvreau, was an American doughboy who served in the trenches during World War I. My uncle, Leif Ohlson, made the ultimate sac-



rifice for our country on the battlefields of France on June 29, 1944, and today lies at rest at the cemetery at Normandy. And, Mr. Chairman, I am very proud to note that even as we sit here today, my nephew, Blake Perron, is in basic training at Fort Benning striving to become the very best infantryman he can be.

And so if I am confirmed, it is to these citizen soldiers and to all their comrades in arms to whom I will dedicate my service on the United States Court of Appeals for the Armed Forces.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Ohlson follows:]

[COMMITTEE INSERT]

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

Let me now ask you a set of standard questions and you can answer together.

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

Mr. SHEEHAN. Yes.

Mr. LIPPERT. Yes.

Mr. CARSON. Yes.

Mr. OHLSON. Yes, sir.

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

Mr. SHEEHAN. No.

Mr. LIPPERT. No.

Mr. CARSON. No.

Mr. OHLSON. No.

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

Mr. SHEEHAN. Yes, sir.

Mr. LIPPERT. Yes, sir.

Mr. CARSON. Yes, sir.

Mr. OHLSON. Yes, sir.

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

Mr. SHEEHAN. Yes.

Mr. LIPPERT. Yes.

Mr. CARSON. Yes.

Mr. OHLSON. Yes.

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

Mr. SHEEHAN. Yes.

Mr. LIPPERT. Yes.

Mr. CARSON. Yes.

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

Mr. SHEEHAN. Yes.

Mr. LIPPERT. Yes.

Mr. CARSON. Yes.

Mr. OHLSON. Yes.

Chairman LEVIN. Do you agree to provide documents, including copies of electronic forms of communication, in a timely manner when requested by a duly constituted committee or to consult with

the committee regarding the basis for any good faith delay or denial in providing such documents?

Mr. SHEEHAN. Yes.

Mr. LIPPERT. Yes.

Mr. CARSON. Yes.

Mr. OHLSON. Yes.

Chairman LEVIN. Thank you.

Let us have a first round of 7 minutes, and there are only a few of us here at the moment. We can have a second round if appropriate or needed, a third round for that matter. We can have whatever number of rounds we need.

Let me start with you, Mr. Sheehan. In your book titled "Crush the Cell," you say that by working closely with foreign units, that we may be able to reduce human rights violations associated with those operations. But if you want to get things done, sometimes we must work in conjunction with tough organizations with spotty human rights records.

Can you give us an idea as to how the benefits of working with partners be balanced with the necessity that they meet our human rights standards under the law?

Mr. SHEEHAN. Yes, Mr. Chairman. When I was ambassador-at-large for counter-terrorism prior to 9/11 and I was focusing on al Qaeda, I found that our Government had cut off relationships with some of the intelligence agencies for human rights and that I felt made our life a little bit more difficult. Moving forward, I find that often where al Qaeda resides, you are often working with countries that have less developed systems of governance and less developed judicial systems. So often you are dealing with organizations that do not maintain the same standards that we are accustomed to in the United States and in the West.

I feel that working together with them, we can achieve both our intelligence collection objectives and work to professionalize those services as they work towards moving to the standards of professionalism in human rights that we expect of them. And I think there has been great progress in that area, but as with most of these very developing and sometimes broken states, it requires a lot of patience and long work to achieve those objectives. But in the long run, I think both are equally important to achieving our security objectives in those broken and developing states.

Chairman LEVIN. Let me ask you another question, Mr. Sheehan, relative to the Special Operations Forces night raids along with Afghan commandoes in Afghanistan. Frequently they have removed literally thousands of insurgents from the battlefield without any shots being fired, but nonetheless, night raids remain controversial in Afghanistan as we read again in this morning's paper when we see President Karzai indicating that the ending of those night raids is a condition of a long-term relationship with the United States. But the Afghan Government community leaders have repeatedly called for eliminating their use.

Can you talk about those night raids? How important is the participation of Afghan commandoes in those operations? And how do we address Afghan concerns about those night raids?

Mr. SHEEHAN. Mr. Chairman, the ability to operate at night is one of the great advantages our Special Operations Forces have in

every theater of operations, to include as we train our local counterparts and give them the technology and expertise to work at night, it also gives them a great advantage. Simultaneously we are aware of the cultural issues and other problems raised politically by the Afghan Government. So we are trying to find the proper balance in that.

But as you mentioned, the key here is transferring the lead of these night operations to the local Special Operations Forces as they develop their capacity in conjunction with ours. I think we are moving well in that direction. I think the commanders are very aware of the issue of the sensitivity of night raids and have taken that under consideration. I think there has been a reduction in the amount of civilian casualties from what I understand. So I think we are moving on the right track in that very important area, but as you had mentioned, the key, as in all counter-insurgency operations, is shifting that primary burden to the local security forces that then can make that initial interaction in the villages in Afghanistan.

Chairman LEVIN. Thank you.

Mr. Lippert, there is a real issue that has been raised by Senator Webb, Senator McCain, and myself relative to the realignment issues on Okinawa and Guam. And I have a lot of questions of you about that, but I see that Senator Webb is here, and in the hope that he may take on that subject, I will withhold at this time. However, if he either is unable to or has to leave—and I do not want to put this onus on him, but if he is unable to do it—I know what his thoughts are on this and I totally share them—I would then ask you questions for the record. So I am just going to leave it at that at the moment because I think we have got to change our whole—the road we are on is not workable, and that is my view. I think Senator Webb would probably go into it in more detail, but I will press you in more detail again on the record if he is not able to get into that for whatever reason.

Mr. Lippert, I will ask you, though, about the Haqqani Network. Would you agree that in order for relations between the United States and Pakistan to be normalized, that the Government of Pakistan has got to go after safe havens in Pakistan for the extremists who are crossing the border and attacking U.S., Afghan, and coalition forces?

Mr. LIPPERT. Yes, Senator.

Chairman LEVIN. Mr. Carson, just one quick question for you and that has to do with the legal status of contractors on the battlefield. There is a very significant number of issues here about the legal status of contractors in the battlefield areas. Are you familiar with some of those issues? And if so, would you agree that the Department of Defense needs to review the legal status of contractors on the battlefield to ensure that we are not subjecting contractor employees to legal jeopardy when they work to support our efforts in hostile areas like Iraq and Afghanistan?

Mr. CARSON. Senator, I believe that is, in fact, a very significant issue, and I know the Department of Defense is reviewing those issues even as we speak. And if confirmed, I hope to get myself more expert in those issues and make it a top priority to resolve them.

Chairman LEVIN. Thank you.

Mr. Ohlson, criminal defendants in the Article III judicial system have an automatic right to appeal to Federal courts of appeal and then a right to at least petition the U.S. Supreme Court for final review of their criminal cases. In contrast, defendants in military courts martial may not appeal their cases to the U.S. Supreme Court unless the United States Court of Appeals for the Armed Forces has also granted discretionary review.

Should defendants in the military justice system in your opinion in Article I courts have the same right as defendants in Article III courts to petition the Supreme Court for review of their case even if the Court of Appeals for the Armed Forces has denied their petition for review?

Mr. OHLSON. Mr. Chairman, I do believe that individuals within the Article I court made up by the Court of Appeals for the Armed Forces should have the identical right as those defendants in the Article III courts and that the Supreme Court should have the ability to address those cases.

Chairman LEVIN. Thank you all.

Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman.

Mr. Ohlson, in your response to my letter of November 10, you stated you had no knowledge of Operation Fast and Furious throughout your assignment as Attorney General Holder's chief of staff and counselor. Your letter, not surprisingly, seems to track closely with Attorney General Holder's assertions about a lack of knowledge of this disastrous operation.

Was there ever a time in 2009 or 2010 you can remember reading about or discussing with ATF officials Operation Gun Runner or Operation Fast and Furious?

Mr. OHLSON. No, Senator. That never occurred.

Senator MCCAIN. Agent Brian Terry was murdered in Arizona in a firefight on December 14th, 2010. Did you hear about his death at that time and the circumstances?

Mr. OHLSON. I did, Senator McCain.

Senator MCCAIN. And when did you become aware then that two weapons that were found at the scene were linked to the gun-walking program known as Operation Fast and Furious?

Mr. OHLSON. Senator, I found out about that through press accounts sometime after I left serving as chief of staff to the Attorney General.

Senator MCCAIN. So when this agent was murdered, it did not arouse your curiosity as to find out the details of his death.

Mr. OHLSON. There was no indication at that time, sir, that there was any connection with Fast and Furious. I was not aware of Fast and Furious.

Senator MCCAIN. But when a Border Patrol agent is murdered, you did not say, hey, what is the story here? How did this happen?

Mr. OHLSON. Yes, sir, and I remember the tragedy of—

Senator MCCAIN. Well, did you ask questions about it?

Mr. OHLSON. No, sir. I was in a briefing of the Attorney General at that time and I learned of the death of Agent Terry.

Senator MCCAIN. So when you learned about it, no matter what you were doing, it did not arouse your curiosity as to ask what the circumstances were.

Mr. OHLSON. We were briefed on that, sir. It certainly aroused my sympathy for the family and I think it was——

Senator MCCAIN. But you did not ask enough to find out that this was part of Fast and Furious.

Mr. OHLSON. Senator McCain, there was not a basis for me to ask that question at that time.

Senator MCCAIN. Well, you would not ask how did the murderers get the weapons that they were using? That again did not arouse your curiosity.

Mr. OHLSON. Sir, I did not ask that question.

Senator MCCAIN. You discussed in your letter routine courtesy copies of weekly reports that were sent to you. What information did those reports include about the gun-selling tactics of Operation Fast and Furious?

Mr. OHLSON. Sir, as I understand it, those reports did not make any mention of gun-walking. They simply referred to the operation as Operation Fast and Furious.

Senator MCCAIN. So you get a memo and it says it is part of Operation Fast and Furious and you do not say, hey, what is Operation Fast and Furious?

Mr. OHLSON. As it turned out, Senator, I did not read that weekly report.

Senator MCCAIN. So you are given weekly reports that you do not read.

Mr. OHLSON. Sir, there were a number of courtesy copies that are sent around the Department, and you are correct. I did not read that report.

Senator MCCAIN. So we have reports that are required to be submitted to your Department and they come to you, the chief of staff for the Attorney General of the United States, only as a courtesy.

Mr. OHLSON. Yes, sir.

Senator MCCAIN. Did you or Mr. Holder ever receive information from the Bureau of Alcohol, Tobacco, Firearms, and Explosives about its efforts to curtail firearms smuggling into Mexico?

Mr. OHLSON. I was not privy to any such conversation, sir, no.

Senator MCCAIN. And again, you were not curious even though the issue of guns being smuggled into Mexico has been widely discussed, widely—a source of deep concern amongst many of us in public life. But it did not arouse your curiosity.

Mr. OHLSON. I certainly take your point, Senator. As chief of staff, that was not within my area of purview, but in retrospect, I wish I had known more about that operation.

Senator MCCAIN. And what actions did you take following news about Agent Terry's death?

Mr. OHLSON. I did not take any actions in particular, Senator McCain.

Senator MCCAIN. Mr. Lippert, it has been widely reported that while serving in the White House, you and then-National Security Advisor General Jim Jones clashed significantly. It has also been widely reported that your departure from the White House to re-

turn to active duty in the Navy was an attempt to resolve this conflict. Would you please explain your interpretation of these events?

Mr. LIPPERT. Senator, I have great respect for General Jones' lifetime of service from Vietnam veteran to Commandant of the Marine Corps to Supreme Allied Commander to his service in the White House, just the highest degree of respect for him and his service.

In terms of the press accounts, I did not leak to the press about General Jones. My departure from the White House was voluntary. I actually turned down a promotion at the White House to return to active duty.

Senator MCCAIN. So there was no conflict between you and General Jones.

Mr. LIPPERT. Senator, General Jones and I worked collaboratively on many issues, and I am proud of what we accomplished. But there were also times we disagreed. But I knew General Jones was the boss.

Senator MCCAIN. So your departure from the White House had no relation whatsoever to the problems with the relationship between you and General Jones.

Mr. LIPPERT. Senator, as I mentioned, I was offered a promotion in the White House and then I turned down that promotion to return to active duty.

Senator MCCAIN. You are not answering the question.

Mr. LIPPERT. Senator, the promotion was to the White House Military Affairs Office which would have been separate and apart from the National Security Council. At that point, I turned down that job and returned to—

Senator MCCAIN. I will ask the question one more time, Mr. Lippert, and I would like to have an answer. Did your departure from the White House have anything to do with the widely reported conflict that you had with General Jones?

Mr. LIPPERT. Again, Senator, I would say it was due to the fact that I wanted to leave the NSC, went over to the White House Military Affairs Office, and turned down that promotion, sir.

Senator MCCAIN. If you do not choose to answer the question, that is fine.

Ambassador Sheehan, very quickly do you believe that the Afghans are capable of carrying on night raids without U.S. military presence?

Mr. SHEEHAN. Senator McCain, from my understanding, the Special Operations Forces that work in tandem with our Special Operations Forces have demonstrated a greatly increased capacity to operate on a wide range and some night operations. Right now at this point, I am not sure they are ready to really step up fully to the plate.

Senator MCCAIN. Do you know anybody that does?

Mr. SHEEHAN. No, sir. I think most believe they still need some more work with our folks.

Senator MCCAIN. I thank you.

I thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator McCain.

Senator Webb.

Senator WEBB. Thank you, Mr. Chairman.

And first, with respect to the chairman's question about the issue on Okinawa and Guam, I would suggest that we work up a joint written question for the record that could be answered in an accelerated fashion before the confirmation comes before the full Senate—or before the whole committee actually. I do not have enough time in 7 minutes to do the question justice, but it is a vital question in terms of what we are doing in that part of the world including, by the way, the announcement yesterday after a court ruling that the Navy says it is going to take more than 2 years for it to figure out an environmental impact report on the training ranges in Guam, which really I find kind of confusing at this point.

Chairman LEVIN. Thank you, Senator Webb, for that suggestion, and I just checked also with Senator McCain and we will ask our staffs, the three of us, to put together a joint question.

Senator WEBB. I appreciate that. It is very important for us to have a clear understanding of where Mr. Lippert and the Pentagon at large is going on that.

First, I would like to congratulate all of the nominees and to thank them for having taken time in various ways to serve our country as they moved forward on those other careers and to welcome family and friends who are here today. I intend to support, without question, three of these nominations.

Mr. Lippert, you and I need to have a longer meeting. These nominations, although they may have been in process for some time, were moved very quickly once they were announced. I have a number of concerns.

First is this position that you are being nominated to is one of the three or four most vital Assistant Secretaryships right now in DOD given the transitions that we are looking at and the renewed emphasis which I have cared about for a very long time on our strategic presence in that part of the world. And there have been questions about how this matches up with your professional skill set, however accomplished it is at this point. So I would ask, first, if you would give us an explanation, first in terms of your view of the scope policy-wise and geographically of the position and how your experiences match up with that.

Mr. LIPPERT. Senator, the answer to your first question on the scope of the position, it covers everything from the Western Pacific PACOM AOR to South Asia, AFPAC, up to Central Asia.

In terms of my qualifications for the job, I bring a unique skill set of hands-on and policy experience to the position. In terms of hands-on, I was on the ground in Afghanistan. I have that experience. I studied Mandarin Chinese, lived in Beijing while I was a graduate student at Beijing University taking language courses.

In terms of policy experience, I have 10 years of service on Capitol Hill working for Senator Daschle, the Democratic Policy Committee, working for Senator Leahy on the State and Foreign Operations Subcommittee, and then working for Senator Obama on the Senate Foreign Relations Committee. All of that time gave me the skill set to tackle a lot of complex, difficult problems. It also had me engage in a range of these issues that we are still facing today. So it allowed me to balance portfolios, juggle responsibilities, and deal with these substantive issues head on.

And then finally the time with the National security Council. During that time, I regularly engaged in these types of issues day in, day out, and at senior levels of the Government.

So I would just say in terms of my experience, I bring somewhat anecdotally to someone who sat in summits with the President and Asian leaders, someone who has been on the ground in Afghanistan, and someone who has a mastery of foreign assistance programs in Southeast Asia and the South Asia region.

Senator WEBB. I thank you for that. I look forward to spending some time with you when you can visit my office when we can discuss that connection further.

I want to follow on to something that Senator McCain raised because it is a question that has been widely reported in the media and it affects not simply whether or not you and General Jones had some sort of a fallout but it is also a question of how someone works when they are on one of these high-level staffs.

I, like most people on this committee, have a tremendous regard for General Jones. I have known him for many, many years, as you know. I believe he is one of the most knowing public servants that we have had, and I greatly admire his leadership style.

The question that came up—and there have been a couple of reports on this. This is to give you an opportunity to clarify this. It said you were widely suspected of leaking salacious and damaging stories about General Jones. And this was reported—I am reading from an article by Josh Rogin, but it was also reported by Bob Woodward in his book. There was a comment in there that at one point people seemed to agree this was rank insubordination. These are words that have been reported.

Can you explain to us a little more what these reports were all about?

Mr. LIPPERT. Senator, there were a number of reports derogatory towards General Jones that were coming out while I was chief of staff at the National Security Council. I, again as I said to Senator McCain, had nothing to do with those reports. I did not talk to the press about General Jones. Full stop there.

On the other issue, in terms of rank insubordination, I knew General Jones was the boss. So on this issue, it is clear in my head. It is that I did not leak to the press and there was not insubordination.

Senator WEBB. So you can say categorically you were not the author of any of these personal leaks to the press directly or indirectly through a third party.

Mr. LIPPERT. Yes.

Senator WEBB. Thank you. And I will look forward to seeing you on a longer visit in my office.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Webb.

Senator Cornyn.

Senator CORNYN. Thank you, Mr. Chairman.

Mr. Ohlson, I wanted to just ask you some questions briefly following up on Senator McCain. What was the description of your duties as chief of staff for the Attorney General from January 2009 through January 2011?



Mr. OHLSON. Senator Cornyn, there were a number of attorneys who worked within the Office of the Attorney General. I supervised them, and I also provided advice as a career member of the Department of Justice for 22 years. I am quite familiar with the Department and advised the Attorney General on issues related to it.

Senator CORNYN. Well, let me ask specifically. In the Judiciary hearings of last week or so when we were asking the Attorney General some questions about memos that had been directed to him, there was one directed to him, an NDIC memo. Do you know what that stands for?

Mr. OHLSON. National Drug Intelligence Center, sir.

Senator CORNYN. That referred to Fast and Furious. It was dated July 5, 2010. There was a subsequent memo entitled a "Significant Recent Events Memo" that was dated November 1, 2010. Would you have been involved in either the preparation of or in the forwarding of those memos to the Attorney General for his attention?

Mr. OHLSON. No, Senator Cornyn.

Senator CORNYN. Who would be responsible to make sure that the Attorney General sees relevant memos from the Department of Justice that require his attention?

Mr. OHLSON. We had within the Office of the Attorney General attorneys who were subject-matter experts with the various components, and if through reviewing material they determined that there was information that needed to be forwarded to the Attorney General, they would do so, sir.

Senator CORNYN. But is there anybody who serves as, for lack of a better word, a traffic cop for the Attorney General to make sure that he sees the most important things that require his eyes-on attention?

Mr. OHLSON. I would be the ultimate funnel point for that information, sir.

Senator CORNYN. And when did you first learn about the gun-walking associated with Fast and Furious?

Mr. OHLSON. Through press accounts in approximately February of this year after I was no longer chief of staff, Senator Cornyn.

Senator CORNYN. Was that about the time the Assistant Attorney General Weich delivered a letter to Senator Grassley denying that any gun-walking had occurred?

Mr. OHLSON. Yes, sir, that would be the same time frame.

Senator CORNYN. Were you involved in preparing or approving that letter?

Mr. OHLSON. I was not, sir. I was no longer serving within main Justice at that time.

Senator CORNYN. And when did you first learn that that letter was false?

Mr. OHLSON. Approximately 10 days ago.

Senator CORNYN. Would that have been roughly the time Lanny Breuer was testifying before the Judiciary Committee?

Mr. OHLSON. Yes, sir.

Senator CORNYN. Mr. Lippert, let me ask you some questions about Taiwan. You have been nominated for a very important position in that very important part of the world. And I have some charts here I would like to just show you. First, a chart that shows the official estimates by the Department of Defense. It shows the

People's Republic of China with about 2,300 operational combat aircraft while the Government of Taiwan has only 490 operational combat aircraft.

And let me show the second chart, please. The reason why that is very important is out of the 490 operational aircraft—as you can see, this chart from the Defense Intelligence Agency demonstrates that F-5 aircraft, as well as French Mirage aircraft, are old and becoming quickly obsolete, hard to repair, hard to get replacement parts for. And you can see the huge cliff here dropping down in roughly 2020 in terms of the number of operational combat aircraft that Taiwan will have to deal with any Chinese aggression.

If confirmed, what course of action do you plan to pursue that the United States Government keeps its commitments under the Taiwan Relations Act to make sure they have the defensive weaponry necessary to defend that nation against aggression by communist China?

Mr. LIPPERT. Senator, I strongly support a comprehensive, durable, and unofficial relationship with Taiwan, this vibrant democracy, and I am deeply concerned with the buildup that you referenced in your charts. My thinking will be guided by the ?one China policy,? the three communiques, the Taiwan Relations Act, and the six assurances. And if confirmed, I can assure you that I am going to be an open-minded official that hears all sides of this debate, but I am not in the job yet, so I would not want to go further on that point.

Senator CORNYN. Well, do you have an opinion as to how many viable combat aircraft Taiwan needs in order to defend itself against communist aggression?

Mr. LIPPERT. I do not at this point in time, but if confirmed, I would dig into that question and work with your staff on that, sir.

Senator CORNYN. Well, in light of the imbalance that I have just shown you and the deterioration of Taiwan's air force, do you believe that the United States Government is fully upholding our legal responsibilities under the Taiwan Relations Act?

Mr. LIPPERT. Senator, my sense is that the administration is upholding their responsibilities under the Taiwan Relations Act.

Senator CORNYN. And what is that based on?

Mr. LIPPERT. That is based on the decision to upgrade the F-16 A and Bs. That is based on the \$12 billion in sales over the last 2 years to Taiwan, and that is based on the close coordination and consultation with the Taiwan Government.

Senator CORNYN. Well, Mr. Lippert, you know that upgrading the As and Bs does nothing to replace the obsolete F-5s and French Mirages. Do you think that that sort of a dramatic decrease in the number of operating combat aircraft increases the risk for Taiwan, or do you think it is irrelevant?

Mr. LIPPERT. My sense, Senator, is that reading the testimony of Assistant Secretary Campbell and Deputy Assistant Secretary Lavoie, that this decision was made on the A and Bs to get the most bang for the buck quickly, get the 160-plus aircrafts over to Taipei as soon as possible, and then go from there.

Senator CORNYN. Well, you know, Mr. Lippert, during the upgrades of the As and Bs, that there will be a period of time where the As and Bs will actually be out of service. So even though Tai-

wan has As and Bs aircrafts, there will be—and it is reflected here in the circled area around 2020. It is going to take a long time, and there will actually be even a reduction beyond the retiring F-5s and French Mirages where the As and Bs will not be in service. So are you serious when you say you think that this provides Taiwan what they need in order to defend themselves?

Mr. LIPPERT. Senator, what I am saying is that the administration, from what I have seen in testimony, felt that the best bang for the buck was to get the As and Bs over there as soon as possible.

Senator CORNYN. And you have no other views other than embracing the administration's position?

Mr. LIPPERT. Senator, as I said in the first point, I would look forward to working with you and your office on this issue going forward.

Senator CORNYN. Why are we trying to manage Taiwan's defense budget?

Mr. LIPPERT. Could you clarify the question, Senator?

Senator CORNYN. Yes. Why are we—when Taiwan is ready to pay cash for American exported military aircraft, why would we deny them that ability? Is there any rationale you can see either from a commercial perspective or from a national security perspective why we would deny Taiwan those aircraft?

Mr. LIPPERT. Again, Senator, all I can say is that the administration, from what I saw outside of the Government, made this decision consistent with the Taiwan Relations Act to try to get the best capability over there as soon as possible.

Chairman LEVIN. Thank you, Senator Cornyn.

Senator Graham?

Senator GRAHAM. Very quickly. Let us follow up with that line of reasoning. Senator Cornyn is the expert on this. I will certainly defer to him and may get him involved in this question.

But they are willing to buy new F-16s. Is that right?

Senator CORNYN. Yes, sir.

Senator GRAHAM. Okay. Why would we not sell a good friend the F-16s?

Mr. LIPPERT. Again, Senator, the decision—

Senator GRAHAM. Best bang for whose buck? Best bang for the buck. Whose buck?

Mr. LIPPERT. The bottom line here, Senator, is that—

Senator GRAHAM. We are not letting the People's Republic of China manage our military sales to Taiwan, are we?

Mr. LIPPERT. Absolutely not.

Senator GRAHAM. Okay. Well then, when you say ?bang for buck,? is our buck or their buck that you are worried about?

Mr. LIPPERT. Senator, again, it was a question of getting 160-plus aircraft over with similar capabilities as soon as possible versus the newer airframes.

Senator GRAHAM. It takes longer to get the newer airframes over there?

Mr. LIPPERT. Senator, that is my understanding, but again, I am happy to dig into this and work with your office on it.

Senator GRAHAM. Okay. We are selling new F-16s to Iraq. Is that right?

Mr. LIPPERT. I will take your word for it on that, sir.

Senator GRAHAM. Well, I am very curious. I do not know why we would not be willing to sell them the plane they want and think they need the most, and I hope mainland China is not dictating what we are doing.

Mr. Sheehan, are you familiar with the special operations missions in Afghanistan?

Mr. SHEEHAN. Yes, Senator, I am somewhat although I am not in a post and I am a civilian right now.

Senator GRAHAM. I understand.

Back to Senator McCain's question. There were some disturbing reports coming out of Afghanistan today from President Karzai, and I just want to be on the record that I am very supportive of an enduring relationship with Afghanistan. I think it is in our National security interest to have a political, economic, military relationship that extends to 2014. I have been open about the idea of having bases, joint bases, post 2014 with American aircraft, special forces units, to make sure that the Afghan security forces can always win any engagement with the Taliban. I think you could do that with a footprint around 20,000 or less. But between now and that time—do you feel the insurgency is still alive and well in Afghanistan?

Mr. SHEEHAN. Absolutely, Senator Graham.

Senator GRAHAM. What percentage of detainees coming into American law of war detention at Bagram Air Base comes from night raids? Do you know?

Mr. SHEEHAN. I do not know the answer.

Senator GRAHAM. It is 82 percent. So to the members of the committee, the night raids, which are Afghan partnered—are you familiar with that?

Mr. SHEEHAN. Yes, Senator.

Senator GRAHAM. Every night raid has Afghan partners. We try to make sure they are the first to go through the door. Are you familiar with the fact that most night raids end with captures without a shot being fired?

Mr. SHEEHAN. I do, Senator, and I recognize how important night raids are for our forces.

Senator GRAHAM. As a matter of fact, it is important not only for the Afghan people to defeat the insurgency, but it is important to make sure that the leadership of the insurgency is kept off balance and cannot mount attacks against our forces. Is that correct?

Mr. SHEEHAN. Absolutely correct, Senator.

Senator GRAHAM. So you are of the mind set representing the special operations community that we are not ready yet, nor are the Afghans ready yet to do this without American assistance.

Mr. SHEEHAN. My understanding, Senator, is that the Special Operations Forces that we have been working with for many years over there have greatly enhanced their capability. And I have talked to special operators that say they are pretty good, but they are not quite ready.

Senator GRAHAM. Well, how many helicopters do they have?

Mr. SHEEHAN. I do not know the exact answers.

Senator GRAHAM. Well, I can tell you almost none that can do this. So when you look at the equipment and the technology and

the expertise, I think we need to be joint special operation, Afghan-U.S. night raid capable for a while to come.

And I just want our Afghan friends to understand that they have got a political concern. We want you to have sovereignty. On the detention front, nothing would please me more to transfer the 2,800 prisoners we have in American law of war detention to Afghan control, but there is no legal system capable of receiving them yet. And as long as you have American troops at the level we are anticipating, we have an obligation here to protect them.

So that is sort of my editorial comment about detention and night raids. We do respect Afghan sovereignty. We want to enhance it but we want to do it in a way make sure we defeat the insurgency, protect the Afghan people, and protect American soldiers and those who are fighting on our behalf.

Now, when it comes to special operations missions throughout the world, if we captured a high-level al Qaeda operative tomorrow, a special operator, what are they supposed to do with him in terms of detention?

Mr. SHEEHAN. Senator, right now, my understanding is they go to Bagram Air Force Base.

Senator GRAHAM. Well, I would correct that. If we caught someone in Yemen tomorrow, we are not taking them to Bagram.

Mr. SHEEHAN. Caught them in Afghanistan.

Senator GRAHAM. Yes.

In Afghanistan, we have available Afghanistan confinement facilities at least for a little while longer. Do you think that is a long-term detention facility for the U.S. war on terror? Do you think the Afghans are going to allow Afghan soil to be the U.S. prison in the war on terror?

Mr. SHEEHAN. Probably not, Senator.

Senator GRAHAM. Now, let us say a capture was made in Yemen, special operations. Where would we put that person? What would we do with them?

Mr. SHEEHAN. I am not sure of the exact answer to that, Senator, at this point.

Senator GRAHAM. Well, do you not think humane detention should be available to every member of the military, particularly special operators because that takes them out of the dilemma of having to kill or release, that we need a coherent detention strategy?

Mr. SHEEHAN. Absolutely, Senator.

Senator GRAHAM. It is hard to interrogate a dead man, is it not?

Mr. SHEEHAN. Absolutely.

Senator GRAHAM. So I would just urge you on behalf of the special operations community to push the administration and the Congress to take a burden off their backs. It is not fair to these men and women who are on the tip of the spear to have to capture people, let them go or kill them when this country's intelligence gathering needs are going to be left behind if you cannot capture, detain, and interrogate. So we need an answer to that question, do you not agree?

Mr. SHEEHAN. Yes, Senator, and if confirmed, I will work closely with you and this committee to get a better answer to that question.

Senator GRAHAM. Is your understanding that the Congress basically has prohibited transfers into the United States of terror suspects? That is the law?

Mr. SHEEHAN. I am aware of that, yes, Senator.

Senator GRAHAM. Well, please work on this with us because this is an unacceptable outcome for our military, for our intelligence community, and for our own safety. Thank you very much.

Chairman LEVIN. Let me just quickly ask one question. I can just see if I can ask Senator Graham this question. My understanding is that the prohibition is that terror suspects cannot be brought here from Guantanamo. Is that correct?

Senator GRAHAM. Yes, sir. If you captured someone in Yemen tomorrow, the idea of bringing them into the United States for civilian prosecution seems to be the only lane available because we are not using military commissions. We are not using Guantanamo Bay as the detention facility. My concern, Mr. Chairman, is that that is criminalizing the war, that if you do not use Guantanamo Bay as a confinement facility to hold and interrogate, then there is no other jail available other than American civilian institutions.

Chairman LEVIN. Or a court of military appeals in the United States? I am sorry. Or a military commission inside the United States?

Senator GRAHAM. Yes, sir. And, Mr. Chairman, I think that idea of, say, bringing someone captured in Yemen to Charleston Air Force Base for a military commission is not going to fly because most of us believe that Guantanamo Bay is a very appropriate place to do the trials, detention, and interrogation.

And here is the main concern, Mr. Chairman. I am not so much worried about the prosecution as I am holding these people long enough to gather good intelligence. Being on a Navy ship is an ad hoc approach. You cannot keep someone on a ship very long. And we have learned that long-term detention sometimes is the most appropriate way to gather intelligence that would be humane, but the only place I know that would allow us to do that is going to be Guantanamo Bay. If you bring them back to the United States, Mr. Chairman, for civilian prosecutions, I believe that is criminalizing the war. You lose intelligence gathering. I just do not think the Congress is going to allow this administration or a Republican administration to jump over Guantanamo Bay. I may be wrong, but we are a Nation without a jail, and that is not good for us.

Chairman LEVIN. I just want to clarify factually there is no prohibition on bringing folks other—

Senator GRAHAM. No. You are right.

Chairman LEVIN. I just wanted to know.

Senator GRAHAM. You are right, Mr. Chairman, but the fact is we are not doing it. We do not have a confinement facility because of executive policy, but there is no bar of bringing someone back in the United States for civilian trial captured overseas or for confinement at a military base inside the United States. But we both know one would lead to criminalization of the war and the second is going to be rejected by Congress. And the fact that we are not doing it shows that the policy is broken. We are not doing any of the above.

Chairman LEVIN. I happen to agree with you. Our policy is broken for many reasons, probably for different reasons, however, but—

Senator GRAHAM. Yes, but we are where we are.

Chairman LEVIN. However, I just want to clarify that factually—and this is for your benefit, Mr. Sheehan—at the moment at least, there is no prohibition on bringing in folks that are captured into the United States either for a civilian trial or for a military commission trial and to be kept at a proper prison or jail, more accurately, on a military base. I think that factually is correct.

Senator GRAHAM. That is factually correct and we are not using any of those facilities, but that is factually accurate.

Chairman LEVIN. Just in terms of your response, Mr. Sheehan, I wanted to clarify that.

One quick question and that has to do with—and this is the point also that Senator Graham was making accurately, I believe, with my total support, and that has to do with these night raids. And I also made a comment about those night raids in addition to what Senator Graham said about the night raids and the importance of them and the care with which they are done and how few people have actually been killed, if any Afghans. We have captured a lot and it is important for intelligence purposes. But in addition to everything which he mentioned, I believe that we also have female troops that go in with those teams on those night raids. We are being sensitive to Afghan culture in many, many ways. I just wanted to add that to what Senator Graham was—

Senator GRAHAM. Mr. Chairman, you are dead right. We have learned night raids have been problematic for the Afghan people. Early on, we were doing them in probably less than an effective manner. We were creating more enemies than we were friends. But I would say that Admiral McGraven and the current 535 commander, along with General Alan Petraeus, have created a system, not only are we Afghan culturally sensitive, that when someone is called out, there is an Afghan partner doing the calling out. There are women associated with these raids to deal with the sensitivity of interrogating a woman. The amount of force being used now is just very small. They are very well coordinated with the Afghan legal system. Before we do a raid, we have a cell of Afghans who get to vote as to whether or not we go and take this target down. It is a very Afghan-centric system, but it cannot be done without American capability at this point.

So when President Karzai says things like he said about 2 hours ago or it was reported about 2 hours ago, it is not helpful. And I think all of us, Senator Levin, McCain, and myself, have a goal of transitioning to Afghan control. We have 2,800 law of order detainees at PAR 1 Prison, the old Bagram Air Base prison, the most modern prison I have seen anywhere in that part of the world, more modern than most in South Carolina. We want to shift those prisoners under the Afghan control.

And if you will just bear with me a second, this is important for the committee to understand. We have a court panel. We have three panels of Afghan judges at the air base doing trials with our prison population. They do about 50 a month, but we are capturing 150 a month. And outside their criminal system, there is no way

to detain people under Afghan law. So we are trying to create a new way forward under Afghan law to hold people as a threat to the state with ample due process. We are not there yet.

And one final thought about the Afghan legal system. It is very immature, and it would be a national security mistake for us to dump 2,800 people that we have caught on the battlefield into the Afghan legal system. They do not have the capacity or capability, but we are getting there. Mr. Karzai, President Karzai, we share your goal but we are just not there yet.

Chairman LEVIN. Thank you, Senator Graham.

Senator McCain.

Senator MCCAIN. Mr. Chairman, I know we are short of time. We are due on the floor in just a few minutes. So I will try to be very brief.

Mr. Carson, do you believe that water-boarding qualifies as torture in violation of the Geneva Conventions?

Mr. CARSON. These are complicated questions, but I do believe it does, Senator.

Senator MCCAIN. You really think that that is complicated?

Mr. CARSON. I think the definition of "torture" is a complicated question, but I do believe that water-boarding is a violation of the Geneva Conventions.

Senator MCCAIN. Mr. Ohlson?

Mr. OHLSON. Yes, I do believe it is a violation of the Geneva Conventions.

Senator MCCAIN. Ambassador?

Mr. SHEEHAN. Yes, sir.

Senator MCCAIN. On the issue of detention, we need a couple more answers from you, Ambassador Sheehan, on this whole issue of night raids and detention because we need to know your thoughts on it, and I hope you will get up to speed in response to some written questions that we will be submitting to you.

And, Mr. Ohlson, I guess according to your testimony that despite all the information about the murder of Agent Brian Terry and the ATF significant involvement with Operation Fast and Furious, you knew nothing about it nor expressed any curiosity about it.

Mr. OHLSON. I did not know about any connection to Fast and Furious. That is correct, Senator McCain.

Senator MCCAIN. I guess we were shocked that gambling was going on in the establishment.

And, Mr. Lippert, it has been documented in numerous books and other reports that there was significant, shall we say, disconnects and leaks to the media concerning General Jones that was harmful to his reputation during your tenure at the NSC, but your testimony is you had nothing to do with any of it.

Mr. LIPPERT. That is correct.

Senator MCCAIN. And finally, I will ask you again, do you believe that we could have succeeded in Iraq without the surge?

Mr. LIPPERT. Senator, the surge was vital in our success in Iraq, and I was in Anbar Province 2007–2008 to witness the surge break the back of the insurgency firsthand. So I think we are where we are because of the surge.



Senator MCCAIN. We are out of time I am afraid, Mr. Chairman, and I thank the witnesses. Thank you.

Senator GRAHAM. Mr. Chairman, could I just add one thing? You said that water-boarding violated the Geneva Convention. Would you agree that it violates the War Crimes Act and the Detainee Treatment Act that are now U.S. law? And if you do not know the answer, go look at it, I mean, if you are unsure.

Mr. CARSON. I do not know the answer to those questions and do not know the specific provisions of the statutes. I believe it is bad policy in addition to a violation of the Geneva Convention. And I would be happy to look at those laws as well to see—

Senator GRAHAM. The Detainee Treatment Act and the War Crimes Act. Okay? Is that—

Chairman LEVIN. Would you—

Senator GRAHAM.—with the rest of you?

Chairman LEVIN. I am sorry.

Senator GRAHAM. All of them nodded in the affirmative.

Mr. SHEEHAN. Yes, Senator.

Chairman LEVIN. Nodded in the affirmative that what?

Senator GRAHAM. That it does violate the War Crimes Act and it does violate the Detainee Treatment Act.

Chairman LEVIN. I would hope they would nod in the affirmative, and Mr. Carson, I hope when you answer for the record—that you provide us an answer to the question for the record and you do that promptly.

Mr. CARSON. Certainly, Senator.

Chairman LEVIN. And I want to thank my colleagues and thank you all for your presence, thank your families.

We will stand adjourned.

[Whereupon, at 10:52 a.m., the committee adjourned.]