

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

THURSDAY, JULY 25, 2013

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

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

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

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

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

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

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

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

Committee members' assistants present: Jeff Fatora, assistant to Senator Nelson; Casey Howard, assistant to Senator Udall; Mara

Boggs and David LaPorte, assistants to Senator Manchin; Patrick Day, assistant to Senator Shaheen; Moran Banai, assistant to Senator Gillibrand; Ethan Saxon, assistant to Senator Blumenthal; Marta McLellan Ross, assistant to Senator Donnelly; Karen Courington, assistant to Senator Kaine; Steve Smith, assistant to Senator King; Alex Herrgott, assistant to Senator Inhofe; Lenwood Landrum, assistant to Senator Sessions; Todd Harmer, assistant to Senator Chambliss; Craig Abele, assistant to Senator Graham; and Peter Blair, assistant to Senator Lee.

OPENING STATEMENT OF SENATOR CARL LEVIN, CHAIRMAN

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

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

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

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

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

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

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

Senator INHOFE. May I say something?

Chairman LEVIN. Please.

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

said, "I've been through two wars, I've been through there, and I'm not going to die on this highway. Slow down." [Laughter.]

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

It's nice to have you back, John.

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

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

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

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

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

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

The Assistant Secretary of the Navy for Financial Management and Comptroller is responsible for managing the Navy's budget and

for keeping the Navy on the path to an auditable financial statement. Ms. Rabern has a distinguished background. She served for 20 years in the U.S. Navy and has held the position of Chief Financial Officer at the Federal Bureau of Investigation (FBI), the U.S. Customs Service, and the U.S. Agency for International Development. She is currently the Director of the Virginia Military Institute Center for Leadership and Ethics.

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

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

I'll now call on Senator Inhofe.

STATEMENT OF SENATOR JAMES M. INHOFE

Senator INHOFE. Thank you, Mr. Chairman.

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

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

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

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

Vice Admiral McGinn, after a distinguished 35-year career in the Navy, you've been nominated to serve as the Assistant Secretary of the Navy for Energy, Installations, and Environment. I note that, since 2011, you've been the President of the American Council

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

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

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

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

Chairman LEVIN. Thank you very much, Senator Inhofe.

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

Again, a very warm welcome, John, and please proceed.

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

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

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

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

I'll be very brief, Mr. Chairman, because the nominee is well known. But, before I proceed to the nominee, may I say, I studied,

with great interest and care, all four of the resumes of these individuals. It's extraordinary to see generations who have done public service, go into the private sector, then willing to forego many of the benefits of private sector and return to serve their Nation and the public. Judging from my own experience, these four resumes constitute an extraordinary body of knowledge needed in these respective positions and needed by our country at a critical time.

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

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

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

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

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

His hallmark, if I were to pick one out, is humility. Surprisingly, humility. Now, he's a naval aviator, and that is extraordinarily difficult for that particular class of individual, it has been my experience for them to be humble. But, he had it. He was in full afterburn, and, most of the time when we were speaking and I had to lean over gently, as you've done to me many times, both you, tapping me, "That's enough." [Laughter.]

But, I have coached him to be brief and to the point and to follow orders of the Commander in Chief and of the Secretary of the

Navy, and he has pledged to do that, to me, and I'm certain he would do the same for you.

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

With that, I once again thank this committee for its work, and wish you well, because these are troubled times for our country. But, it appears to me, with all due respect to the confirmation process, a very vital part of the function of the U.S. Senate, we have fine people. This country is greatly strengthened by the will of such people to step forward and do, time and time again, public service.

I thank you very much, Mr. Chairman.

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

Let me recognize our new member from Virginia, Senator Kaine.

Senator WARNER. Thank you.

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

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

It is great to be with you, as always, Senator, and it's so nice that the chairman let me say those words.

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

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

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

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

I thank the chairman and the ranking member.

Chairman LEVIN. Thank you so much, Senator.

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

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

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

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

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

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

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

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

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

Now, I must say, I have found that the temptation to open with a lengthy statement diminishes dramatically from one of these hearings to the next, so I assure you, I'll be brief with my opening. [Laughter.]

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

If confirmed, I will pledge my continued personal commitment to the rule of law, and will work to ensure that the Department remains in full compliance with all applicable law. I will also pledge always to keep in mind the importance of the mission—protecting our country from threats to the national security—and will work to help find lawful paths to achieve mission objectives. Following the Secretary's lead, I will pledge my best efforts to ensure that the Armed Services Committees are kept properly informed, in furtherance of their critical oversight responsibilities. Finally and most important, as General Counsel, I will pledge to serve the people who serve people who serve us, the fine men and women of the U.S. Armed Forces.

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

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

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

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

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

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

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

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

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

Finally, my private-sector experience includes over 20 years as a banker, a management consultant, and internal auditor. If confirmed, I will capitalize on my past experiences and commit to providing the strong leadership needed to manage this important office.

I look forward to working with Congress, Secretary Hagel, and the Department's leadership to provide independent, relevant, and timely oversight that is critical to supporting the warfighter and promoting accountability, integrity, and efficiency. I also look forward to working with Principal Deputy Inspector General Lynne Halbrooks and the nearly 1,600 employees who are committed to fulfilling the responsibilities of the IG Act at the Department of Defense. Finally, I welcome the opportunity to work with my counterparts in the Department oversight community.

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

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

Thank you.

Chairman LEVIN. Thank you, Mr. Rymer.

Dr. Rabern.

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

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

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

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

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

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

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

I am deeply honored to have been nominated for this position. If confirmed, I pledge to you that I will do my best to serve the Na-

tion and the men and women of the Department of the Navy to the utmost of my ability.

Thank you.

Chairman LEVIN. Thank you, Dr. Rabern.
Admiral McGinn.

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

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

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

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

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

If confirmed, I'll look forward to leading a highly talented, dedicated, and hardworking team in our military and civilian workforce to ensure that the mission of the Department of the Navy is well served and supported. I pledge to wisely apply available resources to increase the availability and efficient use of all of our energy sources, to maintain our installations and training ranges in a high state of readiness, to preserve a high quality of life for our sailors, marines, and their families, to fully meet our obligation as good stewards of the environment, and to enhance safety in every aspect of our overall mission.

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

Thank you.

Chairman LEVIN. Thank you so much, Admiral.

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

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

[All four witnesses answered in the affirmative.]

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

[All four witnesses answered in the negative.]

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

[All four witnesses answered in the affirmative.]

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

[All four witnesses answered in the affirmative.]

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

[All four witnesses answered in the affirmative.]

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

[All four witnesses answered in the affirmative.]

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

[All four witnesses answered in the affirmative.]

Chairman LEVIN. Thank you.

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

Mr. Preston, we have approved a fiscal year 2014 authorization bill in committee. It's not yet gone to the floor, but in committee. We included a number of changes to the procedures for transfers of detainees from Guantanamo.

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

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

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

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

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

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

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

Chairman LEVIN. All right, thank you.

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

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

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

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

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

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

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

I must say, I have to rely on those with far greater familiarity with the report and the record when it comes to facts and findings. But, I accept the conclusions and support the recommendations, and I support the Director's decision to forward these comments to

the committee. Frankly, it's my hope that they will be useful to the committee as it continues to consider the matter.

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

Mr. PRESTON. Very well.

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

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

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

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

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

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

Chairman LEVIN. What is your understanding of what constitutes an "associated force" that is subject to the use of military force under the 2001 authorization? I'll ask two questions, here; it'll be my last one—what is your opinion about the impact of the end of combat operations in Afghanistan on the application of the authorization for the use of force to al Qaeda and its associates elsewhere than Afghanistan?

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

Of course, the language of the Authorization for Use of Military Force (AUMF) refers to groups and individuals responsible for the September 11 attacks and those who harbored them. As you well know, that has obviously been applied to al Qaeda and the Taliban and interpreted also to reach associated forces.

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

But, it does reach groups that have joined the fight with al Qaeda and against the United States.

Chairman LEVIN. Wherever they may be.

Mr. PRESTON. I believe that is correct.

Chairman LEVIN. Thank you.

Senator Inhofe.

Mr. PRESTON. Would you like me to answer your second question?

Chairman LEVIN. Please. Yes, if you could do it briefly.

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

Chairman LEVIN. Thank you.

Senator Inhofe.

Senator INHOFE. Thank you, Mr. Chairman.

When Admiral McGinn made his opening statement, I was reminded of something. While Senator Warner is still here, I'll repeat it.

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

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

Senator INHOFE. You have some time, before you're my age.

Admiral MCGINN. Yes, sir.

Senator INHOFE. I can remember, I'd always take pictures—candid pictures, and we had a Christmas card that would come out every year. Senator Warner, over there, said, "You know, you're the only one who sends a card out where you have 22 members of the family, and not any 2 are looking the same direction." [Laughter.]

You don't want to make that mistake.

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

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

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

Mr. PRESTON. Of last year, sir?

Senator INHOFE. Yes.

Mr. PRESTON. I was General Counsel at CIA.

Senator INHOFE. All right. What was your role in the Benghazi matter?

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

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

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

Mr. PRESTON. Yes, sir.

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

Mr. PRESTON. No, sir.

Senator INHOFE. I didn't think you did.

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

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

The question I would have, you've already answered to my satisfaction, in terms of your role or your lack of role.

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

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

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

Mr. PRESTON. I do.

Senator INHOFE. Okay. I do, too.

I'm not a lawyer, so I feel a little insecure talking about this in a lot of detail to someone who is, and who is a professional. But, I do know what an expeditionary legal complex is. I've been

through this down there, and I've seen the advantages that we have there. I also recall that, 4 years ago, when this President—it may have been, actually, before he took office—talked about the fact that we need to transfer these people to the United States, one of the suggested locations happened to be in my State of Oklahoma. It was in Fort Sill. I went down and I talked to a Sergeant Major down there by the name of Jackson, and she said, "What is wrong with the people in Washington?" She had had two or three deployments to GTMO and said, "We have the ideal situation there." Other than the fact that the terrorists and many people who are our enemies think that this is something that we should not keep open, can you think of any reason why we're not using that today to its fullest capacity for detention and for trials?

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

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

Mr. PRESTON. I would welcome that.

Senator INHOFE. Admiral McGinn, you and I were together and fought the unsuccessful Battle of Vieques some 12 years ago.

Admiral MCGINN. Yes, sir.

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

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

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

Admiral MCGINN. Right.

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

Admiral MCGINN. Based on my knowledge of Twentynine Palms and my experience, having fired rockets and dropped bombs on Twentynine Palms when I was getting ready for combat, I recognize the critical need to do live-fire training and to train like you

fight. That is what the marines want to do, and that's why we need to expand the training range at Twentynine Palms—

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

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

Admiral MCGINN. I look forward to it, Senator.

Senator INHOFE. Thank you, sir.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Inhofe.

Senator Udall.

Senator UDALL. Thank you, Mr. Chairman.

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

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

Admiral, you've served 35 years in uniform, and you've been a steadfast advocate for our sailors, and you've been leader on the national security issues, writ large, and you've earned my deepest respect, and I think everybody's on the committee. I'm not alone in that regard, and I have a letter from the Center for Naval Analyses (CNA) Military Advisory Board, an organization which consists of some of our finest retired three- and four-star admirals and generals, Mr. Chairman, and they've written to the committee in strong support of the Vice Admiral's nomination, and I agree with them completely. I'd like to submit the letter for the record, if I might.

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

[The information referred to follows:]

<p>Members</p> <p>Admiral Steve Abbot USN (Ret.)</p> <p>Admiral Frank "Skip" Bowman USN (Ret.)</p> <p>General Charles Boyd USAF (Ret.)</p> <p>General Michael P. Carns USAF (Ret.)</p> <p>General James Conway USMC (Ret.)</p> <p>Lt. General Ken Eickmann USAF (Ret.)</p> <p>Lt. General Larry Farrell USAF (Ret.)</p> <p>Major General Russell Fuhrman USA (Ret.)</p> <p>General Don Hoffman USAF (Ret.)</p> <p>Vice Admiral Paul Gaffney USN (Ret.)</p> <p>Brig. General Gerald E Galloway USA (Ret.)</p> <p>Vice Admiral Lee Gunn USN (Ret.)</p> <p>General Paul Kern USA (Ret.)</p> <p>General Ron Keys USAF (Ret.)</p> <p>Admiral T. Joseph Lopez USN (Ret.)</p> <p>General Robert Magnus USMC (Ret.)</p> <p>Vice Admiral Dennis McGinn USN (Ret.)</p> <p>Rear Admiral Neil Morisetti UK Royal Navy (Ret.)</p> <p>Admiral John Nathman USN (Ret.)</p> <p>Rear Admiral David Oliver USN (Ret.)</p> <p>Admiral Joseph Prueher USN (Ret.)</p> <p>Vice Admiral Ann Rondeau USN (Ret.)</p> <p>Vice Admiral Roger Rufe USCG (Ret.)</p> <p>Lt. General Keith Stalder USMC (Ret.)</p> <p>General Gordon Sullivan USA (Ret.)</p> <p>Vice Admiral Richard Truly USN (Ret.)</p> <p>Lt. General Clyde A. Vaughn USA (Ret.)</p> <p>General Charles F. "Chuck" Wald USAF (Ret.)</p> <p>Lt. General Richard Zilmer USMC (Ret.)</p> <p>General Tony Zinni USMC (Ret.)</p>	 <p>CNA Military Advisory Board 4825 Mark Center Drive • Alexandria, Virginia 22311-1850 • 702.824.2000</p> <p>July 23, 2013</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>The Honorable Carl Levin Chairman Senate Armed Services Committee Washington, DC 20510</p> </td> <td style="width: 50%; vertical-align: top;"> <p>The Honorable James Inhofe Ranking Member Senate Armed Services Committee Washington, DC 20510</p> </td> </tr> </table> <p>Dear Chairman Levin and Ranking Member Inhofe:</p> <p>We write to provide the support of CNA's Military Advisory Board (MAB) for the appointment of Vice Admiral Dennis McGinn, USN (Ret.) to the position of Assistant Secretary of the Navy for Energy, Installations, and Environment. As a stalwart member of CNA's MAB since 2008, VADM McGinn has demonstrated a keen understanding of the nexus between energy, the environment, and national security and an even more impressive ability to articulate the significance of this nexus to elected officials, military leaders, and the public. If confirmed, these abilities will serve him well as Assistant Secretary of the Navy for Energy, Installations, and Environment.</p> <p>Serving as Vice Chairman of CNA's MAB for the past five years, VADM McGinn has been a mainstay of the board. He has demonstrated strong leadership and a unique ability to build consensus across a group of senior military executives with strongly held, but sometimes differing, views. He has contributed his superior knowledge and experience in energy and national security to several of CNA MAB publications in these areas. He has participated in outreach events with Members of Congress and staff, throughout Washington, DC, and across the country, speaking to countless military leaders, policy makers, and the public on the importance of secure energy, energy's impact on the world's changing environment and the implications of energy to national security. In all of these events, his ability to see past politics and to focus on what is in the best interest of the nation has made him a truly matchless and a prized member of the MAB.</p> <p>For more than 33 years, VADM McGinn served the nation as a naval officer. Upon retirement, he continued to serve the interest of our national security by focusing his efforts on ensuring the United States has a secure, sustainable energy supply. He is practiced, polished, and well-positioned to</p>	<p>The Honorable Carl Levin Chairman Senate Armed Services Committee Washington, DC 20510</p>	<p>The Honorable James Inhofe Ranking Member Senate Armed Services Committee Washington, DC 20510</p>
<p>The Honorable Carl Levin Chairman Senate Armed Services Committee Washington, DC 20510</p>	<p>The Honorable James Inhofe Ranking Member Senate Armed Services Committee Washington, DC 20510</p>		

bringing this experience and leadership back to the Navy as Assistant Secretary of the Navy for Energy, Installations, and Environment.

Sincerely,



Sherri Goodman
Executive Director,
CNA Military Advisory Board
Former Deputy Undersecretary
of Defense (Environmental Security)
Senior Vice President and
General Counsel, CNA



General Paul Kern, USA(Ret.)
Chairman
CNA's Military Advisory Board
Former US Army Material Command

Senator UDALL. Thank you for that.

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

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

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

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

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

I think one of the things that the Agency has focused on in recent years is an effort, not only to practice that, but to try to institutionalize it in some fashion, with respect to our most sensitive programs, to make sure that there is a purposeful effort to ensure

that opinions that we may be relying on, that the factual basis for that opinion has not materially changed.

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

Let me turn to the difference between covert action and secret military operations. As I mentioned, I sit on this committee, I sit on the Intelligence Committee, as well, and I wanted to run through a series of questions and then ask you to respond to them all at once. Let me start here.

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

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

Finally, in this easy set of questions for you—[Laughter]

Finally, under what circumstances can a secret military program, as distinct from a particular tactical operation, be briefed only to the chairman and ranking member?

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

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

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

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

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

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

Mr. PRESTON. Thank you.

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

Admiral MCGINN. Yes, sir.

As the title implies, it involves energy, installations, and environment. Not in the title, but part of the responsibilities are safety for operations afloat and ashore. I want to make sure that the Navy meets near-term warfighting readiness goals. We have a very fine group of men and women in the Navy and Marine Corps that are out there on the tip of the spear, as we say, and we have to make sure that they are well supported, and those following them are fully ready to go out there and relieve them. That's job one, that is the lens through which I want to look at all of those areas of responsibility.

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

Senator UDALL. Thank you, Admiral.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Udall.

Senator Donnelly.

Senator DONNELLY. Thank you, Mr. Chairman.

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

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

Mr. RYMER. Yes, sir, I am very concerned about it. I think the issues concerning sexual assault are certainly something the IG has to pay more attention to than perhaps the office has in the past. That particular report was completed pursuant to the IG's responsibility to provide oversight over the military criminal investigative organizations. That's the Army Criminal Investigation Command (CID), Naval Criminal Investigative Service (NCIS), and the Air Force Office of Special Investigations (OSI).

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

Senator DONNELLY. Yes, I was just going to follow up with the best-practices point that you just made. Do you intend to look and say, "This is working, this is producing the best-quality information we could possibly have, the best, most accurate information," and share it with each of the different branches?

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

Senator DONNELLY. Thank you very much.

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

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

Senator DONNELLY. We look forward to your confirmation. Once you are confirmed, we would like to invite you back. A time that might be ideal is—Indiana University is playing Navy in football, in Bloomington just about 15 miles away, on September 7.

Admiral MCGINN. Yes, sir.

Senator DONNELLY. The Friday before, I assume everyone will be busy at work at Crane—

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

Senator DONNELLY. I thought it would be.

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

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

Senator DONNELLY. I know you know this statistic, but we lost more servicemembers to suicide last year than we did in combat.

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

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

the United States, or do you think that the AUMF applies to al Nusra Front in Syria?

Mr. PRESTON. Senator, let me refrain from revealing any current discussions on that score.

Senator DONNELLY. Understood.

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

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

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

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you.

Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Mr. Chairman.

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

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

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

Mr. PRESTON. Let me say that I appreciate the salutary intent behind the idea. I have to say that I'm not sufficiently informed on the various legislative proposals to have formed a fixed personal view on it. I think the concern that has been expressed about that relates to the role of the military justice system as an integral part

of the command structure. There's a reason for that, because the military justice system is one of the instruments by which command maintains military discipline—

Senator BLUMENTHAL. I understand that point where you know a lot about the Uniformed Code of Military Justice, I am certain, and I know that you don't have a fixed personal view.

Mr. PRESTON. Yes.

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

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

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

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

Senator BLUMENTHAL. Thank you.

[The information referred to follows:]

As the Secretary of Defense has stated, eliminating sexual assault from our Armed Forces is one of the Department's top priorities and, if confirmed, I look forward to helping achieve that goal in my capacity as the chief legal officer for the Department.

It is my personal view that there is great merit to many of the proposals currently pending before Congress. In particular, I support efforts to ensure that individuals convicted of sexual assault do not serve in the military, to supplement the breadth and availability of support services for victims, and to enhance and standardize the oversight and investigation of sexual assault allegations. These proposals represent concrete steps that should strengthen the Department's overall sexual assault prevention and response programs and efforts.

With regard to eliminating the authority of commanders to refer charges or convene court-martials, I think special care should be taken before removing commanders from the administration of military justice, which would represent a fundamental change to the military justice system that is likely to have second- and third-order effects. As I understand it, significant questions have been raised about how such a proposal could be implemented in practice and its potential effect on the expeditious and efficient administration of military justice.

Secretary Hagel recently expanded the role of lawyers in the sexual assault offense disposition process by requiring the Secretaries of the Military Departments to mandate no later than December 1, 2013, that judge advocates serve as investigating officers for all Article 32 hearings on such charges. As this illustrates, the role of lawyers in the military justice system is not immutable, and no potential solution to achieve the eradication of sexual assault in the military is off the table, including increasing the role of lawyers and decreasing the role of the commander.

Indeed, the panel established by Congress to review and assess the systems used to investigate, prosecute, and adjudicate crimes involving sexual assault has been tasked specifically to assess the strengths and weaknesses of the current role of commanders in the administration of military justice. (National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, § 576(d)(1)(G), 126 Stat. 1632, 1760 (2013)). If confirmed, I will study the panel's conclusions in advising the Secretary on this issue.

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

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

Senator BLUMENTHAL. I would appreciate your reviewing that report. My view is that there is absolutely no justification for the purchase of Russian helicopters, when there are no Afghan pilots trained to fly them, no mechanics trained to repair them. The United States will spend, eventually, more than a billion dollars. We've already spent half a billion, and we've just contracted for another half billion. If there are any helicopters to be purchased and there is sufficient justification, my view is, they ought to be American helicopters. But, the first question is whether that sale of helicopters to the Afghans makes any sense at all, in terms of the national defense issues that are raised by the sale, and particularly no justification for purchase of helicopters from a Russian-controlled export agency that is also selling arms to Syria, used for the slaughter of its own people by a dictator whom we have vowed to overthrow. We are, in effect, supporting Bashar Assad.

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

Mr. RYMER. Yes, sir.

[The information referred to follows:]

The Special Inspector General for Afghanistan Reconstruction (SIGAR) assessed the extent to which the Afghan military has the capacity to operate and maintain its current and planned fleet of Mi-17 helicopters and the effectiveness of U.S. Government oversight of two task orders to provide maintenance, logistics, and supply support to the Afghan military (Afghan Special Mission Wing: DOD Moving Forward with \$771.8 Million Purchase of Aircraft that the Afghans Cannot Operate and Maintain, SIGAR Audit 13-13, June 2013). It would not be appropriate for me to comment on the SIGAR report while my nomination is pending; however, if confirmed, I will assess to what extent further audit or inspection work by the Department of Defense (DOD) Inspector General (IG) regarding the purchase of Mi-17 helicopters would be appropriate.

I am aware that the DOD IG has issued several reports that have examined aspects of the Mi-17 helicopter program. On September 28, 2012, the DOD IG issued an assessment report, "Assessment of U.S. Government and Coalition Efforts to Train, Equip, and Field the Afghan Air Force," (DODIG-2012-141), which, in part, addresses challenges presented in training and equipping Mi-17 flight and maintenance personnel. In an audit report, "Mi-17 Overhauls Had Significant Cost Overruns and Schedule Delays," September 24, 2012, (DODIG-2012-135), the DOD IG recommended the U.S. Army consider whether suspension and debarment is warranted for a Russian firm subcontracted to overhaul Mi-17 aircraft.

Subsequent to this hearing, the DOD IG issued audit report DODIG-2013-123, "Army Needs To Improve Mi-17 Overhaul Management and Contract Administration." The report recommended that the Army review the contracting officer's per-

formance for inappropriate actions, recoup \$6.2 million in advance payments to the contractor for services never provided, and review the Program Office actions which established an inappropriate \$8.1 million parts inventory.

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

Chairman LEVIN. Thank you very much, Senator Blumenthal.

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

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

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

Chairman LEVIN. Thank you.

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

Mr. RYMER. Yes, sir, I will.

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

Mr. RYMER. Sir, I think the process that's in place now, is that information is not redacted if the request is from the chairman or the ranking member, in their capacity of acting on behalf of the committee. If it's from an individual member, I believe it's treated as a release to the public, and there are redactions.

Chairman LEVIN. But, to the ranking member and to the chairman, it is unredacted?

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

Chairman LEVIN. Thank you.

In October 2012, the President issued a policy directive relating to the protection of whistleblowers who have access to classified information. This directive is designed to ensure that employees serving in the Intelligence Community or who are eligible for access to

classified information can effectively report waste, fraud, and abuse while protecting classified national security information. Are you familiar with this directive? What do you understand will be your role, if confirmed, in implementing it within DOD?

Mr. RYMER. Yes, sir, I am somewhat familiar with it. As I understand, in the DOD Inspector General if complaints are received, the role of the Inspector General in the whistleblower process is to investigate any claims or concerns about retaliation. That would be my main concern, sir.

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

Mr. RYMER. I think that the process, sir, as I understand it, is when the information comes to the IG, the IG tries to make a determination as to whether it is classified and presents an urgent need. Then I believe there's a role for the Secretary of Defense to release the information to Congress. Or, I may be confusing that with another process.

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

Mr. RYMER. Yes, sir, I will.

[The information referred to follows:]

Executive Order and Department of Defense (DOD) guidance that establish the requirements for access to classified information permit DOD employees, military personnel, and contractor employees to have access to classified information provided the individual possesses a valid and appropriate security clearance, have executed a nondisclosure agreement, and have a valid need-to-know the information in order to perform a lawful and authorized governmental function. Such individuals provided access to classified information have a duty to protect that information from unauthorized disclosure.

Congress has established the Intelligence Community Whistleblower Protection Act (ICWPA) as the authorized means to disclose complaints of classified wrongdoing to Congress. The ICWPA (title 5 U.S.C. Appendix § 8H) provides a secure way for employees, or contractor employees, of the four DOD intelligence agencies—the Defense Intelligence Agency (DIA), National Geospatial-Intelligence Agency (NGA), National Reconnaissance Office (NRO), and the National Security Agency (NSA)—to tell Congress about classified wrongdoing. DOD IG reviews the complaint, and if it determines it to be credible and present an “urgent concern,” forwards it to the Secretary of Defense (SECDEF), who forwards it to Congress.

If the complaint or information does not meet ICWPA standards, the complainant may contact Congress directly, but only after informing SECDEF, through DOD IG, of their intent to contact, and getting SECDEF guidance, through DOD IG, on the appropriate way to do so.

The ICWPA is basically a means to get complaints that involve classified information to Congress. ICWPA does not provide protections against reprisal, however, under the new protections provided by Presidential Policy Directive-19 (PPD-19), a qualifying employee who files an ICWPA complaint may not be reprisal against for doing so.

Chairman LEVIN. Senator Inhofe.

Senator INHOFE. Thank you, Mr. Chairman.

Let me just briefly touch on it.

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

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

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

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

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

Senator INHOFE. Was there a criminal investigation launched?

Mr. PRESTON. That's my understanding.

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

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

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

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

Senator INHOFE. Considering that this individual is the Vice Chairman of HPSCI over there, and made the request, do you see any reason that you couldn't, even in a classified form, respond to his questions, either now or if something should happen in the future?

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

Senator INHOFE. If he were to re-ask you that question in a classified form, could you respond to it?

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

Senator INHOFE. Okay. That's fine.

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

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

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

Admiral MCGINN. Yes, sir.

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

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

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

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

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

Senator INHOFE. All right. Thank you very much for that answer.

Admiral MCGINN. Yes, sir.

Senator INHOFE. Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Inhofe.

I have an additional question or two.

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

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

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

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

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

Admiral MCGINN. Yes, sir.

Chairman LEVIN. Okay.

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

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

Admiral, are you familiar with the GAO report?

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

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

Admiral MCGINN. Yes, I will.

Chairman LEVIN. Also, will you let us know, in your report, whether or not we should be funding military construction projects to support the movement of marines to Guam before we have commitments from host nations, in terms of their participation in those costs?

Admiral MCGINN. Yes, sir.

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

Admiral MCGINN. I will.

Senator INHOFE. Just really briefly.

Chairman LEVIN. Sure.

Senator INHOFE. Let me correct the record. I had used the wrong name. The Sergeant Major at Fort Sill that was really somewhat of an expert in this area—was named Carter. I used the wrong name. I wanted to make sure I got that correction.

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

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

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

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

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

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

Senator INHOFE. All right.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you.

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

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

If there are no additional questions, we will stand adjourned, again with thanks to you and your families.

[Whereupon, at 11:12 a.m., the committee adjourned.]

[Prepared questions submitted to Hon. Stephen W. Preston by Chairman Levin prior to the hearing with answers supplied follow:]

QUESTIONS AND RESPONSES

DEFENSE REFORMS

Question. The Goldwater-Nichols Department of Defense Reorganization Act of 1986 and the Special Operations reforms have strengthened the warfighting readiness of our Armed Forces. They have enhanced civilian control and the chain of command by clearly delineating the combatant commanders' responsibilities and authorities and the role of the Joint Chiefs of Staff. These reforms have also improved cooperation between the services and the combatant commanders in the strategic planning process, in the development of requirements, in joint training and education, and in the execution of military operations.

Do you see the need for modifications of any Goldwater-Nichols Act provisions based on your experience in the Department of Defense?

Answer. I believe that Goldwater-Nichols and other reforms have significantly improved the Department of Defense. At this time, I am not aware of any need to amend Goldwater-Nichols. If am confirmed and become aware of a need, I will recommend any changes I believe to be warranted.

Question. If so, what areas do you believe might be appropriate to address in these modifications?

Answer. See answer above.

RELATIONSHIPS

Question. What is your understanding of both the formal and informal relationship between the General Counsel of the Department of Defense and the following offices?

The Secretary of Defense.

Answer. As the chief legal officer of the Department of Defense, the General Counsel is the principal legal advisor to the Secretary of Defense and, as such, advises on the full range of issues confronting the Department of Defense. If confirmed, I look forward to working very closely with the Secretary and his immediate staff on these issues.

The Under Secretaries of Defense.

Answer. The General Counsel and attorneys reporting to the General Counsel are responsible for providing sound and timely legal advice to the five Under Secretaries of Defense and their respective offices.

The Assistant Secretaries of Defense.

Answer. As with the Under Secretaries of Defense, the General Counsel and attorneys in the Office of General Counsel are responsible for providing sound and timely legal advice to the Assistant Secretaries of Defense and their staffs.

The Chairman of the Joint Chiefs of Staff.

Answer. The Chairman has his own lawyer, the Legal Counsel to the Chairman of the Joint Chiefs of Staff, who is a judge advocate in the grade of brigadier general or rear admiral (lower half). The Chairman relies primarily on the Legal Counsel for legal advice. If confirmed, I expect to meet regularly and work closely with the Chairman's Legal Counsel on a wide variety of matters affecting the Department of Defense and would be available to the Chairman as appropriate.

The geographic combatant commanders.

Answer. The geographic combatant commanders have their own Staff Judge Advocates, on whom they rely for legal advice. If confirmed, I expect to work with the geographic combatant commanders and their Staff Judge Advocates through the Chairman of the Joint Chiefs of Staff and the Joint Staff, including the Legal Counsel to the Chairman as appropriate.

The Commander of the Joint Special Operations Command.

Answer. The Commander of the Joint Special Operations Command (JSOC) has his own Staff Judge Advocate who provides legal advice to him, in conjunction with the Staff Judge Advocate of the U.S. Special Operations Command (SOCOM), as JSOC is a part of SOCOM. If confirmed, I expect to work with the Commander and the Staff Judge Advocate of JSOC, as well as the Commander and the Staff Judge Advocate of SOCOM, through the Chairman of the Joint Chiefs of Staff and the Joint Staff, including the Legal Counsel to the Chairman as appropriate.

The Judge Advocates General (TJAG).

Answer. The Judge Advocates General (TJAG) are responsible for providing legal advice, along with the General Counsels of the Military Departments, to the senior leadership of their respective Military Departments. Title 10 expressly directs that "[n]o officer or employee of the Department of Defense interfere with the ability of the Judge Advocate[s] General to give independent legal advice to" the leadership of their respective Military Departments. See title 10 U.S.C. §§ 3037, 5148, 8037. If

confirmed, I expect to meet regularly and work closely with all of the Judge Advocates General, as well as the Staff Judge Advocate to the Commandant of the Marine Corps, and I aim to have the same productive and collegial relationship with the "TJAGs" and the JAG community as I enjoyed during my prior service at the Department of Defense.

Question. The Legal Advisor to the Chairman of the Joint Chiefs of Staff.

Answer. As noted above, the Legal Counsel to the Chairman is responsible for providing legal advice to the Chairman of the Joint Chiefs of Staff. If confirmed, I expect to have a productive and collegial relationship with the Chairman's Legal Counsel, characterized by frequent meetings and close collaboration, particularly with respect to military operations.

Question. The Staff Judge Advocates to the Commanders of Combatant Commands.

Answer. I understand that the relationship of the General Counsel to the Staff Judge Advocates of the Combatant Commands is primarily through the Chairman's Legal Counsel.

Question. The General Counsels of the Military Departments.

Answer. From my prior service as General Counsel of the Department of the Navy and as Principal Deputy General Counsel of the Department of Defense, I appreciate the close working relationships among the Military Department General Counsels and the DOD General Counsel. The General Counsels of the Army, Navy and Air Force serve as the chief legal officers of their respective departments and report to the Secretaries of their respective departments. At the same time, the DOD General Counsel is the chief legal officer of the entire Department of Defense. If confirmed, I expect to meet regularly and work closely with the Military Department General Counsels.

Question. The Counsels for the Defense Agencies.

Answer. The DOD General Counsel is also the Director of the Defense Legal Services Agency (DLSA), and the General Counsels of the defense agencies and DOD field activities are all part of DLSA. The General Counsels of the defense agencies and DOD field activities report the DOD General Counsel in his or her capacity as DLSA Director.

Question. The Counsel to the Inspector General.

Answer. Title 5 of the U.S.C. provides for a General Counsel to the Inspector General of the Department of Defense, who reports directly to and performs duties as assigned by the Inspector General. If confirmed, I expect to work closely with the General Counsel to the Inspector General.

Question. The Joint Service Committee on Military Justice.

Answer. I understand that the DOD General Counsel designates a non-voting representative to the Joint Service Committee on Military Justice, provides taskings to the committee, and receives advice from it.

Question. The Comptroller General.

Answer. It is my understanding that the General Counsel, on behalf of the Secretary of Defense, may request advisory opinions from the Comptroller General on the obligation and disbursement of public funds. If confirmed, I expect to have a productive relationship with the Comptroller General and his or her staff with respect to matters involving fiscal law within the responsibility of the Comptroller General.

Question. The U.S. Court of Appeals for the Armed Forces.

Answer. By statute, the U.S. Court of Appeals for the Armed Forces is located, for administrative purposes only, within the Department of Defense. See title 10 U.S.C. §941. My understanding is that the DOD General Counsel has historically served as an informal DOD liaison with the Court. If confirmed, I expect to support the work of the Court while respecting its independence.

Question. The Code Committee established under Article 146 of the Uniform Code of Military Justice.

Answer. I understand that the Code Committee consists of the Judges of the United States Court of Appeals for the Armed Forces, the Judge Advocates General of the Military Departments, the Judge Advocate General and Chief Counsel of the Coast Guard, the Staff Judge Advocate to the Commandant of the Marine Corps, and two recognized authorities on military justice appointed by the Secretary of Defense from public life. The General Counsel has no formal relationship to the Code Committee. However, the General Counsel may provide informal support to the Code Committee when requested and regularly communicates with the Code Committee with respect to the activities and recommendations of the Joint Service Committee on Military Justice.

Question. The Attorney General.

Answer. The Attorney General is the chief legal officer and law enforcement authority of the United States. As General Counsel of the Central Intelligence Agency, I have worked closely with the Attorney General and his staff on a number of matters. If confirmed, I look forward to continuing the productive relationship that I have enjoyed with the leadership of the Department of Justice.

Question. The Office of Legal Counsel at the Department of Justice.

Answer. The Assistant Attorney General for the Office of Legal Counsel issues legal opinions that are binding on the executive branch, including the Department of Defense, and regularly provides advice to attorneys throughout the Executive branch. As a result, the DOD General Counsel must work closely with the Office of Legal Counsel to ensure that the best possible legal advice is provided to officials of the Department of Defense. As General Counsel of the Central Intelligence Agency, I have had a very close and productive relationship with the Assistant Attorney General and the Office of Legal Counsel, and, if confirmed, I expect that relationship to continue.

Question. The Office of Legal Adviser at the Department of State.

Answer. Many national security matters require the Departments of State and Defense to work closely together and coordinate efforts. As a result, it is necessary for the DOD General Counsel and the Legal Adviser of the Department of State, and their respective staffs, to consult with each other on legal issues of mutual interest on a regular basis. As General Counsel of the Central Intelligence Agency, my relationship with the Legal Adviser and the Legal Adviser's office has been a close and productive one, and, if confirmed, I look forward to continuing that relationship.

Question. The General Counsel of the Central Intelligence Agency.

Answer. My service as General Counsel of the Central Intelligence Agency provides me with special insight into the appropriate relationship between the incumbent of that position and the DOD General Counsel. The Central Intelligence Agency and the Department of Defense share many common interests in significant national security matters, intelligence activities and military operations, and it is therefore critically important for the General Counsel of the Central Intelligence Agency and the DOD General Counsel to work well together and communicate regularly. If confirmed, I am confident that I will have a very close and productive relationship with my successor at the Agency.

Question. The Interagency Legal Advisors Working Group.

Answer. Attorneys from the national security staff and departments and agencies with national security responsibilities meet as needed or directed to discuss legal issues of concern to multiple departments and agencies or about which there may be differences of opinion. As General Counsel of the Central Intelligence Agency, I have participated in these discussions and will continue to do so as DOD General Counsel, if confirmed.

QUALIFICATIONS

Question. Section 140 of title 10, U.S.C., provides that the General Counsel is the chief legal officer of the Department of Defense and that the General Counsel shall perform such functions as the Secretary of Defense may prescribe.

Assuming you are confirmed, what duties do you expect that the Secretary of Defense will prescribe for you?

Answer. If confirmed, I anticipate that the Secretary of Defense will rely on me for legal advice on the full range of issues that he and the Department must address and will expect me, as a member of his senior leadership team, to share with him the benefit of my experience generally.

Question. What background and experience do you have that you believe qualifies you for this position?

Answer. I have spent most of my career, and the past 20 years straight, working at the juncture of law and national security, both in private practice and in government service.

I am currently General Counsel of the Central Intelligence Agency, appointed by the President with the advice and consent of the Senate a little more than 4 years ago. Before that, as a partner at WilmerHale in Washington, I was co-chair of the firm's Defense and National Security Practice Group, as well as a member of the firm's Regulatory and Litigation Departments. During the Clinton administration, I served as Deputy General Counsel for Legal Counsel, Principal Deputy General Counsel and, for an extended period, Acting General Counsel of the Department of Defense. I then joined the Department of Justice as the Deputy Assistant Attorney General responsible for civil appellate matters. Returning to the Department of De-

fense, I served as General Counsel of the Department of the Navy, a Presidential appointment requiring Senate confirmation.

These experiences have given me a deep understanding of legal and policy issues relating to national defense. I have also gained valuable insight into the critical role of the General Counsel in advising the Secretary of Defense and representing the Department. For the past 4 years, I have dealt extensively with the terrorist threat and other security challenges facing the United States. Perhaps most important, my experience over a professional lifetime has instilled in me a profound appreciation for the men and women who devote their lives to defending our country.

CLIENT

Question. In your opinion, who is the client of the General Counsel of the Department of Defense?

Answer. The client of the General Counsel of the Department of Defense is the Department of Defense and, ultimately, the United States of America.

DUTIES AND CHALLENGES

Question. In your view, what are the major challenges confronting the next General Counsel of the Department of Defense?

Answer. The major challenges I will face, if confirmed, relate directly to the major challenges confronting the Department as a whole. Among them are the conflict with al Qaeda and transition in Afghanistan, as well as other national security challenges, and continuing efforts to ensure full compliance with all applicable law in addressing those challenges. Other priority areas with substantial legal aspects include military detention operations and the military commissions. There are also pressures caused by diminishing budgets and the effects of sequestration, and resulting challenges in both the acquisition and personnel areas. In the acquisition area, for example, bid protests and other contract litigation may be expected to increase as more companies compete for fewer contracts or decide to file contract claims. Furloughs and anticipated reductions in personnel are also likely to raise significant legal issues.

Question. If confirmed, what plans do you have for addressing these challenges?

Answer. The Department is well served by a cadre of experienced attorneys who are experts in relevant areas of law, both in the Office of General Counsel and in the larger DOD legal community. If confirmed, my hope is to provide leadership and the support those attorneys need to provide the best possible legal advice to their component clients. For my part, I will do my utmost to assist the Secretary in meeting the various challenges confronting the Department.

Question. What do you consider to be the most serious problems in the performance of the functions of the General Counsel of the Department of Defense?

Answer. I expect that I will have a better sense of any needs relating to the performance of the DOD General Counsel's functions after spending some time in the position, if confirmed. I understand that current budget pressures, aging of the workforce, and difficulty in replacing attorneys who retire without others having similar expertise may pose significant problems.

Question. What management actions and timelines would you establish to address these problems?

Answer. If confirmed, I intend to treat my colleagues with the respect they so richly deserve, and to focus on resources, succession planning and recruitment with reference to the workforce of my office.

Question. What do you see as the greatest legal problems facing the Department in the coming year?

Answer. In addition to the challenges discussed above, one area that has received a great deal of attention recently, which I expect will draw continued attention in the coming year, would be intelligence activities conducted by the Department of Defense that potentially implicate privacy and civil liberties. DOD attorneys will, I expect, continue to assist their component clients in finding lawful paths to reach operational objectives, facilitating the national security mission while ensuring full compliance with all applicable law and, specifically, strict adherence to the standards and procedures protecting privacy and civil liberties. I also see sexual assault in the military as an urgent problem with substantial legal aspects that will require sustained attention in the coming year, as discussed in response to specific questions below.

Question. Does the Office of the General Counsel have the resources to deal with these problems and do its everyday work?

Answer. I expect that I will have a better sense of any needs relating to Office of General Counsel resources after spending some time in the position, if confirmed.

I understand that furloughs and anticipated reductions in personnel may pose significant challenges in this regard.

LEGAL OPINIONS

Question. Are legal opinions of the Office of the General Counsel binding on all lawyers within the Department of Defense?

Answer. The DOD General Counsel is the chief legal officer of the Department of Defense. Accordingly, the legal opinions of the DOD Office of General Counsel are controlling throughout the Department of Defense. There is an exception for the lawyers in the Office of the Inspector General, as the General Counsel to the Inspector General is expressly exempted from the scope of 10 U.S.C. § 140 by virtue of section 907 of the NDAA for Fiscal Year 2009 A (title 5 U.S.C. App. Inspector General Act of 1978 § 8(h)). I note also that title 10 prohibits any officer or employee of DOD from interfering with the ability of certain senior military lawyers to give independent legal advice to their respective principals.

Question. How will you ensure that such legal opinions are available to lawyers in the various components of the Department of Defense?

Answer. Written opinions of the DOD Office of General Counsel are disseminated throughout the Department in the ordinary course of business, using normal departmental distribution processes. If confirmed, I expect to continue this practice.

Question. If confirmed, are there specific categories of General Counsel legal opinions that you expect to reconsider and possibly revise? If so, what categories?

Answer. I am not aware of any specific categories of General Counsel legal opinions that are in need of reconsideration or revision. However, if confirmed and such a need arises, I would review those opinions in consultation with the appropriate attorneys and subject matter experts within the Department.

Question. What role do you expect to play, if confirmed, in the development and consideration (or reconsideration) of legal opinions by the Office of Legal Counsel (OLC) of the Department of Justice that directly affect the Department of Defense?

Answer. While the Department of Justice is ultimately responsible for the legal opinions of the Office of Legal Counsel, if confirmed, I expect to work closely with the Office of Legal Counsel in the development and consideration of legal opinions that directly affect the Department of Defense. (I am not aware of any such opinions currently in effect that are in need of reconsideration.)

Question. What actions would you take in response to an opinion issued by OLC with which you disagreed as a matter of proper interpretation of the law?

Answer. I would not hesitate to inform the Office of Legal Counsel if I disagreed with one of its legal opinions. I would raise any unresolved concerns directly with the Assistant Attorney General. If necessary and as appropriate, I would be prepared to take the matter all the way up to the Attorney General. I recognize, however, that the Attorney General is the chief legal officer of the United States and that his or her legal opinions are controlling throughout the Executive branch.

INDEPENDENT LEGAL ADVICE

Question. In response to attempts within the Department of Defense to subordinate legal functions and authorities of the Judge Advocates General to the General Counsels of the Department of Defense and the Military Services, Congress enacted legislation prohibiting any officer or employee of the Department of Defense from interfering with the ability of the Judge Advocates General of the Military Services and the legal advisor to the Chairman of the Joint Chiefs of Staff to provide independent legal advice to the Chairman, Service Secretaries, and Service Chiefs. Congress also required a study and review by outside experts of the relationships between the legal elements of each of the Military Departments.

What is your view of the need for the Judge Advocates General of the services, the Staff Judge Advocate to the Commandant of the Marine Corps, and the legal advisor to the Chairman of the Joint Chiefs of Staff to provide independent legal advice to Service Secretaries, Chairman of the Joint Chiefs, Chiefs of Staff of the Army and Air Force, and the Chief of Naval Operations?

Answer. I believe that the ability of these senior military lawyers to provide independent legal advice to their principals is critically important. During my prior service as General Counsel of the Department of the Navy and as Principal Deputy General Counsel of the Department of Defense, long before any legislation in this regard, it was my firm expectation that the senior military lawyers with whom I worked would provide independent legal advice to their principals, entirely without hindrance. As a member of the 2005 Independent Review Panel to Study the Relationships between military department General Counsels and Judge Advocates General, I had an opportunity to reflect on these issues and to reaffirm the independ-

ence of the “TJAGs” in providing legal advice to the leadership of their respective military departments. In my experience, the best legal advice is often the product of consultation and, where possible, consensus. Accordingly, in my view, the advice given by senior military lawyers should be informed by consultation with other departmental lawyers as appropriate. If confirmed, I expect to benefit from, and will insist on, the independent views of the senior military lawyers with whom I will work.

Question. What is your view of the responsibility of judge advocates within the services and joint commands to provide independent legal advice to military commanders?

Answer. Judge advocates within the Services and joint commands must provide military commanders timely legal advice that is independent of improper external influence. While exercising their best judgment, the advice given may be informed by consultation with other departmental lawyers, as circumstances permit, such as more senior judge advocates in the chain of command, and it should be governed by any relevant legal guidance from authoritative sources such as the Department of Justice or within the Department of Defense.

Question. If confirmed, would you propose any changes to the current relationships between the uniformed judge advocates and General Counsels?

Answer. As I understand the current relationships, I would not propose any changes, if confirmed.

DETAINEE ISSUES

Question. Section 1403 of the National Defense Authorization Act for Fiscal Year 2006 provides that no individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location shall be subject to cruel, inhuman, or degrading treatment or punishment.

In your view, is the prohibition in the best interest of the United States? Why or why not?

Answer. I believe this prohibition to be in the best interest of the United States, consistent with the national security and with fundamental American values.

Question. Do you believe that the phrase “cruel, inhuman, or degrading treatment or punishment” has been adequately and appropriately defined for the purpose of this provision?

Answer. The Detainee Treatment Act of 2005 and the Military Commissions Act of 2009 define “cruel, inhuman, or degrading treatment or punishment” as the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution. I think this is an adequate and appropriate definition.

Question. What role do you believe the General Counsel of the Department of Defense should play in the interpretation of this standard?

Answer. The General Counsel should play a primary role in advising the Secretary of Defense and those who fall under his command on the standards governing the treatment of persons detained by the U.S. military, including regarding any interpretation, if necessary, of the standard quoted above.

Question. What role do you believe the Judge Advocates General of the military services should play in the interpretation of this standard?

Answer. The Judge Advocates General and other military lawyers should play a prominent role in the interpretation of standards related to the treatment of detainees. I believe The Judge Advocates General and the lawyers they lead bring experience and an important perspective to these and many other matters, and they play a vital role in supporting the operating forces worldwide. Judge advocates must be depended on to provide timely day-to-day legal advice to military commanders in the field. If confirmed, and if called on to offer any guidance on this standard, I would expect to consult The Judge Advocates General and the Chairman’s Legal Counsel.

Question. If confirmed, will you take steps to ensure that all relevant Department of Defense directives, regulations, policies, practices, and procedures fully comply with the requirements of section 1403 and with Common Article 3 of the Geneva Conventions?

Answer. Yes.

Question. Do you support the standards for detainee treatment specified in the revised Army Field Manual on Interrogations, FM 2–22.3, issued in September 2006, and in DOD Directive 2310.01E, the Department of Defense Detainee Program, dated September 5, 2006?

Answer. Yes.

Question. Section 2441 of title 18, U.S.C., as amended by the Military Commissions Act of 2006, defines grave breaches of common Article 3 of the Geneva Conventions, including torture and cruel and inhuman treatment.

In your view, does section 2441 define these terms in a manner that provides appropriate protection from abusive treatment to U.S. detainees in foreign custody and to foreign detainees in U.S. custody?

Answer. I believe the standard as defined in U.S. domestic law is appropriate for purposes of protection from abusive treatment when applied to detention at home and abroad.

Question. Do you believe that the United States has the legal authority to continue holding alleged members and supporters of al Qaeda and the Taliban as enemy combatants?

Answer. Congress and the Federal courts have recognized the Executive branch's authority to detain individuals who were part of, or substantially supported, al Qaeda or Taliban forces, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act, or has directly supported hostilities, in aid of such enemy forces.

Question. Do you believe that the Federal courts have the procedures and capabilities needed to fairly and appropriately review the detention of enemy combatants, pursuant to habeas corpus petitions?

Answer. The Federal courts have established clear procedures for a habeas petitioner to obtain extensive discovery from the government and for the petitioner to participate in his case (during unclassified proceedings). In the habeas litigation, the courts have provided detainees with a meaningful opportunity to contest the lawfulness of their detention, while protecting core national security interests, such as the protection of classified information and the continued detention of enemy belligerents who pose a threat to the United States.

Question. What role would you expect to play, if confirmed, under the Periodic Review Board procedures for reviewing the status of Guantanamo detainees and determining whether the United States should continue to hold such detainees?

Answer. If confirmed, I would expect to provide legal advice to the Secretary of Defense on the status of the Guantanamo detainees and determinations whether such detainees should continue to be held. In addition, the General Counsel appoints the legal advisor to the Periodic Review Board and is in the legal advisor's supervisory chain.

Question. The Military Commissions Act of 2009 revised the 2006 procedures for military commission trials of "alien unlawful enemy combatants".

In your view, does the Military Commissions Act of 2009 provide appropriate legal standards and processes for the trial of alien unlawful enemy combatants?

Answer. The Military Commissions Act of 2009 provides appropriate standards and processes for the trial of alien unprivileged enemy belligerents.

Question. What role would you expect to play, if confirmed, in determining whether Guantanamo detainees should be tried for war crimes, and if so, in what forum?

Answer. The Convening Authority has the responsibility for determining whether to refer charges to a military commission. The General Counsel does not have a role in the referral of charges. If confirmed, I would expect to provide legal advice, as necessary, to the Secretary of Defense on these matters.

Question. What is your understanding of the relationship between the General Counsel of the Department of Defense and the legal advisor to the convening authority, the chief prosecutor, and the chief defense counsel for the military commissions?

Answer. The Legal Advisor to the Convening Authority and Chief Prosecutor are supervised by the Deputy General Counsel (Legal Counsel). The Chief Defense Counsel is supervised by the Deputy General Counsel (Personnel & Health Policy). Both the Deputy General Counsel (Legal Counsel) and the Deputy General Counsel (Personnel & Health Policy) report to the General Counsel.

COERCIVE INTERROGATION TECHNIQUES

Question. As discussed in a 2008 report of the Senate Armed Services Committee, Survival, Evasion, Resistance, and Escape (SERE) techniques used to train members of our military were never intended to be used by U.S. interrogators. Rather, the techniques—which are based on Communist Chinese interrogation techniques used during the Korean War to elicit confessions—were developed to expose U.S. soldiers to the abusive treatment they might be subjected to if captured by our enemies.

Do you believe interrogation techniques derived from SERE techniques are an effective way to acquire useful intelligence?

Answer. While I have no expertise in either SERE training or methods of interrogation, in my view, the fact that certain techniques have been used to train servicemembers in withstanding abusive treatment if captured is not indicative of the effectiveness of those techniques in obtaining information from detainees, nor does it show such techniques to be superior to conventional interrogation techniques.

Under Executive Order 13491, issued January 22, 2009, departments and agencies of the U.S. Government are prohibited from using any interrogation technique that is not authorized by and listed in the Army Field Manual. My understanding is that none of the interrogation techniques contained in the Army Field Manual—FM 2–22.3, “Human Intelligence Collector Operations,” September 2006—was derived from SERE techniques.

Question. In your opinion, is there any comparability between a friendly trainer exposing our troops to SERE techniques, including waterboarding, for minutes to show what they could face if captured and using these techniques on an enemy to in an effort to extract intelligence?

Answer. While I have no expertise in either SERE training or methods of interrogation, in my view, the two activities are significantly different for purposes of meaningful comparison. They are conducted for very different purposes, and they are carried out in very different contexts/environments. Notably, the person subjected to such techniques during SERE training is aware that he or she is participating in a training exercise and not in fact undergoing interrogation by hostile forces.

Question. In your opinion, does waterboarding constitute torture?

Answer. Under current law, waterboarding constitutes torture. As waterboarding was banned by Executive order in January 2009, I have had no occasion to independently examine the question with reference to any CIA activities during my tenure as General Counsel. However, I believe the law on this is now well settled: in addition to the President, Attorney General Holder has stated that waterboarding is torture. That is the law in my view, and I fully support the President’s decision to ban waterboarding and the other “enhanced interrogation techniques”.

At the time the waterboard was used in connection with the former detention and interrogation program, Agency personnel relied on then-authoritative legal opinions issued by the Department of Justice. Of course, those opinions have since been disavowed and withdrawn by the Department of Justice. However, the Attorney General has repeatedly made clear that anyone who acted in good faith and within the scope of the legal guidance given by the Justice Department would not be subject to prosecution.

Question. Is waterboarding torture within the meaning of the Geneva Conventions?

Answer. See answer above. For purposes of defining torture under the Geneva Conventions, the U.S. military uses the definition of torture under U.S. domestic law. See U.S. Army Field Manual 2–22.3. So if an activity is torture under U.S. law, then it is torture for purposes of the Geneva Conventions. Inasmuch as waterboarding is torture under U.S. law, as noted above, waterboarding is torture within the meaning of the Geneva Conventions.

MILITARY COMMISSIONS ACT

Question. In your view, do military commissions constituted pursuant to the Military Commissions Act of 2009 provide an effective forum for trying violations of the law of armed conflict?

Answer. Military commissions are an appropriate forum for trying offenses against the law of war and other offenses traditionally triable by military commission. The applicability of certain offenses to conduct occurring prior to 2006 is currently the subject of pending litigation in Federal court.

Question. What do you see as the advantages and disadvantages of military commissions as a forum for trying detainees for terrorism-related offenses?

Answer. The reforms of the Military Commissions Act of 2009 ensure that military commissions provide appropriate processes for the trial of alien unprivileged enemy belligerents. In addition, the Department of Defense has made many improvements to the transparency of the process, including closed-circuit transmission of all open proceedings to the general public. Nonetheless, legal challenges remain, particularly in light of the number of unsettled legal issues.

Question. Do you see the need for any changes to the Military Commissions Act of 2009?

Answer. I am not aware of any need for changes to the 2009 Military Commissions Act.

Question. Under what circumstances, if any, do you believe it would be appropriate for the U.S. military to use force, including deadly force, against U.S. citizens?

Answer. Citizenship does not confer immunity on one who takes up arms against our country. However, it is critically important to respect the Constitutional rights of American citizens, even those who may be plotting against the United States. The requirements of Due Process and the circumstances in which the U.S. Government could lawfully target an enemy belligerent/terrorist operator known to be a U.S. person were outlined in the speech by the Attorney General in March of last year and are discussed in some detail in the Department of Justice white paper that has been released. In addition, the policy standards and procedures announced in May of this year require that if the United States considers an operation against a terrorist identified as a U.S. person, the Department of Justice will conduct an additional legal analysis to ensure that such action may be conducted against the individual consistent with the Constitution and laws of the United States.

Question. Under what circumstances, if any, do you believe it would be appropriate for the U.S. military to use force, including deadly force, inside the United States?

Answer. It is a mission of the U.S. military to defend the United States from attack, and the performance of this mission could involve the use of military force to repel an armed attack launched against our homeland. In the conflict with al Qaeda and its militant allies, the U.S. military does not employ deadly force in the United States. As a policy matter, moreover, the use of military force is unnecessary because well-established law enforcement authorities in this country provide the best means for incapacitating a terrorist threat. The United States has a long history of using the criminal justice system to incapacitate individuals located in our country who pose a threat to the United States and its interests.

INTERNATIONAL LAW

Question. In a speech at Columbia Law School and a similar address at Harvard Law School, you discuss a “four-box matrix” which has been used to assist in the legal review of proposed actions by the Central Intelligence Agency. The second box in this matrix is designed to evaluate the “Authority to Act with reference to International Law Principles.”

If a proposed action by the Department of Defense is fully in compliance with U.S. law but there is a question of whether the proposed action is permitted under international law, customary international law or international law principles, does this ambiguity effect, and if so to what extent, or negate the ability of the Department to carry out the proposed action?

Answer. As a threshold matter, all U.S. military operations must be authorized under U.S. domestic law. This authority could be conferred by statute or, in the absence of congressional authorization, under certain circumstances, the President may rely on his constitutional authority as Commander in Chief and Chief Executive, as well as his authority to conduct foreign relations, to authorize the use of military force. There are significant constitutional and statutory limitations on the scope and duration of military operations that the President may authorize.

When the United States uses military force in a foreign country, it complies with all applicable international law.

If confirmed, I would work closely with my colleagues, including the Chairman’s Legal Counsel and interagency lawyers, to ensure that U.S. military operations abroad comply with both U.S. domestic and applicable international law.

Question. In an address at Northwestern Law School in 2012, Attorney General Eric Holder stated that the administration has implemented special procedures to afford a level of due process review before lethal force is taken pursuant to the Authorization for the Use of Military Force of 2001 against a U.S. citizen.

What is your understanding of the extent to which the administration intends to provide similar procedural due process protections to potential targets outside areas of active armed conflict who are not U.S. citizens?

Answer. The policy standards and procedures announced in May of this year, which govern the United States’ use of force in counterterrorism operations outside the United States and areas of active hostilities and are either already in place or will be transitioned into place, apply generally to all terrorist targets, regardless of whether they are American citizens. Particularly as relates to non-U.S. persons abroad, the standards and procedures were promulgated as a matter of policy rather than per requirements of due process.

Question. During the Vietnam war some criticized the layers of bureaucracy which obstructed the timely authorization for an attack on legitimate military targets. In

the current conflict, as in the Vietnam war, targets of opportunity can come and go in a moment's notice.

Are you concerned that the procedures cited by the administration, as summarized in the Fact Sheet: U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities, for targeting terrorists outside active areas of armed conflict could similarly complicate and add to the length of time required to target an overseas, non-U.S. citizen al Qaeda member?

Answer. I agree that agility and timeliness are important attributes in a decision-making process for approving military targets and authorizing military action against such targets. My understanding is that the policy standards and procedures announced in May of this year were developed in close consultation with the departments and agencies with national security responsibilities, including specifically civilian and military leaders responsible for military operations abroad, and with the objective of having a decisionmaking process that would be practically workable and yield timely decisions. In addition, the policy standards and procedures include a reservation by the President permitting action to be taken in extraordinary circumstances.

Question. How do you assess the risk that the procedures could lead to targets of opportunity being missed or could unnecessarily obstruct our ability to fight the war?

Answer. As noted, the policy standards and procedures were developed with the objective of having a decisionmaking process that would be practically workable and yield timely decisions. In addition, risk in this regard should be mitigated by the reservation by the President permitting a departure from otherwise applicable standards and procedures in extraordinary circumstances.

AUTHORITY FOR USE OF MILITARY FORCE/LAW OF ARMED CONFLICT

Question. On September 18, 2001, Congress passed the Authorization for the Use of Military Force (AUMF) (Public Law 107-40), which provides that "the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons." This AUMF remains in effect and provides the legal authority for certain U.S. military actions.

What is your understanding of the role of the General Counsel in interpreting the AUMF and in the application of the AUMF to military activities?

Answer. I understand that the General Counsel, as chief legal officer of the Department of Defense, is responsible for providing advice on legal matters involving the Department of Defense and for overseeing legal services provided within the Department of Defense. The interpretation and application of the 2001 Authorization for Use of Military Force to military activities is a legal matter on which the General Counsel would provide advice to the Secretary of Defense, the Deputy Secretary of Defense, Office of the Secretary of Defense organizations and, as appropriate, other Department of Defense components.

Question. What is your understanding of how the AUMF intersects with the international law of armed conflict?

Answer. It is my understanding that the interpretation of the 2001 Authorization for Use of Military Force, a domestic law of the United States, is informed by principles of international law, specifically, by the law of armed conflict.

Question. In your view, does the Department of Defense have the legal authorities it needs to conduct military operations against entities responsible for September 11 and against those who plan further attacks against the United States?

Answer. The 2001 Authorization for Use of Military Force provides broad legal authority for military operations against those responsible for the September 11 attacks and those harboring them, which authority has been applied to al Qaeda, the Taliban, and associated forces. In addition, the President could order military action to stop further attacks against the United States pursuant to his constitutional authority as Commander in Chief and Chief Executive, even if the terrorist threat was unrelated to al Qaeda, the Taliban, or an associated force. My understanding is that the existing authorities are believed to be adequate and appropriate for military operations to counter the current and immediately foreseeable terrorist threat.

Question. In your view, do existing legal authorities provide the U.S. military the legal flexibility it needs to respond to new and emerging terrorism threats?

Answer. Current Department of Defense strategy calls for increasing reliance on foreign partners as opposed to large-scale deployments of U.S. forces to address new

and emerging terrorism threats. If confirmed, I look forward to examining whether new or revised legal authority for the U.S. military to support the efforts of foreign partners to respond to new and emerging threats is appropriate.

Question. Without the AUMF, would the U.S. military have the legal authority to use force, including deadly force against members of al Qaeda and associated forces? If so, under what circumstances?

Answer. The United States did, in fact, use military force against members of al Qaeda before the 2001 Authorization for Use of Military Force was enacted. If there were no 2001 Authorization for Use of Military Force, the President would have authority as Commander in Chief and Chief Executive to order military action against al Qaeda and associated forces if necessary to protect an important national interest, as with an imminent threat of violent attack. There are, however, significant constitutional and statutory limitations on the scope and duration of military operations that the President may order in the absence of congressional authorization.

Question. What is the impact of the President's Policy Guidance on Counterterrorism on legal application of the AUMF with respect to counterterrorism operations?

Answer. The policy standards and procedures announced in May of this year, which govern the United States' use of force in counterterrorism operations outside the United States and areas of active hostilities, apply to military operations undertaken pursuant to the 2001 Authorization for Use of Military Force, although they do not apply to ongoing military operations in Afghanistan. Beyond the bedrock requirement of a legal basis—where the use of force is authorized under the 2001 Authorization for the Use of Military Force and hence would be legally permissible—the standards and procedures set forth additional requirements for when force should be used as a matter of policy, with particular emphasis on whether the action will protect American lives.

Question. In your view, would it be appropriate for the United States to use military force against terrorist groups that have not engaged in hostilities directly against the United States, but merely shown an intent to do so? If so, under what circumstances?

Answer. The use of military force may be appropriate when necessary to stop an imminent terrorist attack on the United States, U.S. persons or interests abroad, or a U.S. ally by a group that has not previously engaged in hostilities directly against the United States.

Question. What impact will the end of combat operations in Afghanistan at the end of 2014 have on the application of the AUMF?

Answer. I understand that the U.S. and NATO roles in Afghanistan after 2014 are still being discussed within the U.S. Government and NATO and negotiated with the Government of Afghanistan. I also note that the President recently committed to engaging Congress and the American people in efforts to refine, and ultimately repeal, the 2001 Authorization for Use of Military Force. Thus, I do not think one can predict today whether or how the 2001 Authorization for Use of Military Force might be applied in Afghanistan after 2014.

Question. What is your understanding of the current status of the DOD Law of War Manual and what steps will you take, if confirmed, to complete this important document?

Answer. I am advised that the DOD Law of War Manual is in the final revision process managed by the DOD Law of War Working Group. That group is chaired by a representative from the DOD Office of General Counsel and is composed of representatives of the Judge Advocates General and the General Counsels of the military departments, the Staff Judge Advocate to the Commandant of the Marine Corps, and the Legal Counsel to the Chairman of the Joint Chiefs of Staff. I understand that significant progress has been made through the concerted efforts of dedicated military and civilian lawyers within DOD and with assistance from colleagues at the Departments of State and Justice. If confirmed, I will support these efforts with a view to completing this important manual as expeditiously as possible.

UNMANNED SYSTEMS

Question. What are your views on whether the Department of Defense should assume greater responsibility for the operation of unmanned aerial systems (drones)?

Answer. The U.S. military has used remotely piloted aircraft since they were first developed to conduct intelligence, surveillance and reconnaissance, as well as direct action during armed conflict. I support the administration's policy as it relates to the responsibility of the Department of Defense for the operation of such aircraft.

Question. What legal benefits or risks to national security would be implicated if the Department were to take the lead role in operating unmanned systems?

Answer. The role of the Department of Defense in operating remotely piloted aircraft, and associated benefits and risks, are chiefly policy considerations. If confirmed, my focus with respect to military operations using remotely piloted aircraft will be on the legal basis for such operations and compliance with applicable law in conducting such operations.

CONTRACTORS ON THE BATTLEFIELD

Question. U.S. military operations in Iraq and Afghanistan have relied on contractor support to a greater degree than any previous U.S. military operations. The extensive involvement of contractor employees in a broad array of activities—including security functions—has raised questions about the legal accountability of contractor employees for their actions.

Do you believe that current Department of Defense regulations appropriately define and limit the scope of security functions that may be performed by contractors in an area of combat operations?

Answer. I am not familiar with the referenced Department regulations in this area, but am prepared to review them, if confirmed.

Question. What changes, if any, would you recommend to such regulations?

Answer. See answer above.

Question. Do you believe that current Department of Defense regulations appropriately define and limit the scope of contractor participation in the interrogation of detainees?

Answer. I am not familiar with the referenced Department regulations in this area, but am prepared to review them, if confirmed.

Question. What changes, if any, would you recommend to such regulations?

Answer. See answer above.

Question. OMB Circular A-76 defines “inherently governmental functions” to include “discretionary functions” that could “significantly affect the life, liberty, or property of private persons”.

In your view, is the performance of security functions that may reasonably be expected to require the use of deadly force in highly hazardous public areas in an area of combat operations an inherently governmental function?

Answer. I have not previously had any substantial involvement with this set of issues and am not familiar with how the concept of inherently governmental function has been defined and applied in this context. I am advised that by incorporating the definition from the Federal Activities Inventory Reform Act (title 31 U.S.C. 501 note), section 2463 of title 10, U.S.C., defines inherently governmental function as a function that is so intimately related to the public interest that it must be performed by government employees. If confirmed, I intend to look at the application of this provision with considerable care.

Question. In your view, is the interrogation of enemy prisoners of war and other detainees during and in the aftermath of hostilities an inherently governmental function?

Answer. See answer above.

Question. What role do you expect to play, if confirmed, in addressing the issue of what functions may appropriately be performed by contractors on the battlefield?

Answer. If confirmed, I expect to be actively involved in addressing the legal issues relating to the proper role of contractors on the battlefield.

Question. The Military Extraterritorial Jurisdiction Act (MEJA) was enacted in 2000 to extend the criminal jurisdiction of the U.S. courts to persons employed by or accompanying the Armed Forces outside the United States.

In your view, does MEJA provide appropriate jurisdiction for alleged criminal actions of contractor employees in Iraq, Afghanistan, and other areas of combat operations?

Answer. I understand the importance of appropriate accountability for all persons supporting our Armed Forces wherever located. I am generally aware of the Military Extraterritorial Jurisdiction Act of 2000 (MEJA), but I am not familiar with the particular provisions and how well they have served to provide criminal jurisdiction over contractor employees in areas of combat operations.

Question. What changes, if any, would you recommend to MEJA?

Answer. I am not now in a position to propose any changes to MEJA. If confirmed, and if after further review I perceive a need, I will recommend any changes I believe to be warranted.

Question. What role would you expect to play, if confirmed, in developing administration recommendations for changes to MEJA?

Answer. If confirmed, I expect to be actively involved in any effort to develop administration recommendations for changes to MEJA.

Question. Section 552 of the National Defense Authorization Act for Fiscal Year 2007 extended criminal jurisdiction of the military courts under the Uniform Code of Military Justice to persons serving with or accompanying an armed force in the field during time of declared war or a contingency operation, such as our current operations in Iraq and Afghanistan.

In your view, does the UCMJ provide appropriate jurisdiction for alleged criminal actions of contractor employees in Iraq, Afghanistan, and other areas of combat operations?

Answer. I support the position that civilians serving with or accompanying our Armed Forces overseas who commit crimes should be held appropriately accountable. I do not now have an informed view as to whether the UCMJ currently provides the appropriate criminal jurisdiction over contractor employees in areas of combat operations.

Question. What is your view of the procedures agreed upon by the Department of Defense and the Department of Justice to reconcile jurisdictional responsibilities under MEJA and the UCMJ?

Answer. I am aware generally that there are procedures to reconcile these responsibilities reflected in a Secretary of Defense memorandum of March 10, 2008. If confirmed, I am prepared to examine this memorandum and give thought to whether it reflects the appropriate balance.

Question. What changes, if any, would you recommend to the UCMJ to ensure appropriate jurisdiction for alleged criminal actions of contractor employees?

Answer. I have no recommendations for any such changes to the UCMJ at this time. If confirmed, and if after further review I perceive a need, I will recommend any changes I believe to be warranted.

MILITARY JUSTICE MATTERS

Question. Article 6 of the Uniform Code of Military Justice gives primary responsibility for legal advice concerning military justice to the Judge Advocates General.

What is your understanding of the General Counsel's functions with regard to military justice and the Judge Advocates General?

Answer. I understand that the General Counsel has a limited role in military justice, and no direct role in any particular military justice cases. The Secretary of Defense may become involved in military justice in limited circumstances. In those situations, the General Counsel provides legal advice to the Secretary.

The General Counsel is also responsible for designating a non-voting representative to the Joint Service Committee on Military Justice and may serve as an informal DOD liaison with the U.S. Court of Appeals for the Armed Forces.

Question. In your view, how should the General Counsel approach military justice matters—both in terms of specific cases and general policy issues to provide useful advice without generating problems of unlawful command influence?

Answer. As with other senior civilian and military leaders within the Department, the General Counsel must avoid any action that may constitute, or may appear to constitute, unlawful command influence.

Question. The May 30, 2013 Defense Legal Policy Board (DLPB) report on military justice in combat zones recommended a change in joint doctrine to specify that discipline is the responsibility of Joint Force Commanders at all levels. The report recommended that this proposal should be presented to the DOD General Counsel and Secretary of Defense to be integrated into DOD and joint policy, and when appropriate, reviewed by the Joint Service Committee on Military Justice to be uniformly implemented by the Services.

In your view, is it essential to preserve the role of the military commander, including the Joint Force Commander in deployed situations, for disposition of military justice matters?

Answer. I understand that the May 30, 2013 report of the Subcommittee on Military Justice in Combat Zones and the Defense Legal Policy Board's June 14, 2013 memorandum transmitting that report to the Secretary of Defense endorsed the preservation of the role of the military commander, including the Joint Force Commander in deployed situations, in the disposition of military justice matters. As a general matter, I appreciate the central importance of the commander's role in the military justice system historically, but I am not sufficiently familiar with the subcommittee's report and the Board's memorandum to express a view on any recommendations in this regard. I look forward to reviewing them, if confirmed.

Question. What are your views on whether it would be appropriate to preserve the role of the commander as disposition authority, for the entire spectrum of military operations, from deployment to redeployment, in combat areas as well as in garrison?

Answer. I am not now prepared to offer specific assessments of the optimal command role in the disposition of allegations of crimes and other misconduct committed by servicemembers. If confirmed, I intend to look at this issue with considerable care.

Question. If confirmed, what action will you take to ensure that the recommendations of the DLPB with respect to military justice in combat zones are implemented by DOD and the services?

Answer. If confirmed, I expect to review the recommendations of the Subcommittee and the Board, advise the Secretary of Defense with reference to those recommendations, and assist in seeking appropriate changes in policy, regulations or statutes to implement such recommendations as the Secretary adopts.

PREVENTION OF AND RESPONSE TO SEXUAL ASSAULTS

Question. In 2012, for the fourth year in a row, there were more than 3,000 reported cases of sexual assault in the military, including 2,558 unrestricted reports, and an additional 816 restricted reports (restricted, meaning that, in accordance with the victim's request, they were handled in a confidential manner and not investigated). Moreover, a recent survey conducted by the DOD indicates that the actual number of sexual offenses could be considerably higher, as 6.1 percent of Active Duty women and 1.2 percent of Active Duty men surveyed reported having experienced an incident of unwanted sexual contact in the previous 12 months.

What is your understanding of the role of the DOD General Counsel in addressing the problem of sexual assault in the military?

Answer. If confirmed, I expect to play an active role, as the Department's chief legal officer and as a member of the Secretary's senior leadership team, in the ongoing effort to eradicate this scourge from the military. I will oversee the attorneys currently advising the Under Secretary of Defense for Personnel and Readiness and the Sexual Assault Prevention and Response Office, assisting in the implementation of the 2013 DOD Sexual Assault Prevention and Response Strategic Plan, and supporting the important work of the Response Systems Panel. Beyond that, I hope to work with the Secretary and other Department leaders—and with this committee—to make sure that solving this problem remains a top priority, that no effort is spared to get a demonstrably effective system in place, and that any legal impediments are promptly addressed.

Question. Do you believe the DOD General Counsel's role in addressing the problem of sexual assault in the military is appropriate, and, if not, how should it be modified?

Answer. If confirmed, I will look at the role of the DOD General Counsel in addressing the problem of sexual assault in the military to assess whether I or my office can do any more to assist.

Question. What is your assessment of the DOD sexual assault prevention and response program?

Answer. As I understand it, sexual assault against servicemembers is a gravely serious problem and has been a longstanding one. The problem goes beyond the incidence of crimes involving sexual assault and includes concern about possible impediments to coming forward such as fear of retaliation and lack of confidence that action will be taken. The fact that the problem has persisted despite previous efforts directed at both prevention and response is disturbing and I expect deeply frustrating to those who have been working to end it. I am not sufficiently informed to express a personal view on the current DOD sexual assault prevention and response program. I understand that the program has undergone numerous changes, that several provisions from the past two authorization acts are being implemented, and that additional legislative proposals are under active consideration. If confirmed, I will do my level best working with DOD lawyers, Department leadership and Congress to rid the military of sexual assault.

Question. What is your view of the provision for restricted and unrestricted reporting of sexual assaults?

Answer. While I am not now in a position to express a personal view, I am advised that an unrestricted report of sexual assault allows law enforcement involvement and investigation, while restricted reporting allows a victim to disclose the details of the assault to specific individuals and receive medical treatment and counseling without involving law enforcement or triggering an automatic investigation. The goal of restricted reporting is to give the victim the support and confidence eventually to come forward with an unrestricted report so the offender can be held accountable and to strike an appropriate balance between the need for the prosecution of sexual offenders on the one hand and the privacy and physical and mental well-being of the victim on the other.

Question. What is your understanding of the adequacy of DOD oversight of military service implementation of the DOD and Service policies for the prevention of and response to sexual assaults?

Answer. While I am not now in a position to express a personal view, it is my understanding that there is robust oversight of the Department policies for the prevention of and response to sexual assaults. I am advised that the Secretary of Defense has a weekly accountability and assessment meeting with senior Department leaders and that DOD participates in the White House Health of the Force Group meetings to discuss DOD actions to combat sexual assault. I am also aware that the Secretary issued a Strategic Plan directing the Services to align their programs with the Strategic Plan, and that the Director, Sexual Assault Prevention and Response Office hosts quarterly integrated product teams attended by senior leaders from the Services, National Guard Bureau, Office of Secretary of Defense, and Office of the DOD Inspector General. I also understand that the Joint Chiefs of Staff established a quarterly executive council to assess the effectiveness of sexual assault prevention and response across the joint force.

Question. What is your assessment of current DOD policy as it pertains to the legal issues surrounding the investigation and prosecution of sexual assault cases?

Answer. I am not now prepared to offer assessments with reference to the legal issues surrounding the investigation and prosecution of sexual assault cases. If confirmed, I will engage with the Judge Advocates General and other civilian and military leaders and subject matter experts to determine what issues, if any, need to be addressed.

Question. What is your view about the role of the chain of command in changing the military culture in which these sexual assaults have occurred?

Answer. I think the chain of command is instrumental in changing the military culture. Commanders are responsible for the good order and discipline of their units and are indispensable to creating a zero tolerance climate for sexual assaults. However, eradicating sexual assault cannot be limited to the chain of command—everyone has a role in changing military culture to ensure that servicemembers can serve without fear of sexual assault.

Question. In your view, what would be the impact of requiring judge advocates outside the chain of command, rather than commanders, to determine whether allegations of sexual assault should be prosecuted by the military?

Answer. I am not now in a position to express a personal view concerning the optimal roles of commanders and judge advocates in the disposition of sexual assault allegations. I understand that this is the subject of intense debate. If confirmed, I will examine the issue and hope to play a constructive role in the debate.

Question. Article 60 of the Uniform Code of Military Justice requires the convening authority to take action on the sentence issued by a court-martial and authorizes a convening authority, in his sole discretion, to take action on the findings of a court-martial, including setting aside a finding of guilty or changing a finding of guilty to a finding of guilty of a lesser included offense.

What is your view about the authority of a convening authority to set aside or modify findings of guilt and authority to reduce a sentence imposed by court-martial?

Answer. I understand that the Department has proposed legislation that would modify Article 60 by allowing convening authorities to amend findings of guilt only in those cases where the servicemember was acquitted of a more serious offense and the offense of which he was found guilty is a minor offense, not normally disposed of by court-martial. The Department's proposal would also require the convening authority to explain in writing any modifications made to the court-martial findings and sentence. I support this proposal. As to limiting the authority of the convening authority to modify a court-martial sentence, one would have to consider the consequences such a limitation would have on the ability to reach plea bargains in appropriate cases, such as where the victim wishes to avoid being called as a witness in a contested trial.

RELIGIOUS ACTIVITY IN THE ARMED FORCES

Question. What is your understanding of current policies and programs of the Department of Defense and the military services regarding religious practices in the military?

Answer. I understand that the Department of Defense has a long history of supporting, to the extent possible, the free exercise of religion by those servicemembers who choose to do so, while respecting the rights of those who do not.

Question. In your view, do policies concerning religious accommodation in the military appropriately accommodate the free exercise of religion and other beliefs,

including individual expressions of belief, without impinging on those who have different beliefs, including no religious belief?

Answer. I have not had the opportunity to study the Department's current policies in sufficient detail to allow me to make a judgment on the appropriateness of those policies. I understand that the current Department policy on religious accommodation is being revised. If confirmed, I intend to become involved in that revision process.

Question. Under current law and policy, are individual expressions of belief accommodated so long as they do not impact unit cohesion and good order and discipline?

Answer. Again, I am unable to make a judgment regarding the Department's current policies. However, I believe this question correctly highlights the considerations that must be balanced when considering religious accommodation: the individual servicemember's free exercise of religion or no religion, and the Department's requirement to maintain unit cohesion, good order and discipline, and the other elements that comprise military readiness.

Question. In your opinion, do existing policies and practices regarding public prayers offered by military chaplains in a variety of formal and informal settings strike the proper balance between a chaplain's ability to pray in accordance with his or her religious beliefs and the rights of other servicemembers with different beliefs, including no religious belief?

Answer. I believe that military chaplains perform a vital service not only for servicemembers and their families, but also for commanders as advisors. I also believe that military chaplains should be allowed to perform religious services in accordance with the tenets of their religions and without interference from the chain of command. While I am not in a position to opine on the existing policies and practices, I understand that the DOD policy governing the military chaplains' program is being revised, and, if confirmed, I intend to become involved in that revision process.

LEGAL ETHICS

Question. What is your understanding of the action a Department of Defense attorney should take if the attorney becomes aware of improper activities by a Department of Defense official who has sought the attorney's legal advice and the official is unwilling to follow the attorney's advice?

Answer. All Department attorneys are under an obligation to faithfully comply with all applicable laws and regulations, including regulatory reporting requirements. DOD Directive 5505.06, "Investigations of Allegations Against Senior Officials of the Department of Defense," requires referral to the DOD Inspector General of suspected misconduct by senior DOD officials, while DOD regulation, DOD 5500.07-R (Joint Ethics Regulation), requires DOD personnel to report suspected violations of the criminal and administrative rules on ethics and conflicts of interest to appropriate DOD authorities, e.g., the Defense Criminal Investigative Service.

Generally, if a DOD attorney learns of improper activities by an official who has sought his or her legal advice but is unwilling to follow it, the attorney should immediately notify appropriate authorities, usually his or her legal supervisor (or the senior attorney in the next higher level of his or her organization), for review and appropriate action by that higher level official. This is an appropriate way to escalate concerns to ensure that suitable corrective action is promptly taken.

Question. Do you believe that the present limits on pro bono activities of government attorneys are generally correct as a matter of policy or does the policy need to be reviewed?

Answer. In my judgment, participation in pro bono activities and professional legal associations contributes in a meaningful way to the continued professional development of the Federal legal workforce, and, if confirmed, I would encourage DOD attorneys to participate in pro bono activities consistent with the law. To my knowledge, the present limits on pro bono activities are appropriate. I understand that my predecessor issued a pro bono policy. If confirmed, I am prepared to review that policy to ensure it meets the current needs of DOD and the attorneys who wish to contribute their services.

As you may know, two Federal statutes prohibit (with only minor exceptions) Federal personnel from representing clients before the Federal Government, including the Federal courts. That said, I am aware that there are a number of opportunities for DOD attorneys to participate in a variety of pro bono activities, including drafting wills and representing clients in domestic violence cases, landlord/tenant disputes, and personal injury cases, when those matters are before state rather than Federal courts.

Question. In your view, do the laws, regulations and guidelines that establish the rules of professional responsibility for attorneys in the Department of Defense provide adequate guidance?

Answer. To my knowledge, the laws, regulations, and guidelines that establish rules of professional responsibility for DOD attorneys are appropriate. If confirmed, I am prepared to examine the adequacy of the professional responsibility rules for attorneys in the DOD Office of General Counsel and the Defense Legal Services Agency, and make appropriate modifications or issue supplemental guidance if warranted.

LAW OF THE SEA

Question. The United Nations Convention on the Law of the Sea (UNCLOS) is currently pending in the Senate.

What are your views whether or not the United States should accede to UNCLOS?

Answer. I support U.S. accession to the Law of the Sea Convention, and I know that the administration including Secretary Hagel strongly supports accession. Although we have succeeded to date in preserving and protecting our navigational freedoms through reliance on customary international law, joining the Convention would place our national security on a firmer legal footing. Customary international law changes over time, subject to state practice. Treaty law remains the firmest legal foundation upon which to base our global presence.

Question. From a national security standpoint, what do you see as the legal advantages and disadvantages of the United States being a party to UNCLOS?

Answer. I agree with Secretary Hagel that becoming a party to the Law of the Sea Convention would enhance the U.S. security posture around the globe in several significant ways. First, accession would enable the United States to reinforce all of the rights, freedoms, and uses of the sea and airspace codified in the Convention, including the navigational and over-flight rights that are critical to the global mobility of U.S. forces, as well as the right to submit extended continental shelf claims that would help us preserve the rights to potential resources. Additionally, accession would help the United States promote a common rules-based approach in the resolution of territorial and maritime disputes, particularly in East Asia, thereby reducing international tension. Further, accession would add to the Department's credibility in a large number of multilateral venues where Law of the Sea matters are often discussed. Lastly, accession would reassure some nations that have expressed concerns over the legality of cooperative security efforts promoted by the United States, such as the Proliferation Security Initiative. The United States has longstanding interests in freedom of the seas and respect for international law, and our accession to the Convention would further demonstrate our commitment to those national interests.

I do not see national security disadvantages of being a party to the Convention. Although some have suggested that the treaty could subject our maritime forces to the jurisdiction of international tribunals, the Convention expressly permits a party to exclude from international dispute settlement those matters that concern "military activities." Thus, the United States could assert the exclusive right to determine what constitutes a military activity.

Question. In your view, is customary international law alone sufficient to safeguard U.S. navigational and overflight rights and freedoms worldwide?

Answer. As noted above, accession would enable the United States to reinforce all of the rights, freedoms, and uses of the sea and airspace codified in the Convention, including the navigational and over-flight rights that are critical to the global mobility of U.S. forces. Although we have succeeded to date in preserving and protecting our navigational freedoms through reliance on customary international law, joining the Convention would place our national security on a firmer legal footing. Customary international law changes over time, subject to state practice. Treaty law remains the firmest legal foundation upon which to base our global presence.

PROCESSING THE ANNUAL DEPARTMENT OF DEFENSE LEGISLATIVE REQUEST

Question. One of the current responsibilities of the General Counsel of the Department of Defense is to coordinate the Department's legislative program and to provide the Department's views on legislative proposals initiated from outside the Department.

If confirmed, what actions will you take to ensure that the Department's legislative proposals are submitted in a timely manner to ensure ample opportunity for consideration by Congress before markup of the annual National Defense Authorization Act?

Answer. I understand that the Office of General Counsel and the Office of the Assistant Secretary of Defense for Legislative Affairs have worked, and continue to work, closely together on improvements to the Department's Legislative Program—in consultation with the Office of Management and Budget—to transmit the Department's legislative proposals to Congress in a timely manner. If confirmed, I will monitor these efforts and look for any ways in which the process can be improved.

Question. What actions would you take, if confirmed, to ensure Congress receives the Department's views on other proposed legislation in a timely manner?

Answer. I understand that the Office of General Counsel has worked closely with the Office of the Assistant Secretary of Defense for Legislative Affairs and the Office of Management and Budget to respond to request for views on congressional bills expeditiously. If confirmed, I will work to ensure that the Department provides Congress with timely views on proposed legislation.

JUDICIAL REVIEW

Question. What is your understanding of the appropriate role of the Article III courts in the review of military activities?

Answer. Judicial review of ongoing military operations would pose difficult constitutional and practical difficulties. Many of the military's other activities are appropriately subject to judicial review, though the courts often exercise "a healthy deference to legislative and executive judgments in the area of military affairs." *Rostker v. Goldberg*, 453 U.S. 57, 66 (1981).

ROLE IN THE OFFICER PROMOTION AND CONFIRMATION PROCESS

Question. In your view, what is the role of the General Counsel of the Department of Defense in ensuring the integrity and proper functioning of the officer promotion process?

Answer. It is essential that the integrity and independence of the promotion selection process be maintained. Based on my prior service at the Department of Defense, I know that the Secretary of each military department, in consultation with his or her General Counsel and Judge Advocate General, has the initial responsibility to ensure that the promotion selection process for both Regular and Reserve officers is in compliance with law and DOD policy. However, I am also aware that all reports of promotion selection boards are reviewed by the DOD Office of General Counsel prior to final action on the report by the Secretary of Defense or the Under Secretary of Defense for Personnel and Readiness.

If confirmed and I were to determine that a promotion selection board failed to conform to law or policy, it would be my duty to inform the Secretary of Defense or Under Secretary of Defense for Personnel and Readiness of the irregularities and to recommend appropriate corrective action. Further, in providing advice to the Secretary of Defense and the Under Secretary of Defense for Personnel and Readiness, I would ensure that officer promotion policies promulgated in DOD regulations fairly and accurately reflect the law.

Question. What is the role of the General Counsel of the Department of Defense, if any, in reviewing and providing potentially adverse information pertaining to a nomination to the Senate Armed Services Committee?

Answer. It is my understanding that the DOD Office of General Counsel reviews all nomination packages pertaining to officers with attributed adverse information before the package is forwarded to the Secretary of Defense for approval. The General Counsel ensures that any adverse information attributed to such officers is supported by evidence in the associated reports of investigation. I am informed that the General Counsel frequently provides specific advice to the Under Secretary of Defense for Personnel and Readiness and the Secretary of Defense concerning difficult or unusual cases.

LITIGATION INVOLVING THE DEPARTMENT OF DEFENSE

Question. In your opinion, what is the relationship between the Department of Defense and the Department of Justice with respect to litigation involving the Department of Defense?

Answer. Although the Department of Justice has statutory responsibility to represent the United States, its agencies, and its officers, including the Department of Defense, in all litigation matters, Department of Defense attorneys often work directly with counsel at the Department of Justice in cases in which DOD, or one or more of its components or officials, is a party or has an interest.

Question. In your view, does the Department need more independence and resources to conduct its own litigation or to improve upon its current supporting role?

Answer. At this time, I am not aware that any changes are needed. My understanding is that the Department's lawyers have exceptionally strong relationships with their counterparts at the Department of Justice, and that the current arrangement serves the Department well.

COURT OF APPEALS DECISION

Question. On January 4, 2000, the U.S. Court of Appeals for the District of Columbia Circuit decided the case of National Center for Manufacturing Sciences v. Department of Defense, 199 F. 3d 507 (D.C. Cir. 2000). The court concluded that "Because of the existence of title 10 U.S.C. section 114, it is clear that any monies appropriated for NCMS by Congress for research must be authorized before they can be appropriated and distributed"; and "Because title 10 U.S.C. section 114(a)(2) requires authorization of these funds before they become available, appropriation alone is insufficient."

What is your view of the court's decision in this case and its implications regarding the obligation of funds that are appropriated, but not authorized?

Answer. I am aware of the concerns about whether funds can be utilized that are appropriated but not authorized. In this regard, situations where funds have been appropriated but not authorized are often complex and may involve unique statutory language. The Department has always been sensitive to the concerns that exist whenever the amounts appropriated may exceed the amounts authorized and, even before the 2000 decision cited in the question, has worked closely with the authorizing and appropriating committees when such situations arise. If confirmed, I hope and expect that the Department, and the DOD General Counsel, will continue its practice of working closely with our oversight committees whenever this situation appears to be presented.

ROLE IN MILITARY PERSONNEL POLICY MATTERS

Question. What role, if any, should the General Counsel play in military personnel policy and individual cases, including cases before the service boards for the correction of military records?

Answer. The potential range of issues that might require legal advice from the Office of General Counsel is very broad. The Office of General Counsel provides legal advice on policy issues pertaining to military personnel, working closely with the Office of the Under Secretary of Defense for Personnel and Readiness, which has responsibility for Department policy for the correction boards of the military departments. The Office of General Counsel performs a pre-publication legal sufficiency review of every DOD policy issuance pertaining to military personnel.

CONGRESSIONAL OVERSIGHT

Question. In order to exercise its legislative and oversight responsibilities, it is important that this committee and other appropriate committees of Congress are able to receive testimony, briefings, and other communications of information.

Do you agree, if confirmed for this high position, to appear before this committee and other appropriate committees of Congress?

Answer. Yes.

Question. Do you agree, if confirmed, to appear before this committee, or designated members of this committee, and provide information, subject to appropriate and necessary security protection, with respect to your responsibilities as the General Counsel of the Department of Defense?

Answer. Yes.

Question. Do you agree to ensure that testimony, briefings and other communications of information are provided to this committee and its staff and other appropriate committees?

Answer. Yes.

Question. 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?

Answer. Yes.

[Questions for the record with answers supplied follow:]

QUESTION SUBMITTED BY SENATOR CARL LEVIN

NEW LAW OF WAR MANUAL

1. Senator LEVIN. Mr. Preston, is there a consensus among the senior military lawyers of the four Services that the new Law of War manual, as it has been rewritten, accurately and adequately reflects the law governing U.S. Armed Forces?

Mr. PRESTON. I have been informed that the draft DOD Law of War manual is still in the final revision process. My understanding is that senior military lawyers of the four Services are helping to revise it and are integral to the review process, and that they will continue to be actively involved until the manual is completed and ready for publication. If confirmed, I intend to consult with the senior military lawyers in this regard.

QUESTION SUBMITTED BY SENATORS CARL LEVIN AND MARK UDALL

DETENTION AND INTERROGATION ISSUES

2. Senator LEVIN and Senator UDALL. Mr. Preston, on June 27, 2013, the Central Intelligence Agency (CIA) submitted its formal response to the Senate Select Committee on Intelligence's (SSCI) Study of the CIA's Detention and Interrogation Program. What was your role in the review and approval of the CIA response to the SSCI's study?

Mr. PRESTON. My role with respect to the Agency's response to the SSCI's study is perhaps best understood in the context of my broader role as General Counsel of the CIA. For the past 4-plus years, my highest priority as General Counsel has been working to ensure that the Agency is and remains in full compliance with all applicable law in the conduct of intelligence activities, with particular attention to ongoing counterterrorism programs. With respect to the former detention and interrogation program, which was ended by Executive Order prior to my arrival, the primary focus of the Office of General Counsel during my tenure has been on supporting the work of the Department of Justice and the SSCI in their respective reviews of the former detention and interrogation program, with particular emphasis on the document production process, as well as supporting the U.S. Government's efforts to criminally prosecute terrorist detainees.

The preparation of Agency comments following receipt of the SSCI report was undertaken at the direction of the then-Acting Director and performed by a team of senior career officers. The product of their work was ultimately submitted to the Director, via the Deputy Director, for approval. My involvement in this process was limited. I did not personally participate in the team's formulation of substantive comments, nor did I independently review the factual basis for their findings and conclusions. I reviewed the comments, with particular attention to the recommendations, and made suggestions, chiefly as to presentation, in hopes of enhancing the utility of the comments, to the agency and the committee, in the discussion between them that would follow. My role was principally one of advising the Director and the Deputy Director as they considered how best to engage with the committee in light of its report and, of critical importance, how to improve the Agency's conduct and oversight of other sensitive programs going forward.

3. Senator LEVIN and Senator UDALL. Mr. Preston, on November 20, 2008, the Senate Armed Services Committee issued a report titled, Inquiry into the Treatment of Detainees in U.S. Custody. Have you reviewed this report?

Mr. PRESTON. I reviewed portions of the referenced report in 2009, prior to my appointment as General Counsel of the CIA.

4. Senator LEVIN and Senator UDALL. Mr. Preston, do you disagree with any of the report's conclusions? If so, which ones and why?

Mr. PRESTON. I do not recall having any disagreement with the report's conclusions. I should point out that I am not sufficiently familiar with the facts or record underlying the report to offer a personal view on factual propositions. As I recall, a central focus of the report is on the U.S. Government's reliance on Survival, Evasion, Resistance, and Escape (SERE) techniques in deriving interrogation techniques that were used on detainees. While I have no expertise in SERE training or methods of interrogation, it is my firm view that the fact that certain techniques have been used to train servicemembers in withstanding abusive treatment if captured is not indicative of the effectiveness of those techniques in obtaining information from detainees, nor does it say anything about the lawfulness or propriety of using such techniques to interrogate detainees.

QUESTION SUBMITTED BY SENATOR CLAIRE MCCASKILL

BONUSES PAID TO SENIOR EXECUTIVE SERVICE EMPLOYEES OF THE DEPARTMENT OF DEFENSE

5. Senator MCCASKILL. Mr. Preston, if confirmed, will you commit to reviewing and changing, if necessary, the metrics used to determine the performance level of Senior Executive Service (SES) employees in the Office of General Counsel and provide information to this committee regarding the progress and results of your review?

Mr. PRESTON. As General Counsel of the Department of the Navy and the Principal Deputy General Counsel of the Department of Defense, I worked closely with the SES level attorneys in the DOD Office of General Counsel. I was impressed by their uniform professional excellence, selfless dedication, and commitment to the rule of law. My view of the outstanding performance of these SES level attorneys has been strengthened during my service as the CIA General Counsel. In a period of furloughs, pay freezes, and hiring freezes, it is unlikely that funds will be available to pay bonuses, increasing the challenge of keeping the Office of General Counsel staffed with superb lawyers. Nonetheless, if confirmed, I will review the criteria used to evaluate the performance of SES level attorneys in the Office of General Counsel and report the results of that review as you request. If I determine that changes are necessary, I will implement them.

QUESTIONS SUBMITTED BY SENATOR MARK UDALL

LAW OF WAR MANUAL

6. Senator UDALL. Mr. Preston, it is my understanding that in 1995, DOD decided to prepare a single, department-wide manual on the Law of War. This was designed to be an authoritative, peer-reviewed statement of the Law of War as recognized by the United States, based on both treaty obligations and state practice. I also understand that a Law of War Working Group, consisting of experts from the Services and the Office of the Secretary of Defense (OSD) Office of the General Counsel was formed in 1996 and charged with drafting the new manual. There were experts from the State Department and law of war experts from a number of other countries that provided input and advice during the drafting process. The Department of Justice (DOJ) was invited to join the process, but declined. I also understand that in 2009, a 1000 page draft underwent international peer review by senior military law experts from Canada, Australia, New Zealand, and the United Kingdom (U.K.) as well as experts from academic institutions in the United States and the U.K. I also understand that in 2010, when the draft manual was in the final stages, the DOJ intervened and requested an opportunity to review the draft—despite having declined to participate earlier. I also understand that despite commitments made to the DOD General Counsel that the DOJ review would be limited to substantive issues and would be conducted within a month, the DOJ review has yet to be completed. I also have received information indicating that the changes proposed by DOJ to date have been at odds with the tenets and principles of the Law of War reflected in the peer-reviewed draft of 2010, to the point that it seems unlikely that the current draft as changed would be able to gain consensus as an authoritative statement of the Law of War either within DOD or more broadly. If confirmed, will you commit to providing the committee as soon as possible information detailing the current status of the draft Manual?

Mr. PRESTON. If confirmed, I will inquire into the current status of the draft DOD Law of War manual and provide the committee information detailing its status as soon as possible. As I noted in response to an earlier question, it is my understanding that the Law of War manual is undergoing internal review, and that that senior military lawyers of the four Services are helping to revise it and are integral to the review process, and that they will continue to be actively involved until the manual is completed and ready for publication.

7. Senator UDALL. Mr. Preston, if confirmed, will you commit to providing the committee in written form your independent assessment of whether the background summary above is accurate, and, if you conclude that some or all of the information above is inaccurate or incomplete, to advising the committee in detail about which information is inaccurate or incomplete, and what the correct information is?

Mr. PRESTON. If confirmed, I will inquire into the current status of the draft DOD Law of War manual and provide the committee information detailing its status as soon as possible. As I noted in response to an earlier question, it is my under-

standing that the Law of War manual is undergoing internal review, and that that senior military lawyers of the four Services are helping to revise it and are integral to the review process, and that they will continue to be actively involved until the manual is completed and ready for publication.

8. Senator UDALL. Mr. Preston, if confirmed, will you commit to taking such steps as may be necessary to ensure that content and form of the draft Manual is such that it is suitable both as a peer-reviewed, authoritative statement of the Law of War as accepted by the United States, and as a practical guide, incorporating historical examples, for Law of War practitioners, especially those deployed with U.S. operational forces?

Mr. PRESTON. If confirmed, I will take such steps within my power as may be necessary to ensure that the content and form of the draft DOD Law of War manual reflects input from peer reviewers and is suitable both as an authoritative statement of the Law of War as accepted by the United States, and as a practical guide for Law of War practitioners, especially those deployed with U.S. operational forces. Historical examples should inform and illustrate the manual as appropriate.

STUDY ON DETENTION AND INTERROGATION PROGRAM

9. Senator UDALL. Mr. Preston, having reviewed the SSCI's study and participated in the CIA's response, do you believe that DOJ was always provided accurate information about the CIA's detention and interrogation program? If not, do you believe that any inaccurate information was material to DOJ's legal analysis?

Mr. PRESTON. My understanding is that DOJ did not always have accurate information about the detention and interrogation program in that the actual conduct of that program was not always consistent with the way the program had been described to DOJ. Of particular note, I understand that, in a number of instances, enhanced interrogation techniques, specifically waterboarding, were applied substantially more frequently than previously had been described to DOJ. I cannot say what DOJ would or would not have considered material at the time. I can tell you that, if I were in a comparable situation, I would consider information of this nature to be material.

While I have been General Counsel of the CIA, the relationship between the Agency and DOJ's Office of Legal Counsel (OLC) has been characterized by frequent and candid communication concerning the Agency's sensitive programs, with particular attention to ensuring that the OLC is provided complete and accurate information on which to base its legal advice to the Agency. In addition, the Agency is developing an internal mechanism for periodically and systematically reviewing OLC opinions regarding sensitive programs to ensure that OLC is informed of any material changes in facts or circumstances.

COVERT ACTION/SECRET MILITARY OPERATIONS

10. Senator UDALL. Mr. Preston, in your response to my questions about the difference between covert action and secret military operations, you noted that you had not yet "wrestled with how one would advise the U.S. military on the precise parameters of that concept, and the precise concept of attribution in the military context." I'd like to give you another opportunity to answer my set of questions, which I'll list again here: In your view, when does a secret military operation meet the statutory definition of covert action and require a finding, and when does it not?

Mr. PRESTON. While as CIA General Counsel I have not been called upon to advise with respect to the conduct of military operations, I would consider a secret military operation to meet the statutory definition of covert action: (a) if it were "an activity or activities of the U.S. Government to influence political, economic, or military conditions abroad, where it is intended that the role of the U.S. Government will not be apparent or acknowledged publicly," and (b) if such activity did not fall under one of the four statutory exceptions:

- (1) activities the primary purpose of which is to acquire intelligence, traditional counterintelligence activities, traditional activities to improve or maintain the operational security of U.S. Government programs, or administrative activities;
- (2) traditional diplomatic or military activities or routine support to such activities;
- (3) traditional law enforcement activities conducted by U.S. Government law enforcement agencies or routine support to such activities; or

- (4) activities to provide routine support to the overt activities (other than activities described in paragraph (1), (2), or (3)) of other U.S. Government agencies abroad.

It is my understanding that the Department of Defense conducts activities that fall under each of those four exceptions. Whether a particular secret military operation falls within one of the statutory exceptions to the definition of covert action or, absent attribution, would constitute covert action that must be authorized by the President under a Finding requires a fact-specific analysis, informed by historical military practice and precedent. If confirmed, I look forward to examining these matters with great care and attention.

11. Senator UDALL. Mr. Preston, if the military refuses to answer the public's questions about a reported operation, does it become a covert action? If not, what is the basis for that denial? As an example, why are unacknowledged 1208 assistance programs not covert action?

Mr. PRESTON. The fact that certain information regarding a military operation is not discussed publicly does not necessarily mean that the operation constitutes covert action. As defined by the statute, covert action is an activity or activities to "influence political, economic, or military conditions abroad, where it is intended that the role of the U.S. Government will not be apparent or acknowledged publicly," subject to specific exceptions. Thus, for example, military operations that are traditional intelligence, counterintelligence, or military activities and routine support to such activities are excepted from the statutory definition of covert action. Further, my understanding is that a particular secret military operation conducted in the context of broader campaigns that are publicly known is not regarded as covert action, which by definition must be neither "apparent" nor "acknowledged publicly".

While I am not familiar with programs under section 1208, I understand that certain aspects of the support provided under the authority of section 1208 are classified to protect the operation and the personnel involved. I am further advised that support provided under the authority of section 1208 to operations by U.S. Special Operations Forces to combat terrorism is not considered covert action because it is explicitly authorized by Congress and because it falls within the exception to section 503 of the National Security Act for a "traditional military activity." I also understand that the Department of Defense fully informs Congress about activities under the authority of section 1208, in accordance with the reporting requirements of that section.

If confirmed, I expect to examine these matters with great care and attention.

12. Senator UDALL. Mr. Preston, under what circumstances can a secret military program, as distinct from a particular technical operation, be briefed only to the chairman and ranking member?

Mr. PRESTON. It is my understanding that in the context of special access programs (SAPs) of the Department of Defense, there is a narrow set of circumstances under which the Secretary of Defense may determine that certain very sensitive information be reported only to the chairman and the ranking member of the congressional defense committees. Section 119 of title 10, U.S.C., ensures congressional oversight of DOD SAPs by requiring, inter alia, annual reports to the congressional defense committees on each SAP, as well as reports on initiation and termination of individual SAPs. In addition, section 119(e) provides that, only on a "case-by-case basis," the Secretary of Defense may waive a SAP reporting requirement, if the Secretary determines that the inclusion of the required information "would adversely affect the national security." If the Secretary exercises this authority, the Secretary must provide the omitted information and the justification for the waiver, jointly to the chairman and ranking member of each of the defense committees. The congressional defense committees that receive these reports (including those whose chairman and ranking member receive the "waived" SAP information) are the Committee on Armed Services, the Committee on Appropriations, and the Defense Subcommittee of the Committee on Appropriations of the Senate, and the Committee on Armed Services, the Committee on Appropriations, and the Subcommittee on Defense of the Committee on Appropriations of the House of Representatives.

In the event that a secret military program consisted of activities to be conducted pursuant to a Presidential Finding authorizing covert action, then the congressional reporting requirements in section 503 of the National Security Act would apply.

AUTHORITY FOR USE OF MILITARY FORCE/LAW OF ARMED CONFLICT

13. Senator UDALL. Mr. Preston, under what circumstances, if any, can military operations be initiated outside a declared war zone without the concurrence of the President, the Secretary of Defense, or the U.S. chief of mission in the country?

Mr. PRESTON. The President and the Secretary of Defense are at the top of the military chain of command and have full authority for direction and control of military operations. I understand that, in circumstances such as sudden attack or disaster, theater military commanders have certain delegated authority to initiate appropriate military responses as necessary to save lives and protect the forces under their command. All such operations remain subject to the direction and control of the President and the Secretary of Defense.

Chiefs of mission are not in the military chain of command. I understand that, in some circumstances, the President or the Secretary of Defense has approved military operations on the condition that, if the chief of mission expresses disagreement with an activity, the theater military commander will resolve the disagreement or seek further guidance from the Secretary of Defense before proceeding with the activity. This ensures that the views of chiefs of mission regarding potential military operations outside a war zone are fully considered while also preserving the military chain of command.

14. Senator UDALL. Mr. Preston, in your advance questions for the committee, you stated that "If there were no 2001 Authorization for Use of Military Force, the President would have authority as Commander-in-Chief and Chief Executive to order military action against al Qaeda and associated forces if necessary to protect an important national interest, as with an imminent threat of violent attack."

Please elaborate on your statement regarding the President's authority to order military operations outside any Authorized for the Use of Force (AUMF) to "protect an important national interest." Do you view this authority as broader than imminent threat?

Mr. PRESTON. In my response, I noted imminent threat in particular as it would be the probable basis for ordering action against al Qaeda or in the broader counterterrorism context. I am aware of opinions of the Office of Legal Counsel, Department of Justice, that address the President's authority to order certain military operations without the prior, express authorization of Congress. Most recently, the April 2011 opinion regarding Authority to Use Military Force in Libya stated that the Office of Legal Counsel has identified a variety of national interests that, alone or in combination, may justify use of military force by the President. I understand that an "imminent threat" is one possible circumstance in which it might be lawful and appropriate for the President to order military operations without prior congressional authorization, but that imminent threat is not the only circumstance when this may be appropriate. I also note that there are important limitations on the scope and duration of military operations that the President may order in the absence of congressional authorization.

QUESTION SUBMITTED BY SENATOR JOE MANCHIN III

SEXUAL ASSAULT IN THE MILITARY

15. Senator MANCHIN. Mr. Preston, DOD is adamantly opposed to taking sexual assault cases out of the chain of command. If confirmed, your advice to the Secretary of Defense on this matter will be very important. Sexual assault is not a new challenge to the military. You are familiar with this because you served as the Navy's general counsel in the late 1990s. How has your experience with the Navy shaped your views on the role of the chain of command in sexual assault cases?

Mr. PRESTON. My prior experience as General Counsel of the Department of the Navy and as the Principal Deputy General Counsel of the Department of Defense enhances my understanding of the importance of the chain of command to a military organization and the historical integration of the military justice system into the command structure. However, I have not prejudged the optimal role of the commander in the process of adjudicating sexual assault allegations in the military. I am aware that the Response Systems Panel established under section 576 of the National Defense Authorization Act for Fiscal Year 2013 is tasked with providing the Secretary of Defense and Congress with an assessment of the strengths and weaknesses of the military's systems to respond to sexual assaults. The Panel's work will include an assessment of the roles and effectiveness of commanders at all levels. If confirmed, I will consider with an open mind the appropriate role of the

chain of command in sexual assault cases and provide my best advice to the Secretary.

QUESTIONS SUBMITTED BY SENATOR TIM KAINE
AUTHORIZATION FOR USE OF MILITARY FORCE

16. Senator KAINE. Mr. Preston, what is your understanding of the scope, duration, and limitations of the 2001 AUMF?

Mr. PRESTON. The 2001 AUMF encompasses those who are part of, or substantially support, al Qaeda, the Taliban, or associated forces. Courts and Congress, in the context of detention, have endorsed the Executive branch view that the AUMF applies to associated forces that have joined the fight with al Qaeda and against the United States. My understanding of the concept of associated forces is that it is narrow, reaching only forces of an organized, armed group that has entered the fight alongside al Qaeda and a co-belligerent with al Qaeda in hostilities against the United States or its coalition partners.

With respect to geographic limitations, the enemy in this conflict has not confined itself to any one country. The AUMF does not restrict the use military of force against al Qaeda to areas of active hostilities such as Afghanistan. Moreover, the United States can, consistent with international law, prosecute the armed conflict with al Qaeda outside such areas. U.S. military operations are conducted consistent with international law and with respect for another State's sovereignty. With reference to the use of force in counterterrorism operations outside the United States and areas of active hostilities, U.S. military operations are also subject to the policy standards and procedures announced in May of this year.

The President has said that our systematic effort to dismantle terrorist organizations must continue, but that the war against al Qaeda, like all wars, must end. The President has also invited engagement with Congress on the future of the AUMF. As for the duration of the conflict with al Qaeda and continuing authority to counter terrorist threats post conflict, I believe our system works best when there is agreement between the two political branches on how the Nation should proceed. If confirmed, I hope to play a constructive role in that process.

17. Senator KAINE. Mr. Preston, is there a need for AUMF reform now, given combat forces are being withdrawn from Afghanistan?

Mr. PRESTON. Although there will come a point when al Qaeda, the Taliban, and associated forces have been so degraded and dismantled that the United States is no longer be in an ongoing armed conflict, the end of the U.S. combat role in Afghanistan will not necessarily mark that point. However, it does draw attention to the duration of the conflict with al Qaeda and continuing authority to counter terrorist threats post conflict. The President has invited engagement with Congress on the future of the AUMF. If confirmed, I look forward to participating in that discussion.

18. Senator KAINE. Mr. Preston, does the President have the authority needed to conduct operations ongoing anywhere else in the world and, if not, should he come to Congress to get such an authority on a case-by-case basis?

Mr. PRESTON. It is the considered view of the Department of Defense that the President has adequate authority to conduct military operations against al Qaeda, the Taliban, and associated forces. Consistent with the AUMF, the authority to use military force against al Qaeda is not restricted geographically to "hot" battlefields like Afghanistan. Indeed, as outlined in the President's recent War Powers reports to Congress, such military operations have been conducted in Yemen and Somalia, in addition to Afghanistan. My understanding is that the existing authorities are believed to be adequate and appropriate for military operations to counter the current and immediately foreseeable threat. Although the President has the authority to respond as necessary to new threats, I believe the President would consult with Congress to determine if additional authority is appropriate.

QUESTIONS SUBMITTED BY SENATOR JAMES M. INHOFE
INTERNATIONAL LAW

19. Senator INHOFE. Mr. Preston, if a proposed action by DOD is fully in compliance with U.S. law but there is a question of whether the proposed action is permitted under international law, customary international law, or international law

principles, does this ambiguity affect or negate the ability of DOD to carry out the proposed action?

Mr. PRESTON. My understanding is that the United States complies with all applicable international law when it uses military force in a foreign country. Any question in this regard should be resolved if at all possible, and any remaining ambiguity should be brought to the attention of the decision maker. If confirmed, I would work closely with my colleagues, including the Legal Counsel to the Chairman of the Joint Chiefs of Staff and counsel for the other national security agencies, to ensure that U.S. military operations abroad comply with both U.S. domestic and applicable international law.

AUTHORIZED FOR THE USE OF FORCE

20. Senator INHOFE. Mr. Preston, does the AUMF apply to groups which formed after the events of September 11, 2001?

Mr. PRESTON. The AUMF applies to “those nations, organizations or persons [the President] determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons.”

A group that formed after the events of September 11, 2001, may be within the scope of the AUMF if the group is an organized, armed group that has entered the fight alongside al Qaeda and it is a co-belligerent with al Qaeda in hostilities against the United States or its coalition partners. The Executive branch refers to such groups as “associated forces” of al Qaeda, and this interpretation of the AUMF to reach “associated forces” has been supported by the courts and Congress.

21. Senator INHOFE. Mr. Preston, does the AUMF only apply to those groups which only believe in al Qaeda’s ideology?

Mr. PRESTON. The AUMF applies to al Qaeda, the Taliban, and associated forces. The AUMF does not apply to groups solely because they are ideologically aligned with al Qaeda. Instead, to be an associated force, the group must be an organized, armed group that has entered the fight alongside al Qaeda and a co-belligerent with al Qaeda in hostilities against the United States and its coalition partners.

22. Senator INHOFE. Mr. Preston, does the AUMF apply to groups which support al Qaeda’s ideology and have taken violent action, but not against the United States, and the group has not received tangible support from al Qaeda?

Mr. PRESTON. The determination of whether a group is an associated force turns on whether the group has entered the fight alongside al Qaeda and is engaged in hostilities against the United States or its coalition partners. Such a determination is necessarily dependent on specific facts and circumstances.

23. Senator INHOFE. Mr. Preston, do you foresee a time in which the administration will support modifying the AUMF?

Mr. PRESTON. In his recent speech at National Defense University, the President invited engagement with Congress in efforts to refine, and ultimately repeal, the AUMF.

GUANTANAMO BAY DETAINEES

24. Senator INHOFE. Mr. Preston, if we were to close Guantanamo Bay and transfer the detainees to the United States for trial in civilian court would we not have to provide Miranda rights advice and warnings to the detainees thereby greatly reducing our ability to collect intelligence from them?

Mr. PRESTON. While I have not focused on this issue in the performance of my current duties, my understanding is as follows. Transferring detainees to the United States for prosecution would not be expected to reduce our ability to collect valuable intelligence. Most of the detainees held at Guantanamo Bay have been in U.S. custody for at least 10 years, so there has already been significant opportunity for intelligence collection. There is also no requirement to provide Miranda warnings prior to intelligence questioning if statements derived from that questioning are not used in a criminal proceeding. Furthermore, a long and growing list of terrorism suspects who have been prosecuted in our Federal courts—to include Najibullah Zazi, Faisal Shahzad, David Headley, and Umar Faruq Abdulmutallab—have provided extremely valuable intelligence while they were held by law enforcement before trial. The prospect of a long prison sentence has led many hardened terrorists to cooperate with our intelligence professionals.

NEW COUNTERTERRORISM PROCEDURES

25. Senator INHOFE. Mr. Preston, during the Vietnam war some criticized the layers of bureaucracy which obstructed the timely authorization for an attack on legitimate military targets. In the current conflict, as in the Vietnam war, targets of opportunity can come and go in a moment's notice. Therefore, won't the new procedures articulated in the administration's Fact Sheet: U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities, complicate and add to the length of time required to target an overseas, non-U.S. citizen member of al Qaeda?

Mr. PRESTON. I agree that agility and timeliness are important attributes in a decisionmaking process for approving military targets and authorizing military action against such targets. My understanding is that the policy standards and procedures announced in May of this year were developed in close consultation with the departments and agencies with national security responsibilities, including specifically civilian and military leaders responsible for military operations abroad, and with the objective of having a decisionmaking process that would be practically workable and yield timely decisions. In addition, the policy standards and procedures include a reservation by the President permitting action to be taken in extraordinary circumstances.

26. Senator INHOFE. Mr. Preston, will these additional layers of bureaucracy not lead to targets of opportunity being missed?

Mr. PRESTON. As noted, the policy standards and procedures were developed with the objective of having a decisionmaking process that would be practically workable and yield timely decisions. In addition, risk in this regard should be mitigated by the reservation by the President permitting a departure from otherwise applicable standards and procedures in extraordinary circumstances.

27. Senator INHOFE. Mr. Preston, do these policies unnecessarily obstruct our ability to fight the war?

Mr. PRESTON. As noted, the policy standards and procedures were developed in close consultation with the departments and agencies with national security responsibilities, including specifically civilian and military leaders responsible for military operations abroad. I would defer to those leaders on this question, and I do not believe the policy would have been adopted if those leaders believed it would unnecessarily obstruct our ability to fight the war.

28. Senator INHOFE. Mr. Preston, it appears the administration has implemented special procedures to address its concerns that U.S. citizens who are members of al Qaeda or its affiliates should still be afforded a level of due process review before lethal force is taken pursuant to the AUMF of 2001. These procedures were outlined by Attorney General Eric Holder in his address at Northwestern Law School in 2012. Though this appears to be a sensible approach regarding U.S. citizens, it now appears, as articulated in President Obama's May 2013 speech, that the administration will use a similar review before targeting terrorists who are non-U.S. citizens and are located outside areas of active hostilities. Does this create a situation in which overseas terrorists are provided with similar constitutional protections as overseas U.S. citizens who have taken up arms against their own country?

Mr. PRESTON. In his recent speech at National Defense University, the President noted that the targeting of a U.S. citizen raises constitutional issues that are not present in other actions. The President also described a threshold for taking lethal action outside areas of active hostilities that applies regardless of whether the terrorist target is a U.S. citizen. I understand that this threshold—and the rest of the policy standards and procedures announced at the time of the President's speech—have been instituted as a matter of policy. To the best of my knowledge, neither the threshold, nor the other standards and procedures constitutes or reflects any legal judgment or intent to extend Due Process or any other rights to foreign nationals abroad.

 QUESTIONS SUBMITTED BY SENATOR KELLY AYOTTE

DRONE POLICY

29. Senator AYOTTE. Mr. Preston, based on your current role as General Counsel for the CIA, from a perspective of how best to protect our country and go after those who want to kill Americans, what are the advantages and disadvantages of shifting most or all drone attacks from the CIA to DOD?

Mr. PRESTON. With reference to this question and the two questions that follow, I could not comment in this setting on any intelligence activities.

I understand that attacking America's enemies in armed conflict is a traditional competency of the U.S. military and that the U.S. military has extensive experience in the use of remotely piloted aircraft to conduct attacks during armed conflict. The appropriate role of the Department of Defense in operating remotely piloted aircraft, weighing advantages and disadvantages, is essentially a policy decision for the President to make. If confirmed, my focus with respect to military operations using remotely piloted aircraft will be on the legal basis for such operations and compliance with applicable law in conducting such operations.

30. Senator AYOTTE. Mr. Preston, will drone attacks operated by DOD confront more legal constraints?

Mr. PRESTON. The use of military force against the Nation's enemies, whether by remotely piloted aircraft or other means, is subject to the Constitution and U.S. laws, to the law of war, and to the direction and control of the President and the Secretary of Defense. I am aware that the U.S. military uses remotely piloted aircraft to attack terrorists consistent with all applicable law and, if confirmed, I would review such operations for compliance with all applicable law.

31. Senator AYOTTE. Mr. Preston, will fewer drone attacks be conducted because of additional legal constraints?

Mr. PRESTON. The number of attacks by the U.S. military, whether using remotely piloted aircraft or by other means, depends on a variety of factors, circumstances and judgments, such that it would be difficult to isolate the impact, if any, of legal constraints on that number.

DETAINEE POLICY

32. Senator AYOTTE. Mr. Preston, President Obama has sought to close Naval Station, Guantanamo Bay and has refused to put new detainees there, despite the repeated testimony of our military leaders that a designated detention facility for the long-term detention and interrogation of foreign terrorists would be very helpful. This refusal has put our military leaders in a difficult and dangerous situation. The lack of a designated long-term detention facility has forced our military to use substandard, ad-hoc workarounds as they did in the case of Abdul Kadir Warsame. If we captured Ayman al Zawahiri tonight, can you tell me where we would detain him for long-term Law of War detention and interrogation?

Mr. PRESTON. First a determination would have to be made as to whether or not he should be held in military custody for interrogation. Eventually, a determination would have to be made as to disposition, whether it be prosecution in Federal court, trial by military commission or law of war detention long term. The appropriate place of detention would depend on those determinations. At the President's direction, the Department is in the process of identifying a secure facility in the United States for holding military commissions. There is also an outstanding indictment against al Zawahiri.

33. Senator AYOTTE. Mr. Preston, in your opinion, are the detainees held at Naval Station, Guantanamo Bay being treated in a professional and humane manner, which is compliant with U.S. law?

Mr. PRESTON. In 2009, a review was conducted to ensure that the treatment of Guantanamo detainees fully complied with U.S. domestic and international law. My understanding is that that review found that the detainees were being treated in a professional and humane manner that was fully consistent with all applicable law. To the best of my knowledge, that remains the case today.

QUESTIONS SUBMITTED BY SENATOR MIKE LEE

NATIONAL SECURITY AGENCY

34. Senator LEE. Mr. Preston, the National Security Agency (NSA) is under the jurisdiction of DOD. As the General Counsel for DOD, you will have a large amount of influence over the programs at NSA that have recently been in the news for collecting metadata on millions of Americans in large databases. I am concerned that this information might be used for purposes not originally contemplated when the databases were created, not necessarily by this administration but in the future,

which may endanger the liberties of Americans. Do you believe that at some point the collection and aggregation of metadata implicates constitutional concerns?

Mr. PRESTON. Whether or at what point the collection and aggregation of metadata regarding U.S. persons by the U.S. Government implicates constitutional concerns is a question of great importance and complexity. While the Supreme Court's decision in *Smith v. Maryland* is cited for the proposition that there is no protected privacy interest in business records of this sort, I understand that some may have doubts about the applicability of that decision in this context. If confirmed, I expect to play an active role in any further consideration of this issue, together with the appropriate attorneys at the Department of Justice.

35. Senator LEE. Mr. Preston, what limiting practices do you believe should guide the Government in determining the types and amount of information it can collect about Americans?

Mr. PRESTON. Current law and policy strike a balance between protecting the national security of our country and protecting the constitutional rights of our citizens, and it is imperative that the intelligence activities of the U.S. Government, particularly any collection of information about U.S. persons, strictly adhere to all applicable prohibitions and limitations aimed at safeguarding privacy and civil liberties. Executive Order (EO) 12333, as amended, directs U.S. Government departments and agencies to use all means, consistent with applicable Federal law and this order, and with full consideration of the rights of U.S. persons, to obtain reliable intelligence information to protect the United States and its interests. EO 12333 provides that "[t]he U.S. Government has a solemn obligation, and shall continue in the conduct of intelligence activities under this order, to protect fully the legal rights of all U.S. persons, including freedoms, civil liberties, and privacy rights guaranteed by Federal law." Intelligence Community elements are authorized to collect, retain, or disseminate information concerning U.S. persons only in accordance with procedures established by the head of the Intelligence Community element concerned or by the head of a department containing such element and approved by the Attorney General. Intelligence Community elements are required to use the least intrusive collection techniques feasible within the United States or directed against U.S. persons abroad. Such techniques as electronic surveillance, unconsented physical searches, mail surveillance, physical surveillance, or monitoring devices may be used only in accordance with procedures established by the head of the Intelligence Community element concerned or the head of a department containing such element and approved by the Attorney General, after consultation with the Director of National Intelligence. Such procedures shall protect constitutional and other legal rights and limit use of such information to lawful governmental purposes.

The Department of Defense has implemented EO 12333 in procedures approved by the Attorney General. The purpose of these procedures is to enable the DOD intelligence components to accomplish their missions effectively while protecting the constitutional rights and privacy of U.S. persons. The DOD intelligence components may collect information that identifies a U.S. person only if it is necessary to conduct a function assigned to the collecting component and only if the information falls within a specified category (e.g., the information is obtained with the consent of the U.S. person concerned, is publicly available, or is foreign intelligence or counterintelligence).

DRONES

36. Senator LEE. Mr. Preston, do you believe that the Constitution allows for the U.S. Government to target an American citizen on foreign soil with a drone if they are suspected of engaging in terrorist activity and are perceived to be an imminent threat?

Mr. PRESTON. Citizenship does not confer immunity on one who takes up arms against our country. However, it is critically important to respect the constitutional rights of American citizens, even those who may be plotting against the United States. The requirements of Due Process and the circumstances in which the U.S. Government could lawfully target an enemy belligerent/terrorist operator known to be a U.S. person—whether using a remotely piloted aircraft or by other means—were outlined in the speech by the Attorney General in March of last year and are discussed in some detail in the Department of Justice white paper that has been released. In addition, the policy standards and procedures announced in May of this year require that if the United States considers an operation against a terrorist identified as a U.S. person, the Department of Justice will conduct an additional

legal analysis to ensure that such action may be conducted against the individual consistent with the Constitution and laws of the United States.

37. Senator LEE. Mr. Preston, how do you define imminent threat?

Mr. PRESTON. Imminent threat is a concept long known in the law and in practice as relates to the use of military force, but also a concept that has evolved with the emergence of non-state actors planning and executing terrorist attacks with tactics foreign to conventional warfare. This is not the adversary of old, amassing forces on the border, with troops in uniform and arms unconcealed, in advance of an invasion, nor is it an adversary that pays any heed to the law of war, instead hiding among and intentionally targeting innocent civilians.

In the current context, imminent threat would encompass those engaged in planning, approving or carrying out violent attacks against the United States. Additional considerations would include the window of opportunity to act, the chance of reducing collateral harm to civilians, and the likelihood of heading off future disastrous attacks. In any given instance, the determination whether a threat is imminent is based on an assessment of all facts and circumstances known at the time.

DETENTION

38. Senator LEE. Mr. Preston, do you believe the Constitution permits the Government to apprehend a U.S. citizen on American soil and detain that individual indefinitely in a military detention facility?

Mr. PRESTON. I understand that the law is unsettled on this question. As a matter of policy, the President has declared that the U.S. Government "will not authorize the indefinite military detention without trial of American citizens" and further stated that "doing so would break with our most important traditions and values as a Nation."

WAR POWERS

39. Senator LEE. Mr. Preston, did you support the President's decision to use military force in Libya in 2011?

Mr. PRESTON. As General Counsel of the CIA, I had no role in the decision to use military force in Libya in 2011. To the best of my recollection, I did not participate in the substantive discussions concerning the use of military force preceding the President's decision. That said, I do not wish to suggest that I did not support the decision once made. If confirmed, I expect to be actively involved in the consideration of any contemplated use of military force in a foreign country in the future.

40. Senator LEE. Mr. Preston, do you believe that he had the proper authority to do so, and do you believe that the President needs authorization from Congress to arm rebels in Syria?

Mr. PRESTON. With respect Libya, I had no role, as CIA General Counsel, in addressing the authority to use military force, under U.S. domestic law or international law, and I do not recall having any material involvement in those discussions. As I understand it, the President acted in Libya to protect U.S. national interests and prevent a massacre. On March 21, 2011, in his report to Congress about the use of military force in Libya consistent with the War Powers Resolution, the President explained that the use of military force in Libya served important U.S. interests in preventing instability in the Middle East and preserving the credibility and effectiveness of the United Nations Security Council. Although U.S. strikes in Libya exceeded 60 days, my understanding is that the administration concluded, given that the risk to U.S. forces was low and the mission and use of force limited, the term "hostilities" did not apply and, therefore, continuing operations were consistent with the War Powers Resolution. I understand that U.S. and NATO operations in Libya had a basis in international law by virtue of U.N. Security Council resolutions under Chapter VII of the U.N. Charter.

With respect to Syria, all U.S. military operations must be authorized under U.S. domestic law. Without an authorization from Congress, the President could have authority as Commander in Chief and Chief Executive to order military action, depending on the particular facts and circumstances. There are, however, significant constitutional and statutory limitations on the scope and duration of military operations that the President may order in the absence of congressional authorization.

41. Senator LEE. Mr. Preston, do you believe that the current AUMF from 2001 needs to be updated or changed at this point? If so, how?

Mr. PRESTON. It is the considered view of the Department of Defense that the President has adequate authority to conduct military operations against al Qaeda, the Taliban, and associated forces. My understanding is that the existing authorities are believed to be adequate and appropriate for military operations to counter the current and immediately foreseeable threat. The President has invited engagement with Congress on the future of the AUMF. If confirmed, I look forward to participating in that discussion.

ADDITIONAL QUESTIONS SUBMITTED BY SENATOR MARK UDALL

**Senate Armed Services Committee
Questions for the Record for the
Honorable Stephen W. Preston, CIA General Counsel,
Nominated to be the General Counsel of the Department of Defense
August 9, 2013**

Senator Mark Udall

Our great nation is based on a system of checks and balances. I believe that it is essential that the Congress be able to exercise appropriate oversight of executive branch agencies and that agencies appropriately respond to congressional requests. Most executive branch agencies work hard to provide Congress with the information needed to conduct effective oversight. It is important that such best practices be replicated throughout the government. Likewise, it is essential that such practices as unacceptable responses to congressional requests and oversight do not spread to other agencies.

As you know, I have concerns regarding the CIA's recent engagement with the congressional oversight process, to include periods of time during which you have served as General Counsel of the CIA. In your testimony to the Senate Armed Services Committee, you stated that you believed the CIA's response to the Senate Select Committee on Intelligence's *Study on the CIA Detention and Interrogation Program* (the *Committee Study*) was "appropriate," and that you accepted the conclusions of the CIA response. You also stated that you had some involvement in the CIA's response, noting, "For my part, I don't believe there's anything legally objectionable. That's the determination I need to make."

In responding to the questions below, I note the following:

I strongly agree that it is essential that the Congress be able to exercise appropriate oversight of Executive branch agencies and that agencies appropriately respond to congressional requests. Doing a better job of congressional notification and ensuring the proper provision of information concerning covert action and other intelligence activities to the Intelligence Committees has been a top priority of the Directors under which I have served, starting with Director Panetta, and one that I have fully supported. As I stated at this Committee's hearing on my nomination, if confirmed, I will be fully committed to ensuring that the Armed Services Committees are kept properly informed in furtherance of their critical oversight responsibilities vis-à-vis the Department of Defense.

My role with respect to the Agency's response to the SSCI's study is perhaps best understood in the context of my broader role as General Counsel of the CIA. For the past four-plus years, my highest priority as General Counsel has been working to ensure that the Agency is and remains in full compliance with all applicable law in the conduct of intelligence activities, with particular attention to ongoing counterterrorism programs. With respect to the former detention and interrogation program, which was ended by Executive Order prior to my arrival, the primary focus of the Office of General Counsel during my tenure has been on supporting the work of the

Department of Justice and the SSCI in their respective reviews of the former program, with particular emphasis on the document production process, as well as supporting the U.S. Government's efforts to criminally prosecute terrorist detainees.

The preparation of Agency comments following receipt of the SSCI report was undertaken at the direction of the Acting Director and performed by a team of senior career officers. The product of their work was ultimately submitted to the Director, via the Deputy Director, for approval. My involvement in this process was limited. I did not personally participate in the team's formulation of substantive comments, nor did I independently review the factual basis for their findings and conclusions. I reviewed the comments, with particular attention to the recommendations, and made suggestions, chiefly as to presentation, in hopes of enhancing the utility of the comments, to the Agency and the Committee, in the discussion between them that would follow. My role was principally one of advising the Director and the Deputy Director as they considered how best to engage with the Committee in light of its report and, of critical importance, how to improve the Agency's conduct and oversight of other sensitive programs going forward.

In its response, the Agency confirmed its agreement with a number of the study's conclusions, acknowledged shortcomings, and set forth Director-approved remedial measures to address them. The response does not defend the historical policy decision to use enhanced interrogation techniques as part of the former program. In submitting the response, moreover, Director Brennan made clear his view that enhanced interrogation techniques are not an appropriate method to obtain intelligence and his agreement with the President's decision to ban their use. My views are exactly the same as Director Brennan's in both respects. Insofar as the Agency's response also identifies areas of disagreement with the SSCI's study, I see the response not as a rebuttal to the study or any kind of counter-report, but as comments on the study for the Committee's consideration as it seeks to ensure an accurate record of the former detention and interrogation program. In my view, as previously indicated, the preparation of comments by Agency officers and the Director's submission of such comments for the Committee's consideration was a lawful and appropriate step in the ongoing dialogue between CIA and its congressional overseers. There is now underway an important discussion between the Agency and the Committee – between the Director and Committee leadership, and between the respective staff members most familiar with the facts. I am prepared to abide the outcome of that process.

Views on the Responsibilities of Government Agencies to Respond to Congressional Oversight Requests—CIA Response to the Senate Select Committee on Intelligence

1. As you know, on December 14, 2012, the Senate Select Committee on Intelligence provided a nearly 6,300-page *Study on the CIA Detention and Interrogation Program* to the CIA and other agencies for "review and comment." The CIA's response was requested by February 15, 2013. The Committee did not receive the CIA's response until June 27, 2013. During this more than six-month period, Committee Members repeatedly requested that CIA personnel meet with the Committee staff to discuss the *Committee Study*. The CIA declined all requests to meet with its oversight committee on this matter. In your previous response to questions on your role in the CIA's response to the *Committee Study*, you stated: "My role

was principally one of advising the Director and the Deputy Director as they considered how best to engage with the Committee in light of its report and, of critical importance, how to improve the Agency's conduct and oversight of other sensitive programs going forward."

- a. Please elaborate on your specific role in the CIA's decision to decline to meet or communicate with the Members and staff of the CIA's oversight committee on this matter of "critical importance" for more than six months. Did you object to the CIA's decision not to meet with the Committee or its staff? Do you believe this decision was reasonable and appropriate given the "critical importance" of the matter and the repeated requests by multiple Members of the Committee for CIA personnel to meet with Committee staff?
- b. If confirmed as General Counsel of the Department of Defense, will you ensure, to the best of your ability, that the Department will communicate and meet with the Senate Armed Services Committee Members and its staff in a timely and reasonable manner?

The SSCI's study was formally adopted by the Committee and provided to the Agency for response in December 2012. At that point, the Agency undertook to review the study and prepare comments for the Committee's consideration. Agency leadership determined that it would be most productive to review the report and digest its findings and conclusions before trying to reengage with the Committee in the nature of a substantive response. As any comments on the SSCI's study would not be the Agency's considered response unless and until such comments were reviewed and adopted by the Director, Agency leadership also determined that it would be premature and potentially counterproductive to have substantive discussions at a staff level prior to that time. In my view, leadership's judgment in this regard was not unreasonable.

The process took longer than the 60 days originally allotted by the Committee for the Agency's response. This was due in part to the volume of the report, but also to the change in leadership at the Agency, with the nomination and confirmation of a new Director in the first quarter of this year. The Acting Director sought to keep Committee leadership apprised of the Agency's progress and, on at least one occasion during the process, met with the Chairman and Vice Chairman to foreshadow the Agency's preliminary views thus far developed. Following his appointment, the Director also sought to keep Committee leadership apprised of the Agency's progress, and he and the Deputy Director met with Committee leadership in June to walk through the Agency's response to the SSCI's study. As agreed at that meeting, extensive staff-level meetings ensued, and those discussions continue.

If confirmed, I will certainly do everything in my power to ensure that the Department of Defense communicates and meets with Senate Armed Services Committee Members and staff in a timely and reasonable manner. As noted above, I have fully supported efforts to ensure the proper provision of information to the Intelligence Committees, and, if confirmed, I will be fully committed to such efforts with respect to the Armed Services Committees. This would include communicating and meeting with this Committee on a timely and reasonable basis.

CIA Response to the Senate Select Committee on Intelligence

2. In your testimony to the Senate Armed Services Committee, you stated that you believed the CIA's response to the Senate Select Committee on Intelligence's *Study on the CIA Detention and Interrogation Program* was "appropriate." The CIA response largely responds to a small summary portion of the *Committee Study*, not to the material in the 300-page Executive Summary, or to the larger 6,300-page document. CIA personnel have confirmed that when the CIA response makes an affirmative statement about what the CIA believes is *not* in the *Committee Study*, the CIA response is merely referencing bullet points in a short 50-page section of the *Committee Study* that precedes the Executive Summary, not the larger *Committee Study* or its full Executive Summary. CIA personnel have further relayed that no person at the CIA has read the full 6,300-page *Committee Study*.
 - a. Given Director Brennan's statement at his Senate confirmation hearing that he looked forward "to reading the entire 6000-page volume, because it is of such gravity and importance;" the additional four months beyond the February 15, 2013, deadline the CIA took to respond to the *Committee Study*; as well as Director Brennan's testimony to the House Permanent Select Committee on Intelligence that the CIA was taking the extra time to provide a thorough response, do you believe it was appropriate for the CIA to largely respond only to a small section of the *Committee Study* that precedes the Executive Summary?

The Agency undertook to review and respond to the SSCI report to the full extent believed possible given its volume and that of the underlying record material, and given very limited time constraints, imposed originally by the Committee's 60-day deadline and, once that was exceeded, by the practical imperative to respond expeditiously following the appointment of a new Director. In light of these circumstances, the Acting Director adopted a team approach, relying on a group of experienced intelligence officers, rather than a single individual, to conduct the review and prepare comments. He deemed it impractical to respond on a line-by-line basis to the 6,300-page report in any reasonable timeframe, so he directed the team to focus on the study's 20 conclusions and conduct a "deep dive" on a substantial portion of the study viewed as the basis for a number of the study's central conclusions. I understand that the members of the team divided up the substantive matters identified and, in the course of formulating their comments, sought to review those portions of the report and underlying record material relating to the subjects as assigned. Accordingly, while the response is organized in terms of and seeks to address the study's conclusions, my understanding is that the review and resulting comments were not confined to the bare statement of conclusions or even the summary volume of the report. To be sure, the Agency's response does not constitute an encyclopedic treatment of the SSCI's study. To the extent that there are matters apparently not addressed and believed to be important to an understanding of the former program, they would be entirely appropriate for discussion in the staff-level meetings currently in progress.

Views on Responsive Document Production Pursuant to Committee Oversight Requests

3. On July 19, 2013, the New York Times reported that the Senate Select Committee on Intelligence's *Study of the CIA Detention and Interrogation Program* "took years to complete and cost more than \$40 million." In your previous response to questions on your role in the CIA's response, you stated: "My role was principally one of advising the Director and the Deputy Director as they considered how best to engage with the Committee in light of its

report and, of critical importance, how to improve the Agency's conduct and oversight of other sensitive programs going forward."

- a. The CIA declined to provide the Senate Select Committee on Intelligence with access to CIA records at the Committee's secure office space in the Hart Senate Office Building. Instead, the CIA insisted that the Committee review documents at a government building in Virginia. Once the CIA produced relevant documents related to the CIA detention and interrogation program, the CIA then insisted that CIA personnel—and private contractors employed by the CIA—review each document multiple times to ensure unrelated documents were not provided to a small number of fully cleared Committee staff. What role did you play in the decision to employ these unnecessary multi-layered review steps that delayed CIA document production to the Committee at significant governmental expense?
- b. During the CIA's document production of more than six million pages of records, the CIA removed several thousand CIA documents that the CIA believed could be subject to executive privilege claims by the President. While the documents represent an admittedly small percentage of the total number of records produced, the documents—deemed responsive—have nonetheless not been provided to the Committee. What role did you, and other members of CIA leadership, play in the decision to withhold these responsive documents from the Committee? Do you believe it is proper for a federal agency to deny the production of responsive documents to a congressional oversight committee for significant periods of time absent an executive privilege claim by the President?
- c. If confirmed as General Counsel of the Department of Defense, will you ensure, to the best of your ability, that the Department will provide responsive documents as requested by the Senate Armed Services Committee absent an executive privilege claim by the President?

During its review of the former detention and interrogation program, the Committee was provided access to highly sensitive CIA materials, including operational cable traffic, internal electronic communications and other information. All told, the Committee was provided access to more than six million pages of materials, some in a large initial production to the Committee in 2009 and the rest in follow-on tranches in response to hundreds of staff requests over the next three years. It is my understanding that the particular arrangements for access – including scope, location and associated limitations – stemmed from discussions between the Agency and the Committee, initially between Director Panetta and the Chairman and then at a staff level over time. While in most instances I was not directly involved, I believe that the judgments underlying these arrangements were made in a good faith effort to provide adequate protection for particularly sensitive national security information, to ensure access to the materials needed by the Committee to perform its oversight function and otherwise to facilitate the review, and to follow conventional document collection/review/production practices as applicable under the circumstances.

With specific reference to documents potentially subject to a claim of executive privilege, as noted in the question, a small percentage of the total number of documents produced was set aside for further review. The Agency has deferred to the White House and has not been substantively involved in subsequent discussions about the disposition of those documents.

If confirmed, I will certainly do everything in my power to ensure that the Department of Defense will provide responsive documents as requested by the Senate Armed Services Committee, and I will consult with the Committee regarding the basis for any good faith delay or denial in providing such documents.

The Provision of Accurate Information by Federal Agencies to the Department of Justice

4. In your previous response to questions on your role in the CIA's response to the Senate Select Committee on Intelligence's *Study of the CIA Detention and Interrogation Program*, you stated that you had some involvement in the CIA's response, noting, "For my part, I don't believe there's anything legally objectionable. That's the determination I need to make." The CIA response states: "we found no evidence that any information was known to be false when it was provided [to the Department of Justice] or that additional or more frequent updates would have altered OLC's key judgments." You have written in response to a question on this matter:

"My understanding is that DOJ did not always have accurate information about the detention and interrogation program in that the actual conduct of that program was not always consistent with the way the program had been described to DOJ. Of particular note, I understand that, in a number of instances, enhanced interrogation techniques, specifically waterboarding, were applied substantially more frequently than previously had been described to DOJ. I cannot say what DOJ would or would not have considered material at the time. I can tell you that, if I were in a comparable situation, I would consider information of this nature to be material."

The information you have referenced above regarding the discrepancies between the actual use of the waterboard and the description of its use that CIA provided to the Department of Justice—while significant and material—was known prior to the *Committee Study*. Volume II of the *Committee Study*, specifically a 128-page section entitled, *CIA Representations to the Department of Justice Related to Intelligence, Effectiveness, and Operation of the Interrogation Program*, details how far more inaccurate information was provided to the Department of Justice.

- a. In light of the critical nature of this subject, please review the *CIA Representations* section (referenced above) of the *Committee Study* and describe your views on whether the factual record as recounted in the *Committee Study* supports the CIA's legal conclusion that accurate, timely and complete information would not have "altered OLC's key judgments."
- b. As noted above, you have stated in your previous response to a Question for the Record that "I cannot say what DOJ would or would not have considered

material at the time. I can tell you that, if I were in a comparable situation, I would consider information of this nature to be material.” After reviewing discrepancies between the factual record and OLC key judgments, do you agree with the CIA’s response that “revisiting its factual representations and updating them as necessary... would not have had a practical impact on the outcome”? Please explain whether your position differs from the CIA’s conclusion that OLC key judgments would not have been altered. For reference, you might review key judgments in the following documents:

- *Memorandum Regarding Interrogation of al Qaeda Operative* (August 1, 2002);
 - Letters from the Department of Justice related to the interrogation of individual detainees, including to the Acting Director of Central Intelligence, dated July 22, 2004; to the CIA Acting General Counsel, dated August 6, 2004; to the CIA Acting General Counsel, dated August 26, 2004; to the CIA Acting General Counsel, dated September 6, 2004; and to the CIA Acting General Counsel, dated September 20, 2004;
 - *Memorandum Regarding Application of 18 U.S.C. §§ 2340-2340A to Certain Techniques That May be Used in the Interrogation of a High Value al Qaeda Detainee* (May 10, 2005);
 - *Memorandum Regarding Application of 18 U.S.C. §§ 2340-2340A to the Combined Use of Certain Techniques in the Interrogation of High Value al Qaeda Detainees* (May 10, 2005)
 - *Memorandum Regarding Application of United States Obligations Under Article 16 of the Convention Against Torture to Certain Techniques that May Be Used in the Interrogation of High Value al Qaeda Detainees* (May 30, 2005)
 - *Memorandum Regarding Application of the Detainee Treatment Act to Conditions of Confinement at Central Intelligence Agency Detention Facilities* (August 31, 2006)
 - *Memorandum Regarding Application of the War Crimes Act, the Detainee Treatment Act, and Common Article 3 of the Geneva Conventions to Certain Techniques that May Be Used by the CIA in the Interrogation of High Value al Qaeda Detainees* (July 20, 2007)
- c. The CIA response to the *Committee Study* states: “while it would have been prudent to seek guidance from OLC on the complete range of techniques prior to their use, we disagree with any implication that, absent prior OLC review, the use of the ‘unapproved’ techniques was unlawful or otherwise violated policy.” Please state whether you agree with this legal determination and explain your legal reasoning.
- d. You have stated in your previous response to a Question for the Record that: “While I have been General Counsel of the CIA, the relationship between the Agency and DOJ’s Office of Legal Counsel (OLC) has been characterized by frequent and candid communication concerning the Agency’s sensitive programs, with particular attention to ensuring that the OLC is provided complete and accurate information on which to base its legal advice to the Agency. In addition, the Agency is developing an internal

mechanism for periodically and systematically reviewing OLC opinions regarding sensitive programs to ensure that OLC is informed of any material changes in facts or circumstances.” Please describe your views on the importance of federal agencies conveying and ensuring the OLC is properly informed of relevant information. How will you approach your interactions with the Office of Legal Counsel if confirmed as General Counsel of the Department of Defense?

Departments and agencies rely on OLC for authoritative legal guidance on a variety of difficult and consequential issues in an effort to ensure that their programs and operations are entirely lawful. This system works if and to the extent that OLC is properly informed of the information needed to address the legal issues presented. In my view, this is of fundamental importance. During my tenure as CIA General Counsel, I have worked to ensure that the Agency provides the full range of relevant information to OLC. If confirmed, I will do likewise at the Department of Defense, continuing to engage, in an atmosphere of transparency, with my OLC colleagues.

With reference to the factual representations concerning the former detention and interrogation program, it would be difficult to determine with certainty what information DOJ officials years ago would have regarded as outcome determinative. That notwithstanding, I have reviewed the section of the SSCI’s study (and the other material) identified in the question, and I believe CIA’s efforts fell well short of our current practices when it comes to providing information relevant to OLC’s legal analysis. If CIA had adhered to what we regard as proper practice today, it would have ensured that its representations to OLC on matters relating to the former program were and remained complete and accurate – updated as necessary on a timely basis – as we do today. In sum, I believe timely disclosure of all relevant facts to OLC is a necessary predicate to obtaining its authoritative legal guidance. Providing such disclosure is the current practice of the Agency, and it will certainly be my practice at the Department of Defense, if I am confirmed.

On the particular point raised in (c) of the question, I also agree that CIA should have sought guidance from OLC with regard to the complete range of interrogation techniques prior to their use. I understand the Agency’s response to the SSCI’s study to acknowledge this point, noting only that failure to so engage with OLC did not, in and of itself, render any given technique unlawful.

Responding to Congressional Oversight

5. The CIA response to the Senate Select Committee on Intelligence’s *Study of the CIA Detention and Interrogation Program* states that “We disagree with the *Study’s* conclusion that the Agency actively impeded Congressional oversight of the CIA detention and interrogation program.”
 - a. In light of the critical nature of this subject, and its direct relevance to your nomination, please review the 298-page section in Volume II of the *Committee Study*, entitled, *CIA Representations on the CIA Interrogation Program And the Effectiveness of the CIA’s Enhanced Interrogation Techniques To Congress*, as well as any other appropriate sections, and state whether you concur with the CIA’s response.

- b. The CIA response states that the White House had the “responsibility” for determining whether the CIA would brief the full Committee or only the Chairman and Vice Chairman. The CIA response also notes that “We do not want to suggest that CIA chafed under these restrictions; on the contrary, it undoubtedly was comfortable with them.” Do you believe that the limitations on briefings to the Committee Chairman and Vice Chairman for nearly four and a half years was appropriate, or adhered to the letter or spirit of the *National Security Act of 1947, as amended*, regardless of White House direction at the time?
- c. Based on your review of the aforementioned 298-page section, and other associated sections of the *Committee Study*, do you believe that the briefings provided to the Committee Chairman and Vice Chairman prior to September 6, 2006, fulfilled the CIA’s obligation, under the *National Security Act*, to keep the congressional intelligence committees “fully and currently informed of the intelligence activities of the United States, including any significant anticipated intelligence activity”? In your response, please provide your assessment of whether the record indicates that information provided to the Committee Chairman and Vice Chairman was accurate, complete, or timely.
- d. Based on your review of the 298-page section, and other associated sections of the *Committee Study*, do you believe that the briefings provided to the full Committee beginning on September 6, 2006, fulfilled the CIA’s obligation, under the *National Security Act*, to keep the congressional intelligence committees “fully and currently informed of the intelligence activities of the United States, including any significant anticipated intelligence activity”? In your response, please address whether information provided to the Committee was accurate, complete, or timely.
- e. To what extent do you view the CIA’s past engagement with the Senate Select Committee on Intelligence on the CIA’s Detention and Interrogation program—as well as the CIA’s most recent response and engagement with the Committee on this matter—as a model for the Department of Defense’s engagement with the Senate Armed Services Committee?

I have reviewed the section of the SSCI’s study identified in the question, and I believe CIA’s efforts in this regard fell well short of our current practices when it comes to congressional reporting. I would not regard them as a model for the Department of Defense’s engagement with this Committee. Had the Executive understood and discharged its congressional reporting obligations as we have in my experience since 2009, I do not believe that the briefings on a program of this nature, magnitude and duration would have continued on a limited, leadership-only basis. Moreover, as discussed in the Agency’s response and further explored in the staff-level discussions, briefings to the Committees included inaccurate information related to aspects of the program of express interest to Members. What we regard as proper practice today is driven by faithful application of the National Security Act of 1947. It is also informed by the very high priority the Directors under which I have served have placed on doing a better job of congressional notification and ensuring the proper provision of information concerning covert action and other intelligence activities to the Intelligence Committees. To repeat, I have fully

supported these efforts and, if confirmed, will be fully committed to such efforts with respect to the Armed Services Committees.

Section 331 of the Intelligence Authorization Act

6. The CIA response to the *Committee Study* states that “We disagree with the Study’s contention that limiting access is tantamount to impeding oversight.” To support this conclusion, the CIA response states that the narrative of the *Committee Study* “does not reflect mutually agreed upon past or current practices for handling restricted access programs.” The CIA response continues: “Indeed, the Committee codified, as part of the FY12 Intelligence Authorization Act, the practice of briefing sensitive matters to just the Chairman and Ranking Member [sic], along with notice to the rest of the Committee that their leadership has received such a briefing.”
 - a. Is the statement above a reference to Section 331 (“Notification procedures.”) of the FY10 Intelligence Authorization Act, reported out by the Committee on July 22, 2009, and again, on July 15, 2010? If not, please identify the provision in the FY12 Intelligence Authorization Act to which the CIA response is referring in this statement.
 - b. Please confirm your understanding that the language and intent of that legislation was not to “codify... mutually agreed upon past or current practices,” but rather, as the Committee report states, to provide for the “improvement of notification” by ensuring that, “[i]n the event the DNI or head of an Intelligence Community element does not provide [notification] to the full congressional intelligence committees,” the full committee shall be provided notice of this fact. If this is not your understanding, please provide an explanation for the conflict between the sponsors’ and Committee’s legislative intent to improve full Committee notification and the CIA’s alternative interpretation of this law as expressed in the CIA’s response.

The statement quoted above from the Agency’s response to the SSCI’s study refers to section 331 of the FY10 Intelligence Authorization Act, but I believe the statement was inartfully drawn to the extent that it can be read to suggest that, in enacting this legislation, the Congress or the Committee intended to endorse or embrace the Executive’s practice of limited notification of certain sensitive matters to Committee leadership. My understanding of the legislation is that it makes provision for situations in which the Executive determines to provide notification to fewer than all Committee Members (“If the President determines that ..., the finding may be reported to ...”) and, specifically, puts into law the requirement of notice to all Committee Members of the fact of the limited notification (“In any case where ..., the President shall provide to ...”) As I understand it, such notice to all Committee Members was not the pre-existing practice, but rather was an improvement put into place by the legislation. In short, the requirements of section 331 are as stated in the plain language of the provision, and the legislative intent is as stated in the legislative history of the Act, to include specifically the views expressed by Senator Rockefeller.

Previous Responses to Questions for the Record

7. You were asked in a previous Question for the Record about the CIA's past representations that information obtained from the CIA's enhanced interrogation techniques was "otherwise unavailable" to the United States Government, and the CIA's response, which states the CIA now believes these representations were "inherently speculative." The CIA response further states, "it is unknowable whether, without enhanced techniques, CIA or non-CIA interrogators could have acquired the same information from those detainees." In your response, you stated, "I understand this to be saying that information was provided by detainees following the application of enhanced interrogation techniques and that it is not possible to know whether the same information would have been obtained had other interrogation methods been used, because there is no way to turn the clock back and question these detainees all over again in a different fashion. In this sense, it is unknowable."
- a. As you know, in its cataloging of intelligence in U.S. government databases, the Committee accepted the CIA's broad definition of information obtained from CIA enhanced interrogation techniques – to include all information a detainee provided during or after CIA enhanced interrogation techniques, even if that information was provided several years after the use of enhanced interrogation techniques – as information derived from the techniques. Instead of speculating on what might have resulted if the CIA had tried to "turn the clock back and question these detainees all over again in a different fashion," the Committee sought to confirm CIA representations that information the CIA claimed was derived from enhanced interrogation techniques was, as the CIA represented, otherwise unavailable to the U.S. government through other intelligence sources.

Referencing the same standard, in a previous response you relayed that "otherwise unavailable" meant "otherwise unavailable to the Agency through other sources." This interpretation of "otherwise unavailable" is consistent with CIA representations to the CIA Office of Inspector General, Congress, and the Department of Justice, among others. For example, see the May 30, 2005, Office of Legal Counsel Memorandum, which describes CIA representations on effectiveness and the need to obtain "otherwise unavailable intelligence" to protect the nation.

Using the term "otherwise unavailable," as you stated, "otherwise unavailable to the Agency through other sources," which is consistent with past CIA representations, do you agree that a review of intelligence community records could determine whether information the CIA claims resulted from enhanced interrogation techniques was either "otherwise unavailable," or previously available "to the Agency through other sources"?

For purposes of this question, I understand "otherwise unavailable" to focus not on whether conventional interrogation techniques would have produced information different from that obtained following application of enhanced interrogation techniques, but on whether the information obtained was in fact available from sources other than the detainee subjected to such enhanced techniques. Understood in this way, I agree that it may be possible to make a determination as to whether information obtained following application of enhanced interrogation techniques was "otherwise unavailable," depending of course on the state and content of the record. My understanding is that differing views of the record in this regard are being discussed in the staff-level meetings currently in progress.

Attachment: Intelligence Authorization Act of Fiscal Year 2010

ADDITIONAL VIEWS OF SENATOR ROCKEFELLER

The Congressional notification provisions in the bill that we are reporting out today constitute an important improvement over the status quo. They require that the congressional intelligence committees and the President establish written procedures regarding the details of notification processes and expectations; that the President provide written notice about intelligence activities and covert actions, including changes in covert action findings and the legal authority under which an intelligence activity or a covert action is or will be conducted; that the President provide written reasons for limiting access to notifications to less than the full committee; and that the President maintain records of all notifications, including names of Members briefed and dates of the briefings.

I support these provisions because I expect that they will go a long way toward correcting past deficiencies. However, I believe that additional clarity is needed regarding whether or not the full committee will be aware of three critical facts in circumstances of less-than-full-committee notifications: (1) the fact that such a limited access notification has occurred, (2) the general subject of the limited notification, and (3) the reasons for limiting access.

There are situations in which a limited notification is appropriate and even necessary, but those situations are rare. Congressional notification procedures—and practices—should reflect that rarity. Most importantly, they should prevent limited notification from impeding the committees' oversight responsibilities, because effective congressional oversight of intelligence activities is critical to the national security interests of the United States.

As Senator Snowe and I noted in our additional views to the Committee's July 22, 2009 report of an earlier version of this bill, the Committee has supported clarity on these matters in four consecutive intelligence authorization bills. I will continue to work with my colleagues in establishing written notification procedures that resolve any ambiguities in favor of full committee awareness.

The Congressional notification provisions in the bill that we are reporting out today are a good first step—but only a first step.

JOHN D. ROCKEFELLER, IV.

[The nomination reference of Hon. Stephen W. Preston follows:]

NOMINATION REFERENCE AND REPORT

AS IN EXECUTIVE SESSION,
SENATE OF THE UNITED STATES,
June 11, 2013.

Ordered, That the following nomination be referred to the Committee on Armed Services:

Stephen Woolman Preston, of the District of Columbia, to be General Counsel of the Department of Defense, vice Jeh Charles Johnson, resigned.

[The biographical sketch of Hon. Stephen W. Preston, which was transmitted to the committee at the time the nomination was referred, follows:]

BIOGRAPHICAL SKETCH OF HON. STEPHEN W. PRESTON

Education:

Yale University

- September 1975–May 1979

- Bachelor of Arts Degree awarded May 1979
- Trinity College, University of Dublin
- September 1979–May 1980
 - Graduate Diploma awarded May 1980
- Harvard University
- September 1980–June 1983
 - Juris Doctor Degree awarded June 1983
- Employment Record:*
- Central Intelligence Agency
- General Counsel
 - July 2009–present
- Wilmer Cutler Pickering Hale and Dorr LLP
- Partner
 - March 2001–June 2009
- Department of the Navy
- General Counsel
 - September 1998–November 2000
- U.S. Department of Justice
- Deputy Assistant Attorney General, Civil Division
 - September 1995–September 1998
- Department of Defense
- Principal Deputy General Counsel
 - Deputy General Counsel (Legal Counsel)
 - Consultant
 - August 1993–September 1995
- Wilmer, Cutler & Pickering
- Partner
 - Associate
 - January 1986–August 1993
- Center for Law in the Public Interest
- Visiting Fellow
 - September 1984–December 1985
- Chambers of Hon. Phyllis A Kravitch, U.S. Court of Appeals for the Eleventh Circuit, Savannah, GA
- Law Clerk
 - August 1983–July 1984
- Honors and awards:*
- Central Intelligence Agency Distinguished Intelligence Medal (2012)
- National Intelligence Distinguished Service Medal (2012)
- Central Intelligence Agency Director's Award (2011)
- Central Intelligence Agency Director's Award (2010)
- Department of Defense Medal for Distinguished Public Service, bronze palm in lieu of second award (2000)
- Department of the Navy Distinguished Public Service Award (2000)
- Department of Defense Medal for Distinguished Public Service (1995)
- Resolution, Navy–Marine Corps Court of Military Review (1988)
- Honoree, Women's Legal Defense Fund (1987)
- J.D., magna cum laude, Harvard University (1983)
- Editor, Harvard Law Review (1982–1983)
- Graduate Diploma, with First Class Honors, University of Dublin (1980)
- B.A., summa cum laude, Yale University (1979)
- Phi Eta Kappa (1979)

[The Committee on Armed Services requires all individuals nominated from civilian life by the President to positions requiring the advice and consent of the Senate to complete a form that details the biographical, financial and other information of the nominee. The form executed by Hon. Stephen W. Preston in connection with his nomination follows:]

UNITED STATES SENATE
COMMITTEE ON ARMED SERVICES

Room SR-228

Washington, DC 20510-6050

(202) 224-3871

COMMITTEE ON ARMED SERVICES FORM

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF
NOMINEES

INSTRUCTIONS TO THE NOMINEE: Complete all requested information. If more space is needed use an additional sheet and cite the part of the form and the question number (i.e. A-9, B-4) to which the continuation of your answer applies.

PART A—BIOGRAPHICAL INFORMATION

INSTRUCTIONS TO THE NOMINEE: Biographical information furnished in this part of the form will be made available in committee offices for public inspection prior to the hearings and will also be published in any hearing record as well as made available to the public.

1. **Name:** (Include any former names used.)
Stephen Woolman Preston.
2. **Position to which nominated:**
General Counsel of the Department of Defense.
3. **Date of nomination:**
June 11, 2013.
4. **Address:** (List current place of residence and office addresses.)
[Nominee responded and the information is contained in the committee's executive files.]
5. **Date and place of birth:**
May 30, 1957; Atlanta, GA.
6. **Marital Status:** (Include maiden name of wife or husband's name.)
Married.
7. **Names and ages of children:**
Two children.
8. **Education:** List secondary and higher education institutions, dates attended, degree received, and date degree granted.
1980-1983, Harvard University, J.D., June 1983
1979-1980, Trinity College, University of Dublin, Graduate Diploma, May 1980
1975-1979, Yale University, B.A., May 1979
1971-1975, The Lovett School, High School Diploma, June 1975
9. **Employment record:** List all jobs held since college or in the last 10 years, whichever is less, including the title or description of job, name of employer, location of work, and dates of employment.
2009-Present, General Counsel, Central Intelligence Agency
2001-2009, Partner, Wilmer Cutler Pickering Hale and Dorr LLC
10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.
2005, Member, Independent Panel to Review Legal Services in the Department of Defense
1998-2000, General Counsel, Department of the Navy
1995-1998, Deputy Assistant Attorney General, Civil Division, U.S. Department of Justice
1993-1995, Principal Deputy General Counsel Deputy General Counsel (Legal Counsel), Consultant, Department of Defense
1983-1984, Law Clerk, Chambers of Hon. Phyllis A. Kravitch, U.S. Court of Appeals for the Eleventh Circuit, Savannah, GA
11. **Business relationships:** List all positions currently held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corpora-

tion, company, firm, partnership, or other business enterprise, educational, or other institution.

Member, Bartram Ridge Development LLC
Trustee, Family Trust I
Trustee, Family Trust II

12. **Memberships:** List all memberships and offices currently held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.

All Souls Memorial Episcopal Church
American Bar Association
American Bar Foundation
Council on Foreign Relations District of Columbia Bar
Harvard Club of Washington, DC.
International Association for the Study of Irish Literatures
Kalorama Citizens Association
Kennedy Center Membership Program
Metropolitan Club of Washington, DC.
Naval Historical Foundation
Navy League of the United States
Phi Beta Kappa
Smithsonian Institution Resident Associate Program
Saint Anthony Hall
The Elizabethan Club of Yale University
U.S. Navy Memorial
U.S. Naval Institute
Yale Club of Washington, DC

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 5 years.

Barack Obama Presidential Campaign—canvassing activity (2008).

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$100 or more for the past 5 years.

Barack Obama Presidential Campaign—contribution of \$2,300 (2008)

Michael Bennet Senatorial Campaign—contribution of \$500 (2009)

Michael Signer Virginia Lieutenant Governor Campaign—contribution of \$250 (2009)

Deval Patrick Gubernatorial Campaign—contribution of \$500 (2010)

14. **Honors and awards:** List all scholarships, fellowships, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

Phi Beta Kappa (1979)

B.A., summa cum laude, Yale University (1979)

Graduate Diploma, with First Class Honors, University of Dublin (1980)

Editor, Harvard Law Review (1982–1983)

J.D., magna cum laude, Harvard University (1983) Honoree, Women's Legal Defense Fund (1987)

Resolution, Navy-Marine Corps Court of Military Review (1988)

Department of Defense Medal for Distinguished Public Service (1995)

Department of Defense Medal for Distinguished Public Service, bronze palm in lieu of second award (2000)

Department of the Navy Distinguished Public Service Award (2000)

Central Intelligence Agency Director's Award (2010)

Central Intelligence Agency Director's Award (2011)

Central Intelligence Agency Distinguished Intelligence Medal (2012)

National Intelligence Distinguished Service Medal (2012)

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

Author, "CIA and the Rule of Law," 6 J. Nat'l Security L. & Pol'y 1 (2012)

Co-author, "CFIUS and Foreign Investment" in Homeland Security Legal and Policy Issues, ABA Publication (2009)

Co-author, "National Security Versus Business" in The European Lawyer (April 2008)

Co-author, "The CFIUS Review Process: A Regime in Flux" presented at The Foreign Investment and National Security Act of 2007: Navigating the Regulations, ABA Conference (April 4, 2008)

Co-author, "When Will Security Squelch a Foreign Investment Deal" in Executive Counsel (March/April 2008)

Co-author, "Many Transnational Deals Now Face a Security Review" in Executive Counsel (January/February 2006)

Co-author, Legal Services in the Department of Defense: Advancing Productive Relationships, DOD Report (September 15, 2005)

16. **Speeches:** Provide the committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

Speaker, CIA and the Rule of Law, Harvard Law School (April 10, 2012) (drawn from informal remarks initially delivered at Columbia Law School in October 2011)

17. **Commitment to testify before Senate committees:** Do you agree, if confirmed, to respond to requests to appear and testify before any duly constituted committee of the Senate?

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

Yes.

(b) Have you assumed any duties or undertaken any actions which would appear to presume the outcome of the confirmation process?

No.

(c) If confirmed, will you ensure your staff complies with deadlines established for requested communications, including questions for the record in hearings?

Yes.

(d) Will you cooperate in providing witnesses and briefers in response to congressional requests?

Yes.

(e) Will those witnesses be protected from reprisal for their testimony or briefings?

Yes.

(f) Do you agree, if confirmed, to appear and testify upon request before this committee?

Yes.

(g) 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?

Yes.

[The nominee responded to the questions in Parts B–F of the committee questionnaire. The text of the questionnaire is set forth in the Appendix to this volume. The nominee’s answers to Parts B–F are contained in the committee’s executive files.]

SIGNATURE AND DATE

I hereby state that I have read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Stephen W. Preston

This 22nd day of July, 2013.

[The nomination of Hon. Stephen W. Preston was reported to the Senate by Chairman Levin on July 30, 2013, with the recommendation that the nomination be confirmed. The nomination was confirmed by the Senate on October 16, 2013.]

[Prepared questions submitted to Hon. Jon T. Rymer by Chairman Levin prior to the hearing with answers supplied follow:]

QUESTIONS AND RESPONSES

DEFENSE REFORMS

Question. The Goldwater-Nichols Department of Defense Reorganization Act of 1986 and the Special Operations reforms have strengthened the warfighting readiness of our Armed Forces. They have enhanced civilian control and clearly delineated the operational chain of command and the responsibilities and authorities of the combatant commanders, and the role of the Chairman of the Joint Chiefs of Staff. These reforms have also improved cooperation between the Services and the combatant commanders in the strategic planning process, in the development of requirements, in joint training and education, and in the execution of military operations.

Do you see the need for modifications of any Goldwater-Nichols Act provisions?

Answer. The Goldwater-Nichols Act has strengthened our Armed Forces by promoting joint operability, increasing readiness, and creating a higher standard of warfighting efficiency. I am unaware of the need for any modifications to this act at this time. If confirmed, I will notify Congress if the Office of Inspector General identifies the need for modifications to the act.

Question. If so, what areas do you believe might be appropriate to address in these modifications?

Answer. Please see response above.

RELATIONSHIPS

Question. If confirmed, what would your working relationship be with:
The Secretary of Defense.

Answer. Section 8(c) of the Inspector General (IG) Act of 1978, as amended (the IG Act) states that the IG shall “be the principal adviser to the Secretary of Defense for matters relating to the prevention and detection of fraud, waste, and abuse in the programs and operations of the Department . . .” If confirmed, I will seek to maintain a strong and effective relationship with the Secretary that enables me to carry out my statutory duties with the independence required under the IG Act, while enabling the Secretary to exercise his statutory supervisory authority.

Question. The Deputy Secretary of Defense.

Answer. Section 3(a) of the IG Act states that “each IG shall report to and be under the general supervision of the head of the establishment involved or, to the extent such authority is delegated, the officer next in rank below such head.” DOD Directive 5106.01, dated April 10, 2012, states that “the IG of the DOD shall report to and be under the general supervision of the Secretary of Defense and the Deputy Secretary of Defense . . .” Accordingly, if confirmed, my relationship with the Deputy Secretary of Defense will be similar to my relationship with the Secretary of Defense.

Question. The Under Secretary of Defense (Comptroller/Chief Financial Officer).

Answer. If confirmed, I will work with the USD(C/CFO) to formulate the IG’s portion of the annual President’s budget for submission to Office of the Secretary of Defense (OSD) and Office of Management and Budget (OMB), as well as request required resources to conduct the IG’s mission. I will work with the USD(C/CFO) on areas of concern within the financial management arena which have been a long-standing major management challenge for the Department. I will conduct and supervise audits, investigations, and inspections relating to the programs and operations of the establishment in order to promote economy, efficiency, and effectiveness.

Question. The Under Secretary of Defense for Acquisition, Technology, and Logistics (AT&L).

Answer. I have been advised that the office of the DOD IG has also identified acquisition processes and contract management as a major management challenges for DOD. It is therefore essential for the IG to maintain an effective working relationship with the USD(AT&L). If confirmed, I anticipate working closely with the Under Secretary concerning the allocation of IG resources in the acquisition area, and how best to implement audit recommendations pertaining to acquisition processes. As IG, I would also recommend policies, in coordination with the USD(AT&L) and the USD(Comptroller), to ensure that audit oversight of contractor activities and financial management are coordinated and carried out in an efficient manner to prevent duplication.

Question. The Assistant Secretaries of Defense.

Answer. I will work with the various Assistant Secretaries of Defense in managing challenges faced by the Department.

Question. The General Counsel of the Department of Defense.

Answer. If confirmed, I will work with the General Counsel of DOD who serves as the Chief Legal Officer of DOD. I have been advised that an Office of General Counsel within the Office of Inspector General was established outside of the authority, direction and control of the General Counsel of DOD on September 23, 2008. I believe that the establishment of this independent Office of Counsel ensures that the IG receives independent legal advice and is in accordance with the provisions of the National Defense Authorization Act (NDAA) of 2009 and the IG Reform Act of 2008.

Question. The Director of Operational Test and Evaluation (DOT&E).

Answer. I have been advised that the IG and the DOT&E have a common interest in ensuring that equipment and weapons systems provided to the warfighter perform effectively and as planned. If confirmed, I would expect to consult as appropriate with the Director concerning the initiation of oversight efforts in these areas.

Question. The Director of Cost Assessment and Program Evaluation.

Answer. I am told that the IG and the Director of Cost Assessment and Program Evaluation will have a common interest in ensuring that acquisitions made by the Department undergo cost assessments and program evaluations. I will seek to establish a cooperative working relationship with this office.

Question. The Inspectors General of the Military Departments, Defense Agencies, and the Joint Staff.

Answer. Section 8(c)(2) of the IG Act states that the IG of DOD "shall . . . initiate, conduct, and supervise such audits and investigations in DOD (including the military departments) as the IG considers appropriate . . ." Section 8(c)(9) adds that the IG "shall . . . give particular regard to the activities of the internal audit, inspection, and investigative units of the military departments with a view toward avoiding duplication and ensuring effective coordination and cooperation . . ." If confirmed, I will ensure that the DOD IG coordinates and avoids duplicative efforts. As I understand it, the DOD oversight community uses internal coordination mechanisms to deconflict potential duplicative efforts. In addition, DOD directives govern certain programs in which the IGs of the military departments participate.

Question. The Inspectors General of subordinate commands.

Answer. My relationship with the IGs of subordinate commands will be based on the IG role described above. If confirmed, I will work closely with the other DOD IGs to carry out applicable policies and guidance; avoid duplication, overlapping, and gaps; and work to build a strong team.

Question. The Criminal Investigative Services of the Military Departments.

Answer. Under the IG Act, the IG has the authority to initiate, conduct, and supervise criminal investigations relating to any and all programs and operations of the DOD. In addition, the IG is statutorily mandated to develop policy, monitor and evaluate program performance, and provide guidance regarding all criminal investigative programs within the Department. It is my understanding that the DOD IG works frequently in close coordination with the Military Criminal Investigative Organizations (MCIOs) on joint investigations. If confirmed, I will work closely with each of the MCIOs to ensure that investigative resources are used effectively.

Question. The Audit Agencies of the Military Departments.

Answer. Section 4(a) of the IG Act establishes broad jurisdiction for the IG to conduct audits and investigations within DOD, and section 8(c)(2) states that the IG "shall . . . initiate, conduct, and supervise such audits and investigations in the DOD (including the military departments) as the IG considers appropriate." If confirmed, I will work with the audit agencies of the military departments to ensure audit resources are used effectively within the Department.

Question. The Defense Contract Audit Agency.

Answer. If confirmed, I will work with DCAA, as prescribed in the IG Act. Although DCAA reports to the Under Secretary of Defense (Comptroller), it operates under audit policies established by the IG.

Question. The Defense Acquisition Regulatory Council.

Answer. As I understand it, the DOD IG regularly provides comments to the Defense Acquisition Regulatory Council on proposed changes to the Defense Federal Acquisition System and also recommends changes as a result of DOD IG work. If confirmed, I would expect to continue these practices.

Question. The Director of Defense Procurement and Acquisition Policy.

Answer. It is my understanding that the Director of Defense Procurement and Acquisition Policy is responsible for oversight of a large segment of the DOD's acquisition and contracting operations and, accordingly, is a major recipient of reports provided by the IG. If confirmed, I would expect to continue the current practice of working with the Director.

Question. The Comptroller General and the Government Accountability Office.

Answer. It is my understanding that the DOD IG works very closely with the Comptroller General and the Government Accountability Office (GAO) to coordinate planned and ongoing audits and inspections to avoid any duplication of efforts. I also understand that the DOD IG/GAO liaison office serves as the central liaison between GAO and DOD management during GAO reviews of DOD programs and activities. I have served on both the yellow book and blue book advisory committees at GAO. If confirmed, I would work to maintain these cooperative relationships with the Comptroller General and GAO.

Question. The Special Inspector General for Afghanistan Reconstruction.

Answer. It is my understanding that the DOD IG scope of oversight authority encompasses all DOD funded operations and activities in Afghanistan and elsewhere, while the SIGAR focuses his oversight effort only on funds designated for Afghanistan reconstruction. If confirmed, and in keeping with the IG Act, I will ensure that the DOD IG collaborates effectively with the SIGAR to ensure that we protect the public expenditures in Afghanistan for which we have oversight.

Question. The Council of Inspectors General on Integrity and Efficiency.

Answer. On October 14, 2008, the President signed Public Law 110-409, which established the Council of Inspectors General on Integrity and Efficiency (CIGIE), replacing the PCIE. As the Inspector General of the Federal Deposit Insurance Corporation I serve as Chair of the Audit Committee and as a Member the CIGIE Executive Council since 2008. If confirmed, I plan to continue to be a very active participant in the CIGIE

Question. The Defense Council on Integrity and Efficiency.

Answer. Sections 2 and 3 of the DCIE Charter state that, in accordance with section 2(2) of the IG Act, the DOD IG, who is the DCIE Chairman, is responsible to provide "leadership and coordination and recommend policies for activities designed (A) to promote economy, efficiency, and effectiveness in the administration of, and (B) to prevent and detect fraud and abuse in such programs and operations." If confirmed, I would organize meetings with the established members of the DCIE to discuss issues of common interest and reinforce close working relationships within the DOD oversight community.

Question. The Office of Management and Budget.

Answer. As chairman of the Audit Committee of CIGIE, I have worked with OMB on numerous occasions on matters of accounting and audit policy. If confirmed, I will ensure that this office works with the Office of Management and Budget regarding budget and policy issues. In addition, the Deputy Director for Management of the OMB serves as the Executive Chairperson of the CIGIE.

QUALIFICATIONS

Question. Section 3 of the Inspector General Act of 1978 provides that Inspectors General shall be appointed on the basis of their "integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations."

What background and experience do you possess that you believe qualifies you to perform the duties of the Department of Defense Inspector General (DOD IG), particularly in the area of oversight, audit and investigation?

Answer. Since July 5 2006, I have served as the Inspector General of the Federal Deposit Insurance Corporation (FDIC). I am a Certified Internal Auditor and a Certified Government Auditing Professional. I am currently serving as the Chair of the Audit Committee of the Council of the Inspectors General on Integrity and Efficiency and as Vice Chair of the Council of Inspectors General on Financial Oversight. I am a member of the Comptroller General's Advisory Council on Government Auditing Standards and Chair of the Green Book Advisory Council. I am also a member of the Federal Accounting Standards Advisory Board's Accounting and Auditing Policy Committee. As the IG at the FDIC, I have led the team that has ensured efficiency, effectiveness, and accountability of the policies, programs and performance at the FDIC.

I have served for over 30 years in the active and Reserve components of the U.S. Army and I am a graduate of the U.S. Army's Inspector General School. I worked for 7 years in consulting and internal auditing at a major accounting firm and I have over 15 years of experience as a senior manager in the the banking industry.

Question. Do you believe that there are any steps that you need to take to enhance your expertise to perform these duties?

Answer. If confirmed, I plan to meet with a broad cross-section of officials and personnel within the Department of Defense, including members of the Armed Forces here and overseas, to listen to their concerns and identify issues that might merit action by the Office of the Inspector General. Also, I plan to spend time listen-

ing to the concerns of the Members of Congress and their staffs. If confirmed, I also intend to continue to work closely with members of the CIGIE. I also intend to spend time with all elements of the DOD IG office to learn and benefit from their insights. I will maintain my professional certifications as an auditor and complete all continuing professional education requirement.

Question. Based on your background and experience, are there any changes that you would recommend with respect to the current organization or responsibilities of the DOD IG?

Answer. It would be premature to offer any recommendations for change in these areas until I have had an opportunity to conduct the necessary thorough evaluations of the current DOD IG organization and policies and procedures.

MAJOR CHALLENGES, PROBLEMS, AND PRIORITIES

Question. In your view, what are the major challenges and problems facing the next DOD IG?

Answer. The DOD IG identified the following seven management and performance challenges facing the Department in fiscal year 2012:

1. Financial Management
2. Acquisition Processes and Contract Management
3. Joint Warfighting and Readiness
4. Information Assurance, Security, and Privacy
5. Health Care
6. Equipping and Training Iraq and Afghan Security Forces
7. The Nuclear Enterprise

Additionally, the issue of sexual assaults and suicide prevention within the Armed Forces are serious issues that demand the attention of the DOD IG. In the context of meeting these challenges, the OIG will need to continue to provide extensive oversight in support of the Department's efforts to address these challenges. It is difficult as a nominee to identify specific problems I will confront if confirmed. However, if confirmed, it will be my top priority to learn what challenges and problems the DOD IG office needs to address and to ensure the adequacy of resources required to accomplish its mission.

Question. If you are confirmed, what plans do you have for addressing these challenges and problems?

Answer. If confirmed, I will focus audit, investigative, and inspection efforts on the above discussed management challenges. I will also work with senior DOD civilian and military officials and Congress to identify emerging issues that the Department faces.

Question. If you are confirmed, what broad priorities would you establish in terms of issues which must be addressed by the DOD IG?

Answer. It is difficult as a nominee to formulate priorities because I have not had access to the full range of information and considerations that should inform them, however, I do plan to make sure that the office stays aware that the foundations of an effective OIG are independence and professional standards. If confirmed, I look forward to consulting with senior officials of the Department of Defense, DOD IG, and with Congress, in establishing broad priorities.

Question. If you are confirmed, what changes, if any, would you expect to make in the organization, structure, and staffing of the Office of Inspector General?

Answer. It would be premature to offer any recommendations for change in these areas until I have had an adequate opportunity to observe the operation of the office and conduct the necessary evaluations.

DUTIES

Question. What is your understanding of the duties and functions of the DOD IG?

Answer. The duties and functions of the DOD IG are specified in sections 3, 4, 5, 7, and 8 of the IG Act. Additional duties and responsibilities of the IG are specified in DOD Directive 5106.01, which was signed by the Deputy Secretary of Defense on April 20, 2012.

By statute, the DOD IG conducts and supervises audits and investigations relating to the programs and operations of DOD. The DOD IG also provides leadership and coordination, and recommends policy, for activities designed to: (1) promote economy, efficiency, and effectiveness in the administration of DOD programs and operations; and (2) combat fraud, waste, and abuse. In addition, the IG is responsible for keeping both the Secretary of Defense and Congress fully and currently informed about problems and deficiencies in defense programs, the need for corrective action, and the status of such action.

Question. Assuming you are confirmed, what duties and functions do you expect that the Secretary of Defense would prescribe for you?

Answer. If confirmed, I expect the Secretary of Defense will prescribe for me the full range of duties and functions set forth in two DOD publications: DOD Directive 5100.1, "Functions of the Department of Defense and Its Major Components," and DOD Directive 5106.01, "Inspector General of the Department of Defense." These publications delineate that the DOD IG provides staff assistance and advice in accordance with the responsibilities specified in the IG Act. Significantly, these publications reinforce that the IG remains an independent and objective unit within DOD. If confirmed, I will consult directly with the Secretary to identify specific areas of concern and emphasis.

Question. Section 2 of the Inspector General Act of 1978 states that its purpose is to create independent and objective units to conduct and supervise audits and investigations; to provide leadership and coordination and recommend policies designed to promote economy, efficiency, and effectiveness; to prevent and detect fraud and abuse; and to provide a means for keeping Congress and agency heads fully and currently informed about problems and deficiencies relating to the administration of programs and operations and the necessity for and progress of corrective action.

Are you committed to maintaining the independence of the DOD IG, as set forth in the Inspector General statute?

Answer. Yes. If confirmed, I will maintain the independence of the IG consistent with the provisions of the IG Act.

Question. Are you committed to keeping the Committee on Armed Services "fully and currently informed," and, if so, what steps will you take, if confirmed, to ensure that this responsibility is carried out?

Answer. Yes. If confirmed, in accordance with section 2(3) of the IG Act, I will keep the Committee on Armed Services "fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action." I will do so through the dissemination of IG products such as the Semiannual Report to Congress and reports on audits and inspections. In addition, I will provide briefings for Members and staff, and testimony at hearings, when requested, with the intent of maintaining a close relationship.

Section 3 of the Inspector General Act of 1978 provides that the head of an agency, shall exercise "general supervision" over an IG, but shall not "prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation."

What is your understanding of the supervisory authority of the Secretary of Defense over the DOD IG with respect to audits and investigations, in view of the independence provided by sections 2 and 3?

Answer. Section 2 of the IG Act creates independent and objective units to provide a means for keeping the head of the establishment and Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action.

Section 3 states that each IG shall report to and be under the general supervision of the head of the establishment involved or, to the extent such authority is delegated, to the office next in rank below such head, but shall not report, or be subject to supervision by, any other officer of such establishment. Moreover, neither the head of the establishment nor the office next in rank shall prevent or prohibit the IG from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

Question. If confirmed, what action would you take if a senior official of the Department sought to prevent you from "initiating, carrying out, or completing" any audit or investigation within the jurisdiction of the Office of the DOD IG?

Answer. If the action was taken outside the authority of the Secretary of Defense in section 8 of the IG Act, I would notify the Secretary and request his assistance in ensuring compliance with the IG Act by the senior official involved. Failure to resolve the issue, would, in my view, constitute a "particularly serious or flagrant problem, abuse, or deficiency" under section 5(d) of the IG Act. Under this section, the IG is required to report the matter to the head of the establishment, who is then required to transmit the IG's report to Congress within 7 days.

Question. Section 8 of the Inspector General Act of 1978 states that the DOD IG shall "be under the authority, direction, and control of the Secretary of Defense with respect to certain audits or investigations which require access to information concerning sensitive operational plans, intelligence matters, counterintelligence matters, ongoing criminal investigations by other administrative units of the Depart-

ment of Defense related to national security, or other matters, the disclosure of which, would constitute a serious threat to national security.

What is your understanding of the procedures in place to affect the authority and control of the Secretary of Defense over matters delineated in section 8 of the act?

Answer. To my knowledge, the procedure in place is to follow the IG Act. Under 8(b)(1) or 8(b)(2) of the IG Act, the Secretary has the "authority to stop any investigation, audit, or issuance of subpoenas, if the Secretary determines that such a prohibition is necessary to preserve the national security interests of the United States." I am informed that this provision has never been exercised. However, in the event that the Secretary exercises this authority, I would submit an appropriate statement within 30 days to this committee and other appropriate committees of Congress, as required under section 8(b)(3).

Question. What is your understanding of the extent to which the Inspector General has, as a matter of practice, initiated and conducted audits or investigations covered by section 8 differently from other audits or investigations?

Answer. It is my understanding that the practice of the DOD IG with respect to the initiation and conduct of audits and investigations covered by section 8 is the same as for other audits and investigations.

Question. What changes, if any, do you believe are needed in the practices of the DOD IG for initiating and conducting audits or investigations covered by section 8?

Answer. None to my knowledge.

Question. Sections 4 and 8 of the Inspector General Act of 1978 set forth various duties and responsibilities of Inspectors General beyond the conduct of audits and investigations.

What is your understanding of the supervisory authority exercised by the Secretary of Defense with regard to these issues?

Answer. Beyond the conduct of audits and investigations, section 4 of the IG Act directs the IG to "review existing and proposed legislation and regulations" and make related recommendations in semiannual reports; recommend policies to promote economy and efficiency in the administration of Department programs and operations, and to prevent and detect fraud and abuse; keep the Secretary of Defense and Congress fully and currently informed about fraud and other serious problems, abuses, and deficiencies; recommend corrective actions for such problems, abuses, and deficiencies; and report on the progress made in implementing such corrective actions. Section 8(c)(1) adds that the IG shall "be the principal advisor to the Secretary of Defense for matters relating to the prevention and detection of fraud, waste, and abuse in the programs and operations of the Department." The duties and responsibilities specified in sections 4 and 8 come within the general supervisory authority of the Secretary of Defense established under section 3(a).

INDEPENDENCE

Question. The DOD IG must ensure that the independence of the Office of the Inspector General is maintained, that investigations are unbiased, particularly those involving senior military and civilian officials, and promptly and thoroughly completed, and that the highest standards of ethical conduct are maintained.

Under what circumstances, if any, do you believe it would be appropriate for the DOD IG to consult with officials in the Office of the Secretary of Defense (or other DOD officials outside the Office of the Inspector General) before issuing a report, regarding the findings and recommendations in the report?

Answer. In regards to audits and inspections, I understand it is the current practice for the IG to offer officials in the OSD, or other DOD officials, an opportunity to comment before issuing a report to ensure that the information in the report is factually accurate and to resolve or acknowledge disagreements on conclusions, findings, and recommendations. This is not the practice with criminal investigations. Additionally, it is not appropriate to discuss ongoing criminal or administrative investigations.

Question. To the extent that you believe such consultation is appropriate, what steps, if any, do you believe the Inspector General should take to keep a record of the consultation and record the results in the text of the report?

Answer. I believe it is necessary to consult with all parties to gather the facts to develop findings and recommendations. The facts that are relevant should be included in the text of the report, and a written record of all interviews and consultations should be maintained in the working papers.

Question. Under what circumstances, if any, do you believe it would be appropriate for senior officials to request that the DOD IG not investigate or review a particular matter?

Answer. Under section 8 of the IG Act, the Secretary of Defense has the authority to prohibit the IG from initiating, carrying out, or completing any audit or investigation. That authority may be exercised when the audit or investigation requires access to information concerning: sensitive operational plans, intelligence matters, counterintelligence matters, ongoing criminal investigations by other administrative units of DOD related to national security, or other matters the disclosure of which would constitute a serious threat to national security. As noted previously, the Secretary of Defense has never exercised his authority under section 8.

Question. Under what circumstances, if any, do you believe it would be appropriate for senior officials to request that the DOD IG not issue a report on a particular matter?

Answer. No one, other than the Secretary of Defense under the provisions delineated in Section 8 of the IG Act, has the authority to ask the DOD IG not to issue a report on a particular matter.

Question. Under what circumstances, if any, do you believe it would be appropriate for senior officials to request that the DOD IG alter findings, recommendations, or other pertinent material in a report on a particular matter?

Answer. In the course of conducting audits and inspections, the IG practice is to offer officials in the OSD, or other DOD officials, an opportunity to comment before issuing a report to ensure that the information in the report is factually accurate and to resolve or acknowledge disagreements on conclusions, findings, and recommendations. Additionally, in cases where an administrative investigation substantiates allegations involving a senior DOD official, the senior official is given an opportunity to comment on findings and conclusions as part of fairness and due process. Those comments may require that we alter the findings and are considered before a final report is issued. However, for criminal investigations, it is not appropriate to discuss the results of ongoing investigations. The final decision on the content of reports rests with the IG.

Question. If confirmed, how would you react to a request, which you believed to be inappropriate, to not investigate a particular matter, not issue a report on a particular matter, or alter findings, recommendations, or other pertinent material in a report on a particular matter?

Answer. With respect to the initiation or completion of an audit or investigation, if the request was inappropriate and made outside the authority of the Secretary of Defense in section 8 of the IG Act, I would reject the request. If and when necessary, I would notify the Secretary and request his assistance in ensuring compliance with the IG Act by the senior official involved. Failure to resolve the issue, would, in my view, constitute a "particularly serious or flagrant problem, abuse or deficiency" under section 5(d) of the IG Act. Under this section, the IG is required to report the matter to the head of the establishment, who is then required to transmit the IG's report to Congress. (Additionally, the IG Act requires the Secretary to notify Congress if he exercises his authority under section 8(b) (1) or (2))

CONGRESSIONAL REQUESTS

Question. The Office of Inspector General frequently receives requests from congressional committees and Members of Congress for audits and investigation of matters of public interest.

What is your understanding of the manner in which the Office of Inspector General handles such requests?

Answer. The DOD IG receives many requests from congressional committees and Members of Congress for oversight reviews, but adheres to the same principles of independence in responding to those requests.

Question. If confirmed, will you ensure that the Office of Inspector General continues to respond to congressional requests for audits or investigations in a manner consistent with past practice?

Answer. Recognizing Congress' oversight role and in keeping with the DOD and DOD IG policy, I would continue to make appropriate information available promptly and to cooperate fully with Members of Congress and congressional committees and their staffs.

Question. Under what circumstances, if any, do you believe it would be appropriate for the Office of the Inspector General to redact the contents of any information contained in a report it provides to Congress?

Answer. Consistent with the Freedom of Information Act and Privacy Act, it is the practice of the DOD IG to provide unredacted copies of reports to oversight committees of Congress. Additional releases, including those to the public, are redacted in accordance with applicable laws.

Question. In past years, a number of audits and investigations conducted by the DOD IG in response to congressional requests have taken excessively long periods of time to complete. In some cases, the individuals who have been the subject of such investigations have left office by the time the DOD IG has completed its work.

What is your view of the timeliness and responsiveness of the DOD IG's recent work in response to congressional requests?

Answer. I am unable to speak to the timeliness of specific DOD IG reports. In general, I strongly believe that IG findings must be provided to both management and to Congress in a timely manner while professional standards for report production are maintained.

Question. What steps, if any, would you take, if confirmed, to ensure the timeliness and responsiveness of such audits and investigations?

Answer. If confirmed, I will review the timeliness of DOD IG responses to congressional requests and require improvements if necessary.

SENIOR OFFICIAL INVESTIGATIONS

Question. The Office of the DOD IG plays a key role in the investigation of allegations of misconduct by senior officers and civilian employees of the Department of Defense. The Committee on Armed Services has a particular interest in investigations concerning senior officials who are subject to Senate confirmation, and relies upon the DOD IG, as well as the Office of the Secretary of Defense, to ensure that these investigations are accurate, complete, and accomplished in a timely manner.

If confirmed, what steps will you take to ensure that the investigations relating to senior officials are completed in a timely and thorough manner and that the results of investigations are promptly provided to this committee?

Answer. If confirmed, I will emphasize the importance of conducting timely, thorough, and accurate investigations. I will continue efforts to promote efficiencies through training and streamlining of investigative processes. I will ensure that cases with Congressional or Secretariat interest—especially flag officers pending Senate confirmation—receive additional resources and attention. I will obtain regular updates from my staff on senior official investigations and will ensure that all results of investigations are promptly provided to the Under Secretary of Defense (Personnel and Readiness) and the Services for review and consideration in the confirmation process.

Question. Do you believe that the current allocation of responsibilities between the DOD IG and the inspectors general of the military departments is appropriate to ensure fair and impartial investigations?

Answer. If confirmed, I will ensure that the allocation of responsibilities between the DOD IG and the Service IGs is appropriate to ensure fair and impartial investigations. The DOD IG customarily asserts investigative jurisdiction in senior official cases in which allegations cross service lines, the subject outranks the Service IG, or the Service IG encounters an impediment to independence. I will insist my office continue prompt and thorough oversight reviews of the Service IG reports of investigation. Vigilant oversight instills public confidence in the integrity and accountability of DOD Leadership.

Question. What additional steps, if any, do you think the DOD IG should take to ensure that investigations carried out by the inspectors general of the military departments are accurate and complete?

Answer. If confirmed, I will ensure my office continues the vigorous oversight reviews of the Service IG reports of investigation to ensure accuracy and completeness. The quality of the Service IG investigations is enhanced by meetings with the Service IGs, semiannual training symposiums, and daily interaction between OIG and Service IG senior official investigators. These efforts strengthen professional relationships, reinforce best practices, and improve the timeliness and quality of investigative work. I will not hesitate to highlight investigative deficiencies in Service IG reports and will offer assistance or assume investigative jurisdiction when appropriate.

Question. At what point in an investigation and under what criteria would you initiate action to ensure that a "flag," or suspension on favorable personnel action, is placed on a military officer?

Answer. If confirmed, I will promptly notify the Service IG of the initiation of a senior official investigation. If a senior official has a pending nomination or Senate confirmation, I will also notify the Under Secretary of Defense (Personnel and Readiness). The components are responsible to ensure the senior officials are "flagged" and not eligible for favorable actions. Upon receipt of an allegation against a senior official, my office will promptly determine whether the allegation is credible; that is, whether the alleged conduct violates an established standard and whether the

allegation includes sufficient detail. If the allegation is determined to be credible, I will take steps to ensure an investigation is initiated and make the appropriate notifications.

RESOURCES AND AUTHORITIES OF THE DOD IG'S OFFICE AND INVESTIGATORS

Question. Do you believe that the DOD IG's office has sufficient resources (in personnel and dollars) to carry out its audit and investigative responsibilities?

Answer. If confirmed, I will assess the adequacy of the resources available to the DOD IG. I would make it a priority to ensure that the DOD IG's office has sufficient resources to carry out its audit and investigative responsibilities.

Question. If confirmed, will you communicate any concerns that you may have about the adequacy of resources available to the Office of Inspector General to Congress and this committee?

Answer. If confirmed, I will.

Question. Some Federal agencies have reacted to limited Inspector General resources by using contractors to perform some audit and investigative functions.

What is your understanding of the DOD IG's role in determining whether the use of contractor resources to perform audit or investigative functions is appropriate?

Answer. For the audit function, the IG Act, section 4(b)(1)(B) establishes the authority of each IG to establish guidelines for determining when it shall be appropriate to use non-Federal auditors. In addition, section 4(b)(1)(C) of the IG Act states that the IG shall take appropriate steps to ensure that any work performed by non-Federal auditors complies with the standards established by the Comptroller General.

Question. With regard to the criminal investigative function, it is considered inherently governmental and therefore contractors are only utilized in very limited investigative support roles.

Under what circumstances, if any, do you believe that the use of contractor resources to perform such functions would be appropriate?

Answer. It is my understanding that DOD Instruction 7600.02 establishes guidance on when it is permissible to use contractor resources to perform audit functions. It specifically permits DOD components to contract for audit services when applicable expertise is unavailable, if augmentation of the audit staff is necessary to execute the annual audit plan, or because temporary audit assistance is required to meet audit reporting requirements mandated by Public Law or DOD regulation. However, the instruction includes an approval process to ensure the appropriate use of non-Federal auditors and that they comply with the Government Auditing Standards issued by the Comptroller General of the United States.

Question. In recent years, the DOD IG has sought and obtained increased authority to issue subpoenas, carry weapons, and make arrests.

Do you believe that the authorities of the Office of Inspector General and its agents are adequate in these areas, or would you recommend further changes in the law?

Answer. In general, I believe the authorities provided by the Inspector General Act, as amended, are adequate. If confirmed, I will review those authorities as they relate to the mission of the DOD IG.

DOD FINANCIAL ACCOUNTING AND AUDITS

Question. The performance of mandatory statutory duties, such as the performance of financial audits, has consumed a growing share of the resources of the Inspector General's office, crowding out other important audit priorities.

What is your view of the relative priority of financial audits, and the resources that should be devoted to such audits?

Answer. Financial audits will continue to be a high priority consistent with the President's Initiatives, the Secretary of Defense's top priorities, the Chief Financial Officers Act of 1990, and the Federal Financial Management Improvement Act of 1994. As the Department improves audit readiness, the requirements for financial statement audits will increase, placing greater demand on DOD IG resources. If confirmed, I will work with the Department and Congress to ensure that the appropriate level of resources continues to be dedicated to financial audits. I will also seek to ensure that resources committed to financial audits do not come at the expense of other audit priorities.

Question. What is your view of the requirements of section 1008 of the NDAA for Fiscal Year 2002, regarding resources directed to the audit of financial statements?

Answer. Section 1008 directs the IG to significantly reduce the level of audit work when the Department has asserted that the financial statements are not reliable and do not meet accounting standards. This allows the IG flexibility to redirect

audit resources to other areas within the Department. If confirmed, I will continue to work with the Department and Congress to ensure that the appropriate level of resources is dedicated to audit the Department's financial statements. While audit resources have been redirected to other high priority areas, as the level of audit readiness increases across the Department, there will be a need to focus more resources on those financial statements.

Question. Do you see any need for legislative changes to give the Inspector General greater flexibility to target audit resources?

Answer. If confirmed, I will work with the Department and Congress to assess whether legislation in this area is appropriate.

Question. What is your view of the role of the DOD IG in evaluating and contributing to improvements made in the Department's financial management processes?

Answer. The role of the DOD IG is to serve as a catalyst for improvements in the Department's financial management processes. That role should be consistent with the Department's top priorities, and statutory requirements. If confirmed, I will ensure that the DOD IG continues this vital function.

OVERSIGHT OF ACQUISITION PROGRAMS

Question. Problems with procurement, acquisition, and the ability of the Department and the Military Departments to effectively oversee acquisition programs have called into question the capability of existing DOD oversight mechanisms.

What role, if any, do you believe the Office of the Inspector General should play in achieving acquisition reform?

Answer. The role of the DOD IG is to serve as a catalyst for improvements in the Department's acquisition processes and contract management. That role should be consistent with the President's Initiatives, the Department's top priorities, and statutory requirements. If confirmed, I will ensure that the DOD IG continues this vital function.

Question. Over the last 15 years, the DOD IG has gone from having one auditor for every \$500 million on contract by the Department of Defense to one auditor for every \$2 billion on contract.

Do you believe that the DOD IG has the resources it needs to conduct effective oversight over the Department's acquisition programs?

Answer. If confirmed, ensuring that the DOD IG has the resources needed to conduct effective oversight over the Department's acquisition programs will be one of my top priorities. The men and women of our Armed Forces, and our Nation's taxpayers, have a right to expect that the funds appropriated by Congress for defense acquisitions are being utilized efficiently and effectively. I understand that Congress has supported DOD IG efforts to increase its oversight resources. It is essential that the IG, the Department, and Congress to work together in a timely way to ensure that the IG has adequate resources to conduct its essential oversight mission.

Question. The DOD IG has played an important role in advising the Department of Defense and Congress on the sufficiency of management controls in the Department's acquisition programs and the impact that legislative and regulatory proposals could have on such management controls.

How do you see the DOD IG's role in this area?

Answer. The DOD IG has an important role in helping the Department to effectively and efficiently manage acquisition resources dedicated to the support of the Department's mission, and in accounting for the management of those resources to the taxpayer. If confirmed, I will ensure that the DOD IG continues its important advisory role.

OVERSIGHT OF DOD ACTIVITIES IN AFGHANISTAN

Question. What is your understanding of the responsibilities and activities of the Office of the DOD IG in investigating and preventing fraud, waste, and abuse in the course of Department of Defense operations in Afghanistan?

Answer. The DOD IG, in accordance with its legislatively mandated mission, conducts audits, investigations and inspections aimed at identifying and preventing fraud, waste, and abuse of funds appropriated to the DOD for its operations in Afghanistan. I am aware that conducting oversight of operations and activities associated with an overseas contingency presents unique challenges. Nevertheless, as with oversight elsewhere within the Department, the purpose of these reviews should be to ensure our men and women in uniform are receiving the right equipment and support to conduct successful operations.

I also understand that, the Defense Criminal Investigative Service, the law enforcement arm of the DOD IG, and its military criminal investigative counterparts, in particular the U.S. Army Criminal Investigative Command (Army CID), inves-

tigate major frauds, corruption, thefts, and other compromises of DOD assets in Afghanistan, and other countries in that theater.

If confirmed, I will ensure that the DOD IG continues to focus oversight efforts to investigate and prevent fraud, waste, and abuse of U.S.-provided resources for reconstruction and other purposes in Southwest Asia, in keeping with the IG Act.

Question. If confirmed, what changes, if any, would you plan to make to the DOD IG's oversight activities in Afghanistan?

Answer. If confirmed, I would ensure that DOD IG activities in Southwest Asia remain a top priority. I will also assess the current level of oversight to ensure that adequate resources are being devoted to this mission and that those resources are being allocated appropriately.

Question. If confirmed, what would be your goals with respect to the oversight, audit, and investigation of ongoing U.S. activities Afghanistan?

Answer. If confirmed, my goal would be to ensure that the oversight provided by the DOD IG of ongoing DOD activities in Afghanistan is consistent with the responsibilities in the IG Act and is sufficient to provide assurance to Congress, the Secretary of Defense, and to the American taxpayer that funds supporting DOD activities are expended appropriately and effectively.

Question. The Special Inspector General for Afghanistan Reconstruction (SIGAR) has jurisdiction over contracts for the reconstruction of Afghanistan. However, the SIGAR does not have primary jurisdiction over contracts to support our troops in Afghanistan.

What role do you believe the DOD IG should play in the oversight, audit and investigation of such contracts?

Answer. The DOD IG office should play an active role in ensuring stewardship of taxpayers' dollars and effective contract support for our troops through diligent oversight of the contracting function. This would include audits, inspections, and investigations, as required. I understand the DOD IG chairs the Southwest Asia Joint Planning Group, which is a forum for oversight agencies to coordinate audit efforts in Southwest Asia.

Question. Do you believe that a significant on-the-ground presence is necessary to perform this role?

Answer. Yes. While many oversight activities can be conducted from the continental United States, effective oversight requires being on site to assess conditions, examine documents and talk to witnesses and sources. I am aware that the DOD IG currently maintains offices in Afghanistan and Qatar. As the draw down in U.S. troops in Afghanistan proceeds, we must continually assess personnel needs based on the nature and scope of DOD operations and adjust our on-the-ground presence as appropriate.

Question. What is the relationship of the DOD IG to the SIGAR?

Answer. See response to the previous section regarding "Relationships".

INTELLIGENCE

Question. What is the role of the DOD IG with regard to intelligence activities within DOD?

Answer. Responsibilities and functions of the Inspector General as outlined in DOD Directive 5106.1, "Inspector General of the Department of Defense (IG, DOD)," include the responsibility to audit, evaluate, monitor, and review the programs, policies, procedures, and functions of the DOD Intelligence Community to ensure that intelligence resources are properly managed. I am informed that the Inspector General, through the Deputy Inspector General for Intelligence and Special Program Assessments, has responsibility for oversight of DOD intelligence activities and components to include all DOD Components conducting intelligence activities, including the National Security Agency/Central Security Service (NSA/CSS), the Defense Intelligence Agency (DIA), the Military Department intelligence and counterintelligence activities, and other intelligence and counterintelligence organizations, staffs, and offices, or elements thereof, when used for foreign intelligence or counterintelligence purposes. Other organizations and components under the Inspector General's oversight include the Office of the Under Secretary of Defense for Intelligence (USD (I)), the National Reconnaissance Office (NRO), and the National Geospatial-Intelligence Agency (NGA).

The DOD IG performs an oversight and coordination role through the Joint Intelligence Coordination Working Group (JIOCG). The JIOCG is a DOD working group chaired by the Deputy Inspector General for Intelligence and Special Program Assessments and includes representatives from the Service audit agencies, military department IGs, and the IGs of the Defense Intelligence Agencies. The primary goal of the JIOCG is to avoid duplication of effort and enhance coordination and coopera-

tion among IGs and Auditors General inside the DOD, and promote information-sharing among IGs whose functions include audits, inspections, evaluations, or investigations of their respective departments and agencies.

Question. What is the relationship of the DOD IG to the Special Assistant to the Secretary of Defense for Intelligence Oversight?

Answer. DOD Directive 5106.01 requires that intelligence-related actions be coordinated, as appropriate, with the Assistant to the Secretary of Defense (Intelligence Oversight) (ATSD(IO)) to determine respective areas of responsibility in accordance with DOD Directive 5148.11, "assistant to the Secretary of Defense for Intelligence Oversight," dated April 24, 2013. (DOD Directive 5148.11 contains similar language for the ATSD(IO) to coordinate with the IG, as appropriate.) I am advised that the ATSD(IO) is a charter member of the JIOCG, and that the IG has a long history of coordination and cooperation with the ATSD(IO).

Question. What is the relationship of the DOD IG to the Inspector General of the Office of the Director of National Intelligence?

Answer. I understand that the DOD IG's primary relationship with the Intelligence Community IG (IC IG) involves participation in the Intelligence Community (IC) IG Forum. The IC IG Forum promotes information-sharing among the IGs of the departments and agencies of the IC whose functions include audits, inspections/evaluations, or investigations of their respective departments and agencies. The IC IG Forum also strives to avoid duplication of effort and enhance effective coordination and cooperation among IC IGs. The IC IG chairs the IC IG Forum.

In addition to the IC IG Forum relationship, the DOD IG participates in various projects and initiatives undertaken by the IC IG. The IC IG also coordinates with the DOD IG on all ongoing projects relating to DOD intelligence organizations and activities. The IC IG is an Ex-Officio member of the Joint Intelligence Oversight Coordination Group (JIOCG). The JIOCG is a chartered organization which is the DOD focal point for inspectors and auditors general collaboration and deconfliction of project and planning activities.

Question. What is the role of the DOD IG with respect to detainee matters?

Answer. The DOD IG has statutory responsibility for oversight that extends to detainee and interrogation matters. It is my understanding that the DOD IG prepares a summary report every 6 months on investigations of detainee abuse conducted by the MCIOs which is provided to the office of the Under Secretary of Defense for Policy.

Question. What is the role of the DOD IG with respect to interrogation matters?

Answer. Please see my answer to the previous question.

WHISTLEBLOWER PROTECTION

Question. What is your understanding of the role played by the DOD IG in investigating complaints of reprisal against members of the military, DOD civilian employees, and DOD contractor employees, who "blow the whistle" on alleged fraud, waste, and abuse?

Answer. It is my understanding that the DOD IG maintains a robust whistleblower protection program that seeks to ensure that whistleblowers may report fraud, waste, and abuse within the programs and operations of the Department of Defense without fear of reprisal. The DOD IG is responsible for investigating or overseeing investigations conducted by the DOD component inspectors general, regarding allegations of whistleblower reprisal made by members of the Armed Forces, appropriated and nonappropriated fund DOD civilian employees, and DOD contractor/subcontractor employees. Disclosures brought to light by whistleblowers are critical to DOD IG's mission of providing independent, relevant, and timely oversight of the Department.

Question. What is your understanding of the relationship between the DOD IG and the Office of Special Counsel in the protection of DOD civilian employee whistleblowers?

Answer. The Office of Special Counsel is a partner with the Inspector General in the protection of DOD's civilian appropriated-fund employees. OSC receives and has primary jurisdiction to investigate a majority of the civilian whistleblower cases across the Federal Government, pursuant to the Whistleblower Protection Act (WPA), title 5, U.S.C., section 2302. Under the authority of the Inspector General Act, DOD IG provides an alternate means by which DOD civilian appropriated-fund employees may seek protection analogous to protection from reprisal provided by the WPA.

Question. What is your understanding of the legal standards for substantiating a whistleblower claim of reprisal by a member of the military, a DOD civilian employee, or a DOD contractor employee?

Answer. In general, whistleblower reprisal is proven when the evidence establishes that a protected communication or disclosure was a factor in the decision to take, threaten to take, or withhold a personnel action (or a security clearance determination), unless evidence establishes that the action would have been taken, threatened or withheld absent the protected communication or disclosure. There are statute-specific variations though, including the standard of proof for showing whether the action would have been taken, threatened or withheld absent the protected communication or disclosure. Among the statutes and programs administered by DOD IG, the appropriated-fund civilian and contractor/subcontractor investigations require clear and convincing evidence, whereas military and nonappropriated-fund investigations require a preponderance of the evidence to prove that the action would have been taken anyway.

Question. What is your understanding of the changes made by section 827 of the NDAA for Fiscal Year 2013, regarding DOD contractor employee whistleblowers?

Answer. The NDAA for Fiscal Year 2013, signed by President Obama on January 2, 2013, contained numerous enhancements to the existing law protecting Defense contractor employees from whistleblower reprisal, the most significant of which were:

- Extending coverage to employees of Defense subcontractors and, as noted in earlier answers, elevating the agency's burden of proof in rebuttal to clear and convincing evidence.
- Expanding the scope of what constitutes a protected disclosure and to whom such disclosures can be made.
- Prohibiting actions taken by the employer "even if it is undertaken at the request of a Department or administration official" (unless the request takes the form of a nondiscretionary directive and is within the authority of the Department official making the request).

Question. Do you see the need for any further legislative changes to ensure that members of the military, DOD civilian employees, and DOD contractor employees are appropriately protected from reprisal for whistleblowing?

Answer. I am aware that significant enhancements to whistleblower protection, including the Whistleblower Protection Enhancement Act of 2012 and the NDAA for Fiscal Year 2013 amendments to the statute protecting Defense contractor employee whistleblowers, have recently been enacted. Prior to recommending further legislation, if confirmed, I would assess the effectiveness of these changes and work with Congress and others to identify potential gaps in the protections afforded to whistleblowers.

Question. What level of priority will you give, if confirmed, to the DOD IG's whistleblower protection responsibilities?

Answer. Whistleblowing, and the protection of the sources for our investigators, auditors, inspectors and evaluators, will be one of my top priorities. Whistleblowers perform an important public service—often at great professional and personal risk—by exposing fraud, waste, and abuse within the programs and operations of the Department. If confirmed, I will work to ensure that the DOD IG plays a leading role in creating an environment in the Department where whistleblowers can disclose wrongdoing without fear of retribution.

GENERAL COUNSEL TO THE DOD IG

Question. What is your understanding of the history and purpose of section 907 of the NDAA for Fiscal Year 2009, regarding the General Counsel to the DOD IG?

Answer. Section 907 provided for a General Counsel to the DOD IG who would serve at the discretion of the IG, report exclusively to the IG, and be independent of the Office of General Counsel, Department of Defense. I am familiar with and fully support such an arrangement for an IG to receive independent legal advice.

Question. What is your understanding of the role played by the General Counsel to the DOD IG with regard to completed investigations?

Answer. With regard to administrative investigations, attorneys in the Office of General Counsel (OGC) to the DOD IG perform legal sufficiency reviews of senior official and reprisal reports of investigation prior to the final report being submitted to the Inspector General (IG) or Deputy Inspector General for Administrative Investigations (DIG AI), as appropriate, for final approval. In ensuring administrative investigations are legally sufficient, OGC attorneys determine whether the relevant legal or regulatory standards are identified and applied; evidence of record appears complete, credible, and supports the findings of fact by the appropriate standard of proof; findings of fact support the conclusions reached; and the report is generally understandable.

Question. If confirmed, how would you address disputes between the General Counsel to the DOD IG and a DOD IG investigative team as to findings of fact and the appropriate weight to be given to such facts in a completed investigation?

Answer. My understanding is that OGC and the Office of DIG AI have a commendable working relationship and have established procedures for resolving any disagreements related to sufficiency of investigations. Cases where disagreements cannot be resolved between OGC and DIG AI are rare and typically involve matters that impact the outcome of the investigation or supportability of findings and conclusions. Matters unresolved at the directorate level are elevated to the DIG AI, who consults further with the attorney advisor or the General Counsel to resolve the disagreement. If disputes remain unresolved on cases which require OGC coordination prior to PDIG or IG review/signature, the DIG AI notifies the PDIG or IG of the disagreement and provides additional information as requested. The parties involved continue to address the disagreement, aided by any feedback that the PDIG or IG chooses to provide. I intend to continue that resolution process and provide my advice and direction based on the evidence of the particular case.

AUDIT OVERSIGHT REVIEW AND REPORT CARDS

Question. In recent years, one congressional office has prepared an annual report entitled an "Audit Oversight Review and Report Card." These reports have been highly critical of the performance of the audit functions of the DOD IG.

Are you familiar with these reports?

Answer. Yes

Question. What is your view of the findings and conclusions of these reports?

Answer. The reports presented some valid concerns and opportunities for improvement in the audit organization at the DOD IG.

Question. Are there additional steps that you believe the DOD IG should take to address the findings and conclusions of these reports?

Answer. As an auditor by profession, audit selection and audit quality are very important to me. It is my understanding that there has been improvement over the past few years. If confirmed, I will work with the audit organization to ensure that it continues to meet the mission of producing timely, relevant, and accurate audit products.

Question. If confirmed, will you review the organizational structure of the DOD IG, with the objective of streamlining the organization, reducing duplication or redundancy, and increasing the performance of the organization?

Answer. If confirmed, I will have the goal of having a model audit organization. I will ensure we conduct audits that provide return on investment that promote economy, efficiency, and effectiveness within the Department. I will also ensure the audits are carried out in an efficient manner to prevent duplication.

SEXUAL ASSAULT INVESTIGATIONS

Question. In June, 2011, the GAO issued a report entitled "Military Justice Oversight and Better Collaboration Needed for Sexual Assault Investigations and Adjudications", GAO-11-579, finding that the Department of Defense Inspector General has not performed its designated policy development and oversight responsibilities for sexual assault investigations. The GAO recommended that the DOD Inspector General, in conjunction with the Military Services, develop and implement (1) a policy that specifies procedures for conducting sexual assault investigations and (2) clear goals, objectives, and performance data for monitoring and evaluating the Services' sexual assault investigations and related training.

What is the status of the implementation of the GAO's recommendations?

Answer. In response to GAO's first recommendation the DOD IG developed overarching guidance which establishes policy, assigns responsibilities, and provides procedures for the investigation of adult sexual assault within DOD. This guidance is captured in DODI 5505.18, "Investigation of Adult Sexual Assault in the Department of Defense" which was published on January 25, 2013.

Regarding the second recommendation in June 2011, the DOD IG established a unit dedicated to the oversight of sexual assault and other violent crime investigations. The DOD IG has developed a program of regular and recurring oversight of sexual assault investigations and training. Since its establishment, the unit has evaluated both Military Criminal Investigative Organizations' (MCIOs) sexual assault investigation training and adult sexual assault investigations completed in 2010. These reports were published in February 2013 and July 2013, respectively. The unit is currently evaluating the MCIOs' investigations of sexual assaults of children completed in 2012, and DOD's compliance with the Sexual Offender Registration and Notification Act.

Question. If confirmed, will you ensure vigorous oversight and evaluation of the Services' investigations of sexual assault and the related training of investigators?

Answer. Yes, if confirmed, I will endeavor to ensure the DOD IG continues to provide optimum oversight and investigative and policy support in this critically important area. I understand that the DOD IG will evaluate the Department's sexual assault and other violent crime investigations and investigative training on a continuing basis. In the coming year the DOD IG intends to evaluate additional closed MCIO sexual assault investigations, and evaluate MCIO sexual assault victim interview training.

CONGRESSIONAL OVERSIGHT

Question. In order to exercise its legislative and oversight responsibilities, it is important that this committee and other appropriate committees of Congress are able to receive testimony, briefings, and other communications of information.

Do you agree, if confirmed, to appear before this committee and other appropriate committees of Congress?

Answer. Yes.

Question. Do you agree, if confirmed, to appear before this committee, or designated members of this committee, and provide information, subject to appropriate and necessary security protection, with respect to your responsibilities as the Inspector General of the Department of Defense?

Answer. Yes.

Question. Do you agree to ensure that testimony, briefings and other communications of information are provided to this committee and its staff and other appropriate committees?

Answer. Yes.

Question. 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?

Answer. Yes.

[Questions for the record with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR BILL NELSON

OVERPAYMENTS TO CONTRACTORS

1. Senator NELSON. Mr. Rymer, there have been numerous Department of Defense (DOD) Inspector General (IG) reports citing contractor overpayments, such as Boeing overcharging for repair parts for helicopters (DODIG-2013-103). How do we hold contractors accountable to deliver products and services on time and at the agreed upon price?

Mr. RYMER. The DOD IG can assist the Department in holding contractors accountable by identifying overcharges and requesting funds be returned for goods and services not received; recommending the contracting officer take immediate actions to correct the problems through an appropriate contract remedy, and recommending, when warranted by the contractor's inadequate performance, that the Military Department's designated official start suspension or debarment actions. The DOD IG also makes recommendations to DOD Senior Leadership to hold the contracting official and contracting officer representative accountable for their actions in making sure that the contractor is delivering the products and services on time and at the price stated in the contract. To obtain the maximum benefit of the recommendations that have been made regarding spare parts, the Department should apply lessons learned and operational improvement from the individual contracts that the DOD IG has reviewed more broadly to other contracts for spare parts.

2. Senator NELSON. Mr. Rymer, are these overpayments related in any way to DOD's lack of auditability?

Mr. RYMER. While these overpayments may not be directly related to DOD's lack of auditability, the Department's lack of effective processes and controls creates an environment where overpayments are less likely to be detected and corrected in the normal course of business. If the Department were auditable, they would have systems that talk with each other and processes that ensured that property was properly valued and included in the inventory management system and the financial statements.

3. Senator NELSON. Mr. Rymer, why is this report classified For Official Use Only (FOUO)?

Mr. RYMER. It is my understanding that the report is marked FOUO because it contains proprietary data protected by the Trades Secrets Act. Proprietary information is exempt from public disclosure pursuant to the Freedom of Information Act.

QUESTION SUBMITTED BY SENATOR CLAIRE MCCASKILL

OFFICE OF THE INSPECTOR GENERAL

4. Senator MCCASKILL. Mr. Rymer, the DOD Office of the Inspector General (DOD OIG) has been critical in efforts to rein in runaway spending and waste, fraud, and abuse at DOD. It has done a tremendous job in what can be a difficult environment to succeed in. Would you let me, or my staff, know if there are any tools that you believe you need to help you do your job more effectively?

Mr. RYMER. If confirmed, I will review the audit, investigative and inspections capabilities of the DOD IG to determine if they possess the resources and authorities needed to provide effective oversight of the Department of Defense. I will promptly advise your office if additional authorities or capabilities are needed in order for the DOD IG to perform its mission independently and professionally.

QUESTIONS SUBMITTED BY SENATOR JOE MANCHIN III

DOD AUDIT

5. Senator MANCHIN. Mr. Rymer, today, DOD is the only Federal agency that still cannot pass an audit. Along with my friend Senator Coburn, I am working on the Audit the Pentagon Act and think it is long past time for a clean audit on DOD's books. DOD accounts for almost 20 percent of the Federal budget, but we don't know exactly where the money is spent. That makes absolutely no sense. If confirmed, what will you do from day one to root out waste and ensure DOD audits its books?

Mr. RYMER. I share your concerns regarding DOD's inability to audit its books. If confirmed, I will work with the DOD IG audit staff to ensure that the financial management work continues to provide actionable recommendations that will improve the Department's financial management controls and reduce vulnerabilities to fraud waste and abuse. If confirmed, I will ensure that the DOD IG conducts audits focusing on identifying improper payments and that the auditors have the necessary data analysis software to analyze high risk areas such as delinquent debt, particularly related to healthcare services provided to DOD personnel, dependents, and veterans.

6. Senator MANCHIN. Mr. Rymer, the Inspector General is absolutely central to DOD's audit process. What will your approach be to ensuring that DOD not only meets the audit standards and timetables, but also that the integrity of the audit process is upheld?

Mr. RYMER. If confirmed, I will ensure that all DOD IG audit staff are fully trained and qualified to perform their duties. Highly qualified staff should have advanced degrees and/or professional certifications to include Certified Public Accountants (CPAs), Certified Internal Auditors (CIAs), Certified Fraud Examiners (CFEs), Certified Information Systems Auditors (CISAs), and Certified Defense Financial Managers (CDFMs). In addition, if confirmed, I will ensure the audit staff provide the appropriate oversight to CPA firms engaged to assist with financial statement audits. I will also ensure that the auditors are able to share knowledge about the Department as well as audit standards and best practices in performing financial statement audits.

QUESTIONS SUBMITTED BY SENATOR TIM KAINE

MILITARY WHISTLEBLOWERS

7. Senator KAINE. Mr. Rymer, do you feel that current law does enough to protect Active Duty whistleblowers who witness fraud, waste, abuse, or crime?

Mr. RYMER. Protection of whistleblowers must be a top priority for the DOD IG. At this time, I am not prepared to comment definitively on the sufficiency of current law but I do believe that continually educating our military servicemembers on their rights and responsibilities is critical to ensuring these protections are fully exercised. If confirmed, this is a matter I would want to assess more thoroughly. I be-

lieve the DOD IG should continually evaluate protections for whistleblowers and suggest improvements, if necessary, to ensure that all of our servicemembers receive the proper protections for being courageous enough to come forward and report allegations of fraud, waste, abuse, and crime.

8. Senator Kaine. Mr. Rymer, what else can be done to stamp out retaliation against those who come forward as victims or witnesses?

Mr. RYMER. Continued outreach from the DOD IG and increased top-down emphasis on whistleblower rights and protections within the Department sends the message that reporting wrongdoing—including reporting allegations of sexual assault—is the right thing to do, and that whistleblowers are protected from reprisal. I am well aware that even the perception of retaliation can reduce the trust and confidence our servicemembers and civilian employees have in the Department. If confirmed, I will continually review our outreach and education programs to ensure we are doing all we can to protect whistleblowers from reprisal. I would also work to ensure that investigations into allegations of reprisal continues to be a high priority in the Office of Inspector General and that all such investigations are conducted in a timely and thorough manner.

QUESTIONS SUBMITTED BY SENATOR JAMES M. INHOFE

PRIORITIES

9. Senator Inhofe. Mr. Rymer, if confirmed as the DOD Inspector General will you review DOD's use of scarce O&M funds for alternative energy programs?

Mr. RYMER. If confirmed, I will work to ensure the DOD IG continues its audit efforts of the Department's programs to become more energy efficient—including the use of various types of alternative energy. As one of the largest consumers of energy in the world, the Defense Department spends billions of dollars each year on fuel. Becoming more energy efficient makes sense.

10. Senator Inhofe. Mr. Rymer, if confirmed, will you agree to apply your financial and auditing expertise to thoroughly review plans to build a biofuel refinery in light of an April 2013 report by the International Energy Agency that forecasts the United States is on pace to become energy independent by 2030, and to report the results of your review to this committee?

Mr. RYMER. If confirmed, I will ensure that the DOD IG reviews the various initiatives underway at the Department to become more energy efficient and assesses DOD's progress toward meeting its energy efficiency goals. As part of this effort, the DOD IG should assess the use of various types of alternative energies—including biofuel. My goal is to provide the Secretary and Congress with relevant and timely information that can be used to guide policy decisions on various fuel programs.

DOD FINANCIAL ACCOUNTING AND AUDITS

11. Senator Inhofe. Mr. Rymer and Dr. Rabern, if confirmed, what is your understanding of your role in finally establishing the level of audit readiness that is required by law?

Mr. RYMER. The DOD IG must perform the audits required by the CFO Act of 1990. However, section 1008(d) of the National Defense Authorization Act for Fiscal Year 2002 limits the DOD Inspector General to performing only those audit procedures required by generally accepted government auditing standards that are consistent with the representations made by management. In practice this significantly curtails the audit work because most of the Department has not asserted that it is audit ready. It is important that other financial management audits conducted by the DOD IG focus on identifying the necessary improvements that the Department must make to reduce vulnerabilities, improve its financial management operations and continue to progress toward auditability of all the financial statements and meeting the auditability goals for fiscal year 2014 and 2017.

SENIOR OFFICIAL INVESTIGATIONS

12. Senator Inhofe. Mr. Rymer, if confirmed, what is your understanding of your role in providing this committee with timely and accurate information concerning senior officials who are subject to Senate confirmation?

Mr. RYMER. If confirmed, I will ensure that all results of investigations are promptly provided to Senior Management Officials in the Department of Defense for

review and consideration in the confirmation process. I will also respond quickly to inquiries from the committee regarding pending nominations of senior officials.

13. Senator INHOFE. Mr. Rymer, what would be your role in evaluating the processes within DOD and the Services to select for promotion and assignment to positions of responsibility, only the best and fully qualified, ethical, and accountable leaders?

Mr. RYMER. I recognize the importance of providing timely and accurate information to DOD and the Services for use in the promotion and assignment process. If confirmed, I will ensure DOD IG completes its investigations in a timely and accurate manner, and continues its vigilant oversight of senior official investigations conducted by the Service IGs. I will promptly provide any adverse information in our records regarding senior officials for the Department's consideration during the selection and nomination process.

[The nomination reference of Hon. Jon T. Rymer follows:]

NOMINATION REFERENCE AND REPORT

AS IN EXECUTIVE SESSION,
SENATE OF THE UNITED STATES,
June 24, 2013.

Ordered. That the following nomination be referred sequentially to the Committee on Armed Services; when reported by the Committee on Armed Services, pursuant to an order of January 7, 2009, to be sequentially referred to the Committee on Homeland Security and Governmental Affairs for 20 calendar days:

Jon T. Rymer, of Tennessee, to be Inspector General, Department of Defense, vice Gordon S. Heddell, resigned.

[The biographical sketch of Hon. Jon T. Rymer, which was transmitted to the committee at the time the nomination was referred, follows:]

BIOGRAPHICAL SKETCH OF HON. JON T. RYMER

Education:

University of Tennessee

- September 1973–June 1975
- September 1978–June 1981
- Bachelor of Arts Degree, Economics, awarded 1981

University of Arkansas at Little Rock

- September 1993–August 1996
- Master of Business Administration Degree awarded 1996

Employment Record:

Federal Deposit Insurance Corporation

- Inspector General
- July 2006–Present

U.S. Securities and Exchange Commission

- Interim Inspector General
- May 2012–January 2013

Council of the Inspectors General on Integrity and Efficiency

- Audit Committee Chair
- August 2008–Present

U.S. Army

- Command Sergeant Major, U.S. Army Reserve
- Active duty, June 1975–June 1978, November 2004–October 2005
- U.S. Army Reserve June 1978–August 1992,
- U.S. Army Reserve, U.S. Army National Guard, July 1997–June 2013

KPMG LLP

- Director, Banking Advisory Services
- June 1997–November 2004

Boatman's Bank of Arkansas

- Executive Vice President
- November 1992–January 1997

First American National Bank of Tennessee

- Executive Vice President
- June 1981–November 1992

Certifications:

Certified Government Auditing Professional
 Certified Internal Auditor

Honors and awards:

Meritorious Service Medal with Oak Leaf Cluster
 Army Commendation Medal with two Oak Leaf Clusters
 Army Achievement Medal with three Oak Leaf Clusters
 Good Conduct Medal
 Humanitarian Service Medal

[The Committee on Armed Services requires all individuals nominated from civilian life by the President to positions requiring the advice and consent of the Senate to complete a form that details the biographical, financial, and other information of the nominee. The form executed by Hon. Jon T. Rymer in connection with his nomination follows:]

UNITED STATES SENATE
 COMMITTEE ON ARMED SERVICES
 Room SR-228
 Washington, DC 20510-6050
 (202) 224-3871

COMMITTEE ON ARMED SERVICES FORM
 BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF
 NOMINEES

INSTRUCTIONS TO THE NOMINEE: Complete all requested information. If more space is needed use an additional sheet and cite the part of the form and the question number (i.e. A-9, B-4) to which the continuation of your answer applies.

PART A—BIOGRAPHICAL INFORMATION

INSTRUCTIONS TO THE NOMINEE: Biographical information furnished in this part of the form will be made available in committee offices for public inspection prior to the hearings and will also be published in any hearing record as well as made available to the public.

1. **Name:** (Include any former names used.)
 Jon Thomas Rymer.
2. **Position to which nominated:**
 Department of Defense Inspector General.
3. **Date of nomination:**
 June 24, 2013.
4. **Address:** (List current place of residence and office addresses.)
 [Nominee responded and the information is contained in the committee's executive files.]
5. **Date and place of birth:**
 April 2, 1955; Knoxville, TN.
6. **Marital Status:** (Include maiden name of wife or husband's name.)
 Married to Debra Joanne Queen.
7. **Names and ages of children:**

Jon Thomson Rymer, age 17.

8. Education: List secondary and higher education institutions, dates attended, degree received, and date degree granted.

Bearden High School, Knoxville, TN, 1971–1973, diploma, 1973.

University of Tennessee, Knoxville, TN, 1973–1975, 1978–1981, Bachelor Degree, 1981.

University of Arkansas at Little Rock, 1994–1996, Master of Business Administration Degree, 1996.

University of Cincinnati, 2002–2003, no degree awarded.

9. Employment record: List all jobs held since college or in the last 10 years, whichever is less, including the title or description of job, name of employer, location of work, and dates of employment.

June 1997 to November 2004, KPMG LLP, Chicago, IL, Cincinnati, OH, Director.

June 1975 to August 1992 and July 1997 to present, U.S. Army, U.S. Army National Guard, and U.S. Army Reserve. Served in enlisted ranks from Private to Command Sergeant Major.

July 2006 to Present, Inspector General, Federal Deposit Insurance Corporation, Washington, DC. Served as Interim Inspector General at U.S. Securities and Exchange Commission from May 2012 to January 2013.

10. Government experience: List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above.

Chairman of the Audit Committee and member of the Executive Council of the President's Council on Integrity and Efficiency and Council of Inspectors General for Integrity and Efficiency from 2008 to present.

Member of the GAO Advisory Committee of Government Auditing Standards from 2009 to present.

Member of the GAO Advisory Committee of Government Internal Controls Standards from March 2013 to present.

11. Business relationships: List all positions currently held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational, or other institution.

None.

12. Memberships: List all memberships and offices currently held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.

Member of Institute of Internal Auditors

National Rifle Association

13. Political affiliations and activities:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 5 years.

None.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$100 or more for the past 5 years.

McCain for President—three contributions totaling \$750 in 2008

Connelly for Congress—\$100 - 10/16/2008

National Republican Party—\$50 - 04/02/2012

Romney for President—\$150 - 10/17/2013

14. Honors and awards: List all scholarships, fellowships, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

Meritorious Service Medal with Oak Leaf Cluster

Army Commendation Medal with two Oak Leaf Clusters

Army Achievement Medal, four Oak Leaf Clusters

Good Conduct Medal Army Reserve Components Achievement Medal, Three Oak Leaf Clusters

Humanitarian Service Medal

National Defense Service Medal

Ohio Commendation Medal

15. Published writings: List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

None.

16. **Speeches:** Provide the committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

- A. IG Perspectives for the FBI, 9/3/2008
- B. The FDIC IG–FDIC Accounting and Auditing Conference, 5/21/2008
- C. Meeting the Challenges of the Crisis–Association of Government Accountants, 7/13/2010
- D. FDIC OIG Update, AICPA, 9/2010
- E. The FDIC IG–University of Tennessee Corporate Governance Seminar, 10/2010

17. **Commitment to testify before Senate committees:** Do you agree, if confirmed, to respond to requests to appear and testify before any duly constituted committee of the Senate?

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

Yes.

(b) Have you assumed any duties or undertaken any actions which would appear to presume the outcome of the confirmation process?

No.

(c) If confirmed, will you ensure your staff complies with deadlines established for requested communications, including questions for the record in hearings?

Yes.

(d) Will you cooperate in providing witnesses and briefers in response to congressional requests?

Yes.

(e) Will those witnesses be protected from reprisal for their testimony or briefings?

Yes.

(f) Do you agree, if confirmed, to appear and testify upon request before this committee?

Yes.

(g) 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?

Yes.

[The nominee responded to the questions in Parts B–F of the committee questionnaire. The text of the questionnaire is set forth in the Appendix to this volume. The nominee’s answers to Parts B–F are contained in the committee’s executive files.]

SIGNATURE AND DATE

I hereby state that I have read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

JON T. RYMER.

This 19th day of July, 2013.

[The nomination of Hon. Jon T. Rymer was reported to the Senate by Chairman Levin on July 30, 2013, with the recommendation that the nomination be confirmed. The nomination was confirmed by the Senate on September 17, 2013.]

[Prepared questions submitted to Dr. Susan J. Rabern by Chairman Levin prior to the hearing with answers supplied follow:]

QUESTIONS AND RESPONSES

DEFENSE REFORMS

Question. The Goldwater-Nichols Department of Defense Reorganization Act of 1986 and the Special Operations reforms have strengthened the warfighting readiness of our Armed Forces. They have enhanced civilian control and clearly delineated the operational chain of command and the responsibilities and authorities of

the combatant commanders, and the role of the Chairman of the Joint Chiefs of Staff. They have also clarified the responsibility of the Military Departments to recruit, organize, train, equip, and maintain forces for assignment to the combatant commanders.

Do you see the need for modifications of any Goldwater-Nichols Act provisions?

If so, what areas do you believe might be appropriate to address in these modifications?

Answer. I do not see the need to modify any provisions of the Goldwater-Nichols Act.

DUTIES OF THE ASSISTANT SECRETARY OF THE NAVY (FINANCIAL MANAGEMENT AND
COMPTROLLER)

Question. What is your understanding of the duties and functions of the Assistant Secretary of the Navy (Financial Management and Comptroller)?

Answer. The Assistant Secretary of the Navy (Financial Management and Comptroller) directs and manages the financial activities of the Department of the Navy. This means overseeing the management of the annual budget, its execution, financial reporting and subsequent audit, as well as providing independent analysis. The office provides informed recommendations to the senior leadership of the Department of the Navy regarding the efficient and effective allocation of assets, consistent with the national security priorities of the President and the Secretary of Defense. The office provides for the development of a world-class financial management work force and is committed to the American public for the proper stewardship of the resources they entrust to the Department of the Navy.

Question. What background and experience do you possess that you believe qualifies you to perform these duties?

Answer. I have significant financial management experience in multiple government agencies including the Federal Bureau of Investigation, the U.S. Customs Service, the U.S. Agency for International Development and while on Active Duty in the U.S. Navy.

Question. As Chief Financial Officer of the U.S. Agency for International Development, I was responsible for all financial matters related to the delivery of economic development and humanitarian assistance programs through grants, contracts, and loans to governmental and non-governmental organizations globally. I was responsible for reform and refurbishment of financial systems, implementing changes in the management of government expenditures, trust funds, and loans in over 100 appropriations.

As Assistant Commissioner and Chief Financial Officer of the U.S. Customs Service, I served as the key advisor to the Commissioner on all matters relating financial and resource programs, construction and procurement. I directed the formulation, presentation and execution of the Customs Service budget, obligation of funds and employment ceilings, managed annual appropriations, revenue, procurement, real property and other assets in over 600 locations worldwide.

As the Chief Financial Officer for the Federal Bureau of Investigation, I was the principal advisor to the Director on all financial matters, and responsible for all financial planning, programming, budgeting, investment, and contracting, establishing standards and procedures worldwide.

Question. Do you believe that there are any actions that you need to take to enhance your ability to perform the duties of the Assistant Secretary of the Navy (Financial Management and Comptroller)?

Answer. If confirmed, I will quickly identify any shortcomings in my knowledge regarding the many challenging issues facing the Department of the Navy through discussions with subject matter experts within the Navy and the broader Department of Defense.

RELATIONSHIPS

Question. What is your understanding of the relationship between the Assistant Secretary of the Navy (Financial Management and Comptroller) and each of the following:

The Secretary of the Navy.

Answer. The Assistant Secretary of the Navy (Financial Management and Comptroller) is the principal advisor to the Secretary and Under Secretary of the Navy on fiscal and budgetary matters and performs such other duties as the Secretary or Under Secretary may prescribe.

Question. The Under Secretary of the Navy/Chief Management Officer of the Navy.

Answer. See response above.

Question. The other Assistant Secretaries of the Navy.

Answer. The Assistant Secretary of the Navy (Financial Management and Comptroller) works directly with the other Assistant Secretaries of the Navy to ensure that the financial management activities of their respective organizations are supported.

Question. The General Counsel of the Navy.

Answer. The Assistant Secretary of the Navy (Financial Management and Comptroller) must collaborate with the General Counsel to ensure all operations of the Department conform to fiscal law requirements.

Question. The Chief of Naval Operations.

Answer. The Assistant Secretary of the Navy (Financial Management and Comptroller) should make certain that the Chief of Naval Operations has the financial support necessary to execute his statutory duties and responsibilities.

Question. The Commandant of the Marine Corps.

Answer. Likewise, the Assistant Secretary of the Navy (Financial Management and Comptroller) should make certain that the Commandant of the Marine Corps has the financial support necessary to execute his statutory duties and responsibilities.

Question. The Under Secretary of Defense (Comptroller).

Answer. The Assistant Secretary of the Navy (Financial Management and Comptroller) must work closely with the Under Secretary of Defense (Comptroller) to ensure the appropriate development and execution of budgetary and fiscal policies and initiatives of the President, the Secretary of Defense, and the Secretary of the Navy.

Question. The Deputy Chief Management Officer of the Department of Defense.

Answer. Likewise, the Assistant Secretary of the Navy (Financial Management and Comptroller) must work closely with the Deputy Chief Management Officer of the Department of Defense to ensure the implementation of business systems architecture and to help identify business process improvements.

Question. The Assistant Secretaries for Financial Management of the Army and Air Force.

Answer. The Assistant Secretary of the Navy (Financial Management and Comptroller) must work closely with sister Service counterparts to ensure that decision making at all levels reflects the strongest cooperation and collaboration (to include sharing of best practices) among the military services.

Question. The Chief of Legislative Affairs for the Department of the Navy.

Answer. The Assistant Secretary of the Navy (Financial Management and Comptroller) should work closely with the Chief of Legislative Affairs to ensure that all budgetary and legislative matters are properly conveyed to the appropriate Members of Congress and committees.

MAJOR CHALLENGES

Question. In your view, what are the major challenges that confront the Assistant Secretary of the Navy for Financial Management and Comptroller?

Answer. In sum, (1) balancing the budget while ensuring requirements of the warfighter are met; (2) ensuring the financial management workforce is recruited, retained, trained and developed; (3) ensuring the financial statements within the Navy and Marine Corps are audit-ready.

Question. Assuming you are confirmed, what plans do you have for addressing these challenges?

Answer. Standing alone, the challenges I enumerated above are considerable. In the context of the constraints of the Budget Control Act of 2011, the challenges are even more daunting and can only be accomplished through close coordination with the Under Secretary of Defense (Comptroller), the Secretary and Under Secretary of the Navy, and the Navy's Service Chiefs.

Question. What do you consider to be the most significant problems in the performance of the functions of the Assistant Secretary of the Navy for Financial Management and Comptroller?

Answer. I am aware that the specific impacts of furlough associated with the Department's effort to manage the effects sequestration have had a negative impact on the performance and functions of the Assistant Secretary of the Navy for Financial Management and Comptroller.

Question. If confirmed, what management actions and timelines would you establish to address these problems?

Answer. Specific solutions, which in turn would determine the timeline, must be the product of collaboration with the Office of the Secretary of Defense and Congress. If confirmed, I will do everything in my power to find solutions to the problems and/or to mitigate the impacts.

PRIORITIES

Question. If confirmed, what broad priorities would you establish in terms of issues which must be addressed by the Assistant Secretary of the Navy (Financial Management and Comptroller)?

Answer. My priorities are aligned to what I perceive as the Department's greatest challenges. In sum, (1) balancing the budget while ensuring requirements of the warfighter are met; (2) ensuring the financial management workforce is recruited, retained, trained and developed; (3) ensuring the financial statements within the Navy and Marine Corps are audit-ready.

CIVILIAN AND MILITARY ROLES IN THE NAVY BUDGET PROCESS

Question. What is your understanding of the division of responsibility between the Assistant Secretary of the Navy (Financial Management and Comptroller) and the senior military officers responsible for budget matters in Office of the Chief of Naval Operations and headquarters, Marine Corps, in making program and budget decisions, including the preparation of the Navy Program Objective Memorandum, the annual budget submission, and the Future Years Defense Program?

Answer. The Assistant Secretary of the Navy (Financial Management and Comptroller) is responsible for all budget matters within the Department. If I am confirmed, the senior military officers, including the Director of the office of Budget, would serve as principal military advisors to me in my capacity to oversee the development of the Departments Program Objective Memorandum, annual budget submission, and Future Years Defense Program.

FINANCIAL MANAGEMENT AND ACCOUNTABILITY

Question. DOD's financial management deficiencies have been the subject of many audit reports over the past 10 or more years. Despite numerous strategies and initiatives, problems with financial management and data continue.

What do you consider to be the top financial management issues that must be addressed by the Department of the Navy over the next 5 years?

Answer. The top financial management issues include: (1) balancing the budget while ensuring requirements of the warfighter are met; (2) ensuring the financial management workforce is recruited, retained, trained and developed; (3) ensuring the financial statements within the Navy and Marine Corps are audit-ready.

Question. If confirmed, how would you plan to ensure that progress is made toward improved financial management in the Navy?

Answer. If confirmed, I commit to working closely with my civilian counterparts and military leadership within the Department of the Navy and the Office of the Secretary of Defense (Comptroller) to properly allocate resources, to improve our systems and processes, to recruit and retain the right workforce and to achieve auditable financial statements.

Question. If confirmed, what private business practices, if any, would you advocate for adoption by the Department of Defense and the Department of the Navy?

Answer. At this time, I am not aware of any private business practices that I would advocate for adoption. If confirmed, I will consider best financial practices from within the private sector and other well-run Federal or State agencies.

Question. What are the most important performance measurements you would use, if confirmed, to evaluate changes in the Navy's financial operations to determine if its plans and initiatives are being implemented as intended and anticipated results are being achieved?

Answer. The timely distribution and allocation of funds; the timely obligation of funds; balance of funds with the Treasury, the percentage of invoices that are paid in timely fashion, the amount of interest penalties paid, and the timeliness of financial data are all performance measures that I believe require close monitoring. If confirmed, I would track these metrics along with the scheduled timelines previously established within the Department of the Navy. I would use these indices to evaluate where and how to make any adjustments.

Question. Section 1003 of the National Defense Authorization Act for Fiscal Year 2010 establishes an objective for the Department of Defense to ensure that its financial statements are validated as ready for audit by not later than September 30, 2017. The provision requires the Department to establish interim goals, including objectives for each of the Military Departments.

What is your understanding of the status of Navy efforts to ensure that its financial statement is validated as ready for audit by the statutory deadline?

Answer. I understand that the Department has a Financial Improvement Plan and is making progress toward achieving auditable financial statements. However,

a substantial amount of work remains to be completed if the Department is to improve its business processes and systems. Difficult issues must be addressed, including the valuation of major weapon systems and equipment. While I support the 2017 goal, I have not had the opportunity to review the plan and at this time could not inform you of my confidence level that the September 30, 2017 goal is achievable.

Question. What additional steps do you believe the Department of the Navy should take to ensure that it meets the 2017 deadline?

Answer. Maintaining a steady focus and commitment on all Department efforts enabling audit readiness will be critical to success in 2017 and lay the foundation for a sustainable audit environment well into the future. If confirmed, I will review the objectives that have been prepared and determine whether they appear to be reasonable and effective.

Question. What is the role of the Assistant Secretary of the Navy (Financial Management and Comptroller) in this effort?

Answer. The Assistant Secretary of the Navy (Financial Management and Comptroller) provides the overall leadership within the Department to achieve auditable financial statements. However, the ability to produce auditable statements is influenced by all the business operations and processes within the Department. If confirmed, I will work with the civilian and military leadership, process owners and the Office of the Secretary of Defense (Comptroller) to meet the requirement for auditable financial statements.

Question. If confirmed, how will you work with the Chief Management Officer of the Department of the Navy and the Navy Business Transformation Office in this effort?

Answer. If confirmed, I will work closely with the Chief Management Officer of the Department of the Navy and the Navy Business Transformation Office to ensure that budget, finance, and accounting operations are considered in changes to Department of the Navy business processes. I will provide leadership and advice in the financial management functional area and ensure that those efforts are aligned with Department of Defense priorities to achieve and sustain auditable financial statements.

SUPPLEMENTAL FUNDING AND ANNUAL BUDGETING

Question. Since September 11, 2001, the Department of Defense has paid for much of the cost of ongoing military operations through supplemental appropriations, and the fiscal year 2014 budget included a full-year request for overseas contingency operations.

What are your views regarding the use of supplemental appropriations to fund the cost of ongoing military operations?

Answer. The longstanding practice of using supplemental appropriation requests to fund contingency operations has allowed the administration and Congress to specifically identify and review the cost of military operations above those costs necessary to provide for ongoing national security activities. While this has been an added burden to the resource process, it should continue to diminish as operations continue to wind down. I believe this method has been helpful in allowing these two branches of government to fulfill their respective roles and responsibilities.

BUDGET CONTROL ACT AND SEQUESTRATION

Question. Due to the 2011 Budget Control Act (BCA) sequestration is cutting the enacted fiscal year 2013 defense budget by more than \$40 billion and, without changes to the BCA, sequestration will cut the DOD budget request by approximately \$52 billion.

What are your views regarding the Budget Control Act and sequestration of budgetary resources?

Answer. The BCA is law until the President and Congress negotiate an alternative solution. I agree with the general observations made by those involved that ensuring compliance with BCA implementation requirements has produced significant challenges to effective and efficient DOD operations. I am also aware that the possibility exists for implementation of the BCA in fiscal year 2014 if the law remains in place.

If confirmed, it will be my responsibility to advise the Secretary of the Navy, the Chief of Naval Operations and the Commandant of the Marine Corps how best to implement BCA reductions to lessen the adverse impact that sequestration will have on the Naval enterprise and on national security.

Question. What is your view of the impact that sequestration in fiscal year 2014 and beyond would have in the Department of the Navy?

Answer. At this point, I am unfamiliar with the specific effects of sequestration in fiscal year 2014 and beyond for the Department of the Navy, but I generally understand and personally believe that sequestration will in all likelihood, dramatically, and in very short order, degrade readiness and adversely affect the health and morale of the all volunteer force. If confirmed, it will be my responsibility to advise the Secretary of the Navy, the Chief of Naval Operations and the Commandant of the Marine Corps how best to implement BCA reductions to lessen the adverse impact that sequestration will have on the Naval enterprise and on national security.

FURLOUGH OF NAVY PERSONNEL

Question. It was previously reported that the Navy believed it could structure its available fiscal year 2013 funding to avoid having any furlough days for Navy civilian workers. However, other parts of DOD were not in a position to do the same for their own civilian workers and, in the end, DOD's solution was to have all DOD civilian workers, including Navy civilian workers, take up to 11 furlough days.

What is the impact on the Navy's various budget accounts, and on Navy readiness, of the DOD decision to require Navy civilian workers to be furloughed for up to 11 days?

Answer. While I am aware that the CNO and Commandant had to make very tough choices, I do not have insight into the DOD decision process that required them to direct the DON to furlough. If confirmed, I will be able to study these impacts further and provide you greater insight in the future.

Question. Now that the Navy has finally determined the impact of the March 1, 2013, sequester on the Navy's fiscal year 2013 accounts, was the impact of the sequester on the Navy along the lines of what Navy and DOD officials originally expected and forecast?

Answer. I do not have insight into how the DON is implementing sequestration versus its original forecasts. If confirmed, I will be able to review fiscal year 2013 execution to assess the final impact of sequestration.

Question. What does the experience with the sequestration of fiscal year 2013 accounts tell us about the potential impact of sequestration later this year or early next year on the Navy's fiscal year 2014 accounts?

Answer. While the President's budget submitted for fiscal year 2014 did not assume the impacts of sequestration, it is my understanding that the Department has been directed to prepare for the possibility of sequestration continuing into fiscal year 2014. I am not aware of any specifics.

AUTHORIZATION FOR NATIONAL DEFENSE PROGRAMS

Question. Do you believe that an authorization pursuant to section 114 of title 10, U.S.C., is necessary before funds for operations and maintenance, procurement, research and development, and military construction may be made available for obligation by the Department of Defense?

Answer. Yes. Furthermore, if confirmed, I will respect the views and prerogatives of the Department's oversight committees.

LABORATORY DIRECTED RESEARCH AND DEVELOPMENT (LDRD)

Question. Section 219 of the NDAA for Fiscal Year 2009 authorized the Secretary of Defense, in consultation with the Secretaries of the military departments, to "establish mechanisms under which the director of a defense laboratory may use an amount of funds equal to not more than three per cent of all funds available to the defense laboratory ... to fund innovative basic and applied research and several other purposes at these laboratories." Similar to the model of the Department of Energy LDRD program, the purpose of section 219 is to provide funding and discretion to the Navy's laboratory and technical center directors, to support the continued infusion of new ideas that support Navy missions, and in particular to authorize the directors to exercise some discretion in investing in promising technologies and other laboratory activities.

What should the role and authority of the Navy comptroller's organization be in implementing this statute?

Answer. I agree that the Navy's laboratory and technical centers are vital to supporting Navy's mission. The Navy Comptroller's role in implementing this statute is to develop a budget strategy consistent with the congressional direction, to ensure the implementation and execution of this authority is done in accordance with the law, and to ensure appropriate financial and accounting methods are in place to support this program. If confirmed, I will ensure the Department's budget strategy and policies are in accordance with the law.

Question. How would you intend to enable the laboratory director's discretion over such funding to support its effective implementation, similar to the Department of Energy model?

Answer. At this point, I do not have the necessary familiarity with the Department of Energy model, but if confirmed, I will work with the Assistant Secretary of the Navy (Research, Development and Acquisition) and the Office of the Secretary of Defense (Comptroller) to ensure effective and successful implementation.

BUDGETING TO ADDRESS OPERATIONAL NEEDS AND TECHNOLOGICAL OPPORTUNITIES

Question. The Services often are often faced with situations in which an urgent operational need or a new technological opportunity arises on a timeline that is inconsistent with the relatively slow budgeting and programming process.

How should the Navy change its processes so that its budgeting, programming, and planning processes are more adaptable to emerging operational needs and technological opportunities?

Answer. At this point, I do not have the necessary familiarity with current processes to answer this question, but if confirmed, I will review all current processes to see if there are adjustments to be made that make us more adaptable to emerging operational needs and technological opportunities.

IN-KIND MILITARY CONSTRUCTION

Question. The committee released a report on April 15, 2013, titled "Inquiry into U.S. Costs and Allied Contributions to Support the U.S. Military Presence Overseas." Among other things, the committee's inquiry found that in-kind payments from Germany, South Korea, and Japan have been used to fund questionable military construction projects. The committee's version of the National Defense Authorization Act for Fiscal Year 2014 includes a provision (section 2801) that would require that future military construction projects funded using in-kind payments pursuant to bilateral agreements with partner nations be submitted for congressional authorization in the Military Construction Authorization Act.

If confirmed, how would you ensure that in-kind payments are utilized only for identified U.S. priorities to offset costs that the Department of the Navy would otherwise pay with appropriated funds?

Answer. At this point, I do not have a complete understanding of the prevalence of this method of funding nor the specific details of its prior use within the Department of the Navy. Upon receipt of this question, I reviewed the Navy-specific sections in the referenced report. If confirmed, I will ensure that gaining an understanding this practice will become one of my immediate short-term priorities and that my understanding is placed in the context of other legal authorities and constraints.

CONGRESSIONAL OVERSIGHT

Question. In order to exercise its legislative and oversight responsibilities, it is important that this committee and other appropriate committees of Congress are able to receive testimony, briefings, and other communications of information.

Do you agree, if confirmed for this high position, to appear before this committee and other appropriate committees of Congress?

Answer. Yes, I agree.

Question. Do you agree, if confirmed, to appear before this committee, or designated members of this committee, and provide information, subject to appropriate and necessary security protection, with respect to your responsibilities as the Assistant Secretary of the Navy (Financial Management and Comptroller)?

Answer. Yes, I agree.

Question. Do you agree to ensure that testimony, briefings and other communications of information are provided to this committee and its staff and other appropriate committees?

Answer. Yes, I agree.

Question. 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?

Answer. Yes, I agree.

[Questions for the record with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR CLAIRE McCASKILL

BONUSES PAID TO SENIOR EXECUTIVE SERVICE EMPLOYEES OF THE DEPARTMENT OF DEFENSE

1. Senator MCCASKILL. Dr. Rabern, in 2011, the Department of the Navy (DON) was among the few Federal agencies that awarded, on average, more than one bonus per Senior Executive Service (SES) employee. The Navy was also one of the five agencies with the highest average spending on SES bonuses, awarding more than \$13,000 in bonuses per SES employee. If confirmed, will you share with this committee the status of bonuses paid to SES employees in the Navy in fiscal year 2012, including the total amount paid, the amount per SES employee, the number and percentage of SES employees receiving bonuses, and whether any SES employees received aggregate pay above the statutory limit of \$230,700?

Dr. RABERN. Yes, if confirmed I will share with the committee the status of SES bonuses in the Navy.

2. Senator MCCASKILL. Dr. Rabern, will you commit to reviewing, and changing, if necessary, the metrics used to determine the performance level of SES employees, and provide information to this committee regarding the progress and results of your review?

Dr. RABERN. Yes, if confirmed I commit to reviewing the metrics used to determine the performance level of SES employees and, if necessary, will propose changes to the appropriate DON, Department of Defense (DOD), or Office of Personnel Management officials.

DEPARTMENT OF THE NAVY AUDIT

3. Senator MCCASKILL. Dr. Rabern, Public Law 111-84, the National Defense Authorization Act of 2010, enacted October 28, 2009, requires auditable DOD financial statements by September 30, 2017. While progress is being made, the current Assistant Secretary of the Navy (Financial Management and Comptroller) acknowledged several material weaknesses related to the Navy's business processes and systems that prevent the Navy from producing auditable financial statements. Given the numerous weaknesses that have been identified, do you believe that the Navy will be in a position to keep up its end of the bargain in getting DOD to a point where it can be audited in the next 4 years?

Dr. RABERN. I understand that the Department has a Financial Improvement Plan and is making progress toward achieving auditable financial statements. However, I have not had the opportunity to review the plan and at this time could not inform you of my confidence level that the September 30, 2017, goal is achievable.

4. Senator MCCASKILL. Dr. Rabern, what gives you confidence that the Navy can meet the 2017 goal?

Dr. RABERN. Even though I support the 2017 goal, I have not had the opportunity to review the plan and at this time could not inform you of my confidence level that the September 30, 2017, goal is achievable.

5. Senator MCCASKILL. Dr. Rabern, on July 18, the DOD OIG released a report raising concerns about the Navy's use of the Navy Enterprise Resource Planning System (Navy ERP). The DOD OIG found that while the Navy has identified a material weakness in the its ability to account for Navy military equipment, and has identified Navy ERP as the solution, the Navy is in fact not using Navy ERP to account for this equipment. Rather, the Navy continues to use what the DOD OIG called "inefficient manual processes" in its accounting procedures. The Navy spent \$870 million to develop and implement Navy ERP, and the Navy needs to be fully utilizing its capabilities. If confirmed, will you take a close look at this issue to ensure the Navy is appropriately using the resources at its disposal to be accountable and achieve its audit-ready obligations?

Dr. RABERN. If confirmed, I commit to working closely with my civilian counterparts and military leadership within the Department of the Navy and the Office of the Secretary of Defense (Comptroller) to properly allocate and account for resources, to improve our systems and processes, and to achieve auditable financial statements.

QUESTIONS SUBMITTED BY SENATOR JOE MANCHIN III

CONTRACTOR SALARIES

6. Senator MANCHIN. Dr. Rabern, since I've gotten to the Senate, I've been asking DOD how many contractors there are, and how much money they make. I still don't have an answer. What I do know is that contractors can make up to \$763,000—funded by the taxpayers. If we do nothing, that figure will rise to nearly \$1 million this year. What is your opinion on paying our contractors nearly \$1 million?

Dr. RABERN. In my experience, government contracts generally do not specify a number of personnel required to satisfy the terms; rather, the government contracts for performance of a specific set of tasks, objectives, or services. I do not have in depth knowledge of the salaries paid to Department of Navy contractor personnel. If confirmed, I commit to looking at this issue and providing informed recommendations to senior leadership of the Department of the Navy regarding the efficient and effective allocation of resources consistent with the national security priorities of the President and the Secretary of Defense.

7. Senator MANCHIN. Dr. Rabern, would it have an impact on the readiness of the military if we brought that figure to a more reasonable amount?

Dr. RABERN. I do not have sufficient information to respond to this question at this time. If confirmed, I commit to looking at this issue and providing informed recommendations to senior leadership of the Department of the Navy regarding the efficient and effective allocation of resources consistent with the national security priorities of the President and the Secretary of Defense.

QUESTIONS SUBMITTED BY SENATOR JAMES M. INHOFE

PRIORITIES

8. Senator INHOFE. Dr. Rabern, do you believe the Navy's purchase last year of 450,000 gallons of biofuels for \$12 million using scarce operations and maintenance (O&M) funds at a cost of over \$26 a gallon is an efficient, effective use of O&M funds and is an example of proper stewardship?

Dr. RABERN. I am not familiar with the details of this purchase and cannot provide an opinion on the matter at this time. If confirmed, I will ensure that we develop and execute balanced budgets that are the result of thorough and timely analysis and in support of the goals and initiatives that Secretary Mabus has established for the Department.

FINANCIAL MANAGEMENT AND CONTROL

9. Senator INHOFE. Dr. Rabern, based on your extensive experience in financial management do you believe it is prudent for any Federal agency to submit their annual budget submission without including consideration for the effects of the Budget Control Act?

Dr. RABERN. I have not been associated with any budget submissions since passage of the Budget Control Act of 2011, but I believe that agency budgets should be submitted consistent with the requirements and constraints of the law.

DOD FINANCIAL ACCOUNTING AND AUDITS

10. Senator INHOFE. Dr. Rabern, if confirmed, what is your understanding of your role in finally establishing the level of audit readiness that is required by law?

Dr. RABERN. The Assistant Secretary of the Navy (Financial Management and Comptroller) provides the overall leadership within the Department to achieve auditable financial statements. However, the ability to produce auditable statements is influenced by all the business operations and processes within the Department. If confirmed, I will work with the civilian and military leadership, process owners, and the Office of the Secretary of Defense (Comptroller) to meet the requirement for auditable financial statements.

QUESTIONS SUBMITTED BY SENATOR KELLY AYOTTE

NAVY FACILITY BACKLOG

11. Senator AYOTTE. Dr. Rabern, section 2476 of title 10 requires 6 percent of annual capital investment for certain depots. Are you aware of this requirement and will you commit to follow that requirement?

Dr. RABERN. I am familiar with this requirement, and if confirmed, I commit to working with the Chief of Naval Operations, Commandant of the Marine Corps, and the Assistant Secretaries of the Navy for Research, Development, and Acquisition and Energy, Installations and Environment to ensure that whatever funding may be available for shore infrastructure, including shipyards and depots, is allocated appropriately to meet mission critical needs.

DOD AUDIT

12. Senator AYOTTE. Dr. Rabern, with DOD facing significant budget reductions, it is more important than ever that we have reliable financial data so we can differentiate between necessary budget cuts and those that would harm our troops and endanger our national security. Do I have your commitment that the Navy will meet the 2014 statement of budgetary resources deadline, as required by the National Defense Authorization Act for Fiscal Year 2013?

Dr. RABERN. If confirmed, I am committed to maintaining a steady focus on all Department efforts towards clean audit opinions and critical to that success is assertion in 2014. If confirmed, I will review the objectives that have been prepared and determine whether they appear to be reasonable and effective.

13. Senator AYOTTE. Dr. Rabern, is the Navy creating systems and processes that will be repeatable so that we avoid expending great effort to ensure the Navy is audit ready—only to find that the Navy is unable to sustain these efforts over the long-term?

Dr. RABERN. A crucial step in the DON plan to achieve audit success is laying the foundation for a sustainable audit environment well into the future. If confirmed, I will review the objectives that have been prepared and determine whether they appear to be reasonable and effective.

[The nomination reference of Dr. Susan J. Rabern follows:]

NOMINATION REFERENCE AND REPORT

AS IN EXECUTIVE SESSION,
SENATE OF THE UNITED STATES,
June 27, 2013.

Ordered. That the following nomination be referred to the Committee on Armed Services:

Susan J. Rabern, of Kansas, to be an Assistant Secretary of the Navy, vice Gladys Commons, resigned.

[The biographical sketch of Dr. Susan J. Rabern, which was transmitted to the committee at the time the nomination was referred, follows:]

BIOGRAPHICAL SKETCH OF SUSAN J. RABERN

Education:

University of Kansas

- 1970–1974
- B.A. degree in Biology, 1974

Boston University

- 1979–1980
- M.A. degree in Education, 1980

San Diego State University

- 1983–1986
- M.B.A. (finance) degree, 1986

National Defense University

- 1995–1996
- M.S. (strategic studies) degree, 1996

University of Virginia, Darden School of Business

- 2003–2009
- Ph.D (ethics and entrepreneurship) degree 2998

Employment Record:

Virginia Military Institute

- Director, Center for Leadership & Ethics
- 2009–Present

U.S. Agency for International Development

- Deputy Director, Office of Military Affairs
- 2007–2009

Virginia Military Institute

- Special Assistant to the Chief of Staff and Superintendent
- 2003–2007

Federal Bureau of Investigation

- Chief Financial Officer
- 2000–2002

U.S. Customs Service

- Assistant Commissioner and Chief Financial Officer
- 2002

U.S. Agency for International Development

- Chief Financial Officer
- 2002–2003

U.S. Navy (active duty, 1980–2000)

- Retired in 2000 in rank of Captain (0–6)

U.S. Naval Hospital, Naples, Italy,

- Counselor
- 1978–1980

Honors and awards:

Defense Superior Service Medal

Meritorious Service Medal (six awards)

Joint Service Commendation Medal

Navy Commendation Medal

Commandant's Award for Excellence in Research & Writing, Industrial College of the Armed Forces, National Defense University (1996)

Boards:

Community Foundation of Rockbridge, Bath, and Alleghany Counties.

- Board Member and Committee Chair (Grants/Audit)

Academy of Management

- Member

Omicron Delta Kappa, National Leadership Society

- Member

[The Committee on Armed Services requires all individuals nominated from civilian life by the President to positions requiring the advice and consent of the Senate to complete a form that details the biographical, financial, and other information of the nominee. The form executed by Dr. Susan J. Rabern in connection with her nomination follows:]

1058

UNITED STATES SENATE
COMMITTEE ON ARMED SERVICES

Room SR-228

Washington, DC 20510-6050

(202) 224-3871

COMMITTEE ON ARMED SERVICES FORM

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF
NOMINEES

INSTRUCTIONS TO THE NOMINEE: Complete all requested information. If more space is needed use an additional sheet and cite the part of the form and the question number (i.e. A-9, B-4) to which the continuation of your answer applies.

PART A—BIOGRAPHICAL INFORMATION

INSTRUCTIONS TO THE NOMINEE: Biographical information furnished in this part of the form will be made available in committee offices for public inspection prior to the hearings and will also be published in any hearing record as well as made available to the public.

1. **Name:** (Include any former names used.)

Susan Jean Rabern (Susan Jean Wynn, Susan Jean Kite, Susan Jean Blunt).

2. **Position to which nominated:**

Assistant Secretary of the Navy (Financial Management and Comptroller).

3. **Date of nomination:**

June 27, 2013.

4. **Address:** (List current place of residence and office addresses.)

[Nominee responded and the information is contained in the committee's executive files.]

5. **Date and place of birth:**

March 28, 1952; McPherson, KS.

6. **Marital Status:** (Include maiden name of wife or husband's name.)

Married to David William Rabern.

7. **Names and ages of children:**

Stacey Elaine (Blunt) Lobst, age 35.

Allison (NMN) (Blunt) Leigh, age 30.

Megan Lynn Blunt, age 28.

8. **Education:** List secondary and higher education institutions, dates attended, degree received, and date degree granted.

University of Kansas, 1970-1974, BA (Biology), 1974

Boston University, 1979-1980, MA (Education), 1980

San Diego State University, 1983-1986, MBA (Finance), 1986

National Defense University, Industrial College of the Armed Forces, 1995-1996, MS (Strategic Studies), 1996

University of Virginia, Darden School of Business, 2003-2009, Ph.D. (Ethics & Entrepreneurship), 2009

9. **Employment record:** List all jobs held since college or in the last 10 years, whichever is less, including the title or description of job, name of employer, location of work, and dates of employment.

Director, Center for Leadership and Ethics, Marshall Hall, Virginia Military Institute, Lexington, VA, 2009-present

Deputy Director, Office of Military Affairs, U.S. Agency for International Development, Ronald Reagan Building, Washington, DC, 2007-2009

Special Assistant to the Chief of Staff and Superintendent, Virginia Military Institute, Intergovernmental Personnel Assignment from U.S. Agency for International Development, Virginia Military Institute, Lexington, VA, 2003-2007

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.

U.S. Navy (Active Duty, 21 years, retired 2000, rank Captain)

Assistant Director and Chief Financial Officer, Federal Bureau of Investigation, 2000–2002

Assistant Commissioner and Chief Financial Officer, U.S. Customs Service, 2002
 Chief Financial Officer, U.S. Agency for International Development, 2002–2003
 Counselor, U.S. Naval Hospital, Naples, Italy, 1978–1980

11. Business relationships: List all positions currently held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational, or other institution.

Owner, Provenance Mill Clothiers, Fairfield, VA
 Owner, Shenandoah Fiber, Fairfield, VA

12. Memberships: List all memberships and offices currently held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.

Board Member and Committee Chair (Grants/Audit), Community Foundation of Rockbridge, Bath, and Alleghany Counties.

Member, Academy of Management

Member, Omicron Delta Kappa, National Leadership Society

13. Political affiliations and activities:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 5 years.

None.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$100 or more for the past 5 years.

None.

14. Honors and awards: List all scholarships, fellowships, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievements.

Defense Superior Service Medal
 Meritorious Service Medal (six awards)
 Joint Service Commendation Medal
 Navy Commendation Medal.

Commandant's Award for Excellence in Research and Writing, Industrial College of the Armed Forces, National Defense University (1996)

15. Published writings: List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

Doctoral Dissertation:

- 2009, University of Virginia. Leveraging the Feds: An Assessment of the Effectiveness of Corporate Political Strategies

Book Length Government Manuscripts:

- 2000 National Defense University, Industrial College of the Armed Forces, Philanthropy, Statesmanship, Innocence or Greed? U.S. Engagement with the Former Soviet Union 1992–2000
- 1996, National Defense University, Industrial College of the Armed Forces, The Effect of Organized Crime on the Post-Cold War Economy of Russia

16. Speeches: Provide the committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

None.

17. Commitment to testify before Senate committees: Do you agree, if confirmed, to respond to requests to appear and testify before any duly constituted committee of the Senate?

17. Commitments regarding nomination, confirmation, and service:

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

Yes.

(b) Have you assumed any duties or undertaken any actions which would appear to presume the outcome of the confirmation process?

No.

(c) If confirmed, will you ensure your staff complies with deadlines established for requested communications, including questions for the record in hearings?

- Yes.
 (d) Will you cooperate in providing witnesses and briefers in response to congressional requests?
 Yes.
 (e) Will those witnesses be protected from reprisal for their testimony or briefings?
 Yes.
 (f) Do you agree, if confirmed, to appear and testify upon request before this committee?
 Yes.
 (g) 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?
 Yes.

[The nominee responded to the questions in Parts B–F of the committee questionnaire. The text of the questionnaire is set forth in the Appendix to this volume. The nominee’s answers to Parts B–F are contained in the committee’s executive files.]

SIGNATURE AND DATE

I hereby state that I have read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

SUSAN J. RABERN.

This 18th day of July, 2013.

[The nomination of Dr. Susan J. Rabern was reported to the Senate by Chairman Levin on July 30, 2013, with the recommendation that the nomination be confirmed. The nomination was confirmed by the Senate on August 1, 2013.]

[Prepared questions submitted to Mr. Dennis V. McGinn by Chairman Levin prior to the hearing with answers supplied follow:]

QUESTIONS AND RESPONSES

DEFENSE REFORMS

Question. The Goldwater-Nichols Department of Defense Reorganization Act of 1986 and the Special Operations reforms have strengthened the warfighting readiness of our Armed Forces. They have enhanced civilian control and clearly delineated the operational chain of command and the responsibilities and authorities of the combatant commanders, and the role of the Chairman of the Joint Chiefs of Staff. They have also clarified the responsibility of the Military Departments to recruit, organize, train, equip, and maintain forces for assignment to the combatant commanders.

Do you see the need for modifications of any Goldwater-Nichols Act provisions?
 Answer. I believe the Goldwater-Nichols defense reforms have been very effective, and I am not aware of the need for any modifications.

Question. If so, what areas do you believe might be appropriate to address in these modifications?

Answer. I am not aware of the need for any modifications to Goldwater-Nichols, but if confirmed, I will work with the Secretary of the Navy and Under Secretary of the Navy on any proposed changes that pertain to Navy energy, installations or the environment.

DUTIES

Question. What is your understanding of the duties and functions of the Assistant Secretary of the Navy for Energy, Installations, and Environment?

Answer. The Assistant Secretary of the Navy (Energy, Installations, and Environment) formulates policy and procedures for the effective management of the Navy and Marine Corps energy programs, real property, housing and other facilities; envi-

ronmental protection ashore and afloat; and, safety and occupational health for both military and civilian personnel. This position is also responsible for the timely completion of closures and realignments of installations under base closure laws.

Question. What background and experience do you possess that you believe qualifies you to perform these duties?

Answer. During my 35-year career with the U.S. Navy I served as a naval aviator, test pilot, aircraft carrier commanding officer, and national security strategist. My capstone assignment with the Navy was as Deputy Chief of Naval Operations for Warfare Requirements and Programs at the Pentagon, where I oversaw the development of future U.S. Navy capabilities. In my previous operational leadership roles, I commanded the U.S. Third Fleet.

In my civilian career I have served as co-chairman of the Center for Naval Analyses (CNA) Military Advisory Board advising policy makers on the nexus of energy and national security, and as an international security senior fellow at the Rocky Mountain Institute. I served on the Steering Committee of the Energy Future Coalition, as a member of the United States Energy Security Council, and as a member of the Bipartisan Policy Center Energy Board. I previously worked with Battelle Memorial Institute, where I was a corporate officer and led the energy, transportation, and environment division. While serving as the CEO and President of the American Council On Renewable Energy (ACORE), I led the advancement of the organization's mission of building a secure and prosperous America with clean, renewable energy.

Question. Do you believe that there are actions you need to take to enhance your ability to perform the duties of the Assistant Secretary of the Navy for Energy, Installations, and Environment?

Answer. I am confident that there is much that I can do to enhance my abilities to perform the duties of the Assistant Secretary of the Navy (Energy, Installations and Environment). If confirmed, I will seek to learn more about the individual programs and facilities within my purview, as well as the different requirements associated with military construction. Using my significant managerial experience, I would expect to parlay the expertise and views of those within the Department of the Navy, as well as those of the Secretary of Defense and the other military departments, to develop efficient and effective policies for the Department's use of our installations and the environment. If confirmed, I will also seek and listen to the advice and counsel of Congress, and the communities in which we operate, to find ways to be the best steward of the Department of the Navy's properties.

Question. Assuming you are confirmed, what duties and functions do you expect that the Secretary of the Navy would prescribe for you?

Answer. If confirmed, I would expect the Secretary of the Navy to prescribe the duties and functions stated above. Additionally, I would expect that the Secretary will request that I rely upon my years of operational experience to assist him in developing and implementing programs to meet the energy goals he laid out for the Department.

RELATIONSHIPS

Question. If confirmed, what would be your professional relationship with: The Secretary of the Navy.

Answer. If confirmed, I will seek to carry out the goals and priorities of the Secretary of the Navy.

Question. The Under Secretary of the Navy.

Answer. If confirmed, I will work directly with the Under Secretary and seek his counsel and guidance as I work to support his efforts to carry out the goals and priorities of the Secretary of the Navy.

Question. The Chief of Naval Operations.

Answer. If confirmed, I will provide the support that the Chief of Naval Operations requires to execute his duties and responsibilities and achieve the mission of the Navy.

Question. The Commandant of the Marine Corps.

Answer. If confirmed, I will provide the support that the Commandant requires to execute his duties and responsibilities and achieve the mission of the Marine Corps.

Question. The Deputy Under Secretary of Defense for Installations and Environment.

Answer. If confirmed, I will work with the Deputy Under Secretary of Defense for Installations and Environment to develop and execute the policies and initiatives of the President, the Secretary of Defense, and the Secretary of the Navy.

Question. The Assistant Secretary of Defense for Operational Energy Plans and Programs.

Answer. If confirmed, I will work with the Assistant Secretary of Defense for Operational Energy Plans and Programs to develop and execute the policies and initiatives of the President, the Secretary of Defense, and the Secretary of the Navy.

Question. The other Assistant Secretaries of the Navy.

Answer. If confirmed, I will work as part of the team to ensure that we present the best collaborative approach to supporting the goals and priorities of the Secretary of the Navy.

Question. The Assistant Secretaries of the Army and Air Force for Installations and Environment.

Answer. If confirmed, I will work closely with the Assistant Secretaries of the Army and Air Force for Installations and Environment to strengthen the cooperation between the Services. I will work to foster a cordial and productive working relationship with these colleagues.

Question. The General Counsel of the Navy.

Answer. If confirmed, I will work closely with the General Counsel of the Navy to ensure that the programs we execute, and the policies we develop are consistent with the law.

Question. The Judge Advocate General of the Navy.

Answer. If confirmed, I will work closely with the Judge Advocate General of the Navy to ensure that the programs we execute and the policies we develop are consistent with the areas of law contained within her purview. I would also expect to work directly with the Judge Advocate General of the Navy on areas of mutual interest.

Question. The Director of Naval Energy Policy.

Answer. If confirmed, I will work with the Director of Naval Energy Policy to identify and implement policies and practices that best support the needs of the Department of the Navy.

Question. Commander, Naval Facilities Engineering Command.

Answer. If confirmed, I will work with the Commander, Naval Facilities Engineering Command to identify and implement policies and practices that best support the needs of the Department of the Navy.

Question. Commander, Navy Installations Command.

Answer. If confirmed, I will work with the Commander, Navy Installations Command to identify and implement policies and practices that best support the needs of the Department of the Navy, our sailors, marines, and their families.

MAJOR CHALLENGES AND PROBLEMS

Question. In your view, what are the major challenges that confront the Assistant Secretary of the Navy for Energy, Installations, and Environment?

Answer. There are many significant challenges confronting the next Assistant Secretary of the Navy (Energy, Installations, and Environment). The most significant of these includes the Guam military construction projects, ensuring that the Department of the Navy has the right infrastructure at the right time for the right cost to support the country's warfighters and their families, and establishing the programs necessary to meet the Department's energy goals.

Question. Assuming you are confirmed, what plans do you have for addressing these challenges?

Answer. If confirmed, I plan to work closely with Congress, the Secretary of the Navy, the Chief of Naval Operations, the Commandant of the Marine Corps, the Deputy Under Secretary of Defense (Installations and Environment), as well as other governmental and nongovernmental organizations to devise solutions to address these challenges and maximize successful outcomes for all parties involved.

Question. What do you consider to be the most significant problems in the performance of the functions of the Assistant Secretary of the Navy for Energy, Installations, and Environment?

Answer. I am not aware of any significant problems in the performance of the functions of the Assistant Secretary of the Navy for Energy, Installations and Environment.

Question. If confirmed, what management actions and timelines would you establish to address these problems?

Answer. If confirmed, I will work closely with the Secretary and the Under Secretary of the Navy to develop a strategic plan to address significant problems that arise.

PRIORITIES

Question. If confirmed, what broad priorities would you establish in terms of issues which must be addressed by the Assistant Secretary of the Navy for Energy, Installations, and Environment?

Answer. If confirmed, I will establish priorities consistent with those of the President, the Secretary of Defense, and the Secretary of the Navy. In broad terms, I will assist the Secretary of the Navy in meeting the energy goals he laid out for the Department, work closely with Members of Congress and State and local officials and the public to remain fully transparent when considering projects and processes with environmental impacts, and seek to allocate funding to develop the right infrastructure at the right time at the right cost to support our warfighters and their families.

Question. Do you have any specific plans to help improve the quality of life for Navy and Marine Corps families who are under considerable strain as a result of repeated deployments?

Answer. Not at this time, but as a 35 year Navy veteran, I am very aware of the tremendous sacrifices made by Navy and Marine Corps families. If confirmed, I will be committed to identifying and implementing quality of life initiatives.

Question. The Assistant Secretary of the Navy for Energy, Installations, and Environment has responsibility for, among other things, enhancing energy security, construction and maintenance of installations; family housing, and environmental protection.

In the competition for resources inherent in the Defense Department budget process, how do you believe funding for these various responsibilities should be balanced?

Answer. These important programs are not mutually exclusive. Although they would certainly compete for the same limited resources, the development of these programs must be done in conjunction with each other. All of these programs must work hand-in-hand to further the strategic vision and goals of the Secretary of the Navy.

MILITARY CONSTRUCTION

Question. What would be your highest priorities, if confirmed, for allocating military construction (MILCON) funding for the Department of the Navy over the next several years?

Answer. If confirmed, I will seek to allocate funding to develop the right infrastructure at the right time at the right cost to support our warfighters and their families.

Question. Are you concerned that overseas initiatives, including the realignment of marines in the Pacific, will consume an increasing share of the Department of the Navy MILCON budget—thereby crowding out other programs such as housing and quality of life programs for sailors, marines, and their families?

Answer. Although we find ourselves in a challenging fiscal environment, I am cautiously optimistic that we will be able to meet all of these challenges and fund the right investments at the right time.

GUAM

Question. The committee remains concerned about the plans for the relocation of marines from Okinawa to other locations in the Pacific, and specifically, the affordability, sustainability and operational viability of those plans. In April of last year, the United States and Japan announced a new plan for the marines—called the “distributed laydown”—that envisions about 4,500 in Guam, about 2,500 in Australia, on a rotational basis, and some number in Hawaii. The committee’s version of the National Defense Authorization Act for Fiscal Year 2014 would continue a prohibition on the use of U.S. or Japanese funds to implement the realignment of Marine Corps forces from Okinawa until several conditions, including the development of a master plan for the laydown of marines in Guam and Hawaii, are met.

What is your understanding of the status of the Department of the Navy’s plans for the realignment of Marine Corps forces from Okinawa?

Answer. I have not had an opportunity to develop a thorough understanding of the issues associated with the relocation of marines and their families from Okinawa to Guam. From the information that I have seen at this point, I understand the Supplemental Environmental Impact Statement (SEIS) and associated supporting studies are being prepared and that the DON anticipates that the Draft SEIS will be formally released for public comment in early 2014 with a Record of Decision expected in early 2015.

Question. What is your understanding of the current estimated cost to implement the realignment of Marine Corps forces from Okinawa?

Answer. Although I am not familiar with the official estimates, I understand that the Department of Defense is identifying and incorporating comprehensive cost estimates as they become available upon completion of necessary environmental planning documents and the conclusion of host-nation discussions on cost-sharing.

Question. When will the Department of the Navy provide the Senate Armed Services Committee with the Guam Master Plan so that the costs and timing of construction contracts for the entire project will be totally transparent?

Answer. My understanding is that the Department will be able to provide the Guam Master Plan after the Draft SEIS is released, sometime next year.

FUTENMA AIR STATION

Question. The committee understands that Futenma Marine Corps Air Station on Okinawa will require significant investments to maintain mission capability and readiness. In fact, the marines estimate that current repair and construction demands will cost about \$180 million.

What is your understanding of the current plan to fund the nearly \$180 million in repairs and construction?

Answer. My understanding is that the Department has been working with the Government of Japan (GOJ) on a replacement facility for MCAS Futenma. In the interim, the Department is working with the GOJ to fund the repairs necessary to support operations at the base.

BASE CLOSURE AND REALIGNMENTS

Question. The Department of Defense has requested another Base Realignment and Closure (BRAC) round.

Do you believe another BRAC round is necessary? If so, why?

Answer. I believe it is prudent to objectively assess our shore assets and make informed decisions about potentially excess infrastructure. A new assessment would allow the Department to take into account changes to the shore/platform interfaces as our weapons systems capabilities, testing, and how we employ them have evolved over time.

Question. If Congress were to authorize a another BRAC round, what is your understanding of the responsibilities of the Assistant Secretary of the Navy for Energy, Installations, and Environment in formulating BRAC recommendations and implementing the decisions of the BRAC Commission?

Answer. If confirmed, I will serve as the Department of the Navy's primary senior leader charged with meeting our BRAC responsibilities. Accordingly, I will work closely with Congress, the Secretary of the Navy, the Chief of Naval Operations, the Commandant of the Marine Corps, the Deputy Under Secretary of Defense (Installations and Environment), as well as other governmental and nongovernmental organizations as appropriate in order to execute these statutory requirements.

Question. If confirmed and if Congress were to authorize another BRAC round, how would you go about setting priorities for infrastructure reduction and consolidation within the Department of the Navy?

Answer. If confirmed and Congress were to authorize a BRAC, I would first seek to gain a thorough understanding of the extent of the Department's footprint ashore and how it supports the warfighter. I would then ensure we have the necessary tools and resources to evaluate what exists in terms of military value. I would also work with my counterparts in the other Services for opportunities to consolidate or collocate functions, where it makes sense.

Question. If confirmed and if Congress were to authorize another BRAC round, what is your understanding of the responsibilities of the Assistant Secretary of the Navy for Energy, Installations, and Environment in working with local communities with respect to property disposal?

Answer. I believe that the Department of the Navy is responsible for working with local communities to ensure an orderly and transparent transition from public ownership to private ownership.

Question. It has been noted repeatedly that the 2005 BRAC round resulted in major and unanticipated implementation costs and saved far less money than originally estimated.

What is your understanding of why such cost growth and lower realized savings have occurred?

Answer. I am not familiar with the events leading cost growth in implementing BRAC 2005.

Question. How do you believe such issues could be addressed in a future BRAC round?

Answer. If confirmed, I would ensure that the program is implemented with management controls in place to help curtail excessive cost growth.

OVERSEAS FACILITIES

Question. Do you believe the Department of the Navy currently maintains excess infrastructure overseas? If so, how would you seek to address this issue?

Answer. I have not had an opportunity to study Navy overseas force structure, however, if confirmed I will work with the Secretary of the Navy, the Chief of Naval Operations, and the Commandant to make sure Navy infrastructure is aligned with force structure to support naval operations.

IN-KIND MILITARY CONSTRUCTION

Question. The committee released a report on April 15, 2013, titled "Inquiry into U.S. Costs and Allied Contributions to Support the U.S. Military Presence Overseas." Among other things, the committee's inquiry found that in-kind payments from Germany, South Korea, and Japan have been used to fund questionable military construction projects. The committee's version of the National Defense Authorization Act for Fiscal Year 2014 includes a provision (section 2801) that would require that future military construction projects funded using in-kind payments pursuant to bilateral agreements with partner nations be submitted for congressional authorization in the Military Construction Authorization Act.

If confirmed, how would you ensure that in-kind payments are utilized only for identified U.S. priorities to offset costs that the Department of the Navy would otherwise pay with appropriated funds?

Answer. I do not have a complete understanding of this method of funding within the Navy but I have reviewed sections of the report mentioned in this question and I understand the issue and concerns. If confirmed, I will make certain I will work with the Assistant Secretary of the Navy (Financial Management and Comptroller) and others within the Department to respond to this question more completely.

INVESTMENT IN INFRASTRUCTURE

Question. Witnesses appearing before the committee in the past have testified that the military services under-invest in both the maintenance and recapitalization of facilities and infrastructure compared to private industry standards. Decades of under-investment in DOD installations has led to substantial backlogs of facility maintenance activities, created substandard living and working conditions, and made it harder to take advantage of new technologies that could increase productivity.

If confirmed, what recommendations would you have for restoring and preserving the quality of our infrastructure?

Answer. If confirmed, I will closely examine the way the Navy manages inventory and will work with the Secretary of the Navy, the Chief of Naval Operations, and the Commandant to make sure our infrastructure supports the warfighter.

Question. This underinvestment in infrastructure is particularly acute in naval shipyard facilities. According to the Navy's shipyard modernization plan, it will take 17 years and \$3.4 billion to clear the maintenance and infrastructure repair backlog.

If confirmed, how do you plan on addressing this shortfall?

Answer. Materiel readiness is a key enabler to maintaining freedom of the seas. I'm also aware of the fiscal challenges facing the Department. If confirmed, I will advocate for and work with the Chief of Naval Operations and the Assistant Secretary of the Navy (Research, Development, and Acquisition) to ensure that whatever funding may be available for shore infrastructure, including shipyards and depots, is allocated appropriately to meet mission critical needs.

Question. How do you believe the difficult budget environment will affect the Navy's shipyard modernization efforts going forward in light of other competing priorities?

Answer. I believe the current fiscal environment will present significant challenges across the entire Department. When faced with reduced resources, any organization, whether a business or a household, must assess its short- and long-term objectives and make prudent expenditures and investments accordingly. I believe the same holds true for the Department of the Navy. If confirmed, I will look forward to meeting the challenge of balancing the Department's infrastructure investments across a broad array of requirements.

ENHANCED USE LEASES

Question. Congress has provided the authority for each of the Service Secretaries to lease underutilized non-excess property and to use revenues generated by those leases to enhance infrastructure and operating costs on those installations. This so-called "enhanced use lease" (EUL) authority is being used in different ways and for different purposes by each of the military departments.

What is your understanding of the EUL authority?

Answer. My understanding is that the enhanced use lease authority is a valuable tool in the Department's infrastructure management toolbox. My understanding is that the Navy can use this authority to partner with industry and the outside community to maximize the use of Department property.

Question. What do you see as the future of the Department of the Navy's EUL program?

Answer. I understand that there are several promising EUL opportunities that the Department of the Navy is currently examining.

Question. What Navy and Marine Corps EUL projects do you see as most viable in the near term?

Answer. Because I am not aware of all the current projects or those projects being considered, I could not identify the most viable in the near term. If confirmed, I will examine all of our projects more fully before making such an assessment.

Question. If confirmed, what would be your priorities for the Department of the Navy's EUL program?

Answer. I do not have a sufficient level of understanding to identify priorities at this time. If confirmed, I will examine all of our projects more fully and discuss with Navy stakeholders before making such an assessment.

Question. If confirmed, would you consider the authority to provide support to energy initiatives?

Answer. If confirmed, I will utilize the EUL program to ensure our warfighters and their families have the highest quality environment in which to live and work and that the Department's real estate is put to the highest valued uses.

Question. The Congressional Budget Office has expressed concern that EUL authority could be used to acquire expensive facilities through long-term leases that commit the Department of Defense to make payments (rather than receiving payments) over an extended period of time.

Do you believe that it would be appropriate to use EUL authority to commit future-years Department of Defense funds for long-term projects to acquire facilities that have not received approval through the normal budgeting process?

Answer. I have not yet had an opportunity to study this issue, but if confirmed, I certainly will do so.

Question. If confirmed, how would you address proposals to use EUL authority in this manner?

Answer. Since I have not had an opportunity to study this issue, I do not know how I would address such proposals if confirmed.

BASE OPERATING SUPPORT

Question. What is your understanding of the base operating support requirements of the Department of the Navy and Marine Corps?

Answer. My understanding is that Base Operating Support (BOS) requirements of the Department of the Navy are critical to the overall mission readiness of our Navy and Marine Corps. BOS funding finances shore activities that support ship, aviation, combat operations, critical training, facilities infrastructure maintenance, public safety, and family programs for both Active and Reserve components.

Question. In your view, is the Department of the Navy receiving adequate funding for base operating support?

Answer. I have not had an opportunity to review BOS funding in detail, but if confirmed, I will closely examine funding levels to ensure the highest quality living and working conditions for our sailors, marines, and their families.

Question. How might the Department of the Navy distribute base operating funds to best ensure sound investment of constrained resources?

Answer. If confirmed, I am committed to learning the methods and processes in place across the Department to guide investment decisions and distribution of resources.

FAMILY HOUSING AND PRIVATIZATION

Question. In recent years, the Department of Defense and Congress have taken significant steps to improve family housing. The housing privatization program was

created as an alternative approach to speed the improvement of military family housing and relieve base commanders of the burden of managing family housing. If confirmed for the position of Assistant Secretary of the Navy for Energy, Installations, and Environment you will have a key role in decisions regarding military family housing.

What are your impressions of the overall quality and sufficiency of Navy and Marine Corps family housing both in the United States and abroad?

Answer. My understanding is that major improvements have been made to the overall of the quality and sufficiency of family housing inventory, both domestically and overseas.

Question. What are your views regarding the privatization of family housing?

Answer. I believe the use of the housing privatization authorities was an important and necessary tool to revitalize a large inventory of homes in a relatively short period of time.

Question. What is your view of the structure and general goals of the Department of the Navy's current housing privatization program?

Answer. I believe the structure and general goals of the Department's housing privatization program are sound.

Question. Do you believe the housing program should be modified in any way? If so, how?

Answer. I have not had an opportunity to review the housing program in detail to determine if it should be modified in any way, but if confirmed, I will closely examine it to ensure the highest quality living and working conditions for our sailors, marines, and their families.

ENVIRONMENTAL RESTORATION

Question. The Department of the Navy's environmental restoration budget remains a significant part of the Navy's overall environmental program budget.

What do you see as the main priorities for clean-up within the Department of the Navy program?

Answer. The Department of the Navy's priorities for clean-up are established by the Deputy Under Secretary of Defense (Installations and Environment), and, if confirmed, I will work closely with the Deputy Under Secretary to ensure that those priorities are implemented.

Question. What will you do to ensure that adequate funding is requested and received so that clean-ups under the Installation Restoration Program and under the Military Munitions Remediation Program continue apace?

Answer. If confirmed, I will ensure that I fully understand the clean-up priorities, as established by the Secretary of the Navy, and will work with the Secretary, as well as Members of Congress, to ensure that adequate funding for clean-up is both requested and received.

PAST WATER CONTAMINATION AT CAMP LEJEUNE

Question. For more than 12 years, the Department of the Navy has been trying to understand and resolve issues associated with past water contamination suspected at Camp Lejeune in North Carolina. However, aspects of this matter remain unresolved, including the nature and extent of various scientific studies into the potential human exposure.

If confirmed, what will you do to help ensure that all reasonable actions are taken to resolve this matter as expeditiously as possible?

Answer. The Department of the Navy is committed to ensuring the health and safety of all its personnel—both past and present. I know that the Department has commissioned numerous scientific studies to inquire into a possible connection between past water contamination at Camp Lejeune and health issues of personnel who served there. I have not, however, been made privy to their results. If confirmed, I will ensure that the Department, using the information from these studies, acts promptly and in accordance with all applicable laws to resolve this important matter.

ENCROACHMENT ON MILITARY INSTALLATIONS

Question. Encroachment by commercial and residential development on military installations can negatively impact Navy and Marine Corps operations at military airfields, training ranges, and the development of new facilities.

What do you see as the main constraints on the Department of the Navy's ability to use its facilities, including training ranges?

Answer. I am not aware of any specific constraints on the Department of the Navy's ability to use its facilities. I believe that the Department has completed or

is completing environmental impact statements for its training ranges, and that these ranges are operated in accordance with the results.

Question. If confirmed, what policies or steps would you take to balance the trade-off between energy development and the impact on operations and training?

Answer. I believe that military operations and energy development are not mutually exclusive. If confirmed, I would work closely with Federal, State, and local governments as well as the energy developers to meet the needs of the Department while enabling access to new sources of energy.

Question. How can the Department of the Navy address the issues of encroachment around its bases in the United States, particularly with respect to encroachment caused by residential development?

Answer. I believe the Department of the Navy must take a two-pronged approach to addressing issues of encroachment around its bases. First, it is important to communicate concerns with local communities. Second, where appropriate, the Department should seek additional land surrounding its bases.

Question. One significant issue for the Navy has been the potential interference to aircraft radars of wind farms installed around military installations and ranges.

Given your qualifications, including as a former naval aviator, what would you propose as objectives and goals to address this issue?

Answer. As a naval aviator, I know that while wind turbines can physically interfere with aircraft operations and military training routes, that problem is a merely matter of proper siting. The much more difficult issue is the electromagnetic interference caused wind turbines which can impact radars many miles away. I'm aware the Department of Defense has created a body to assess the impact of these projects and if confirmed I will work to ensure we can reap the benefits from alternative energy development without impacting training and operations.

Question. What is your understanding of the Navy's ability to receive information and plans from potential developers in a timely and effective manner?

Answer. I believe the Department of Defense has established procedures to assess the impact of these proposed projects and that while the process is still fairly new and developing, it does afford an opportunity for the Navy to review these plans. If confirmed, I would work to ensure this system continues to improve.

PENDING LAND WITHDRAWAL REQUESTS

Question. As part of the President's budget request for fiscal year 2014, the Department of Defense has requested legislation for a number of land withdrawals, including the reauthorization of the land withdrawals at the Chocolate Mountains and at China Lake, as well a land withdrawal to support an expansion at the Marine Corps base at Twentynine Palms.

What is your understanding of these requests and why are each of these withdrawals important to the Department of Navy missions and capabilities?

Answer. My general understanding is that the Department of Defense seeks to control only the minimum amount of property necessary to meet the military requirement. From my experience, I know the Chocolate Mountain range, the test center at China Lake and the Marine Corps base at Twentynine Palms are key DON installations.

ENERGY POLICY

Question. If confirmed, what would your responsibilities be for setting and implementing energy policy within the Department?

Answer. If confirmed, my responsibilities would be to support the Secretary's Navy Energy Office and work towards meeting the Secretary's shore and operational energy goals.

Question. Do you support the Department of Defense policy on alternative fuels released in July 2012 that the Department of Defense will not make bulk purchases of alternative drop-in replacement fuels unless they are cost competitive with petroleum products?

Answer. Yes, I support the DOD policy to only make bulk purchases of alternative drop-in fuels that are cost competitive with conventional fuel.

Question. In your view, how does the bulk use of alternative drop-in replacement fuels improve the military capabilities of the fleet?

Answer. In addition to reducing reliance on foreign sources of energy, "drop-in" fuels would not require any infrastructure or operational changes to bring on line.

Question. Given recent forecasts about oil production in the United States over the next 30 years, what do you see as the national security implications, if any, of a dependence on fossil fuels?

Answer. Fossil fuels, whether imported or domestically produced, are subject to price volatility and uncertainty of supply. Deriving fuels from other than petroleum sources adds to the supply and helps mitigate fluctuating prices.

Question. In your opinion, are the statutory and regulatory goals for the Department of the Navy regarding the use of renewable energy and alternative fuels realistic and achievable?

Answer. I have not yet had an opportunity to study this issue, but if confirmed, I will review the Department's progress towards meeting the statutory and regulatory goals regarding the use of renewable energy and alternative fuels. If confirmed, it is my intention to meet these goals unless otherwise directed.

Question. What is your view of the adequacy of Department of the Navy funding to meet statutory and regulatory energy conservation goals?

Answer. At this point, I do not have in-depth knowledge of the Department's budget, but I am aware of the significant fiscal challenges it faces. If confirmed, I will advocate for and work with the Secretary of the Navy, the CNO, the Commandant, the General Counsel, and the Judge Advocate General, to ensure statutory and regulatory conservation goals are met.

Question. Do you believe that significant additional funding will be needed in future years to meet such goals?

Answer. At this point, I do not have in-depth knowledge of the Department's budget, but I am aware of the significant fiscal challenges it faces. Further, energy security directly enhances national security. If confirmed, I will advocate for and work with the Secretary of the Navy, the CNO and the Commandant to ensure the continued support of the Department's energy goals while meeting the needs of the warfighter.

Question. If confirmed, what energy goals and policies will you promote for the Department of the Navy for investments and initiatives that provide direct and tangible benefit to the warfighter or less cost for the Department?

Answer. If confirmed, I will establish priorities consistent with those of the President, the Secretary of Defense, and the Secretary of the Navy. In broad terms, I will assist the Secretary of the Navy in meeting the energy goals laid out for the Department in 2009. I will promote energy policies that provide energy security for fleet and shore units, enable additional combat capability for operational forces, and leverage opportunities to reduce the energy cost of operating shore infrastructure.

IMPLICATIONS OF CLIMATE CHANGE

Question. What do you see as the national security implications of climate change, if any, for the United States?

Answer. Climate change will affect food production and living conditions to varying degrees worldwide. Rising sea levels will impact coastal communities as well as critical Navy infrastructure located in these communities.

Question. What do you believe will be the impact of climate change, if any, on the Navy and Marine Corps mission?

Answer. I believe the Navy and Marine Corps mission will remain the same however, we will need to enhance Navy capabilities to operate in Arctic waters, including weather and sea-condition forecasting. There is also likely to be a growing number of requests for help responding to natural disasters, food shortages, and government instability caused by climate change.

DEPARTMENT OF THE NAVY LABORATORY AND TEST CENTER RECAPITALIZATION

Question. There has been concern over the adequacy of recapitalization rates of the Department's laboratory facilities and test centers. Historically, Navy technical centers, laboratories and test centers do not appear to have fared well in the internal Navy competition for limited military construction and facility sustainment funds.

What metrics would you use to assess the amount of investment in the recapitalization of Navy technical centers, laboratories and test centers to determine its adequacy?

Answer. I have not had an opportunity to assess the amount of investment required, but if confirmed, I will closely examine the issue and work with the Assistant Secretary of the Navy (Research, Development, and Acquisition) (ASN (RD&A)) to determine the appropriate metrics to use.

Question. If confirmed, how would you work with ASN (RD&A) and other stakeholders to properly recapitalize the Navy's technical centers, laboratories and test centers?

Answer. If confirmed, I will work directly with the Assistant Secretary of the Navy (Research, Development, and Acquisition) to gain a better understanding of

the requirement and with the Assistant Secretary of the Navy (Financial Management and Comptroller) to ascertain what are the available financing mechanisms and constraints.

SECTION 2808 AUTHORITY

Question. Section 2808 of title 10, U.S.C., allows the Secretary of Defense, in the event of a declaration of war or national emergency, to undertake military construction projects supporting the use of Armed Forces with otherwise unobligated military construction funds.

What is your assessment of this authority?

Answer. I believe this authority is vital to provide construction projects necessary under a national emergency or declaration of war.

Question. From a policy standpoint, what restrictions do you believe are appropriate for the use of this authority?

Answer. I am not fully versed in the policy regarding this statute. If confirmed, I will ensure the Department is executing any projects under this statute in accordance with applicable guidance.

Question. Do you believe it is appropriate to use this authority outside theaters of armed conflict? If so, in what instances?

Answer. I believe the statute is necessary to allow the department flexibility in executing urgent construction projects in the event of a declaration of war or national emergency. I have not had an opportunity to study it in detail and cannot today provide an example of a hypothetical situation.

CONGRESSIONAL OVERSIGHT

Question. In order to exercise its legislative and oversight responsibilities, it is important that this committee and other appropriate committees of Congress are able to receive testimony, briefings, and other communications of information.

Do you agree, if confirmed for this high position, to appear before this committee and other appropriate committees of Congress?

Answer. Yes.

Question. Do you agree, if confirmed, to appear before this committee, or designated members of this committee, and provide information, subject to appropriate and necessary security protection, with respect to your responsibilities as the Assistant Secretary of the Navy for Energy, Installations, and Environment?

Answer. Yes.

Question. Do you agree to ensure that testimony, briefings and other communications of information are provided to this committee and its staff and other appropriate committees?

Answer. Yes.

Question. 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 of any good faith delay or denial in providing such documents?

Answer. Yes.

[Questions for the record with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR JOE MANCHIN III

SUGAR GROVE

1. Senator MANCHIN. Mr. McGinn, I wanted to talk about Sugar Grove—a Navy base in West Virginia. This is a world-class facility that has contributed immensely to our national security, especially in the last decade during the war on terror. But, the mission is changing there. Sugar Grove is not going away, it's just going to have a different mission. We have been working with the Navy, and the community, and other governmental agencies, to find a new tenant and a new mission. Could you give me an update on how that process is going? Is there anything we can do to help move the process along?

Mr. MCGINN. I understand that the Navy is the installation host to another Government agency which has plans to leave the installation in a few years and that the Navy is currently looking for an alternative use for the installation after the NSA departs in a few years. I don't know what point in the process the Navy has reached, but if confirmed, I will ensure the Navy proceeds without undue delay and that I will keep you updated of any progress.

NAVY BIOFUELS

2. Senator MANCHIN. Mr. McGinn, the Navy has been pushing for greater usage of biofuels to cut its dependence on foreign oil. But, a RAND report published in 2011 raised serious questions regarding the ability to produce biofuels at a large enough scale to make a positive impact to military operations. However, that report did identify the production of fuel from a combination of biomass and coal as a near-term pathway to low-greenhouse gas, affordable fuels that can be produced at a large scale. Have you read that RAND report?

Mr. MCGINN. Yes, I have read the report and am familiar with the assertions stated therein.

3. Senator MANCHIN. Mr. McGinn, please comment on whether you will pursue near-term pathways such as coal and biomass-to-liquids technologies with real, near-term benefits.

Mr. MCGINN. It is my understanding that the Military Departments are testing and certifying pathways that will serve as a drop-in replacement for liquid fuels on our operational platforms. I am not aware of each pathway that has been tested and certified for use but would support all pathways that meet technical and legal standards.

 QUESTION SUBMITTED BY SENATOR TIM KAINE

NAVY LABORATORY AND TEST CENTER RECAPITALIZATION

4. Senator KAINE. Mr. McGinn, historically, Navy technical centers, laboratories, and test centers do not appear to have fared well in the internal Navy competition for limited military construction and facility sustainment funds. These centers and laboratories are crucial to developing the next generation of capabilities for the warfighter and the quality of research facilities influences the ability of the Navy to attract the best scientists and engineers. DOD is increasingly in competition with the private sector for the best and brightest. If confirmed, what will you do to adequately resource the Navy's laboratories and technical and test centers?

Mr. MCGINN. I agree that the Navy's laboratories and technical test centers are a crucial component of developing our future capability and readiness. The current fiscal environment will present significant investment challenges across the entire Department. If confirmed, I look forward to meeting the challenge of balancing the Department's infrastructure investments across a broad array of requirements, including laboratories and test centers.

 QUESTIONS SUBMITTED BY SENATOR JAMES M. INHOFE

PRIORITIES

5. Senator INHOFE. Mr. McGinn, in October 2009, before the Environmental and Public Works Subcommittee, you testified: "[Climate change] will magnify existing tensions in critical regions, overwhelm fragile political, economic and social structures, causing them to fracture and fail. The predictable result: much greater frequency and intensity of regional conflict and direct threats to our United States' interests and national security. . . . The science community has clear consensus in concluding that human activities are the most significant cause of climate change." Do you still believe this?

Mr. MCGINN. Yes, I do.

6. Senator INHOFE. Mr. McGinn, you also testified: "But unlike what many believe—it is not just foreign oil that jeopardizes our energy security. It is all oil. We simply do not have enough sustainable oil resources in this country to free us from the stranglehold of those who do . . . we will never have enough domestic supply to meet our need for this fuel so we must deliberately and effectively wean ourselves from it." Do you still believe this?

Mr. MCGINN. Yes, I continue to be concerned about our energy security and the global oil market, even with the welcome and positive projections of greatly increased domestic production to occur over the next 10 to 15 years. As a part of the global oil market, I believe it is in our national interest to minimize our vulnerability to supply interruptions and price spikes due to geo-political events, terrorism and natural disasters, in part by diversifying our sources of transportation energy.

7. Senator INHOFE. Mr. McGinn, do you plan to formulate policies for the Navy to address these beliefs?

Mr. MCGINN. If confirmed, my formulation of energy policies for the Department of Navy will be guided by the policies of the President, the Secretary of Defense, and the Secretary of the Navy. I will apply my very best judgment to determine how best to balance the investment of available resources to achieve the best outcomes for both near term mission readiness and future readiness and capabilities.

8. Senator INHOFE. Mr. McGinn, what changes would you propose to Department of the Navy programs?

Mr. MCGINN. If confirmed, I will take a deliberate and collaborative cost, benefit and risk analysis approach to determine whether changes to Navy programs are necessary.

RESPONSIBILITY FOR NATIONAL ENERGY POLICY

9. Senator INHOFE. Mr. McGinn, which Federal agency, the Department of Energy (DOE) or DOD, is responsible for developing and promoting a national energy policy?

Mr. MCGINN. It is my understanding that the President establishes national energy policies which are then executed by multiple parts of the administration. I believe that a sound energy policy incorporates energy security and that both DOD and DOE have key roles to play as defined in several inter-agency agreements.

10. Senator INHOFE. Mr. McGinn, in your opinion, given the devastating impact of sequestration occurring now to the readiness and capabilities of the Armed Forces, why should DOD be the primary source of funds and leadership for the construction of a commercial biofuels refinery?

Mr. MCGINN. A declining defense budget coupled with the elevated petroleum prices is the primary reason that DOD, the single largest consumer of fossil fuel in the Federal Government, is interested in accelerating the establishment of a domestic biofuels industry. It is my understanding that the agreement signed by the U.S. Department of Agriculture, the Department of Energy, and the Department of the Navy in 2011 to stand up a commercial scale, domestic biofuels industry that will produce drop-in alternative fuels at a price competitive with petroleum calls for equal contributions from each department. This investment figure will then be matched by private industry investment.

VIEWS ON NATIONAL SECURITY

11. Senator INHOFE. Mr. McGinn, given the range of national security threats facing this Nation, how would you rank the threat of climate change?

Mr. MCGINN. I consider climate change to be a threat to our national security. It is one of many threats that our Navy and Marine Corps will confront and, in many ways, has the potential to act as a threat multiplier for instability, serving in some cases to augment and accelerate the underlying causes of conflict.

12. Senator INHOFE. Mr. McGinn, how would you rank the threat of our Nation's dependence on fossil fuels?

Mr. MCGINN. I consider the Department of the Navy's reliance on petroleum products to fuel our ships and aircraft as a supply vulnerability. Despite the very good news about increasing U.S. production of natural gas and petroleum, I am concerned by the increase in global demand, rising prices and potential supply disruptions. I support the Secretary of the Navy's efforts to lessen this vulnerability by increasing the energy efficiency of training and operations and the supply of domestically produced alternative fuels.

13. Senator INHOFE. Mr. McGinn, are you familiar with the President's Defense Strategic Guidance released in January 2012? (Sustaining U.S. Global Leadership: Priorities for 21st Century Defense)

Mr. MCGINN. Yes, I am familiar with this guidance.

14. Senator INHOFE. Mr. McGinn, how many additional hours will have to be dedicated to bring all these units and its aircrews back up to mission ready status?

Mr. MCGINN. While I understand that sequestration and Continuing Resolutions have had a significant negative impact on the Department's mission readiness, I have not had the opportunity to develop a thorough understanding of those effects

and, if confirmed, will study this critical readiness issue and work to help alleviate it.

15. Senator INHOFE. Mr. McGinn, how much will that cost?

Mr. MCGINN. I am not familiar with the official costs and, if confirmed, will work diligently with the operators in the Navy and Marine Corps to determine priority investments for the Department.

16. Senator INHOFE. Mr. McGinn, do you know what it says about the national security implications of climate change, energy independence, and a domestic reliance on fossil fuels?

Mr. MCGINN. While the Defense Strategic Guidance does not directly address the security implications of climate change, energy independence and domestic reliance on fossil fuels, it does address the need to maintain an adequate industrial base and our investment in science and technology as these do contribute to our overall security posture.

17. Senator INHOFE. Mr. McGinn, if confirmed, would you be committed to promoting the core defense priorities for the Department of the Navy in support of the Defense Strategic Guidance?

Mr. MCGINN. If confirmed, I will support the priorities of the President, the Secretary of Defense, and the Secretary of the Navy as expressed in multiple defense policy and guidance documents.

SUPPOSED MILITARY CAPABILITIES OF THE GREEN FLEET

18. Senator INHOFE. Mr. McGinn, the committee specifically asked you in advance for your view, given your impressive Navy career and military expertise, how the bulk use of alternative drop-in replacement fuels improves the military capabilities of the fleet. You responded: "In addition to reducing reliance on foreign sources of energy, 'drop-in' fuels would not require any infrastructure or operational changes to bring on line."

How exactly does your answer translate into an enhanced or improved military capability for Navy ships, planes and submarines?

Mr. MCGINN. Liquid alternative fuels are not being considered as a drop-in replacement for our nuclear-powered submarine fleet. However, for our ships, vehicles and aircraft, a drop-in alternative fuel will provide strategic and operational benefits by providing commanders with additional refueling resources to help dampen the volatility of fossil fuel prices that now strain our operational readiness budgets.

19. Senator INHOFE. Mr. McGinn, in your view, should Navy investments in alternative fuels be justified with the same rationale that led the Navy to invest billions in the development of nuclear powered ships?

Mr. MCGINN. While I fully support the Department's efforts to invest in alternative liquid fuel supplies, especially from multiple feedstocks, I do not believe the costs of that investment will be on the same scale, nor for the same strategic rationale, as past investments in nuclear energy.

THE FALLACY OF FUEL PRICE VOLATILITY

20. Senator INHOFE. Mr. McGinn, you responded to an advance policy question about the national security implications of a dependence on fossil fuels by noting that, "Fossil fuels, whether imported or domestically produced, are subject to price volatility and uncertainty of supply. Deriving fuels from other than petroleum sources adds to the supply and helps mitigate fluctuating prices." Given the fact that the use of ethanol over the last 15 years has not affected the volatility of petroleum prices, what analysis do you have that supports your assertion?

Mr. MCGINN. The use of ethanol for transportation fuel in the United States has played an important role in accounting for about 10 percent of our domestic gasoline supply mix. Incorporating ethanol in our gasoline supply acts as a useful blending component and expands supply diversity. Diversity of supply helps to cushion our exposure to the price fluctuations and volatility driven by the dynamics of a global market.

21. Senator INHOFE. Mr. McGinn, to what degree of confidence do you have that DOD investments in the development of alternative fuels will directly result in a reduction in the volatility of petroleum prices?

Mr. MCGINN. I am confident that our investments in alternative fuels will increase the overall supply and diversity of liquid fuel products suitable for use in our ships, vehicles and aircraft, and thereby helping to cushion our exposure to the price fluctuations and volatility driven by the dynamics of a global market.

22. Senator INHOFE. Mr. McGinn, do you assume that a demand for alternative fuels will not result in the same type of price volatility?

Mr. MCGINN. I believe that the price of every commodity can rise and fall in response to supply and demand. As a major consumer of liquid fuel vital to our national security, DOD would greatly benefit from a competitive, domestic renewable fuel industry capable of broadening the fuel supply base by using multiple feedstocks.

PENDING LAND WITHDRAWAL REQUESTS

23. Senator INHOFE. Mr. McGinn, one of the top priorities for the Department of the Navy this year is to renew or initiate a series of land withdrawals for ranges supporting the Navy and Marine Corps, including the expansion of the combat center range Marine Corps Base, Twentynine Palms, CA. Can you provide for the record your personal assessment of the need for these withdrawals?

Mr. MCGINN. As a Naval Aviator with 35 years of active service and command experience at the squadron, carrier, and fleet level, I understand the critical need to conduct realistic, coordinated live fire training and to train like we fight. I cannot overstate the importance of renewing the land withdrawals at the Chocolate Mountain range and the test center at China Lake, as well as expanding the combat center range at Marine Corps Base, Twentynine Palms. These three training and testing installations are vital to maintaining our current readiness and to ensuring we are ready to fight and win our Nation's wars.

GUAM

24. Senator INHOFE. Mr. McGinn, on the issue of billions of dollars planned for investment on Guam, do you support this committee's position that U.S. or Japanese funds should not be spent until we have a clear and detailed assessment of the plans and costs for the laydown of marines in Guam and Hawaii?

Mr. MCGINN. The realignment of marines to Guam is the right strategic move to support the United States posture in the Pacific. A construction effort of this size will take over 10 years to complete. While it is prudent to understand the entire plan and costs, I believe it makes sense to start now on projects for which all required environmental planning is complete, in order to prepare for a larger construction surge when the final planning and environmental studies are complete. Starting some of these projects will reinforce our commitment to allies in the region and will help facilitate our negotiations with the Government of Japan on continued funding for the realignment.

QUESTIONS SUBMITTED BY SENATOR KELLY AYOTTE

INSTALLATION MAINTENANCE

25. Senator AYOTTE. Mr. McGinn, there has been a significant impact on facility sustainment because of sequestration and an additional cut of \$53 billion in fiscal year 2014 will further degrade important facilities. Deferred facility repairs are not savings, but an assumption of greater risk that contributes to lower military readiness. How will you recover deferred repairs at critical facilities accumulated in 2013?

Mr. MCGINN. I understand that facility sustainment accounts were hit hard due to sequestration in fiscal year 2013. I agree that deferred facility maintenance comes with risk of higher repair bills in the future. To recover from deferred repairs, the Navy will have to be prudent when deciding how to expend diminishing resources to strike the right balance between operational requirements and risk to our shore infrastructure.

26. Senator AYOTTE. Mr. McGinn, can you describe specific impacts to installations, environment, and energy programs if sequestration continues into 2014?

Mr. MCGINN. If sequestration continues into 2014, I expect there will be similar reductions in funding for facility sustainment and base operations and support accounts. These continued reductions would have a compounding impact on the state

of our facilities. At this time, I cannot describe any specific cuts or impacts. If confirmed, one of my highest priorities will be to understand the impacts of sequestration on the entire energy, installations, and environment portfolio and to ensure we are evaluating every investment to balance current and future readiness with risk to our shore infrastructure.

NAVY FACILITY BACKLOG

27. Senator AYOTTE. Mr. McGinn, in April, the Navy submitted an investment plan for the modernization of Naval Shipyards required by the National Defense Authorization Act for Fiscal Year 2012. The report indicated that the overall condition of the infrastructure is below the Navy average, and there is a \$3.5 billion maintenance backlog associated with infrastructure, which includes \$1.2 billion in deficiencies at mission essential facilities. The report also stated that the Navy will need about 17 years, at current funding rates, just to clear the current maintenance backlog. The Navy is examining ways to accelerate facility investment to fix the backlog under a 10-year plan. Do you know what additional annual funding you will need to achieve this goal?

Mr. MCGINN. Materiel readiness is a key enabler to maintaining freedom of the seas. I am aware of the investment plan and the Navy's commitment to address the backlog. I don't know what specific level or type of additional funding would be required to accelerate the plan. If confirmed, I will advocate for and work with the Chief of Naval Operations and the Assistant Secretary of the Navy (Research, Development, and Acquisition) to ensure that whatever funding may be available for shore infrastructure, including shipyards and depots, is allocated appropriately to meet mission critical needs.

28. Senator AYOTTE. Mr. McGinn, how will sequestration in 2013 and 2014 affect this plan?

Mr. MCGINN. I can't address any specific impacts to the plan from sequestration in 2013. If sequestration continues into 2014, it will challenge investments across the entire Energy, Installations and Environment portfolio. When faced with reduced resources, any organization, whether a business or a household, must assess its short- and long-term objectives and make prudent expenditures and investments accordingly. I believe the same holds true for the Department of the Navy. If confirmed, one of my highest priorities will be to understand the impacts of sequestration on the entire Energy, Installations, and Environment portfolio and to ensure we are evaluating every investment to balance current and future readiness with risk to our infrastructure investments across a broad array of requirements.

FAMILY HOUSING

29. Senator AYOTTE. Mr. McGinn, I am troubled about recent reports regarding concerns expressed by residents at Admiralty Village—a public-private family housing facility that supports personnel working at Portsmouth Naval Shipyard. Some residents have expressed concerns regarding black mold that may be causing health problems in residents, water dripping from ceiling light fixtures, and old appliances that are leaking gas. I want to make sure Captain William Greene, Commander at Portsmouth Naval Shipyard, is receiving all of the support and resources he needs from the Navy in order to address this problem. Are you aware of these reports and if confirmed, will you ensure that Captain Greene, and commanders like him around the Navy, receive the support and resources they need to ensure our military families have military housing that is worthy of their service?

Mr. MCGINN. I am aware of the reports in the press regarding Admiralty Village and I share your concern for the safety and well-being of our servicemembers. If confirmed, I will ensure our commanders have the support and resources they need to provide the highest quality living and working conditions for our sailors, marines, and their families.

[The nomination reference of Mr. Dennis V. McGinn follows:]

NOMINATION REFERENCE AND REPORT

AS IN EXECUTIVE SESSION,
SENATE OF THE UNITED STATES,
July 9, 2013.

Ordered, That the following nomination be referred to the Committee on Armed Services:

Dennis V. McGinn, of Maryland, to be an Assistant Secretary of the Navy, vice Jackalyne Pfannenstiel, resigned.

[The biographical sketch of Mr. Dennis V. McGinn, which was transmitted to the committee at the time the nomination was referred, follows:]

BIOGRAPHICAL SKETCH OF VADM DENNIS V. MCGINN (USN, RET.)

Education:

- U.S. Naval Academy
 - 1963–1967
 - B.S. degree in naval engineering 1967
- Kennedy School of Government, Harvard University
 - National security program
 - 1998
- U.S. Naval War College
 - Chief of Naval Operations Strategic Studies Fellow
 - 1990–1991

Employment Record:

- American Council On Renewable Energy (ACORE)
 - President and CEO
 - May 2011–Present
- Remote Reality
 - CEO and Chairman
 - Jan. 2008–Present
- Battelle Memorial Institute
 - Corporate Officer, Energy, Transportation and Environment Division
 - 2002–2007
- U.S. Navy: 1967–2002
 - Naval aviator, test pilot, aircraft carrier commanding officer, national security strategist
 - Deputy Chief of Naval Operations for Warfare Requirements and Programs at the Pentagon
 - Commander of U.S. Third Fleet

Honors and awards:

- Air Medal (three awards)
- Navy-Marine Corps Commendation Medal (eight awards, all with Combat V)
- Distinguished Flying Cross (two awards)
- Meritorious Service Medals (one award)
- Legion of Merit (four awards)
- Defense Superior Service medal (one award)
- Distinguished Service Medal (one award)

Boards:

- CNA Military Advisory Board
 - Vice Chairman
 - 2007–Present
- Rocky Mountain Institute
 - International Security Senior Fellow
 - 2002–Present
- Energy Future Coalition
 - Steering Committee Member
 - 2011–Present

- National Conference on Citizenship
- Director, Chairman of Strategy Committee
 - 2005–Present
- U.S. Energy Security Council
- Member
 - 2011–Present
- Bipartisan Policy Center
- Energy Board Member
 - Jan. 2012–Mar. 2013

[The Committee on Armed Services requires all individuals nominated from civilian life by the President to positions requiring the advice and consent of the Senate to complete a form that details the biographical, financial, and other information of the nominee. The form executed by Mr. Dennis V. McGinn in connection with his nomination follows:]

UNITED STATES SENATE
COMMITTEE ON ARMED SERVICES

Room SR–228
Washington, DC 20510–6050
(202) 224–3871

COMMITTEE ON ARMED SERVICES FORM
BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF
NOMINEES

INSTRUCTIONS TO THE NOMINEE: Complete all requested information. If more space is needed use an additional sheet and cite the part of the form and the question number (i.e. A–9, B–4) to which the continuation of your answer applies.

PART A—BIOGRAPHICAL INFORMATION

INSTRUCTIONS TO THE NOMINEE: Biographical information furnished in this part of the form will be made available in committee offices for public inspection prior to the hearings and will also be published in any hearing record as well as made available to the public.

1. **Name:** (Include any former names used.)
Dennis Vincent McGinn.
2. **Position to which nominated:**
Assistant Secretary of the Navy for Energy, Installations, and Environment.
3. **Date of nomination:**
July 9, 2013.
4. **Address:** (List current place of residence and office addresses.)
[Nominee responded and the information is contained in the committee's executive files.]
5. **Date and place of birth:**
August 26, 1945; Attleboro, MA.
6. **Marital Status:** (Include maiden name of wife or husband's name.)
Married to Susan Kelly (Harris) McGinn.
7. **Names and ages of children:**
John McGinn, 45.
David McGinn, 43.
Daniel McGinn, 37
Susan Yekstat, 36.
8. **Education:** List secondary and higher education institutions, dates attended, degree received, and date degree granted.
U.S. Naval Academy, 1963–1967, B.S., June 7, 1967.

U.S. Naval Test Pilot School, 1973–1974
 U.S. Naval War College, 1990–1991, CNO Fellow

9. Employment record: List all jobs held since college or in the last 10 years, whichever is less, including the title or description of job, name of employer, location of work, and dates of employment.

President/CEO, American Council on Renewable Energy, 1600 K St., NW, Washington, DC, 2011–Present

CEO and Chairman, RemoteReality, Inc, 1700 West Park Drive, Westborough, MA, 2008–Present

Senior Vice President, Energy, Transportation, Environment, Battelle Memorial Institute, 505 King Ave, Columbus, OH, 2003–2007

Schott North American, 2451 Crystal Drive, Arlington, VA, 22202, 2011–2012

10. Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.

Member of the Department of Energy Electricity Advisory Board, 2012–present

National Commission on Disabled Veterans Benefits, Member, 2004–2007

11. Business relationships: List all positions currently held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational, or other institution.

American Council on Renewable Energy, President/CEO, 2011–present

Remote Reality Corporation, Chairman and CEO, 2008–present

Member of the CNA Military Advisory Board, 2007–present

12. Memberships: List all memberships and offices currently held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.

National Conference on Citizenship, Director and Chair of Strategy Committee, 2005–Present

Naval Institute, Member, 1970–Present. Chairman of the Board, 2001–2002

American Renewable Energy Institute, Director, 2012–Present

13. Political affiliations and activities:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 5 years.

None.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$100 or more for the past 5 years.

None.

14. Honors and awards: List all scholarships, fellowships, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

Personal military awards during service with U.S. Navy, 1967–2002:

Air Medal (three awards)

Navy-Marine Corps Commendation Medal (eight awards, All with Combat

V)

Distinguished Flying Cross (one award)

Meritorious Service Medals (one award)

Legion of Merit (four awards)

Defense Superior Service medal (one award)

Distinguished Service Medal (two awards)

15. Published writings: List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

Reports (Co-Authored):

- America's Energy Resurgence: Sustaining Success, Confronting Challenges, Bipartisan Policy Center, February 27, 2013

- Ensuring America's Freedom of Movement: A National Security Imperative to Reduce U.S. Oil Dependence, CNA Military Advisory Board, October 2011

- Powering America's Economy: Energy Innovation at the Crossroads of National Security Challenges, CNA Military Advisory Board, July 2010

- Powering America's Defense: Energy and the Risks to National Security, CNA Military Advisory Board, May 2009

Op-Eds/Blog Submissions:

- American Renewable Energy Is Powering the American Energy Transformation (The Hill, July 4, 2013 reprinted by Huffington Post, July 9, 2013)
- Level the Playing Field for Renewables (Politico, June 24, 2013)
- ACORE Salutes Tesla for Repaying Loan Guarantee Nine Years Early, Showing Success of LGP Program (States News Service, May 23, 2013)
- Congress Can Jolt Renewable Energy (National Journal Energy Experts Blog, April 29, 2013)
- More Renewables for States (Politico, April 4, 2013)
- Bullish on Biofuels (National Journal Energy Experts Blog, March 29, 2013)
- Opinion: Dennis McGinn of ACORE (Recharge, March 4, 2013)
- The Year For Bipartisan Energy Policy (National Journal Energy Experts Blog, January 9, 2013)
- Long Term Thinking For PTC (National Journal Energy Experts Blog, December 17, 2012)
- Jobs and Manufacturing At Stake (National Journal Energy Experts Blog, December 12, 2012)
- Together We Move Forward (National Journal Energy Experts Blog, November 14, 2012)
- Get Past Politics and Back to Business (National Journal Energy Experts Blog, November 5, 2012)
- A Real “All of the Above” Strategy (National Journal Energy Experts Blog, October 17, 2012)
- The Supply and Demand of Renewable Energy (Huffington Post, September 26, 2011)

16. **Speeches:** Provide the committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

I have delivered several speeches and interviews over the past 5 years related to energy, economic and environmental security in the context of national security. I do not retain hard copies but speak from notes.

I also have a record of written and oral testimony all of which included in the Congressional Record.

Specifically, I testified before the House Select Committee on Energy Independence and Global Warming on 1 December 2010 and 18 April 2007. I testified before the Senate Environment and Public Works Committee on 28 October 2009 and 30 July 2009. I testified before the Senate Foreign Relations Committee on 21 July 2009. The topic of my testimony in each instance was relevant to the position for which I have been nominated.

17. **Commitments regarding nomination, confirmation, and service:**

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

Yes.

(b) Have you assumed any duties or undertaken any actions which would appear to presume the outcome of the confirmation process?

No.

(c) If confirmed, will you ensure your staff complies with deadlines established for requested communications, including questions for the record in hearings?

Yes.

(d) Will you cooperate in providing witnesses and briefers in response to Congressional requests?

Yes.

(e) Will those witnesses be protected from reprisal for their testimony or briefings?

Yes.

(f) Do you agree, if confirmed, to appear and testify upon request before this committee?

Yes.

(g) 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?

Yes.

[The nominee responded to the questions in Parts B–F of the committee questionnaire. The text of the questionnaire is set forth in the Appendix to this volume. The nominee’s answers to Parts B–F are contained in the committee’s executive files.]

SIGNATURE AND DATE

I hereby state that I have read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

DENNIS VINCENT MCGINN.

This 23rd day of July, 2013.

[The nomination of Mr. Dennis V. McGinn was reported to the Senate by Chairman Levin on July 30, 2013, with the recommendation that the nomination be confirmed. The nomination was confirmed by the Senate on August 1, 2013.]