S. HRG. 111–558

NOMINATION OF ROBERT S. LITT TO BE GENERAL COUNSEL, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE AND NOMINATION OF STEPHEN W. PRESTON TO BE GENERAL COUNSEL, CENTRAL INTELLIGENCE AGENCY

HEARING

BEFORE THE

SELECT COMMITTEE ON INTELLIGENCE

OF THE

UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

MAY 21, 2009

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THURSDAY, MAY 21, 2009

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC.

The Committee met, pursuant to notice, at 2:33 p.m., in Room SH–216, Hart Senate Office Building, the Honorable Dianne Feinstein (Chairman of the Committee) presiding.

Committee Members Present: Senators Feinstein, Wyden, Mikulski, Feingold, Whitehouse, Levin, Bond, Snowe, and Risch.

Chairman FEINSTEIN. Because we have a vote coming up at 2:40, which is about seven minutes from now, I'm going to begin the hearing and try to keep it going during the vote. I know the Vice Chairman is on his way. We have three other Members here, so I think I'll begin and I'll begin with my statement.

OPENING STATEMENT OF HON. DIANNE FEINSTEIN, CHAIRMAN, A U.S. SENATOR FROM CALIFORNIA

Chairman FEINSTEIN. The committee meets today to receive testimony to consider two nominations: Mr. Robert Litt, nominated to be the General Counsel in the Office of the Director of National Intelligence, and Mr. Stephen Preston, nominated to be General Counsel of the Central Intelligence Agency. And I welcome both of them.

If you have family with you that you would like to introduce right now I think that would be very nice. I know you both do, so, Mr. Litt, why don't we begin with you and let everybody meet your two daughters, your wife, your mother-in-law——

Mr. LITT. Thank you, Madam Chairman. Directly behind me is my oldest daughter, Rebecca, who spent three-and-a-half years working as a legislative assistant for Senator Mikulski. Next to her is my wife Deborah, who is one of the most patient women in the world. Then my youngest daughter, Rachel——

Chairman FEINSTEIN [continuing]. And I asked who's the boss in the family, and Rachel immediately said she was.

Mr. LITT. Immediately and correctly. My mother, Edith Litt, and mother-in-law, Joan Gordon. My middle daughter Miriam is not

here today because she's on her honeymoon—she got married 10 days ago, and so I'm probably the rare nominee that comes before you and can't say for sure that this is the most stressful thing he's done this week. [Laughter.]

Chairman FEINSTEIN. Mr. Preston.

Mr. PRESTON. Thank you, Madam Chairman. I am very pleased to introduce to the Committee my wife Mary Manemann Preston, and our daughter Julia and our son Collett.

Chairman FEINSTEIN. Well, I hope the families know they are very much welcomed.

Both nominees have provided written responses to background questions and to questions about legal issues they will confront if confirmed. Their answers will be posted today on the committee's Web site. I have met with both nominees and came away from both meetings duly impressed.

It is crystal clear that the intelligence community, and perhaps the CIA more than the other 15 agencies, needs absolutely clear, authoritative, and accurate legal advice. The intelligence community and the nation have struggled with questions about the legality of counterterrorism operations—notably rendition, detention and interrogation—over the past few years.

There have been similar doubts about the legality of the warrantless surveillance program conducted outside of the Foreign Intelligence Surveillance Act. I expect Members will have questions about many intelligence activities, and we look forward to your responses, gentlemen.

To me, the key questions are: will these two nominees, if confirmed, provide sound and careful legal advice and also their best counsel and judgment to the director of national intelligence and the Director of the CIA.

If necessary, will they do everything within their power to prevent any activity that they believe to be unlawful and unwise? And I would add this: Will they ensure that there is appropriate oversight within all three branches of the federal government to ensure that programs only go forward after all relevant and required views are obtained and followed?

Let me say a few words about each nominee and the position to which they are nominated.

Mr. Robert Litt is a graduate of Harvard University and Yale Law School. He clerked for Judge Edward Weinfeld of the Southern District of New York and Justice Potter Stewart of the Supreme Court. He served as an Assistant U.S. Attorney in the Southern District of New York for six years. He later became a partner at the law firm of Williams & Connolly, and then, from 1993 to 1999, served in the State Department and at the Department of Justice, where he rose to be Principal Deputy Attorney General, with responsibilities including FISA applications, covert action reviews and other national security matters.

He has been a partner with the law firm of Arnold and Porter since 1999. If confirmed, Mr. Litt would be the second General Counsel in the Office of the Director of National Intelligence. The first person to hold the position, Ben Powell, appeared regularly before this committee and should be commended for his straightforward and helpful testimony and advice.

The General Counsel is the chief legal officer of the Office of Director of National Intelligence. In providing legal advice to the DNI, he must have insight into activities throughout the intelligence community, including those of the General Counsel offices in the various intelligence community elements.

The committee expects that Mr. Litt will be aware of and have an opportunity to evaluate all of the significant legal decisions made throughout the intelligence community. As the committee recently discussed with Director Blair, the General Counsel will also represent the executive branch in proposing and negotiating legislative provisions for our annual intelligence authorization bill, which is coming up, and other legislation that effects the equities of the intelligence community.

Stephen Preston is a graduate of Yale University and Harvard Law School. He clerked for Judge Phyllis A. Kravitch, U.S. Court of Appeals for the 11th Circuit, and joined Wilmer, Cutler & Pickering, where he became a partner. From 1993 to 2000, Mr. Preston served in the Department of Defense and the Department of Justice.

He was Principal Deputy General Counsel of the Department of Defense, Deputy Assistant Attorney General, Civil Division, in the Department of Justice, and General Counsel of the Department of the Navy. He has been a partner at WilmerHale since 2001.

The position of CIA General Counsel has been vacant since July of 2004. Frankly, I can't think of an agency in the United States government that is in stronger need of a Senate-confirmed General Counsel than the CIA.

This is an agency that operates outside of the law around the world but is required to operate in strict compliance with United States law. This is an extremely challenging legal position and one that requires a strong and principled General Counsel.

The CIA Office of General Counsel played a key role in the creation of the detention and interrogation program. It provided significant information to the Office of Legal Counsel at the Department of Justice. It participated in most of the briefings to the National Security Council and to Congress. And it was in charge of interpreting and implementing the Office of Legal Counsel's guidance to CIA interrogators in the field.

As I said before, the CIA and the nation need a strong General Counsel of unimpeachable integrity and an unwavering commitment to the Constitution and laws of the United States, and I cannot say that too strongly.

I am pleased that the two nominees before us are both highly qualified, highly respected in their field, and well suited to provide this advice to both the Director of National Intelligence and the CIA.

I now turn to the Vice Chairman. Before I do, I would just like Members to know that we would like to have a brief classified session on some recent happenings in—we can go to 211 directly following this and hopefully these hearings, because they are so qualified, will go quickly.

Mr. Vice Chairman.

OPENING STATEMENT OF HON. CHRISTOPHER S. BOND, VICE CHAIRMAN, A U.S. SENATOR FROM MISSOURI

Vice Chairman BOND. Madam Chair, thank you. I think that's a good idea. I think I can fire off all my questions in one round or submit them for the record. And I agree with you it's time that we had that meeting. But I welcome Mr. Litt and Mr. Preston and their families to the committee—to Mr. Litt to be the General Counsel for ODNI, Mr. Preston to be General Counsel for the CIA.

Madam Chair, I think both men come to this hearing with impressive credentials, considerable experience and a modest recognition that they still have to learn much about national security law. Fortunately, there are many talented lawyers at the ODNI and CIA offices of the General Counsel who will assist them in getting up to speed on the national security learning curve.

These are extremely important positions and nominations, as you've pointed out, Madam Chair. Many people don't understand the crucial role that the lawyers play within the intelligence community.

National security lawyers routinely review operational activities to ensure that they are conducted within the bounds of the law. Sometimes they have to deliver bad news and disapprove certain operations. And that is very important—to say no when it has to be said.

At the same time, they serve as problem solvers who ought to be able to find a way to comply with the law, to satisfy the legal requirements and still accomplish the intelligence objectives for which their agencies are charged.

In addition to the important oversight role, national security lawyers are often called upon to provide Congress with necessary technical assistance to ensure that relevant legislation does not adversely impact intelligence equities and, having worked extremely closely with the lawyers during FISA, I know how valuable their assistance is with respect to national security legislation.

We've relied on them in the past years and we will again in the USA PATRIOT Act, the Patriot Improvement Reauthorization Act, and implementing further recommendations of the 9/11 Commissions Act. I think it's safe to say that the two men now sitting before us will play an important role in future legislation.

I have met privately with each of the nominees and was very favorably impressed. I think both men are talented lawyers who are capable of being effective leaders and managers of their respective offices and have the necessary character, quality, experience and knowledge to do the job.

I congratulate you on your nominations. I look forward to your testimony, and assuming you are confirmed, which I think you will be, I look forward to working with you to ensure that the ODNI and the CIA offices of the General Counsel continue to provide outstanding legal support to the intelligence community and to Congress.

Thank you, Madam Chair.

Chairman FEINSTEIN. And I thank you, Mr. Vice Chairman. Members should know that Mr. Litt's remarks are under tab C, and Mr. Preston's under tab D, and they are both concise and short.

Mr. Litt, would you care to make a brief statement to the committee and then we'll follow with Mr. Preston, and then a few questions.

STATEMENT OF ROBERT S. LITT, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE GENERAL COUNSEL-DESIGNATE

Mr. LITT. Thank you, Madam Chairman. My oral remarks will be even shorter.

Madam Chairman, Vice Chairman Bond and Members of the committee, I want to thank you for the opportunity to appear before you here today. I also have appreciated the opportunity to meet privately with a number of you to hear what's on your mind and what your concerns are about the law and the intelligence community.

I am deeply honored that President Obama has nominated me to be the General Counsel of the Office of the Director of National Intelligence. The past few years, as you know, have been trying ones for the Intelligence Community. It has been accused of a wide variety of failures. It's been accused of errors of omission and errors of commission. It's been accused of excessive passivity and of over-aggressiveness. And it is still dealing with the restructuring that Congress ordered with the Intelligence Reform and Terrorism Prevention Act of 2004, which is the most substantial reorganization of the intelligence community since the passage of the National Security Act in 1947.

Our nation needs a strong and vital intelligence community in order to protect itself from its enemies; but the intelligence community equally needs clear legal rules that define what it can and cannot do. These twin needs are reflected in the twin statutory responsibilities of the Director of National Intelligence—one, to ensure that the president, the executive branch and the Congress are provided intelligence that is "timely, objective, independent of political considerations, and based upon all sources available to the intelligence community and other appropriate entities," and; two, to ensure that the activities of the intelligence community are carried out in "compliance with the Constitution and laws of the United States." If I am confirmed as General Counsel, I look forward to assisting Director Blair in carrying out these responsibilities.

I know, from talking with some of you, that the Members of this committee are very concerned with whether the Director of National Intelligence has the proper authorities to carry out these important responsibilities. And, if confirmed, I will pay close attention to how those authorities work in practice, and if there are any deficiencies in them I will bring them to the attention of this committee and work with the committee to try to remedy them.

I will also be mindful of the need for Congress to exercise effective oversight of the activities of the intelligence community. I believe that congressional oversight is particularly important in the area of intelligence because of the central role that intelligence plays in protecting national security, because of the power of the tools that are given to the intelligence community, and their potential risks to privacy and civil liberty if they are abused, and because of the necessarily secret nature of much of what the intelligence community does.

Director Blair has emphasized to the entire intelligence community the importance of keeping the intelligence committees fully and currently informed about intelligence activities—and if confirmed I will fully support him in that and will work with you to try to ensure that you are able to exercise this oversight function in the manner in which it needs to be exercised.

In addition, there are a wide range of important and challenging legal issues affecting the intelligence community, some of which I discuss in my written statement. If confirmed, I will not only provide Director Blair my best views on the law based on a thorough understanding of the facts and the law—whatever those views may be—but also my counsel and judgment on the wisdom and propriety of particular courses of conduct.

Madam Chairman, in the course of my professional career, I have been privileged to get to know many individuals who work as part of the intelligence community, both lawyers and non-lawyers. They are dedicated professionals, many of whom gave up a potentially lucrative career in the private sector for the privilege of serving the United States and protecting its people. If I am confirmed, I look forward to the great privilege of assisting them in that vital task.

Thank you for your consideration of my nomination.

[The prepared statement of Mr. Litt follows:]

PREPARED STATEMENT OF ROBERT S. LITT

Madam Chairman, Vice Chairman Bond, Members of the Committee, thank you for giving me the opportunity to appear before you today. I have also appreciated the opportunity to meet privately with several of you and to discuss a variety of issues that are important to you.

I am deeply honored that President Obama has nominated me to be the General Counsel of the Office of the Director of National Intelligence. The past few years have been trying ones for the Intelligence Community. It has been accused of a wide variety of failures, of errors of omission and of commission, of excessive passivity and of over-aggressiveness. And it is still dealing with a restructuring, initiated by Congress with the passage of the Intelligence Reform and Terrorism Prevention Act of 2004, that is unparalleled since the passage of the original National Security Act in 1947.

Our nation needs a strong and vital Intelligence Community in order to protect itself from its enemies; but the Intelligence Community equally needs clear rules that define what it can and cannot do. These twin mandates are reflected in the twin statutory responsibilities of the Director of National Intelligence to ensure both that the President, the Executive Branch and the Congress are provided intelligence that is "timely, objective, independent of political considerations, and based upon all sources available to the intelligence community and other appropriate entities," and that the activities of the Intelligence Community are carried out in "compliance with the Constitution and laws of the United States." If confirmed as General Counsel, I look forward to assisting Director Blair in carrying out these responsibilities.

Director Blair has made clear to me that he expects my role to encompass the provision of both sound legal advice and sound judgment, and if confirmed I am prepared to do so. I have been fortunate to be mentored by a number of outstanding lawyers from whom I have drawn lessons that guide my approach to the practice of law. My father was a general practice lawyer in the New York suburbs. He made me conscious from a young age of the lawyer's broad responsibilities both to ensure that justice is done in the individual case, and towards the improvement of society as a whole. I have always tried to keep in mind his example.

After graduating from Harvard College and Yale Law School, I had the great honor to clerk for two outstanding judges. The first was the legendary Judge Edward Weinfeld of the United States District Court for the Southern District of New York. Judge Weinfeld was justly famous for his extraordinary diligence, his fairness and his thoroughness. He was fond of saying that "every case is important," and for him this was more than a platitude: it characterized his approach to the law, in that he gave every case the same degree of attention and thought. I often feel his guiding presence looming over my shoulder. After Judge Weinfeld, I clerked on

the United States Supreme Court for Justice Potter Stewart. Like Judge Weinfeld, Justice Stewart did not approach the law with ideological preconceptions. He was always concerned with finding the right outcome in the law, not in justifying a predetermined outcome that fit his personal preferences.

I was then hired as an Assistant United States Attorney for the Southern District of New York by Robert B. Fiske, Jr., an outstanding lawyer and leader whose career exemplifies the old-fashioned ideal of the lawyer as public servant. After six years as a federal prosecutor, I joined the firm of Williams & Connolly in Washington, where I had the opportunity to work closely with Edward Bennett Williams, one of the giants of the bar, known for his preparation, his judgment and insight into human nature, and his zealous devotion to his clients' interests. Finally, I had the privilege to work in the Department of Justice with former Attorney General Janet Reno and present Attorney General Eric Holder, each of whom I admire for their unfailing commitment to doing the right thing in all circumstances and for their understanding of the moral responsibilities of a government lawyer.

Each of these very different individuals left their mark on me. I cannot hope to match their achievements but I have learned much by their example. I have learned that a lawyer has the responsibility to try to help a client achieve his or her goals within the law, but equally to tell a client forthrightly when a proposed course of conduct is not within the law. I have learned that a lawyer's duty to a client encompasses first of all a careful, dispassionate and unbiased analysis to determine what the law actually is. But a lawyer should also exercise independent judgment and advise the client as to the prudence or wisdom of the proposed course of conduct. I have learned that a lawyer for the government in particular has obligations not only to his or her client agency but also to the public at large, and if the client's proposed action would not serve the public interest, the government lawyer should say so even if that action is legal. If confirmed, I pledge that I will approach my responsibilities as General Counsel in this spirit.

Over the years I have had the opportunity to work on a variety of matters affecting the Intelligence Community. While at the Department of Justice I worked on matters involving the Foreign Intelligence Surveillance Act and the Classified Information Procedures Act; I participated in reviews of covert actions and in evaluating crimes reports and requests for legal opinions from the Intelligence Community. I have spoken and written about the law and the Intelligence Community. I have represented several members of the Intelligence Community in a variety of matters.

As a result of this experience, as well as my discussions both with the staff at the Office of the Director of National Intelligence and the members of this Committee, I have some knowledge of the legal issues that the Intelligence Community faces. I would like briefly to touch upon some of the issues that I expect I will be dealing with if I am confirmed as General Counsel. First, I know that Members of this Committee are concerned with whether the Director of National Intelligence has the proper authorities to do the jobs that Congress has set out for him, and if confirmed I will pay close attention to how those authorities operate in practice and will bring any deficiencies to the attention of this Committee.

If confirmed, I will also be mindful of the need for Congress to exercise oversight of the activities of the Intelligence Community. I believe that Congressional oversight is particularly important in the area of intelligence, because of the central role of intelligence in protecting our national security, the power of the tools given to the Intelligence Community and their potential risks to privacy and civil liberties if used improperly, and the necessarily secret nature of much of what the Intelligence Community does. Sections 502 and 503 of the National Security Act require that the two intelligence committees be kept "fully and currently informed" about significant intelligence activities, and Director Blair has reiterated to the entire community the need to comply strictly with this requirement.

There are also several substantive areas that I expect will continue to be at the forefront of the activities of the Office of General Counsel. One of the principal responsibilities of the Director of National Intelligence is to ensure that relevant information is shared to the maximum extent possible within the Intelligence Community. We cannot afford to have information that is essential to our national security "stovepiped" within individual components of the community. The Office of General Counsel is deeply involved in writing the rules that will encourage this sharing of information and, if confirmed, I look forward to assisting Director Blair in moving towards an ever more integrated and cooperative Intelligence Community.

At the same time, the collection, analysis and dissemination of intelligence information must be done in a manner that protects constitutional and statutory rights. Again, it is my understanding that the Office of General Counsel, along with the Civil Liberties Protection Officer, plays an important role in creating and overseeing the structures and rules that ensure that intelligence activity is consistent with the

civil liberties and privacy of Americans. This is one of those areas where it is important to provide clear guidance to the Intelligence Community, so that they know what they can and cannot do and do not feel the need to consult with lawyers on a daily or hourly basis as they do their jobs—which is neither efficient nor realistic.

One particular area of concern to me is the security of our information and communications systems. While at the Department of Justice, I helped create and stand up the Criminal Division's Computer Crime Section, and I am acutely aware that our networks are not only vulnerable to attack but are repeatedly attacked every day. The President has ordered a review of our cybersecurity policies. While I do not want to prejudge its conclusions I would anticipate that the Intelligence Community would of necessity have a vital role to play in this area, and that the Office of General Counsel would play an important role in ensuring that the Intelligence Community's activities in this area are consistent with the law.

In the course of my professional career I have been privileged to get to know many individuals who work as part of the Intelligence Community, both lawyers and non-lawyers. They are dedicated professionals, many of whom gave up potentially lucrative career opportunities and have chosen to serve the United States and protect its people. If confirmed, I look forward to the great privilege of assisting them in that vital task.

Thank you for your consideration of my nomination.

Chairman FEINSTEIN. Thank you very much, Mr. Litt.

Mr. Preston.

STATEMENT OF STEPHEN W. PRESTON, CENTRAL INTELLIGENCE AGENCY GENERAL COUNSEL-DESIGNATE

Mr. PRESTON. Thank you, Madam Chairman, Mr. Vice Chairman and Members of the Committee. I am greatly honored to appear before you as the President's nominee to be General Counsel of the Central Intelligence Agency. Madam Chairman, you were kind enough to let me introduce my wife and children a moment ago. I should point out that today is our wedding anniversary and so I ought to thank the Committee for this occasion to get together. [Laughter.]

Chairman FEINSTEIN. Congratulations. Which one is it?

Mr. PRESTON. It's our fifteenth.

Chairman FEINSTEIN. Congratulations.

Mr. PRESTON. It is our fifteenth anniversary and I thank you for bringing us together on this occasion.

In all seriousness, these are the most important people in my life. And it is because of them that I am here today, prepared to undertake what I expect will be the most meaningful and likely the most difficult job in my professional life.

I want to thank President Obama and Director Panetta for their trust and confidence in me. If confirmed, I look forward to working with you, the Director and the fine men and women of the CIA to confront the ongoing threats to our national security and ultimately to protect families like mine all over this country.

Given the scarcity of time and the abundance of business before you, I would like to submit the remainder of my statement for the record. Let me say, I appreciate this opportunity to appear before the Committee today, and I would be happy to answer any questions.

[The prepared statement of Mr. Preston follows:]

PREPARED STATEMENT OF STEPHEN W. PRESTON

Thank you, Madam Chairman, Mr. Vice Chairman, and members of the Committee. I am greatly honored to appear before you as the President's nominee to be General Counsel of the Central Intelligence Agency. With your indulgence, I would

like to introduce the members of my family: my wife, Mary Manemann Preston; our daughter, Julia Preston; and our son, Collett Preston. These are the most important people in my life, and it is because of them that I am here today, prepared to undertake what I expect will be the most meaningful, and likely the most difficult, job in my professional life. I want to thank President Obama and Director Panetta for their trust and confidence in me. If confirmed, I look forward to working with you, the Director, and the fine men and women of the CIA to confront the ongoing threats to our national security and, ultimately, to protect families like mine all over this country.

This is a dangerous time for the United States and a challenging time for the Central Intelligence Agency. The threat of radical jihadist terrorists is real, immediate and unrelenting, and in the fight against them the Agency is at the very tip of the spear. America is counting on the Agency to help disrupt and dismantle *al Qa 'ida*, and to learn the intentions of our other adversaries. We will do this, through the quiet efforts and untold sacrifices of the talented and dedicated men and women who are the Agency. At the same time, the Agency must respond to continued scrutiny concerning past practices. We will do this, too, cooperating with this Committee in its review, supporting those who sought and followed authoritative legal guidance, and all the while remaining focused on our vital mission going forward.

The General Counsel has no role more important than ensuring the CIA's compliance with applicable laws of the United States. If I am confirmed, I will assume this responsibility with the utmost seriousness. I believe I have had a good deal of useful experience, having spent most of my career in law and national security, both in government—as General Counsel of the Department of the Navy, and as Principal Deputy General Counsel and Acting General Counsel of the Department of Defense, as well as at the U.S. Department of Justice—and more recently in private practice. I also bring to the job strong commitments, to public service and the protection of U.S. national security, to the rule of law in our society and adherence to the law in what we do, and to the exercise of independent judgment and common sense in furtherance of all of these. I pledge my full support to the Director, and I am eager to join my future colleagues at the Agency and in the Intelligence Community.

If confirmed, I look forward to working with this Committee and the Congress to maintain effective communication, and in addressing the range of legal issues that may arise during my tenure. In the meantime, I appreciate this opportunity to appear before the Committee today and would be happy to answer any questions.

Chairman FEINSTEIN. Thank you very much. I'll begin the questions. There is a standard of initial questions for all nominees and I will quickly read this and if you will say yes or no:

Do you both agree to appear before the Committee here or in other venues when invited?

Mr. LITT. Yes.

Mr. PRESTON. Yes.

Chairman FEINSTEIN. Do you both agree to send officials from your respective offices to appear before the Committee and designated staff when requested?

Mr. LITT. Yes.

Mr. PRESTON. Yes.

Chairman FEINSTEIN. Do you agree to provide documents or any other material requested by the Committee in order for it to carry out its oversight and legislative responsibilities?

Mr. LITT. Yes.

Mr. PRESTON. Yes.

Chairman FEINSTEIN. Will you ensure that your respective offices provide such material to the Committee when requested?

Mr. LITT. Yes.

Mr. PRESTON. Yes.

Chairman FEINSTEIN. Thank you very much.

In its short history, the Director of National Intelligence has used intelligence community directives to set out guidance and reg-

ulation across the entire intelligence community—much like the director of the CIA issued DCI directives before the DNI position was created.

Three recent examples of these ICDs are: ICD 101, intelligence community policy system, January 16th of this year; ICD 501, discovery and dissemination or retrieval of information within the intelligence community, January 21st; and ICD 402, Director of National Intelligence representatives, May 19th, 2009. Do you believe that the DNI has the authority to issue directives to agencies of the intelligence community? Mr. Litt.

Mr. LITT. Yes, I do.

Chairman FEINSTEIN. Mr. Preston.

Mr. PRESTON. Yes, ma'am.

Chairman FEINSTEIN. Do you believe that these intelligence community directives are binding on individual agencies of the intelligence community? Mr. Litt.

Mr. LITT. Yes, I do.

Mr. PRESTON. Yes, I believe a properly issued and final ICD is binding on agencies in the community.

Chairman FEINSTEIN. Thank you very much. And just one other question.

On page six of the written questions and answers, Mr. Preston, I'd like to ask you to clarify one answer, and here it is: "By virtue of its relationship with the entire intelligence community, the General Counsel's Office is well-positioned to identify conflicting legal interpretations within the community. Because the General Counsel does not have decisional authority to resolve such conflicts, if there are conflicting legal views on an issue, I would bring the relevant General Counsels together to discuss the issues and attempt to resolve any differing opinions."

This is your writing. How do you mean this?

Mr. PRESTON. I believe that comes from Mr. Litt's questionnaire, although I would be happy to address it.

Chairman FEINSTEIN. Oh, I beg your pardon.

Mr. LITT. I was going to say, I thought it was my writing, Madam Chairman.

Chairman FEINSTEIN. Well, that's what piqued my interest in the question. I thought it was his.

Mr. LITT. No, no.

Chairman FEINSTEIN. But I think——

Mr. LITT. Is the answer clearer when you——

Chairman FEINSTEIN [continuing]. The answer is much clearer when it comes from you, because I think the point that I wanted to make clear in my first question, and with this, is the fact that we passed legislation to create an overarching head of the 16 intelligence agencies. And that is the Director of National Intelligence. And he is the boss.

And as a matter of fact, we had Mr. Panetta here at his hearing, and we asked him, and he verified, yes, the DNI is my boss. And I want to be sure that that is the impression of the new legal counsel for the CIA.

Mr. PRESTON. Understood.

Chairman FEINSTEIN. Okay. Mr. Vice Chairman.

Vice Chairman BOND [presiding]. Madam Chair, you are going to go vote, I understand——

Chairman FEINSTEIN. I'll go vote and come right back.

Vice Chairman BOND [continuing]. I will ask questions and hope you get back speedily because I will probably have to go vote and if Senator Snowe wants to stay around and ask questions after I run, I will be happy to turn it over. Otherwise, I will exercise the gavel in an apparently untrammeled manner, here, for a couple of minutes—as long as I think I can get away with it and still vote on time.

Gentlemen, one of the questions I ought to ask everybody, and I will ask again to get your views on the record—and since we've practiced it before, I'm sure you can be brief and to the point—for all national security lawyers, I like to ask—and I'll first ask Mr. Litt and then Mr. Preston—if the President of the United States has inherent authority under Article II of the Constitution to engage in warrantless foreign intelligence surveillance or physical searches or, in your opinion, does FISA trump Article II? Mr. Litt?

Mr. LITT. Mr. Vice Chairman, I think the answer to that is that there is a very express exclusivity provision in FISA that says that it's the sole means for executing electronic surveillance that comes within its terms, and I think that this administration has indicated it intends to abide by that exclusivity. Obviously to the extent that there are matters that are entirely outside the scope of FISA—the President, I think, does have inherent Article II authority to conduct activities that are necessary to the defense of the nation.

Vice Chairman BOND. So you're saying he doesn't have the authority if it's within the scope of FISA.

Mr. LITT. I think that this administration has indicated that it will abide by the exclusivity provision. This is obviously, as you know, one of the constitutional questions that scholars of considerably more wisdom than I have been debating for years and years.

Vice Chairman BOND. I'll let you get by with that.

Mr. LITT. Thank you. [Laughter.]

Vice Chairman BOND. Mr. Preston.

Mr. PRESTON. In that case, I'd like to associate myself with his remarks.

Vice Chairman BOND. I want to see if you can do a better job. [Laughter.]

Mr. LITT. I'm sure he can.

Mr. PRESTON. I think Bob has accurately described the state of the play and where the difficulty lies. I have an answer perhaps not satisfactory to constitutional scholars and a little more simple-minded, but I don't think the President is above the law and the FISA amendments establish procedures that the President has acknowledged he intends to follow.

And if there remains, under Article II, powers for him to do differently in special circumstances, I would have to defer to the constitutional scholars on that.

Vice Chairman BOND. Well, heaven forbid we get into that situation where it's needed, but I'll be interested in hearing what you have to say should that occasion arise. Mr. Litt.

Mr. LITT. If I could just add on that, I'm quite confident that if that situation ever arose, you would be hearing from us about it.

Vice Chairman BOND. I used to be a constitutional lawyer, not a scholar, but I'll be happy to talk with you about it.

Mr. Litt, I'm very much concerned and I've asked the DNI and these lawyers many times if they had the authorities they need to do the job. Some representatives of the DNI indicated they might not. I think that question continues to arise. We talked about it. Have you had a chance to study it any further since our initial discussion?

Mr. LITT. Not really. In my mind, Mr. Vice Chairman, what's going to be most important is to have an opportunity to actually see how the authorities operate in practice. I can read the words of the statute, but until I actually have an opportunity to be in place and watch how they're used and see if there are any gaps, I'd be cautious in forming any judgments about whether any additional authorities are needed.

Vice Chairman BOND. There may be an opportunity very shortly. I have questions that we've discussed before; I'll submit them for the record.

Mr. Preston, the Committee has begun a review of the CIA detention and interrogation program. Do you think the Department of Justice should conduct criminal investigations on those individuals involved in detention and interrogation of al-Qa'ida terrorists in accordance with procedures approved by the OLC and if authorized by the President?

Mr. PRESTON. Sir, I would note that the President, as well as the Attorney General, the DNI, the D/CIA have decided—and the others have agreed—that the people who, in good faith, sought and followed what was believed to be authoritative legal guidance with respect to the interrogation program ought not be subject to prosecution—as Director Panetta said, ought not be subject to investigation and prosecution.

The fact of the matter is that there has been in place at CIA an investigatory mechanism in the form of the IG, which has been, since the time that the interrogation program was in place, investigating allegations of abuse. So it's not as if there isn't already in place investigation efforts, and I just would echo the concept that those who acted in good faith, in reliance on that authoritative legal authority, ought not be punished for it.

Vice Chairman BOND. Do you think the DOJ should conduct criminal investigation of the lawyers who wrote the CIA opinions, the senior Executive Branch officials who authorized the program, or congressional members who were aware of the program's details and chose to fail to exercise their congressional oversight to stop them?

Mr. PRESTON. Senator, my focus has been principally on the Agency and its role and, frankly, its role going forward. With respect to people at the Justice Department and elsewhere, I really haven't formulated a conclusion. I will tell you, broadly, I believe that public servants who act in good faith and in reasonable belief that they're acting lawfully in defense of our country ought not be punished for that. I would prefer not to comment on other agencies.

Vice Chairman BOND. Mr. Litt, any further expansion?

Mr. LITT. Mr. Vice Chairman, I certainly believe that it is essential to the operation of government that people be able to rely on

opinions from the Justice Department without fear that those opinions will later be pulled back from them and leave them exposed to criminal liability.

Vice Chairman BOND. I'm asking about if a lawyer gives an opinion you think is bad, should they be prosecuted for it?

Mr. LITT. I'm not aware of any such case, Mr. Vice Chairman.

Vice Chairman BOND. I am concerned that we're moving back to a pre-9/11 mentality, where international terrorists are considered as ordinary criminals that should be afforded all the due-process rights of our criminal courts. Mr. Preston, what are your views on this issue?

Mr. PRESTON. I haven't conceived of the situation in those terms, but my thinking on it is that our government, the past administration and the current administration, have recognized radical jihadist terrorist organizations as posing a serious, real and enduring threat to our national security and have been committed to applying the full panoply of tools at our disposal in combating that threat.

Vice Chairman BOND. Mr. Litt, quick answer?

Mr. LITT. Mr. Vice Chairman, I would simply point to the President's speech this morning, in which he indicated that there are some terrorists who we have who are amenable and properly tried in normal criminal courts; there are some who ought to be tried in military commissions for acts against the law of war; and that there may be some who cannot be tried, but will need to be detained under some legal framework worked out cooperatively among the executive branch and the legislative branch.

Vice Chairman BOND. Gentlemen, I'll suspend the hearing. It will resume at such time as the Chair returns.

[Recess.]

Senator WYDEN [presiding]. I want to thank both our nominees, and I'm sorry that it's so hectic on the floor, and you'll have us shuttling back and forth here for a period of time.

Let me start with you, if I could, Mr. Preston. As I indicated to you in the office, I think your position is one of extraordinary importance. When you're the General Counsel of the CIA, your clients are the men and women of the Agency, and it's your job to protect your clients by ensuring that intelligence activities comply with the law.

The dedicated people who work at the Agency take big risks to protect their country and uphold American values and they deserve to have confidence that they're never going to end up in trouble because they were asked to participate in a program that did not have a strong legal foundation. And as you know, Mr. Preston, I've taken a great interest in this position in the past and I will continue to do so, and that's why I have a few specific questions for you.

If you're confirmed as the CIA General Counsel, and the Department of Justice hands you a poorly-reasoned legal opinion—like the Bybee memo—and tells you to use it as the legal basis for a sensitive intelligence program, what would you do?

Mr. PRESTON. Senator, I strongly believe that as the chief legal officer of the Agency, by statute, I have a responsibility to exercise independent judgment in matters of law affecting the Agency. I rec-

ognize that OLC opinions are treated, and properly treated, as binding, if you will, within the executive branch. But if I were confronted with a circumstance of the sort you described, and I had a strong disagreement with an opinion, I would make my disagreement known. I would make it known to the Director, who is my principal and make it known to the leadership of the Justice Department and elsewhere, as appropriate.

Senator WYDEN. So you would bring it up specifically with the Department of Justice and you would say, this memo doesn't cut it and you don't believe it's an adequate foundation for a significant program?

Mr. PRESTON. I think that's a fair statement.

Senator WYDEN. Okay. One other question I had for you—and this was just something that struck me and I'd like to get your thoughts with respect to what it was you were trying to convey. In response to one of the prehearing written questions to Peru, you stated that CIA Office of General Counsel attorneys might somehow advise their clients not to create discoverable documents in situations that might involve litigation. My question is, would you agree that government employees have an obligation to make accurate records of their actions and not try to cover up anything by refusing to write it down?

Mr. PRESTON. I would agree with that, Senator. Let me say, as I hope I made clear in my written response, I am not familiar with the circumstances of the Peru incident—have not reviewed the IG report. From my private practice experience, I know it's not at all uncommon to advise clients to take care in what they put in writing, take care with the use of e-mail, what have you, when you are in a circumstance of civil litigation or possible civil liability. I consider that worlds apart from telling people not to make proper records or to, in any way, falsify or destroy records or anything of the sort.

Senator WYDEN. I appreciate that because it seemed to me that the Peru issue certainly is hard to get all the facts in terms of your situation at this time, but I just wanted to get on the record that you did not mean that the office of the General Counsel should somehow advise CIA employees to not keep records.

Mr. PRESTON. That is a correct understanding and I should have been clearer.

Senator WYDEN. Very good. Let me ask you just one question, Mr. Litt, if I might. When we met in my office, we discussed the statutory requirements of the executive branch to keep the Committee fully and currently informed about intelligence activities, and you actually called afterwards to clarify your answer. I'm encouraged that there is a lawyer who cares that much about making sure that they get the question right.

And, for the record, just tell us, if you would, your views on this law and specifically address the practice of notifying only the Chairman and the Vice Chairman rather than the full membership of the Committee.

Mr. LITT. Senator, I understand that this is a question of great importance to the Committee, and I think it's of great importance to the intelligence community as well because of the importance of oversight that I mentioned in my opening statement.

Section 502 of the National Security Act requires that the intelligence Committees be kept fully and currently informed of all significant intelligence activities. And Director Blair, a couple of months ago, as I mentioned, sent around a memorandum to the entire intelligence community emphasizing this.

And as I believe he said recently, this notification should be to the full Committee in all but the most extraordinary circumstances when there are compelling national interests. Director Blair has also, I think, promised this Committee that if there are such extraordinary circumstances, he will discuss with the Chair and the Vice Chairman how and when the full Committee should be briefed.

If confirmed, I look forward to assisting him in the overall process of ensuring that this Committee is kept fully and currently informed.

Senator WYDEN. Is there any basis in law for limiting notification of any intelligence activities other than covert actions to just the Chairman and the Vice Chairman?

Mr. LITT. Section 502 begins with a clause that says that the notification is to the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters.

I think that this is at least arguable recognition that there may be extraordinary circumstances in which a more limited notification is appropriate, but I would emphasize that in my view this should be done only rarely, only when it's essential because of a vital interest and extraordinary circumstances, and should only be done in consultation with the Chairman and Vice Chairman.

Senator WYDEN. My time has expired, but what would be an example of an extraordinary circumstance? I mean, part of the reason I'm asking you this is for the reasons that we talked about.

Most of this Committee was kept in the dark for years and years on the interrogation issue, and not just one or two years, but you're hearing all this discussion now about how everybody on this Committee was kept in the loop over the years on the interrogation question.

That's just a position that's disconnected from reality. I mean, I was on the Committee starting in 2001 and even the Agency's records indicate that we weren't briefed until 2006. So this is an issue I feel strongly about. I think others do.

So let me close my questioning. I'm over my time, Madam Chair.

Give me an example of an extraordinary circumstance where you wouldn't see notification to the Committee.

Mr. LITT. I'm hampered in that by not having actually been on the ground and seen many of the circumstances in which notification actually occurs. It would seem to me that one example might be where there is exceptionally grave and immediate risk to the lives of American agents. That's a situation where you might consider it. But it's difficult for me to give specifics on that without having been in the job and seeing how it operates.

Senator WYDEN. Well, the law to me seems to be that it really is an exception only for covert activities. I know we're going to talk

about this further. Both of you bring, in my view, a great professionalism to these positions. I look forward to voting for you.

Thank you, Madam Chairman.

Chairman FEINSTEIN [presiding]. Thank you, Senator Wyden.

Senator Feingold, I think you're next, and then Senator Whitehouse.

Senator FEINGOLD. I thank the Chair and congratulate both the nominees on your nomination.

I do need to pursue what Senator Wyden very appropriately began, and that is the issue of the Gang of Eight statute. I heard the language "fully and completely inform the Committee," and the Senator went through what the statute says.

The exception only applies to covert action, not to collection programs or activities, and I'm just trying to figure out what the legal basis is for this circumstance that you're imagining of grave risk and so on. What is the legal basis or where is the language that allows that kind of an independent interpretation of the plain statute?

Mr. LITT. Senator, Section 502 begins, "To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, the Director of National Intelligence and the heads of all departments, agencies and other entities of the United States government involved in intelligence activities shall keep the congressional intelligence committees fully and currently informed," and so on.

So there clearly is a qualification. In my view, that qualification—and let me make it very clear—I do not think that that qualification is a limitation on whether the intelligence committees should be kept informed. I think it does afford some wiggle room on how the intelligence committees are kept fully informed.

As I said, in my view this is something that should be done only in the most extraordinary of circumstances and only in consultation with the Chairman and Vice Chairman of the Committee.

Senator FEINGOLD. Well, I appreciate the reference to that language. First of all, the notion that a Committee can be fully informed when just two Members are notified to me is illogical, but I understand the argument you're trying to make.

But do you agree that the provision which allows for a Presidential determination that limited access is essential "to meet extraordinary circumstances affecting vital interests of the United States" was not intended, of course, to authorize hiding matters from the full Committee because they are politically sensitive or legally controversial?

Mr. LITT. Not on those bases alone, no, sir.

Senator FEINGOLD. Mr. Preston, your answer to this area, please.

Mr. PRESTON. I would agree on that, certainly.

Senator FEINGOLD. And what is your general position with regard to the explicit language of the statute and the very narrow exception that's provided?

Mr. PRESTON. I think I would agree with Mr. Litt's construction of the statute to the extent that that opening language does provide a qualification on the obligation. However, I would emphasize, with equal or greater weight, the point he has made that it should

be truly exceptional circumstances and that the legal requirement here is for complete and timely provision of information to the full Committee. The law admits of exceptions only on an extraordinary basis.

I am keenly aware of the concern on this Committee, and I know that Director Panetta is aware of the concern, about the use, or many would say overuse, of restricted briefings. He is committed to addressing that. I will join him in working to improve effective communication between the Agency and the Committee and to get notification and reporting done right.

Senator FEINGOLD. I believe both of you are sincere in wanting to get this right, but let me just underscore what it means if, after what was frankly a rogue administration's approach to this, somehow the approach is ratified by a second administration that did not take such a cavalier attitude but sort of says, well, actually there are these independent things you can do despite the statute, how serious that would be for this. But I've heard your words and I look forward to working with you on it.

Mr. Litt, you have informed the Committee that you represent several current and former CIA employees who had some role in rendition, detention and interrogation. You indicated that to avoid conflicts of interest you will not participate in any decisions affecting the outcome of any prosecutions or investigation of these or similarly situated individuals, nor will you offer opinions with regard to particular interrogation procedures that may have been employed in the past and that "relate to the subject of my representation."

Given that we can't predict how current and future policy deliberations might ultimately affect your clients, shouldn't you proceed under the assumption that any opinions you offer on detention, interrogation and rendition could present an appearance of a conflict of interest?

Mr. LITT. Senator, obviously, as you know, I'm keenly aware of this issue. I did send a letter to the Committee about it. And I will consult regularly with the designated Agency ethics official about what is and is not appropriate for me to participate in.

My approach to the law is generally that I try to apply the law to a specific set of facts, and it's my current judgment that if I am presented with a set of facts in the future where somebody asks me, can we use this interrogation technique in this circumstance, that I would be able to offer an opinion or my best legal judgment on that without affecting the interests of my clients. But obviously I would be constantly consulting with the ethics officer on that.

Senator FEINGOLD. Finally, Mr. Preston, the President said today that he disagreed with the legal analysis and the OLC memos on torture. Do you as well, and do you consider the interrogation techniques described in the OLC memos to be torture?

Mr. PRESTON. Sir, you said Mr. Preston——

Senator FEINGOLD. Yes.

Mr. PRESTON [continuing]. But you seem to be looking at Mr. Litt.

Senator FEINGOLD. I'm sorry. Go ahead.

Mr. PRESTON. Shall I answer?

Senator FEINGOLD. Please, Mr. Preston.

Mr. PRESTON. Senator, I believe that the four OLC memos at issue are flawed. I look to the Justice Department's own actions in reaching that conclusion. The Justice Department, during the last administration, repudiated publicly the legal reasoning of the unclassified August 2, 2002, memo from which the classified August 2, 2002, memo was derived, formally withdrew the former and later superseded the latter in May 2005.

More recently, the Department of Justice has indicated the flawed nature of all four memos, having now withdrawn all four, such that they are now dead letters.

Senator FEINGOLD. Do you consider the interrogation techniques described in the OLC memos to be torture?

Mr. PRESTON. I have not reached that conclusion. I have very studiously focused on the four opinions as they are relevant to the tasks that will lie ahead of me. My view is that by virtue of the fact that the practices outlined in those memos have now ended, the law has changed since 2002 and 2005 in significant fashion. And, as I pointed out, the letters have been withdrawn.

Senator FEINGOLD. You've not reached a contrary conclusion either, right?

Mr. PRESTON. I have not.

Senator FEINGOLD. Okay. I apologize for going over my time.

Chairman FEINSTEIN. Thank you very much Senator.

Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Madam Chair. Welcome to the minefield, gentlemen. [Laughter.]

Senator WHITEHOUSE. Two issues. One, we urgently need a new cyber policy. The trajectory of what the Bush administration has left us is not sustainable. Indeed, I think you've been left in a bit of a trap. It's all too classified to discuss further, but I would point it out publicly it is a very big mine in the minefield.

Two is torture. This is a question that has three components. The first is what we did. And I could not advise you more strongly to acquaint yourself with the details, to drill down to the cables, to bring people in and ask hard questions, and to not be fobbed off with sanitized summaries. Do it yourself or assure that it's done by someone not tainted by the program, independent, and who you can trust.

Ask about conditions, hygiene, humanity and dignity, medical care. Ask about the intensity, duration and multiplicity of techniques. Find out if they complied with the limits and the predicates—and the predicates—of the OLC opinions. How bad is it? You need to know in order to advise your principals well.

Second is how this happened. Institutions were damaged to make this happen, most profoundly, the Office of Legal Counsel of the Department of Justice. But how is it that no lawyer within the intelligence community found *United States* v. *Lee* on waterboarding, or our history of military prosecutions. Evan Wallach's Law Review article I would commend to you on the availability of that information. What went wrong? Why didn't they ask about it?

And, third, this is a problem with a long history of false and misleading information, from the President saying it's not torture when we've prosecuted it as torture—as not only a crime but as a war crime—in our history. We were told it was clearly lawful and

the OLC opinions were likely phonied up. Objections to them from within the administration were not answered but rather were suppressed. CIA appears to have turned a blind eye to it. "Clearly lawful" seems to exaggerate a good deal.

It's the same as the SERE training, we were told. We do it to our troops. CIA's own IG report and the OMS section of that belies that. And if you've answered the first question you know it's false, the first question being about what was actually done.

We were told that we need to back our brave CIA agents who did all this, and now we find out that the worst of the program was actually led by private contractors. We were led to believe that waterboarding was irresistible and immediately effective. Then we find out that KSM was waterboarded 183 times and another detainee 83 times. We were told that KSM lasted only seconds on the waterboard, it was that irresistible, and it never had to be done again. That was plainly false.

We were told that it produced actionable data. I have not yet seen evidence of that, and the things that suggest that that's true are carefully worded, I think to mislead. Certainly Director Mueller has said he's seen no evidence of it also. Look carefully. Is there actually real evidence of actionable intelligence on the waterboard?

Finally, military and FBI interrogators have been derided as amateurish and ineffective, with the opposite argument being that it's the expert and experienced folks at the CIA who don't need the Army field manual, sort of like it's training wheels on a bicycle, in order to do their jobs. In fact, the opposite is true.

The FBI and the military and some career CIA folks were the real experts. The people who came in improvised a program. There was no previous expertise in that area, and the people who did it had no previous experience in interrogation. There is a strong record of that at this point.

This whole question of the false and misleading information raises the question whether this is just a giant collective misunderstanding or whether there has been a calculated plan to deceive, and, whichever, it feeds into a consistent storyline that is, by all the evidence we've seen so far, false, and yet was maintained as early as today.

Do not be taken in, I urge you, and do not allow your principals to be taken in. We know too much right now that is false. Your reactions?

Mr. PRESTON. Well, Senator, I appreciate the admonition and the guidance. You clearly have followed this closely and are taking an active interest in it, which I and others at the Agency I am sure appreciate. And I think your observations and admonitions will be useful to me if I have the privilege of serving.

Mr. LITT. Senator, I agree with what Steve said. I would also just comment that I know that this Committee is undertaking a review of the past interrogation practices, and I think that this Committee is particularly well situated to do that in an appropriate manner by virtue of the bipartisan tradition of the Committee and the expertise that it has in intelligence. And if I'm confirmed I look forward to doing what I can in working with you in that area.

Senator WHITEHOUSE. If I may add one final point in reaction to that, I could not be more proud of what Chairman Feinstein is

doing. I could not be more confident in her leadership. But there are limitations to what a congressional committee can do in terms of the access that we're allowed to information, in terms of the consequences if we are misled, in terms of the boundary of executive privilege that protects certain things, or can be asserted to protect certain things.

I very much hope that the executive branch of government is not relying on this Committee to sort out the mess that was made. For whatever we're doing, you have an independent responsibility as lawyers and as occupants of the offices you—I hope soon—will hold to conduct your own independent, equally rigorous review of this so that you and the principals that you represent are not fooled, are not misled, and have a full understanding of what took place.

Chairman FEINSTEIN. Thank you very much, Senator Whitehouse.

Senator Levin.

Senator LEVIN. Madam Chairman, thank you very much and welcome to our witnesses and their families.

I want to get back at the answer that you gave, Mr. Preston, I understand, to Senator Feingold about whether or not specific techniques represented torture or not, and I think your answer was you haven't reached that conclusion, or something like that?

Mr. PRESTON. That's right.

Senator LEVIN. Have you reached the opposite conclusion?

Mr. PRESTON. No, sir.

Senator LEVIN. Have you given some thought to the question?

Mr. PRESTON. I have indeed.

Senator LEVIN. And why haven't you reached a conclusion, if you have given thought to it?

Mr. PRESTON. Well, it's difficult to answer the question with general reference to the techniques referenced in the opinions.

Senator LEVIN. How about waterboarding 183 times?

Mr. PRESTON. I will answer that. I just want to say the point I was making with Senator Feingold was that my focus has principally been on the issues I am likely to face going forward. To the extent that practices have ended by order of the President, the law changed after 2005, and we have a process in place to try to identify permissible practices. I have been focused in that direction and not so much on the judgments or misjudgments that were made in the past.

Senator LEVIN. The Attorney General is in the same position you are, if you are confirmed.

Mr. PRESTON. Yes, sir.

Senator LEVIN. The President had said he's no longer going to use waterboarding. The Attorney General was very forthright. In his judgment, waterboarding is torture. He didn't say what you just said—hey, the President said he's not going to use it. So now let me ask you: is waterboarding torture?

Mr. PRESTON. Well, as you point out, it has been determined at the highest level of our government, by the President and by the chief legal officer of the country, that waterboarding is torture and that the United States will not engage in that practice going forward. That's a decision made and I support the decision. Yes, sir.

Senator LEVIN. You support that conclusion?

Mr. PRESTON. Yes, sir.

Senator LEVIN. Are you familiar with SERE techniques?

Mr. PRESTON. I am generally familiar with them. Yes, sir.

Senator LEVIN. Have you read the opinions that describe what those techniques are and how we use those to help train our people under very carefully controlled conditions as to what they might expect from people who torture them?

Mr. PRESTON. Yes, sir.

Senator LEVIN. Have you read the way in which those techniques were utilized not to help train our people to survive brutality but to inflict brutality. Have you read about techniques that were used?

Mr. PRESTON. I have, sir.

Senator LEVIN. And, in your judgment were the—and you read the Bradbury opinion, for instance?

Mr. PRESTON. I have.

Senator LEVIN. And in your judgment, were the techniques that were utilized against detainees utilized in the same way that SERE techniques are used to help our own folks resist intimidation or abuse?

Mr. PRESTON. Senator, my understanding is that there are some differences that one might consider substantial.

Senator LEVIN. Do you consider them substantial?

Mr. PRESTON. I would. Among them——

Senator LEVIN. Does that mean I do?

Mr. PRESTON [continuing]. Yes, sir. Among the differences is that obviously one voluntarily enters into SERE training and, as I understand it, the participants are given a code word, if you will, the utterance of which will cause a cessation of the practice. Those strike me as significant differences.

Senator LEVIN. The folks that run that program are called the Joint Personnel Recovery Agency, JPRA. They're the ones who help to train our people in case they're captured and abused, to try to survive that. A memo from that agency to the General Counsel of the Department of Defense said the following—that the use of coercive techniques in interrogation, out in training under controlled circumstances, including the one that you've just given, you can end it at any moment, but that the use of coercive techniques in interrogation would "increase resistance, would create doubts about the accuracy and reliability of the information obtained, and could be used by enemies as justification for the torture of captured U.S. personnel." Do you agree with that assessment?

Mr. PRESTON. I am not familiar with the memo, Senator. And I certainly understand that those and other points have been made in support of the proposition that these coercive techniques are not effective and ill advised.

Senator LEVIN. And do you share those same doubts about——

Mr. PRESTON. I share some of the same concerns. Yes, sir.

Senator LEVIN. Madam Chair, is my time up? I'm over my time. I'm sorry, Madam Chair.

Chairman FEINSTEIN. We thank you very much, Senator.

Senator Risch.

Senator RISCH. Pass.

Chairman FEINSTEIN. Senator, would you like to ask another question?

Senator LEVIN. Yes. But I could come back. I didn't realize that——

Chairman FEINSTEIN. He passed.

Senator LEVIN. Oh, okay. Thank you.

General Petraeus in May of 2007 said the following: Some may argue that we would be more effective if we sanctioned torture or other expedient methods to obtain information from the enemy. They would be wrong. Beyond the basic fact that such actions are illegal, history shows that they are also frequently neither useful nor necessary. Certainly extreme physical action can make someone talk. However, what the individual says may be of questionable value. Do you agree with General Petraeus?

Mr. PRESTON. Senator, I would like to respond as completely as I can, but I frankly am not expert in the efficacy of interrogation techniques, the spectrum of interrogation techniques.

Senator LEVIN. Are you concerned that if torture is used that someone will say anything in order to stop the torture?

Mr. PRESTON. I beg your pardon?

Senator LEVIN. Are you concerned that if torture is used that somebody who was being tortured will say anything to end the torture?

Mr. PRESTON. Certainly, that's an intuitively understandable proposition. I just don't have any experience base with interrogation methods. And I would say certainly with respect to torture, as the President's made clear, we will not engage in torture.

Senator LEVIN. Thank you. Thank you, Madam.

Chairman FEINSTEIN. Yes. Thank you very much, Senator Levin.

Let me ask my questions. My curiosity was piqued by something, Mr. Preston, you wrote in the responses to prehearing questions about the unclassified conclusions of the CIA Inspector General's report entitled "Procedures Used in Narcotics Airbridge Denial Program in Peru, 1995–2001."

On question 20(a), you state that the Office of General Counsel attorneys have a legitimate role to play in advising CIA personnel on mitigating potential civil liability, including advising their clients not to create discoverable documents during civil litigation or while facing the threat of civil litigation.

Let me read a press statement written by the Vice Chairman of the House Intelligence Committee on January 13th. "The CIA Inspector General also found that persons within the CIA mounted an extensive cover-up of the facts of this tragedy from the White House, the Justice Department, and Congress. The CIA lied to Congress and the executive branch about the downing of the Bowers' plane to shield its personnel from being held accountable and from possible prosecution."

Now, as you know, Mrs. Bowers was killed when the Peruvian Air Force shot at the plane and the bullet went through her into the brain of the baby she was holding in her lap and killed the baby as well. Who is the client of the CIA General Counsel—the United States, the CIA, the CIA Director, supervisors, the CIA personnel with accountability functions, or all individual CIA personnel? Who is your actual client?

Mr. PRESTON. That is an excellent question and one that I have given thought to and I will answer as directly as I can. In your absence, Senator Wyden also asked me about this and gave me an opportunity to clarify that I am not familiar with the circumstances of the Peru incident, have not had access to the IG report, and am not in a position to comment on the particular observation or allegation about the making of discoverable documents. I was simply trying to make the point that it is not uncommon, certainly in private sector experience and I think increasingly in the public sector, that an attorney could properly advise a client or agency personnel not to unnecessarily generate documents that would be discoverable in a civil litigation context.

Chairman FEINSTEIN. Well, it's one thing to do that; it's another thing to inspire a direct cover up.

Mr. PRESTON. And as I tried to clarify with Senator Wyden, I think what I am describing is worlds apart from anything I would call a cover up or instructions not to create records that are regularly kept or to alter records, to destroy records or otherwise not cooperate in, for example, a criminal investigation.

Chairman FEINSTEIN. Let me ask you——

Mr. PRESTON. I do want to answer your question.

Chairman FEINSTEIN [continuing]. Another question.

Mr. PRESTON. Yes, ma'am.

Chairman FEINSTEIN. Are there any circumstances under which the CIA should be permitted to lie to Congress?

Mr. PRESTON. I don't believe—I cannot think of any.

Chairman FEINSTEIN. And if you believed the CIA were in fact lying to Congress, what would you see it to be your duty to do?

Mr. PRESTON. Well, I would follow the lead of Director Panetta on this, and he has said it is neither the policy nor the practice of the Agency to lie to or mislead Congress. I would view an instance of lying to Congress as being in direct tension and direct opposition with that stated policy and practice by the Director. And I would, at a minimum, bring it to the Director's attention so that we could discuss the appropriate response.

Chairman FEINSTEIN. I would very much hope you would not condone it.

Mr. PRESTON. Oh, absolutely not.

Chairman FEINSTEIN. And that you would do more than bring it to his attention for a response.

Mr. PRESTON. Well, by which I simply meant that I would engage with him and that we would decide—he would decide with the benefit of my judgment how to rectify the situation. I don't mean to suggest it's merely a matter of letting him know about it.

Chairman FEINSTEIN. Well, let me ask you, if you are confirmed, that you do review the Inspector General's report on this.

Mr. PRESTON. I plan to. And I do want to answer your question. I believe my client will be the Agency and ultimately the United States. I take my direction from the Director, and in some very real ways the men and women who are the Agency we regard as our clients. But in, for example, a matter in which there's possible criminal misconduct, neither I nor the lawyers in my office have any business providing personal counsel to individuals who may

have exposure. Our client is the Agency, the United States, and the people of the United States.

Chairman FEINSTEIN. Thank you very much.

Mr. Ranking Member, do you have a question?

Vice Chairman BOND. I've heard enough.

Chairman FEINSTEIN. Okay.

Senator Whitehouse, do you have additional questions?

Senator WHITEHOUSE. If I may.

Chairman FEINSTEIN. Please, go ahead.

Senator WHITEHOUSE. Thank you.

Mr. Preston, you, in responding to Chairman Levin, indicated a tendency, if you will, to try to address the forward-looking problems of the Agency that with any luck you will soon be representing, as opposed to the backward-looking problems. As lawyers, as you know, when we come in, those old messes are still our problems. You don't get to say, well, that happened before I got here. It's not my problem.

You have under American law the corpus delicti of a crime. Waterboarding under American law is a crime established by the United States Court of Appeals for the Fifth Circuit, the *United States* v. *Lee*.

So now the question is, is anybody criminally liable for it? You found a body, doesn't necessarily mean somebody is criminally liable for it. You have to investigate further. You have at least one U.S. Attorney investigating a related issue. I think that the notion that somehow this can be wished away or isn't going to be a very real and immediate part of your professional life is misguided.

I understand that there is something of a tension between the President's desire to look forward, which I think is both correct and commendable and appropriate for his office, and the problem that, frankly, this can't be wished away. And you will be at the junction point of the Presidential desire to go forward, and yet the facts and the practicalities of really not being able to until this is resolved. And I'd be interested to hear how you would resolve that tension.

I'd also like you to comment on another tension. You will be representing—both of you actually—principals, your bosses, the director of National Intelligence and the Director of the CIA, who are new to their positions and who rely to a very substantial degree on career staff to provide them advice. And in both cases, it is possible that within that staff chain of command are people who are actually implicated in the decisions that led to the torture of detainees.

It seems to me that that creates a very significant management and legal problem for your principals if they have not, particularly on this issue, built a chain of command to advise them on it that is clear and independent of any taint of association with the program.

That's particularly complex in Mr. Litt's case because he has his own separate conflict issues related to this.

So how do you intend to balance the President's desire of the President of the United States to look forward with your responsibilities as Agency counsel with a very significant and as yet unresolved problem in your past to resolve? And what is your responsibility for assuring that your principal has a clean and untainted

chain of command that is informing him about this so that coverups aren't happening in that chain of command?

Mr. PRESTON. Let me begin with the first question and underscore my agreement with you that one cannot wish away the issues arising from the past practices. And I don't mean to suggest anything of the sort. I recognize that those——

Senator WHITEHOUSE. We all wish they never happened, but that's a different——

Mr. PRESTON [continuing]. Well, that may be. I recognize that these are real and present issues that the Agency, the Director, myself will need to deal with responsibly, and I have every intention of doing that. My reference to looking ahead was really by way of explanation as to why as these issues come to me I don't expect the dead letters of the OLC opinions to be providing guidance to me. I will be looking at the facts that are presented then and the guiding principles that now apply and apply my best judgment for the benefit of my client.

Senator WHITEHOUSE [continuing]. And on the question of an untainted reporting chain?

Mr. PRESTON. Pardon?

Senator WHITEHOUSE. And on the question of an untainted reporting chain?

Mr. PRESTON. On the question of reporting chain, it's an interesting point. I think it's more than an interesting point. It's an important point. One of the things I can do to help the Agency and to help the Director is to come in as someone who has no prior involvement with the matters under examination and, starting with me, provide guidance, advice and counsel that is uninformed and, to the outside observer, untainted, to use your word, by prior involvement.

The Agency and other members of the intelligence community don't wholesale change out the leadership when there's a change in administration, and that's a good thing. I would expect that both the Director and I will come to rely on the solid career people at the Agency, senior staff and otherwise, that from administration to administration we have come to rely on.

I think you flag an issue that we need to be sensitive to as we navigate these shoals. But I do think and I have—from my experience with the senior staff in the Office of General Counsel that I've worked with, I know them to be dedicated and capable. And to the extent that people were there at the time the matters under examination were happening, that's something that we will simply have to factor into our actions and decisionmaking.

Senator WHITEHOUSE. But you do recognize that for all the wonderful work that the CIA career folks do and, as the son of a former CIA employee and career federal employee, I think very, very highly of what they do. This is not a slam on them. This is just a fact that if you allow your chain of reporting to be only through people who are potentially implicated in an incident, it is not clear that your principal who you represent will be getting untainted information. And getting to your principal untainted and complete information I think is one of your highest duties.

Thank you, Chairman.

Chairman FEINSTEIN. Do you have any other questions?

Senator LEVIN. Just a couple, if you would, Madam Chairman.

You said a few moments ago that if a Director of CIA said something that was misleading. Is that who you were referring to, that you would then talk to him about how to rectify the situation?

Mr. PRESTON. That wasn't how the question was presented to me.

Senator LEVIN. Who was the question referring to? Was it not the CIA Director?

Mr. PRESTON. Well, the Chairman referred to the CIA—if the CIA were to lie to Congress.

Senator LEVIN. All right. So if the CIA Director said something which was misleading or erroneous publicly, what would you do?

Mr. PRESTON. I think my first responsibility would be to apprise him of my concerns about the accuracy of his statements.

Senator LEVIN. And what would be the second thing, if he continued.

Mr. PRESTON. It may well depend on what his response is.

Senator LEVIN. Well, he said, "I'm not going to correct it. You're right. It's erroneous, but I'm not going to correct it."

Mr. PRESTON. Well, I think one can suppose any number of circumstances where my client or the Director would choose not to follow my advice or act against my counsel. That would present to me a dilemma in which, depending on the issue and the strength of my disagreement, I might find myself compelled to seek employment elsewhere. I certainly hope and with this Director confidently predict that's not going to be a problem.

Senator LEVIN. I'm sure that's our hope and our confident prediction, but we don't know how these things turn out. Director Tenet said some things publicly which were false and, by the way, acknowledged later on in his book that they were erroneous. A top policymaker of the United States, the Vice President, said some things which were false. Director Tenet said, gee, looking back, I'm sure we should have done something to force a correction of that.

We went to war based on misleading, erroneous information that was passed on by our top policymakers based on intelligence, particularly alleging a link between al-Qa'ida and Saddam Hussein. These are serious matters involving a huge amount of lives. And it's important to me that I know what's in your gut about, if and when that happened, how seriously you would take it.

Mr. PRESTON. I think that it is a gravely serious matter. I think there's been a lot learned from that experience. I think this process by which Director Panetta was selected and confirmed, and to a lesser extent myself, is one in which hopefully we are capably communicating the gravity with which we would regard that and our every intention not to let it happen.

Senator LEVIN. The Chairman made reference to an IG report on the shootdown of a missionary family's plane in Peru, which was a Michigan missionary family, and made reference to the fact that the lawyers from the CIA Office of General Counsel advised CIA personnel to avoid putting anything in writing lest it be discoverable in legal proceedings. My understanding was that you indicated in a prehearing answer that such advice could be justified, but then I thought you said that you have clarified this with one of our colleagues. Is that correct?

Mr. PRESTON. Well, there was a colloquy with Senator Wyden in which he just wished to make clear—I wished to make clear that I was not commenting on the specific facts in the Peru incident because I am not aware of those facts and I have not seen the report. I had made the observation that is not uncommon and may be entirely proper for counsel to advise client personnel not to generate unnecessary documents that might prejudice the Agency's case in civil litigation. But beyond that, I really am not familiar with the Peru incident or what advice was given and do not want to express a judgment one way or the other on that.

Senator LEVIN. I think you should become familiar with that report so you can give us your opinion. Would you do that?

Mr. PRESTON. I have every intention of reviewing that——

Senator LEVIN. Promptly.

Mr. PRESTON [continuing]. When I take office.

Senator LEVIN. Well, no. I'd like you to do that promptly.

Mr. PRESTON. Yes, sir.

Senator LEVIN. If you do that in the next couple of days, I would be appreciated.

Mr. PRESTON. Well, it's classified and I am not able to have access to it, but my plan was, if I am privileged to take office, to make it one of my first priorities.

Chairman FEINSTEIN. If I may, I think what Senator Levin and some of us are pointing out is that you are not just an attorney representing any client. You're representing an agency that presents itself as a difficult client because of its mission. And our expectation is that the law will be followed and that we will not be lied to. And these are problems of war and peace, as Senator Levin pointed out. And I think anything other than the truth, as somebody knows it at the time, is really unacceptable. And to some extent, the burden is going to be yours.

Now, you said if the question were of such magnitude and the Director, let's say—I guess it is the Director—would not take your advice, that you would resign. And I think that's the appropriate thing. And I think there has to be a legal conscience for the Agency and your office is going to be it.

Mr. PRESTON. I appreciate your insights into that and I am in agreement with you. I am confident, as I told Senator Levin, that with Director Panetta things would not get to that point, but I do not mention it lightly and I would not take that step lightly. But I agree entirely with you in terms of the great importance of both adherence to the law and candor with the oversight committees.

Chairman FEINSTEIN. Okay.

At the conclusion of the hearing, the Committee is going to have questions for the record that we will submit to the nominees in writing. I'd like to ask that Members submit their questions by noon on Tuesday, and I'd like to ask both you, Mr. Preston, and you, Mr. Litt, that you respond to them ASAP. As soon as we receive them, have an opportunity to review them, we will mark up your nomination and hopefully be able to move it out to the floor.

So at this time, once again, if the Members could meet in room 211, that would be appreciated. And this hearing is adjourned.

[Whereupon, at 4:02 p.m., the Committee adjourned.]

Supplemental Material

SELECT COMMITTEE ON INTELLIGENCE

UNITED STATES SENATE

QUESTIONNAIRE FOR COMPLETION BY PRESIDENTIAL NOMINEES

SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE

QUESTIONNAIRE FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART A - BIOGRAPHICAL INFORMATION

1. NAME: Robert S. Litt

2. DATE AND PLACE OF BIRTH: Dec. 29, 1949, New York City

3. MARITAL STATUS: Married

4. SPOUSE'S NAME: [DELETED]

5. SPOUSE'S MAIDEN NAME IF APPLICABLE: [DELETED]

6. NAMES AND AGES OF CHILDREN:

NAME	AGE
[DELETED]	[DELETED]
[DELETED]	[DELETED]
[DELETED]	[DELETED]

7. EDUCATION SINCE HIGH SCHOOL:

INSTITUTION	DATES ATTENDED	DEGREE RECEIVED	DATE OF DEGREE
Harvard College	1967-1971	A.B.	1971
Yale University	1972-1973	M.A.	1973
Yale Law School	1973-1976	J.D.	1976

8. EMPLOYMENT RECORD (LIST ALL POSITIONS HELD SINCE COLLEGE, INCLUDING MILITARY SERVICE. INDICATE NAME OF EMPLOYER, POSITION, TITLE OR DESCRIPTION, LOCATION, AND DATES OF EMPLOYMENT.)

EMPLOYER	POSITION/TITLE	LOCATION	DATES
Hon. Edward Weinfeld	Law Clerk	USDC, SDNY	1976-1977
Hon. Potter Stewart	Law Clerk	U.S. Supreme Ct.	1977-1978
U.S. Department of Justice	Asst. U.S. Atty.	Southern Dist. of New York	1978-1984
Williams & Connolly	Associate, Partner	Washington, DC	1984-1993

U.S. Department of State	Special Advisor to Asst. Secty of State, EUR	Washington, DC 4/93-6/94
U.S. Department of Justice	Deputy Asst. AG, Criminal Division	Washington, DC 6/94-10/97
U.S. Department of Justice	Principal Associate Deputy AG	Washington, DC 10/97-1/99
Arnold & Porter	Partner	Washington, DC 9/99-present

9. GOVERNMENT EXPERIENCE (INDICATE EXPERIENCE IN OR ASSOCIATION WITH FEDERAL, STATE, OR LOCAL GOVERNMENTS, INCLUDING ADVISORY, CONSULTATIVE, HONORARY, OR OTHER PART-TIME SERVICE OR POSITION. DO NOT REPEAT INFORMATION ALREADY PROVIDED IN QUESTION 8):

See question 8.

10. INDICATE ANY SPECIALIZED INTELLIGENCE OR NATIONAL SECURITY EXPERTISE YOU HAVE ACQUIRED HAVING SERVED IN THE POSITIONS DESCRIBED IN QUESTIONS 8 AND/OR 9.

As Deputy Assistant Attorney General in the Criminal Division, I dealt with matters arising out of what were then the Internal Security and Terrorism sections. As Principal Associate Deputy Attorney General, I reviewed FISA applications; participated in the annual covert action review; interacted with components of the intelligence community on requests for opinions, crimes reports and leaks investigations; and attended conferences of lawyers in the intelligence community, among other matters. Since leaving the government, I have represented a number of clients in the intelligence community or in national security related matters; I am a member of the Advisory Committee to the ABA's Standing Committee on Law and National Security; and I have written or given presentations on matters including domestic surveillance, detention and interrogation, and trial of terrorists.

11. HONORS AND AWARDS (PROVIDE INFORMATION ON SCHOLARSHIPS, FELLOWSHIPS, HONORARY DEGREES, MILITARY DECORATIONS, CIVILIAN SERVICE CITATIONS, OR ANY OTHER SPECIAL RECOGNITION FOR OUTSTANDING PERFORMANCE OR ACHIEVEMENT):

Department of Justice – Edmund Randolph Award for outstanding service, Feb. 1999
While an AUSA I received a Director's Award for my work in the Brink's Robbery case; this would have been around 1983 or 1984 but I can't recall specifically.

12. ORGANIZATIONAL AFFILIATIONS (LIST MEMBERSHIPS IN AND OFFICES HELD WITHIN THE LAST TEN YEARS IN ANY PROFESSIONAL, CIVIC, FRATERNAL, BUSINESS, SCHOLARLY, CULTURAL, CHARITABLE, OR OTHER SIMILAR ORGANIZATIONS):

ORGANIZATION	OFFICE HELD	DATES
American Bar Association	Council Member and Vice Chair, Criminal Justice Section	2004-date

American Bar Association	Member, Advisory Committee, Standing Committee on Law and National Security	2007-date
Temple Sinai, Washington, DC	Board member and officer	2004-date

13. PUBLISHED WRITINGS AND SPEECHES (LIST THE TITLES, PUBLISHERS, AND PUBLICATION DATES OF ANY BOOKS, ARTICLES, REPORTS, OR OTHER PUBLISHED MATERIALS YOU HAVE AUTHORED. ALSO LIST ANY PUBLIC SPEECHES YOU HAVE MADE WITHIN THE LAST TEN YEARS FOR WHICH THERE IS A TEXT OR TRANSCRIPT. TO THE EXTENT POSSIBLE, PLEASE PROVIDE A COPY OF EACH SUCH PUBLICATION, TEXT, OR TRANSCRIPT):

This list was compiled from what is in my files, from memory, and from an internet search. It includes articles that I co-authored.

Published Articles, Letters, Client Advisories, etc.

Discovery and Criminal Implications in Civil RICO Actions, (PLI 1990).

"Law Enforcement and the Growth of Electronic Commerce," in R. Fischer ed., Privacy in Electronic Commerce (1997) (as DAAG/CRM).

Issue 37-3 of the American Criminal Law Review contains the transcript of a 1999 debate between me and Prof. Paul Cassell on Dickerson v. United States.

"The Economic Espionage Act: Enforcement and Compliance", published as materials for the ABA White Collar Crime National Institute (Jan. 2000).

"Formal Bilateral Relationships as a Mechanism for Cybersecurity," published in materials for a conference on Cybersecurity by CSIS, the Markle Foundation and the Institute of Defense and Strategic Studies, Singapore (March 2002).

"Revised Sentencing Guidelines Increase Jail Time for White-Collar Offenders," (Jan. 2003), Arnold & Porter Client Advisory, available on A&P website.

"Unsealing the Lawyer's Lips: The Changing Contours of Attorney-Client Privilege in an Era of Corporate Fraud." One version of this was presented to the ABA National Institute on White Collar Crime in March 2004; another was published in the newsletter of the ABA Section on Litigation Committee on Criminal Litigation, undated. (Available on A&P website).

"Supreme Court Strikes Down Mandatory Sentencing Guidelines," Arnold & Porter Client Advisory (Jan. 2005).

"Federal Sentencing Guideline Reform in H.R. 1528," Arnold & Porter Client Advisory (April 2005).

"A Government Affairs Compliance System," Arnold & Porter Client Advisory (Jan. 2006).

"A Fake Cisneros Scandal," Washington Post, (Jan 23, 2006) (op-ed) (Available online; no copy in my possession).

"Corporations Need to Adopt Effective Policies, Procedures to Address Political, Lobbying Activity," Corporate Counsel Weekly, (Feb. 22, 2006) (Available on A & P website).

"New Rulings Challenge Constitutionality of Government Interference with Corporate Decisions to Advance Legal Fees to Employees," Arnold & Porter Client Advisory (July 2006).

"Inherent Conflicts in Joint Representation," ABA Criminal Justice Section Newsletter (Winter 2006) (Available on A&P website).

"Department of Justice Revises Policies on Attorney-Client Privilege and Payment of Employee Defense Costs," Arnold & Porter Client Advisory (Dec. 2006).

"Congressional Oversight Investigations: What to Expect and How to Respond," Corporate Counsel Weekly (Jan. 24, 2007). (Available on A&P website).

"Trends in Criminal Enforcement Against Off-Label Promotion," ABA White Collar Crime National Institute (2007). (Available on A&P website).

"Corporate Employees Need Protection From Overzealous Prosecutors," Business Crimes Bulletin (Dec. 2007). (Available on A&P website).

"Do Privacy Rights Extend to International Travelers? Warrantless Border Searches of Electronic Devices," Privacy and Security Law (Feb. 25, 2008). (Available on the A&P website as a client advisory).

"Representing a Client in Congressional Investigations," ABA White Collar Crime National Institute (2008). (Available on A&P website).

"Court Decision and New Department of Justice Guidelines Change the Landscape for Corporate Criminal Investigations," Arnold & Porter Client Advisory (Sept. 2008).

I wrote an article for the American Bar Association's journal *Litigation* on the Hyde Amendment (payment of attorneys' fees for defendants whom government has unreasonably prosecuted). I do not have a copy and do not recall the date of the article.

Speeches, Presentations, Testimony

Testimony before the Subcommittee on Regulation and Government Information, Senate Committee on Governmental Affairs, on the Invention-Promotion Industry (Sept. 2, 1994) (as DAAG/CRM).

Testimony before U.S. Sentencing Commission (March 14, 1995) (as DAAG/CRM).

Briefing of staff of House and Senate Appropriations Committees on Criminal Division activities (April 25, 1995) (as DAAG/CRM).

Testimony before the Subcommittee on Terrorism, Technology and Government Information, Senate Judiciary Committee, on the availability of bomb-making information on the Internet (May 11, 1995) (as DAAG/CRM).

Remarks on Insurance Fraud to conference of Surplus Lines Association (July 25, 1995) (as DAAG/CRM).

Remarks at conference of First Assistant United States Attorneys on domestic terrorism investigations and sentencing issues (August 1995) (as DAAG/CRM).

Testimony at U.S. Sentencing Commission Symposium on Corporate Crime (Sept 7, 1995) (as DAAG/CRM).

Testimony before the Senate Judiciary Committee on Amendments to the False Claims Act (May 14, 1996) (as DAAG/CRM).

Remarks on Fraud Investigations in an Era of Dwindling Investigative and Audit Resources, at PCIE conference (May 22, 1996) (as DAAG/CRM).

Remarks on Federalization of Local Crime at NDAA convention (July 23, 1996) (as DAAG/CRM).

Testimony before U.S. Sentencing Commission (August 12, 1996) (as DAAG/CRM).

Remarks on "Toward Electronic Money & Banking: The Role of Government/Law Enforcement Perspectives." (September 20, 1996) (as DAAG/CRM).

Speech to conference of American Bar Assn and American Bankers Assn. on electronic commerce (October 29, 1996) (as DAAG/CRM).

Testimony before the Subcommittee on Telecommunications, Trade and Consumer Protection, House Committee on Commerce, on cellular phone privacy (Feb. 5, 1997) (as DAAG/CRM).

Testimony before the Subcommittee of Privacy and Confidentiality, National Committee on Vital and Health Statistics, on medical records privacy (Feb. 18, 1997) (as DAAG/CRM).

Testimony before the Subcommittee on Technology, Terrorism and Government Information, Senate Judiciary Committee, on Encryption (March 19, 1997) (as DAAG/CRM).

Testimony before the Subcommittee on Courts and Intellectual Property, House Judiciary Committee, on Encryption (March 20, 1997) (as DAAG/CRM).

Remarks at "Day with Justice" on Encryption (April 21, 1997) (as DAAG/CRM).

Testimony before the Subcommittee on Social Security, Senate Ways and Means Committee (sic on the document) on internet fraud (May 6, 1997) (as DAAG/CRM).

Testimony before the Subcommittee on International Economic Policy and Trade, House Committee on International Relations, on Encryption (May 8, 1997) (as DAAG/CRM).

Testimony before the Subcommittee on Commercial and Administrative Law, House Committee on the Judiciary, on the Apprehension of Tainted Money Act of 1997 (May 14, 1997) (as DAAG/CRM).

Testimony before the Subcommittee on Telecommunications, Trade and Consumer Protection, House Commerce Committee, on Encryption and H.R. 695 (Sept. 4, 1997) (as DAAG/CRM).

Remarks at NHLA/AAHA Healthcare Fraud and Abuse conference on Health Care Fraud (October 30, 1997) (as PADAG).

Testimony before the Subcommittee on the Constitution, Federalist and Property Rights Committee, Senate Judiciary Committee, on Encryption (March 17, 1998) (as PADAG).

Speech at U.S. Chamber of Commerce on law enforcement and the internet (May 12, 1998) (as PADAG).

Remarks on encryption policy at conference of EPIC (June 8, 1998) (as PADAG).

Remarks on U.S. Encryption Policy at the Royal Institute of International Affairs, London (June 22, 1998) (as PADAG).

Panelist on The Prosecutor's Role in Light of Expanding Federal Criminal Jurisdiction, at Fordham Law School (Nov. 6, 1998) (as PADAG).

I did a presentation at the Federalist Society, I believe in 1998, on Encryption. It was published in the Texas Review of Law & Politics, Fall 1999 issue, as "Crime in the Computer Age: The Law Enforcement Perspective."

"Ten Questions About Internal Investigations," Powerpoint presentation at Fifth Annual National Congress on Health Care Compliance (Jan. 2002). Note that I have given versions of this presentation a number of times over the

years. One version of this was published in program materials for a conference of the ABA Section of Litigation Committee on Corporate Counsel in February 2006. One version is available on the A&P website.

Brookings Institution presentation on "Intelligence and Law Enforcement." (April 18, 2002). I have a copy of my notes for that.

I spoke at the Third Annual Medical Device Regulatory, Reimbursement and Compliance Congress in Cambridge, MA on "That's What the Government Wants – What Do You Really Need to Do?" (March 26, 2008).

I participated in a Brookings Institution Judicial Issues Forum panel on "Legal Policy in the Obama Administration" (November 12, 2008). Transcript available.

PART B - QUALIFICATIONS

14. QUALIFICATIONS (DESCRIBE WHY YOU BELIEVE YOU ARE QUALIFIED TO SERVE IN THE POSITION FOR WHICH YOU HAVE BEEN NOMINATED):

I believe that the job of General Counsel to the Office of the Director of National Intelligence requires legal excellence, management skills and the ability to work with people, and a knowledge of the problems facing the Intelligence Community. I have spent over thirty years practicing law, handling a wide variety of complex litigation, counseling and policy matters in private practice and for the government. I have learned how to assist a client in accomplishing what he or she wants within the law, and also the critical importance of telling a client frankly when what he or she proposes is against the law. Drawing lessons I learned clerking for two superb judges, I approach a legal problem by trying to find the right answer based on the facts and the law, rather than trying to find law to justify a predetermined outcome. I am confident that I have a reputation for careful legal analysis, hard work, vigorous but ethical representation of my clients (whether they be private persons or government entities), and sound judgment.

After clerking for Judge Weinfeld in the Southern District of New York and Justice Stewart on the United States Supreme Court, I spent six years representing the United States as a federal prosecutor. I returned to government service in 1993, first for a year as Special Advisor to the Assistant Secretary of State for European and Canadian Affairs, and then as Deputy Assistant Attorney General in the Criminal Division of the Department of Justice and as Principal Associate Deputy Attorney General.

In my government jobs I have interacted with the Intelligence Community both as a consumer of intelligence and as a lawyer dealing with legal problems the community faces. For example:

- I participated in the review and evaluation of numerous applications under the Foreign Intelligence Surveillance Act.
- On a number of occasions I helped evaluate courses of action proposed by components of the Intelligence Community for compliance with U.S. law.
- I helped evaluate crimes reports and requests for leaks investigations.
- I participated in legal conferences of the intelligence community.
- I represented the Department of Justice at the annual interagency review of covert actions.
- I served as the Department of Justice's public and interagency representative on matters of importance to the law enforcement and national security relating to encryption and electronic surveillance, including implementation of the Communications Assistance to Law Enforcement Act (CALEA).
- I helped create and stand up the Department of Justice's Computer Crime and Intellectual Property Section.
- I worked with the Congress on a variety of legislative matters of importance to the Intelligence Community, including provisions relating to the applicability of the law to activities of the Intelligence Community and amendments to the Computer Fraud and Abuse Act.
- I was actively involved in the supervision of several domestic terrorism investigations, including the Unabomber and the Oklahoma City bombing, as well as the government's investigation of al-Qaeda (which led to the pending indictment of Osama bin Laden and others in New York).

- I frequently served as liaison between prosecutors and the Intelligence Community on sensitive issues relating to the use of evidence or prosecutive decisions.

In the years since I left the Department of Justice I have continued to be involved in matters related to the Intelligence Community. While at Arnold & Porter LLP I have represented several employees of the CIA in matters arising out of their employment, some of which are classified, and have dealt extensively on those matters with the CIA and its Office of General Counsel and Office of Inspector General. I have counseled firm clients on matters relating to intelligence and surveillance. I have been active in the American Bar Association's Standing Committee on Law and National Security and have lectured, written or moderated panels on topics such as the prosecution of terrorists, the interplay of surveillance laws and constitutional rights, and the critical issue of cybersecurity.

In general, my experience as a prosecutor (and as a defense lawyer who has represented clients in criminal cases and other investigations that involved classified information) has given me an appreciation of the complex interplay between the criminal justice system and the intelligence community, including the operation of such statutes as FISA and the Classified Information Procedures Act, and of the need to ensure a broad and free flow within the government of information essential to protect the national security, consistent with civil liberties.

At the Department of Justice I was also involved extensively in the important process of Congressional oversight. I testified before various committees of the House and Senate on numerous occasions on a variety of matters, including encryption and the availability of bomb-making information on the internet, and I briefed members of Congress or their staffs on a variety of issues. As noted above I also worked with members and their staff on a wide range of legislative issues, on behalf of the Department of Justice.

An important function of ODNI, and by extension of its General Counsel, is to coordinate and direct the activities of the many agencies that make up the intelligence community. My work at the Departments of Justice and State has acquainted me with many of the tools through which this coordination and direction is accomplished, including the interagency process, budgeting and reprogramming. Moreover, I have developed good working and personal relationships with many individuals in the intelligence community and other government bodies with whom I would be working if confirmed by the Senate. Finally, as a manager both in the Department of Justice and at Arnold & Porter I learned valuable lessons about running an office.

PART C - POLITICAL AND FOREIGN AFFILIATIONS

15. POLITICAL ACTIVITIES (LIST ANY MEMBERSHIPS OR OFFICES HELD IN OR FINANCIAL CONTRIBUTIONS OR SERVICES RENDERED TO, ANY POLITICAL PARTY, ELECTION COMMITTEE, POLITICAL ACTION COMMITTEE, OR INDIVIDUAL CANDIDATE DURING THE LAST TEN YEARS):

Contributions

Committee	Amt.
1999	
Al Gore	$250
Bill Bradley	$250
Democratic Senatorial Campaign Cmte.	$500
2000	
Al Gore	$750
Al Gore	$250

Paul Sarbanes	$500
DNC Services Corp	$2000
2001	
Cuomo for Governor	$500
Arnold & Porter PAC	$500
Van Hollen for Congress	$2,000
Reno for Governor	$1,000
DCCC	$500
DSCC	$400
2002	
Florida Democratic Party	$1,000
Friends for Jane Lawton	$100
Friends of Tom Perez	$50
Marietta Robinson for Attorney General	$500
Arnold & Porter PAC	$500
Van Hollen for Congress	$2,000
DSCC	$1,000
DCCC	$1,000
Mark Pryor for U.S. Senate	$250
2003	
Arnold & Porter PAC	$700
Van Hollen for Congress	$2,000
DCCC	$2,000
DSCC	$2,000
DNC	$2,000
Kerry for President	$500
Matheson for Governor	$100
Mikulski for Senate	$1,000
2004	
Van Hollen for Congress	$6,000
Arnold & Porter PAC	$700
Kerry for President	$3,000
Matheson for Governor	$500
Daschle for Senate	$250
DNC	$5,000
2005	

Arnold & Porter PAC	$700
Van Hollen for Congress	$8,400
Friends of Hillary	$500
Ben Cardin for Senate	$500
Forward Together PAC	$500
DCCC	$1,000
DSCC	$1,000

2006

Friends of Peter Franchot	$250
DCCC	$2,000
Victory Now PAC	$5,000
Ben Cardin for Senate	$700
Friends for Jane Lawton	$100
Friends of Martin O'Malley	$1,000

2007

Van Hollen for Congress	$9,200
Obama Exploratory Committee	$4,600
Arnold & Porter PAC	$1,400
Obama for America	$4,600
DSCC	$1,000
Trauner for Congress	$100
Victory Now PAC	$1,000

2008

Arnold & Porter PAC	$1,400
People for Chris Gregoire	$1,000
Trauner for Congress	$200
Victory Now PAC	$5,000

Notes

My records only go back to April 1, 2001.
For older contributions, I have relied on
publicly available sources.
In some instances the committee name may not be exact.
Contributions reflect those of my wife as well.
In 2004, I provided volunteer legal assistance to the Kerry campaign.
In 2006, I provided volunteer legal assistance to the DCCC.

In 2008, I provided volunteer legal assistance to the Obama campaign.

16. CANDIDACY FOR PUBLIC OFFICE (FURNISH DETAILS OF ANY CANDIDACY FOR ELECTIVE PUBLIC OFFICE):

None.

17. FOREIGN AFFILIATIONS

(NOTE: QUESTIONS 17A AND B ARE NOT LIMITED TO RELATIONSHIPS REQUIRING REGISTRATION UNDER THE FOREIGN AGENTS REGISTRATION ACT. QUESTIONS 17A, B, AND C DO NOT CALL FOR A POSITIVE RESPONSE IF THE REPRESENTATION OR TRANSACTION WAS AUTHORIZED BY THE UNITED STATES GOVERNMENT IN CONNECTION WITH YOUR OR YOUR SPOUSE'S EMPLOYMENT IN GOVERNMENT SERVICE.)

A. HAVE YOU OR YOUR SPOUSE EVER REPRESENTED IN ANY CAPACITY (E.G. EMPLOYEE, ATTORNEY, OR POLITICAL/BUSINESS CONSULTANT), WITH OR WITHOUT COMPENSATION, A FOREIGN GOVERNMENT OR AN ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE FULLY DESCRIBE SUCH RELATIONSHIP.

From time to time some of my partners have consulted me, relatively briefly, on matters involving the representation of foreign governments:

- In approximately 2007-2008 I helped to moot court one of my partners who represents Israeli government officials who were sued in federal courts in the District of Columbia and New York, on claims arising out of the bombing by the Israeli Defense Forces of a house in Gaza. The lawsuits were dismissed.
- In approximately 2000 I gave advice to partners representing the central bank of a South American country; to the best of my recollection this involved potential litigation to recover funds stolen by a former officials, although my recollection is not firm.
- Since approximately 2006, the Government of Venezuela has from time to time sought advice about how to approach the U.S. Government about counterfeit bonds of that government being marketed in the U.S.; I met on behalf of that government with the U.S. Attorney's Office for the Southern District of New York, which subsequently brought a prosecution.
- In about 2006, one of my partners asked me to consult with the government of an allied nation on whether the disclosure of information classified by that nation might violate U.S. law under the circumstances.
- In 2008 I represented the horse racing authority of a foreign government that wanted advice on U.S. gambling laws in connection with a contract to simulcast races into the United States.

These are the only instances I can recall.

B. HAVE ANY OF YOUR OR YOUR SPOUSE'S ASSOCIATES REPRESENTED, IN ANY CAPACITY, WITH OR WITHOUT COMPENSATION, A FOREIGN GOVERNMENT OR AN ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE FULLY DESCRIBE SUCH RELATIONSHIP.

Arnold & Porter LLP has an active practice representing foreign governments and foreign government-controlled entities, most frequently with respect to financing transactions or international arbitrations, and we have offices in London and Brussels. The firm's records, however, do not specifically identify which clients are foreign

government entities. I have made inquiry of those individuals who I believe have knowledge of our international representations and I have reviewed our firm's filings under the Foreign Agents Registration Act. As a result of that review I am aware of the following foreign government clients of the firm since 1999, in addition to those identified in question 17A above. I cannot be certain that this list is complete. In addition, I have been made aware of several additional matters where we represent foreign governments or foreign government-controlled entities but our representation is confidential and I am not authorized to disclose it. In connection with the nomination process, I have consulted with the Office of Government Ethics and the Office of the DNI's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the DNI's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

Argentina – international arbitration
Bahrain – advice with respect to status of forces agreement
Bosnia/Herzegovina – debt renegotiation
Brazil – financing matters and advice as to potential litigation
Canada (Province of Alberta) – international trade matters
Chile – international arbitration
China (Ministry of Commerce) – international trade matters
Colombia – financing matters and advice regarding free trade agreement
Dominican Republic – international arbitration
Ecuador – international arbitration
El Salvador – financing matters and international arbitration
Ethiopia – intellectual property matters
France (Electricite de France) – international arbitration
Guatemala – international arbitration
Hungary – international arbitration
Israel – financing transactions, litigation and advice on legislation and international trade agreements
Kazakhstan – advice concerning U.S./Kazakhstan relations
Moldova – financing matters
Pakistan – financing matters
Panama – financing matters, intellectual property matters, international arbitration and advice regarding free trade agreement
Romania – financing matters
Saudi Arabia – commercial litigation
Singapore (Infocomm Development Authority) – Regulatory issues
Tanzania (Communications Commission) – Advice on local regulatory matters
Trinidad and Tobago – financing transactions and commercial litigation
Turkey – financing transactions
Venezuela – financing matters, litigation and international arbitration
Yemen – financing matters and litigation advice
Zambia – financing matters and related litigation and arbitration

C. DURING THE PAST TEN YEARS, HAVE YOU OR YOUR SPOUSE RECEIVED ANY COMPENSATION FROM, OR BEEN INVOLVED IN ANY FINANCIAL OR BUSINESS TRANSACTIONS WITH, A FOREIGN GOVERNMENT OR ANY ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE PROVIDE DETAILS.

None other than as listed above.

D. HAVE YOU OR YOUR SPOUSE EVER REGISTERED UNDER THE FOREIGN AGENTS REGISTRATION ACT? IF SO, PLEASE PROVIDE DETAILS.

No.

18. DESCRIBE ANY LOBBYING ACTIVITY DURING THE PAST TEN YEARS, OTHER THAN IN AN OFFICIAL U.S. GOVERNMENT CAPACITY, IN WHICH YOU OR YOUR SPOUSE HAVE ENGAGED FOR THE PURPOSE OF DIRECTLY OR INDIRECTLY INFLUENCING THE PASSAGE, DEFEAT, OR MODIFICATION OF FEDERAL LEGISLATION, OR FOR THE PURPOSE OF AFFECTING THE ADMINISTRATION AND EXECUTION OF FEDERAL LAW OR PUBLIC POLICY.

In 2001-2002, on behalf of the Recording Industry Association of America, I met with members of Congress and/or staff (I cannot now recall which) concerning proposed amendments to the Computer Fraud and Abuse Act and their possible effect on the music industry's anti-piracy efforts.

From approximately 2006 to the present, I have advised the American Bar Association, on a pro bono basis, with respect to regulations implementing amendments to the habeas corpus statute to expedite the process of federal habeas corpus petitions in capital cases where states provide competent counsel for state post-conviction petitions. In that capacity, I met with representatives of the U.S. Department of Justice and provided comments. I also met with some congressional staff in relation to this matter.

I am not including in this response litigation or potential litigation matters.

PART D - FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST

19. DESCRIBE ANY EMPLOYMENT, BUSINESS RELATIONSHIP, FINANCIAL TRANSACTION, INVESTMENT, ASSOCIATION, OR ACTIVITY (INCLUDING, BUT NOT LIMITED TO, DEALINGS WITH THE FEDERAL GOVERNMENT ON YOUR OWN BEHALF OR ON BEHALF OF A CLIENT), WHICH COULD CREATE, OR APPEAR TO CREATE, A CONFLICT OF INTEREST IN THE POSITION TO WHICH YOU HAVE BEEN NOMINATED.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Office of the Director of National Intelligence's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Office of the DNI's designated agency ethics official and that has been provided to this Committee.

With respect to my current or former clients, I have represented a State Department employee in a criminal matter and currently represent several present and former employees of the CIA in DOJ, congressional and IG investigations. In addition, my law firm represents a number of telecommunications and high-tech companies on matters on which I have been consulted from time to time. Some of these matters have been classified. My law firm also was appointed by the United States Court of Appeals for the Fourth Circuit to represent Zacarias Moussaoui on appeal. In 2007-08 I assisted the lawyers who handled the matter by providing legal advice about the criminal law and by participating in moot courts.

Should a conflict arise, in accordance with the terms of my ethics agreement, I will not participate personally and substantially in any particular matter involving specific parties in which a former client of mine is a party or represents a party for a period of one year after I last provided service to that client, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). I also understand that I am required to sign the Ethics Pledge (Exec. Order No. 13490) and that I will be bound by the requirements and restrictions therein. I am not aware of any potential conflicts of interest not covered under the terms of the ethics agreement or the Ethics Pledge.

20. DO YOU INTEND TO SEVER ALL BUSINESS CONNECTIONS WITH YOUR PRESENT EMPLOYERS, FIRMS, BUSINESS ASSOCIATES AND/OR PARTNERSHIPS, OR OTHER ORGANIZATIONS IN THE EVENT THAT YOU ARE CONFIRMED BY THE SENATE? IF NOT, PLEASE EXPLAIN.

Yes.

21. DESCRIBE THE FINANCIAL ARRANGEMENTS YOU HAVE MADE OR PLAN TO MAKE, IF YOU ARE CONFIRMED, IN CONNECTION WITH SEVERANCE FROM YOUR CURRENT POSITION. PLEASE INCLUDE SEVERANCE PAY, PENSION RIGHTS, STOCK OPTIONS, DEFERRED INCOME ARRANGEMENTS, AND ANY AND ALL COMPENSATION THAT WILL OR MIGHT BE RECEIVED IN THE FUTURE AS A RESULT OF YOUR CURRENT BUSINESS OR PROFESSIONAL RELATIONSHIPS.

As part of my severance I will receive my capital contribution back, and I expect to receive a pro rata portion of the income that I would otherwise have earned this year, based on the firm's standard partnership agreement. I also have retirement funds in the firm's pension and profit-sharing plans, which are defined contribution plans. I have no other agreements.

22. DO YOU HAVE ANY PLANS, COMMITMENTS, OR AGREEMENTS TO PURSUE OUTSIDE EMPLOYMENT, WITH OR WITHOUT COMPENSATION, DURING YOUR SERVICE WITH THE GOVERNMENT? IF SO, PLEASE PROVIDE DETAILS.

No.

23. AS FAR AS CAN BE FORESEEN, STATE YOUR PLANS AFTER COMPLETING GOVERNMENT SERVICE. PLEASE SPECIFICALLY DESCRIBE ANY AGREEMENTS OR UNDERSTANDINGS, WRITTEN OR UNWRITTEN, CONCERNING EMPLOYMENT AFTER LEAVING GOVERNMENT SERVICE. IN PARTICULAR, DESCRIBE ANY AGREEMENTS, UNDERSTANDINGS, OR OPTIONS TO RETURN TO YOUR CURRENT POSITION.

There are no agreements or understandings and I have no specific plans.

24. IF YOU ARE PRESENTLY IN GOVERNMENT SERVICE, DURING THE PAST FIVE YEARS OF SUCH SERVICE, HAVE YOU RECEIVED FROM A PERSON OUTSIDE OF GOVERNMENT AN OFFER OR EXPRESSION OF INTEREST TO EMPLOY YOUR SERVICES AFTER YOU LEAVE GOVERNMENT SERVICE? IF YES, PLEASE PROVIDE DETAILS.

N/A

25. IS YOUR SPOUSE EMPLOYED? IF YES AND THE NATURE OF THIS EMPLOYMENT IS RELATED IN ANY WAY TO THE POSITION FOR WHICH YOU ARE SEEKING CONFIRMATION, PLEASE INDICATE YOUR SPOUSE'S EMPLOYER, THE POSITION, AND THE LENGTH OF TIME THE POSITION HAS BEEN HELD. IF YOUR SPOUSE'S EMPLOYMENT IS NOT RELATED TO THE POSITION TO WHICH YOU HAVE BEEN NOMINATED, PLEASE SO STATE.

She is employed and her employment is unrelated to the position to which I have been nominated.

26. LIST BELOW ALL CORPORATIONS, PARTNERSHIPS, FOUNDATIONS, TRUSTS, OR OTHER ENTITIES TOWARD WHICH YOU OR YOUR SPOUSE HAVE FIDUCIARY OBLIGATIONS OR IN WHICH YOU OR YOUR SPOUSE HAVE HELD DIRECTORSHIPS OR OTHER POSITIONS OF TRUST DURING THE PAST FIVE YEARS.

NAME OF ENTITY	POSITION	DATES HELD	SELF OR SPOUSE
Temple Sinai, Washington, DC	Board Member and officer	2004-date	Self

My wife and I are trustees of trusts set up by my wife and myself for the benefit of each of our children. In addition, I am co-trustee of two trusts of which my mother is currently the beneficiary and my siblings and I are residual beneficiaries .

27. LIST ALL GIFTS EXCEEDING $100 IN VALUE RECEIVED DURING THE PAST FIVE YEARS BY YOU, YOUR SPOUSE, OR YOUR DEPENDENTS. (NOTE: GIFTS RECEIVED FROM RELATIVES AND GIFTS GIVEN TO YOUR SPOUSE OR DEPENDENT NEED NOT BE INCLUDED UNLESS THE GIFT WAS GIVEN WITH YOUR KNOWLEDGE AND ACQUIESCENCE AND YOU HAD REASON TO BELIEVE THE GIFT WAS GIVEN BECAUSE OF YOUR OFFICIAL POSITION.)

None that I recall.

28. LIST ALL SECURITIES, REAL PROPERTY, PARTNERSHIP INTERESTS, OR OTHER INVESTMENTS OR RECEIVABLES WITH A CURRENT MARKET VALUE (OR, IF MARKET VALUE IS NOT ASCERTAINABLE, ESTIMATED CURRENT FAIR VALUE) IN EXCESS OF $1,000. (NOTE: THE INFORMATION PROVIDED IN RESPONSE TO SCHEDULE A OF THE DISCLOSURE FORMS OF THE OFFICE OF GOVERNMENT ETHICS MAY BE INCORPORATED BY REFERENCE, PROVIDED THAT CURRENT VALUATIONS ARE USED.)

DESCRIPTION OF PROPERTY	VALUE	METHOD OF VALUATION
I will incorporate the SF-278 by reference.		
House in [Deleted] MD	$1,000,000	Estimate of market value
House in [Deleted] VT	$450,000	Estimate of market value

29. LIST ALL LOANS OR OTHER INDEBTEDNESS (INCLUDING ANY CONTINGENT LIABILITIES) IN EXCESS OF $10,000. EXCLUDE A MORTGAGE ON YOUR PERSONAL RESIDENCE UNLESS IT IS RENTED OUT, AND LOANS SECURED BY AUTOMOBILES, HOUSEHOLD FURNITURE, OR APPLIANCES. (NOTE: THE INFORMATION PROVIDED IN RESPONSE TO SCHEDULE C OF THE DISCLOSURE FORM OF THE OFFICE OF GOVERNMENT ETHICS MAY BE INCORPORATED BY REFERENCE, PROVIDED THAT CONTINGENT LIABILITIES ARE ALSO INCLUDED.)

NATURE OF OBLIGATION	NAME OF OBLIGEE	AMOUNT

I will incorporate the SF-278 by reference.

30. ARE YOU OR YOUR SPOUSE NOW IN DEFAULT ON ANY LOAN, DEBT, OR OTHER FINANCIAL OBLIGATION? HAVE YOU OR YOUR SPOUSE BEEN IN DEFAULT ON ANY LOAN, DEBT, OR OTHER FINANCIAL OBLIGATION IN THE PAST TEN YEARS? HAVE YOU OR YOUR SPOUSE EVER BEEN REFUSED CREDIT OR HAD A LOAN APPLICATION DENIED? IF THE ANSWER TO ANY OF THESE QUESTIONS IS YES, PLEASE PROVIDE DETAILS.

No.

31. LIST THE SPECIFIC SOURCES AND AMOUNTS OF ALL INCOME RECEIVED DURING THE LAST FIVE YEARS, INCLUDING ALL SALARIES, FEES, DIVIDENDS, INTEREST, GIFTS, RENTS, ROYALTIES, PATENTS, HONORARIA, AND OTHER ITEMS EXCEEDING $200. (COPIES OF U.S. INCOME TAX RETURNS FOR THESE YEARS MAY BE SUBSTITUTED HERE, BUT THEIR SUBMISSION IS NOT REQUIRED.)

[DELETED]

32. IF ASKED, WILL YOU PROVIDE THE COMMITTEE WITH COPIES OF YOUR AND YOUR SPOUSE'S FEDERAL INCOME TAX RETURNS FOR THE PAST THREE YEARS?

Yes.

33. LIST ALL JURISDICTIONS IN WHICH YOU AND YOUR SPOUSE FILE ANNUAL INCOME TAX RETURNS.

For the year 2008, we filed returns in Maryland and Virginia, along with federal returns. I believe that my law firm filed consolidated returns in Colorado, California, New York, the UK and Belgium as well, in which I participated.

34. HAVE YOUR FEDERAL OR STATE TAX RETURNS BEEN THE SUBJECT OF AN AUDIT, INVESTIGATION, OR INQUIRY AT ANY TIME? IF SO, PLEASE PROVIDE DETAILS, INCLUDING THE RESULT OF ANY SUCH PROCEEDING.

To my knowledge my returns have never been audited or investigated. From time to time I have gotten letters from the IRS proposing changes in my returns. I cannot recall the details of these but they were all relatively minor. My accountant's files contain two such letters, one relating to 2002 and one relating to 2003. Each of these claimed that we had underpaid estimated taxes. In each case my accountant responded and I believe the matters were resolved in our favor. In addition, I was notified by the Virginia State tax authorities that we had failed to attach a copy of our federal return to our 2007 Virginia state return, and we provided that. There may have been other instances that I cannot recall but none would have been substantial. In addition, in 2004 we were notified that our accountant had improperly claimed a credit for long term care insurance on Maryland State Tax returns in two years. We paid the tax due and no penalty was assessed.

35. IF YOU ARE AN ATTORNEY, ACCOUNTANT, OR OTHER PROFESSIONAL, PLEASE LIST ALL CLIENTS AND CUSTOMERS WHOM YOU BILLED MORE THAN $200 WORTH OF SERVICES DURING THE PAST FIVE YEARS. ALSO, LIST ALL JURISDICTIONS IN WHICH YOU ARE LICENSED TO PRACTICE.

I am licensed to practice in New York, the District of Columbia, and Maryland, as well as numerous federal courts including the U.S. Supreme Court.

I have listed below major clients (which I am considering to be clients to whom I billed more than 100 hours in a single year).

Wyeth Pharmaceuticals
Donald W. Keyser
Samir Vincent
Thomas Bauer
Arthur Andersen
Gilead Sciences, Inc.
KV Pharmaceuticals, Inc.
AstraZeneca, Inc.
Several former law enforcement and intelligence officials as amicus curiae in Padilla v. Rumsfeld
Jose Denis
Robert W. Olson
Leo Apotheker
The Recording Industry Association of America

I have worked less substantially for the following clients:

Government of Venezuela

Cyrus Friedheim, Robert Kistinger, Carl Lindner, Warren Ligan, Keith Linder, James Riley, Jeffery Zalla, William Tsacalis, Steve Warshaw & Fred Runk

DMTM Partners
PHRMA
Arthur Andersen
Herzog, Fox & Neeman
Alvin Glickman, Inc.
Mark M Richard
State of Israel
VISA USA
Hoffman-LaRoche, Inc.
Ambassador L. Paul Bremer
Newspaper Association of America
Able Laboratories, Inc.
CSX Corporatin
ContentGuard, Inc.
Mark N. Hendrix
Abbott Laboratories
Accenture
EMD
Scott Sullivan
Avon Products, Inc.
Harvard University
Aronson & Co.
Phillip Morris USA
Altria Client Services
Viacom International
Concord Partners LLC
Russell D. Lukas
GlaxoSmithKline
Ruesch International, Inc.
DFDS Transport (US)

In addition, I have represented a number of clients in non-public investigative matters whose identities I am not disclosing because of bar ethical rules.

36. DO YOU INTEND TO PLACE YOUR FINANCIAL HOLDINGS AND THOSE OF YOUR SPOUSE AND DEPENDENT MEMBERS OF YOUR IMMEDIATE HOUSEHOLD IN A BLIND TRUST? IF YES, PLEASE FURNISH DETAILS. IF NO, DESCRIBE OTHER ARRANGEMENTS FOR AVOIDING ANY POTENTIAL CONFLICTS OF INTEREST.

No. I do not believe that the position I am nominated for will present substantial conflicts of interest with my holdings. I will consult with the appropriate agency ethics official, and I am prepared to divest myself of individual holdings that are determined to present such a conflict.

37. IF APPLICABLE, ATTACH THE LAST THREE YEARS OF ANNUAL FINANCIAL DISCLOSURE FORMS YOU HAVE BEEN REQUIRED TO FILE WITH YOUR AGENCY, DEPARTMENT, OR BRANCH OF GOVERNMENT.

N/A

PART E - ETHICAL MATTERS

38. HAVE YOU EVER BEEN THE SUBJECT OF A DISCIPLINARY PROCEEDING OR CITED FOR A BREACH OF ETHICS OR UNPROFESSIONAL CONDUCT BY, OR BEEN THE SUBJECT OF A COMPLAINT TO, ANY COURT, ADMINISTRATIVE AGENCY, PROFESSIONAL ASSOCIATION, DISCIPLINARY COMMITTEE, OR OTHER PROFESSIONAL GROUP? IF SO, PROVIDE DETAILS.

No.

39. HAVE YOU EVER BEEN INVESTIGATED, HELD, ARRESTED, OR CHARGED BY ANY FEDERAL, STATE, OR OTHER LAW ENFORCEMENT AUTHORITY FOR VIOLATION OF ANY FEDERAL STATE, COUNTY, OR MUNICIPAL LAW, REGULATION, OR ORDINANCE, OTHER THAN A MINOR TRAFFIC OFFENSE, OR NAMED AS A DEFENDANT OR OTHERWISE IN ANY INDICTMENT OR INFORMATION RELATING TO SUCH VIOLATION? IF SO, PROVIDE DETAILS.

No

40. HAVE YOU EVER BEEN CONVICTED OF OR ENTERED A PLEA OF GUILTY OR NOLO CONTENDERE TO ANY CRIMINAL VIOLATION OTHER THAN A MINOR TRAFFIC OFFENSE? IF SO, PROVIDE DETAILS.

No.

41. ARE YOU PRESENTLY OR HAVE YOU EVER BEEN A PARTY IN INTEREST IN ANY ADMINISTRATIVE AGENCY PROCEEDING OR CIVIL LITIGATION? IF SO, PLEASE PROVIDE DETAILS.

In approximately 1982, when we lived in New York City, my wife and I brought an action in landlord-tenant court to evict a tenant. The matter was not resolved at the time we sold our house and moved to Washington, DC.

In addition, I was informed that as a partner in my former law firm I was named in a lawsuit against the partnership for age discrimination, as were all of the other partners. The lawsuit did not relate to my individual actions in any way and I do not know the disposition of that matter.

Other than that I am not aware of any such proceedings, although it is possible that there have been such matters involving my present or former law firm of which I am unaware.

42. HAVE YOU BEEN INTERVIEWED OR ASKED TO SUPPLY ANY INFORMATION AS A WITNESS OR OTHERWISE IN CONNECTION WITH ANY CONGRESSIONAL INVESTIGATION, FEDERAL, OR STATE AGENCY PROCEEDING, GRAND JURY INVESTIGATION, OR CRIMINAL OR CIVIL LITIGATION IN THE PAST TEN YEARS? IF SO, PROVIDE DETAILS.

Yes. I have been asked to be a witness in a civil lawsuit now pending in the Superior Court for the District of Columbia between Ullico, Inc., a former client of my firm, and the law firm of Baker Botts. I have also from time to time been interviewed in connection with background investigations conducted of third parties. To the best of my recollection, I was also interviewed by the Department of Justice Office of Professional Responsibility at some point in connection with a leak investigation but I cannot recall the details.

43. HAS ANY BUSINESS OF WHICH YOU ARE OR WERE AN OFFICER, DIRECTOR, OR PARTNER BEEN A PARTY TO ANY ADMINISTRATIVE AGENCY PROCEEDING OR CRIMINAL OR CIVIL LITIGATION RELEVANT TO THE POSITION TO WHICH YOU HAVE BEEN NOMINATED? IF SO, PROVIDE DETAILS. (WITH RESPECT TO A BUSINESS OF WHICH YOU ARE OR WERE AN OFFICER, YOU NEED ONLY CONSIDER PROCEEDINGS AND LITIGATION THAT OCCURRED WHILE YOU WERE AN OFFICER OF THAT BUSINESS.)

As noted above, I do not know whether either of the law firms of which I have been a partner has been a party to such a proceeding, but I doubt that there would have been any relevant to the position for which I have been nominated.

44. HAVE YOU EVER BEEN THE SUBJECT OF ANY INSPECTOR GENERAL INVESTIGATION? IF SO, PROVIDE DETAILS.

No.

PART F - SECURITY INFORMATION

45. HAVE YOU EVER BEEN DENIED ANY SECURITY CLEARANCE OR ACCESS TO CLASSIFIED INFORMATION FOR ANY REASON? IF YES, PLEASE EXPLAIN IN DETAIL.

No.

46. HAVE YOU BEEN REQUIRED TO TAKE A POLYGRAPH EXAMINATION FOR ANY SECURITY CLEARANCE OR ACCESS TO CLASSIFIED INFORMATION? IF YES, PLEASE EXPLAIN.

No.

47. HAVE YOU EVER REFUSED TO SUBMIT TO A POLYGRAPH EXAMINATION? IF YES, PLEASE EXPLAIN.

No.

PART G - ADDITIONAL INFORMATION

48. DESCRIBE IN YOUR OWN WORDS THE CONCEPT OF CONGRESSIONAL OVERSIGHT OF U.S. INTELLIGENCE ACTIVITIES. IN PARTICULAR, CHARACTERIZE WHAT YOU BELIEVE TO BE THE OBLIGATIONS OF THE GENERAL COUNSEL OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE AND THE INTELLIGENCE COMMITTEES OF THE CONGRESS RESPECTIVELY IN THE OVERSIGHT PROCESS.

Congress, acting in particular through the intelligence committees, serves a vital role in oversight of intelligence activities. Section 502 of the National Security Act of 1947 requires the Director of National Intelligence to keep the two intelligence committees "fully and currently informed" of all U.S. intelligence activities (covert actions are more specifically covered in Section 503), including "significant anticipated intelligence activities" and "significant intelligence failures." Like Director Blair, I believe that this notification must be timely to be effective,

and I anticipate that, if confirmed, my responsibilities as General Counsel will include assisting him in carrying out this critical responsibility.

In addition to the reports that are required by law, Congressional oversight more generally helps to ensure that intelligence activities are conducted in compliance with the Constitution and our laws, including protecting the privacy and civil liberties of all Americans. It is my understanding that as the chief legal officer for the Office of the Director of National Intelligence, the General Counsel has a similar, and complementary role, by virtue of his responsibility to assist the Director in carrying out his statutory authority under section 102A(f)(4) of the National Security Act to "ensure compliance with the Constitution and laws of the United States."

Finally, timely and effective congressional oversight can improve the quality of intelligence and the effective, efficient operation of the Intelligence Community. If confirmed as General Counsel, I would expect to assist the Director in ensuring that the Intelligence Community works cooperatively with Congress and the intelligence committees to best protect our Nation, consistent with the Constitution and laws.

49. EXPLAIN YOUR UNDERSTANDING OF THE RESPONSIBILITIES OF THE GENERAL COUNSEL OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.

Section 103C(d) of the National Security Act provides that "the General Counsel shall perform such functions as the Director of National Intelligence may prescribe." I expect that, if confirmed, my primary responsibility will be to assist the Director in carrying out his responsibility under section 102A(f)(4) of the National Security Act to "ensure compliance with the Constitution and laws of the United States" by the Intelligence Community. In the case of components of the Intelligence Community other than the Central Intelligence Agency, the statute requires the Director to carry out this responsibility "through the host executive departments." Accordingly, I would expect to have regular interaction with the General Counsels of all elements of the Intelligence Community and with Department General Counsels, including discussion of cross-cutting legal issues to help ensure consistency of legal interpretations across the Community.

I would also expect the General Counsel to be a key member of the Director's senior advisory team. By this I mean that I would expect to provide not only legal advice, but also "general counsel" on a wide variety of matters faced by the Director in his role as the principal adviser to the President and the national security leadership, and in his role as the head of the Intelligence Community. For example, it is my understanding that the General Counsel's office, on behalf of the Director in his role as head of the Intelligence Community, prepares the President's proposed annual Intelligence Authorization Act, and is involved in evaluating numerous issues in proposed legislation that could affect intelligence equities. In addition, the General Counsel should have a significant role assisting the Director in carrying out his legal authorities, which arise from the unique interagency nature of the Intelligence Community, to promulgate and implement policies, guidance, and procedures to integrate and further improve the Intelligence Community. Finally, as noted in my answer to Question 48, I believe that the General Counsel assists the Director in responding to Congressional oversight.

I also believe that the General Counsel should take a leadership role in fostering greater collaboration within the Intelligence Community legal community and to promote educational and training opportunities for Intelligence Community attorneys.

Finally, the General Counsel's Office has a primary role in ensuring that the Office of the Director of National Intelligence is operating lawfully, and in dealing with the multitude of legal and ethical issues faced by any agency within the Executive Branch.

AFFIRMATION

I, [Original Signed], DO SWEAR THAT THE ANSWERS I HAVE PROVIDED TO THIS QUESTIONNAIRE ARE ACCURATE AND COMPLETE.

MAY 6, 2009 — (Date)
[Original Signed] — (Name)

COMMONWEALTH OF VIRGINIA:
COUNTY OF FAIRFAX:

[Original Signed] — (Notary)

#324663

John Wigle
NOTARY PUBLIC
Commonwealth of Virginia
My Commission Expires 8/20/2010
#324663

TO THE CHAIRMAN, SELECT COMMITTEE ON INTELLIGENCE:

In connection with my nomination to be General Counsel of the Office of the Director of National Intelligence, I hereby express my willingness to respond to requests to appear and testify before any duly constituted committee of the Senate.

[Original Signed]
Signature

Date: 5/6/2009

SELECT COMMITTEE ON INTELLIGENCE UNITED STATES SENATE

Prehearing Questions
For
Robert S. Litt
Upon his Selection to be
General Counsel
Office of the Director of National Intelligence

Keeping the Intelligence Committee Fully and Currently Informed

QUESTION 1:

Section 502 of the National Security Act of 1947 provides that the obligation to keep the congressional intelligence committees fully and currently informed of all intelligence activities applies to the Director of National Intelligence and to the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities. What is your understanding of the standard for meaningful compliance with this obligation of the Director of National Intelligence and the heads of all departments, agencies and other entities of the United States Government involved in intelligence activities to keep the congressional intelligence committees, including all their Members, fully and currently informed of intelligence activities? Under what circumstances is it appropriate to brief the Chairman and Vice Chairman and not the full committee membership?

ANSWER: I believe that Congressional oversight is particularly important in the area of intelligence, because of the importance of intelligence to protecting our national security, the power of the tools given to the Intelligence Community and their potential risks to privacy and civil liberties if used improperly, and the necessarily secret nature of much of what the Intelligence Community does. As the question notes, Section 502 of the National Security Act requires the Director of National Intelligence, and the heads of all departments and agencies with intelligence components, to keep the two intelligence committees "fully and currently informed" of all U.S. intelligence activities (excepting covert actions that are covered in section 503), including "significant anticipated intelligence activities" and "significant intelligence failures." By its terms, section 502 contemplates that the committees will be notified of all significant intelligence activities before they are undertaken, and section 503 imposes a similar requirement for covert actions.

Director Blair has emphasized the importance of timely and complete congressional notification. On March 24, 2009, he issued a memorandum to the heads of all components of the Intelligence Community reminding them of their obligation in this regard and directing that they review their internal procedures to ensure full and timely compliance. Like Director Blair, I believe that congressional notification must be timely to be effective, and I anticipate that, if confirmed, my responsibilities as General Counsel will include assisting him in ensuring that the entire Intelligence Community carries out this critical responsibility.

Although Section 502 provides that congressional notification must be made "[t]o the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive sources and methods or other exceptionally sensitive matters," I

believe that this phrase does not limit the obligation to keep the intelligence committees "fully informed" but rather provides the DNI a degree of latitude in deciding how he will bring extremely sensitive matters to the committees' attention. In certain rare circumstances, I believe it could be appropriate to brief the Chairman and Vice Chairman of the intelligence committees on particularly sensitive matters. Limited notification should be undertaken only in the most exceptional circumstances, by analogy to the provision of Section 503 that permits limited briefing on covert actions "to meet extraordinary circumstances affecting the vital interests of the United States." Even in those circumstances, however, I expect that the DNI would discuss his concerns about further briefings with the Chairman and Vice Chairman and have an on-going dialogue with them about how and when the full committee membership should be briefed on the matter.

Priorities of the Director of National Intelligence

QUESTION 2:

Have you discussed with the Director of National Intelligence his specific expectations of you, if confirmed as General Counsel, and his expectations of the Office of the General Counsel as a whole? If so, please describe those expectations.

ANSWER: Director Blair and I have had such discussions. He has made clear that his principal expectation is that, if I am confirmed, I as General Counsel and the Office of General Counsel as a whole will be responsible for providing him timely and accurate advice about the law to enable him to exercise his important responsibilities, but also, as any good lawyer should do, for providing counsel and judgment going beyond the technical requirements of the law and dealing with such issues as whether a particular course of action is wise, prudent or appropriate. He also expects that we will not have a narrow focus on the Office of the Director of National Intelligence but would consider the interests of the Intelligence Community as a whole and the national interest. Finally, he has indicated that he expects to have an open door for his General Counsel and expects me promptly to bring to his attention any legal or policy issues that concern me.

More particularly, Director Blair recognizes that the General Counsel has an important role to play in helping to coordinate overlapping responsibilities within the ODNI and within the Intelligence Community as a whole. He particularly mentioned to me his desire that his General Counsel work closely with the Civil Liberties Protection Officer and Inspector General to help him ensure, as he is required to do by Section 102A(f)(4) of the National Security Act, that intelligence activities are carried out in "compliance with the Constitution and laws of the United States." For example, the critical function of overseeing compliance with Foreign Intelligence

Surveillance Act is shared among a number of different entities, and he expects that the Office of General Counsel would help coordinate that oversight for maximum effectiveness.

The Office of the General Counsel

QUESTION 3:

The Office of the General Counsel of the Office of the Director of National Intelligence has a myriad of roles and responsibilities. What are your expectations for the Office?

ANSWER: My expectations for the office are much the same as the DNI's expectations. I would expect that its lawyers would provide both sound legal advice and wise counsel, and that they would make clear to the recipients of their advice when that advice is legal and when it reflects judgment and policy considerations. I would expect them to work with the various components of the Intelligence Community to try to enable them to take all necessary steps to protect the nation while not hesitating to tell them where the bounds of the law are. I would expect them to keep their focus on the needs of the Intelligence Community and the nation as a whole, and to work cooperatively, rather than adversarily, with the legal counsel to all other components of the intelligence community. Finally, I would expect them to be proactive rather than reactive as much as possible – to maintain the sorts of relationships with the components of the Intelligence Community that would encourage those components to consult with them on an ongoing basis rather than at the end, typically when things have gone off the rails.

a. Do you have any preliminary observations on its responsibilities, performance, and effectiveness?

ANSWER: Obviously, my observations on the operations of the Office of General Counsel to date are extremely limited, but they are very favorable. I have been impressed with the competence, experience, knowledge and dedication of the lawyers I have met so far. The office appears to be integrated into the daily routine of the entire ODNI, well respected within ODNI and the larger legal community, and effective.

b. If confirmed, will you seek to make changes in the numbers or qualifications of attorneys in the office, or the operations of the office?

ANSWER: Generally, it has been my experience that it is best to spend some time in a new position or a new office before starting to make decisions about what to change. If confirmed, I will get to know the attorneys and the office better, and evaluate how effective the office is in helping the Director accomplish his statutory responsibilities. Moreover, if confirmed I would

expect to consult with the Intelligence Committees to obtain their views as to the operations of the office. As an initial matter, however, if confirmed I expect that I would continue the practice of having several of the attorneys in the office be detailed from other legal offices in the Community. These detailees provide the DNI General Counsel's Office a broader Community perspective and a better understanding of the variety of legal issues facing the elements of the Intelligence Community, and when the detailees return to their components they take with them a Community perspective.

QUESTION 4:

Describe your understanding of the responsibilities of the Director of National Intelligence and the General Counsel of the Office of the Director of National Intelligence in reviewing, and providing legal advice on, the work of the Central Intelligence Agency, including covert actions undertaken by the Central Intelligence Agency.

ANSWER: By statute, the Director of the Central Intelligence Agency reports to the Director regarding the activities of the CIA, and the Director of National Intelligence is specifically charged with many responsibilities relating to the CIA. For example, he is responsible for ensuring compliance with the Constitution and laws of the United States by the CIA, monitoring the implementation and execution of the National Intelligence Program (NIP) and keeping the Congress fully and currently informed of intelligence activities and covert actions. If confirmed, I will assist the Director in the execution of these responsibilities by working with the CIA General Counsel to ensure that legal issues and NIP-funded programs, including covert actions, are carefully evaluated and reviewed and, when appropriate, that any unresolved legal issues are referred to the Department of Justice for additional review.

QUESTION 5:

Describe your understanding of the responsibilities of the General Counsel of the Office of the Director of National Intelligence in the process set forth in the President's Executive Orders of January 22, 2009, with respect to ensuring lawful interrogations, review and disposition of individuals detained at Guantanamo Bay Naval Base and closure of detention facilities, and review of detention policy options.

ANSWER: The Director of National Intelligence has an important role in carrying out each of those Executive Orders. He is Co-Vice Chair of the Special Interagency Task Force on Interrogation and Transfer Policies established by E.O. 13491, a participant in the detainee review process established by E.O. 13492, and a member of the Special Interagency Task Force on Detainee Disposition established by E.O. 13493. The General Counsel's role is to provide

legal advice and counsel to the Director and those officials he has designated to assist him with the implementation of these Executive Orders. The Executive Orders raise important and complex legal and policy issues and it is my understanding that the Office of General Counsel has been working closely with ODNI officials and the Intelligence Community on them.

QUESTION 6:

Explain your understanding of the role of the General Counsel of the Office of the Director of National Intelligence in resolving conflicting legal interpretations within the Intelligence Community.

ANSWER: By virtue of its relationship with the entire Intelligence Community, the General Counsel's Office is well positioned to identify conflicting legal interpretations within the Community. Because the General Counsel does not have decisional authority to resolve such conflicts, if there are conflicting legal views on an issue, I would bring the relevant general counsels together to discuss the issues and attempt to resolve any differing opinions. I would also involve, as appropriate, the experienced attorneys at the National Security Division and the Office of Legal Counsel at the Department of Justice. This process would correspond to the provision of Section 102A(f)(4) of the National Security Act, which charges the Director with ensuring compliance with the Constitution and laws, but generally "through the host executive departments" that contain elements of the Community.

I have worked in the past with several of the Intelligence Community general counsels, or lawyers on their staff, as well as many of the senior attorneys and officials at the Department of Justice, and I would expect that through this cooperative process we could resolve the great majority of legal issues. However, if we are unable to do so, either the General Counsel of the ODNI or any of the other general counsels could refer a legal question to the Department of Justice. Even in that case, I would expect that the Office of General Counsel of ODNI would be involved in the Department of Justice's decision-making process.

Guidelines under Executive Order 12333

QUESTION 7:

One of the fundamental documents governing the activities of the Intelligence Community is Executive Order 12333. Under Executive Order 12333, as amended in July 2008, there are requirements for Attorney-General approved guidelines. For each of the following requirements, describe the principal matters to be addressed by each of the required Attorney General-approved guidelines or procedures, the main issues you believe need to be resolved in addressing these

guidelines or procedures, and your understanding of the schedule and priorities for completing them (or indicate whether the existing named guidelines or procedures are deemed sufficient)

ANSWER: In general, I understand that the General Counsel of the ODNI plays a role in determining the schedule and priorities for drafting required guidelines and procedures. If confirmed, I expect to be involved in that prioritization process as well as the substantive process of developing the actual guidelines.

a. Guidelines under section 1.3(a)(2) for how information or intelligence is provided to, or accessed by, and used or shared by the Intelligence Community, except for information excluded by law, by the President, or by the Attorney General acting under presidential order in accordance with section 1.5(a).

ANSWER: I would expect these guidelines to address a variety of legal issues and privacy protections in order that information collected by Federal Government agencies outside the Intelligence Community can be shared with the Intelligence Community to the greatest extent possible consistent with protecting the privacy, civil liberties, and statutory rights of U.S. persons. (It is my understanding that intelligence and information-sharing *within* the Intelligence Community is governed by section 1.3(b)(9)(B) of the Order, and guidelines governing this information sharing are contained in ICD 501, issued in January of this year.) Much of the information collected by other Federal Government agencies is protected by various laws, such as the Privacy Act, the Bank Secrecy Act, etc., and it could contain a great deal of information about U.S. Persons. Whether the information can be accessed by the Community, who within the Community can access the information, under what conditions it can be accessed, requirements for handling information related to U.S. persons, and restrictions on how the information can be further used and shared within the Intelligence Community all need to be addressed in the guidelines.

b. Procedures under section 1.3(b)(18) for implementing and monitoring responsiveness to the advisory tasking authority of the Director of National Intelligence for collection and analysis directed to departments and other U.S. entities that are not elements of the Intelligence Community.

ANSWER: It is my understanding that advisory tasking is a process whereby the Director of National Intelligence asks a Federal Government agency that is not part of the Intelligence Community to collect information that is relevant to national intelligence. I would expect guidelines for advisory tasking to focus on the legal authorities that a non-intelligence agency could or should use to collect national intelligence information for the Intelligence Community. All collection activities would need to be consistent with the responding agency's legal authorities and would need to protect appropriately the privacy and civil liberties of Americans.

Section 1.5(d) of Executive Order 12333 also provides that the heads of departments or agencies shall respond to advisory taskings "to the greatest extent possible, in accordance with applicable policies established by the head of the responding department or agency." This provision allows responding departments or agencies to issue policies regarding how a particular department or agency would respond to these advisory taskings.

c. Procedures under section 1.6(g) governing production and dissemination of information or intelligence resulting from criminal drug intelligence activities abroad if the elements of the IC involved have intelligence responsibilities for foreign or domestic criminal drug production and trafficking.

ANSWER: This section of the Executive Order is directed to the heads of Intelligence Community elements and tells them to participate in the development of these procedures. Under the revised Order, I believe the procedures for the "production and dissemination" of information or intelligence would be covered by the guidelines under section 1.3(a)(2) of the Executive Order, which is discussed in my answer to question 7a, above, and that the relevant Intelligence Community elements would participate in the development of these guidelines.

d. Regulations under section 1.7(g)(1) for collection, analysis, production and intelligence by intelligence elements of the FBI of foreign intelligence and counterintelligence to support national and departmental missions.

ANSWER: The new procedures for the FBI called for by section 1.7(g)(1) were signed by the Attorney General in the fall of 2008, after consultation with the Director of National Intelligence. It is my understanding that they were drafted before the changes to Executive Order 12333 and that the only thing that was affected by the signing of the new Order was the addition of the requirement to consult with the DNI before the Attorney General could approve the procedures, a requirement that was complied with. Both the Acting General Counsel of ODNI and the Civil Liberties Protection Officer tell me that they were actively engaged in reviewing these new procedures before they were signed last fall.

e. Procedures under section 2.3 on the collection, retention, and dissemination of United States person information and on the dissemination of information derived from signals intelligence to enable an Intelligence Community element to determine where the information is relevant to its responsibilities.

ANSWER: The requirement that elements of the Intelligence Community have procedures approved by the Attorney General under section 2.3 for the collection, retention, and dissemination of U.S. person information is unchanged from the prior version of Executive Order 12333, except for the new requirement that the Attorney General consult with the Director

of National Intelligence before approving any new guidelines. In addition, section 2.3 of the new Executive Order, unlike the prior version, permits information derived from signals intelligence to be disseminated to Intelligence Community elements for the purpose of allowing the recipient element to determine whether the information is relevant to its responsibilities and can be retained by it, but only in accordance with procedures established by the Director in coordination with the Secretary of Defense and approved by the Attorney General.

All Intelligence Community elements are required to operate under so-called "U.S. person rules" when collecting, retaining, or disseminating information regarding U.S. persons. All of the established elements of the Community have had these guidelines in place for years and those guidelines remain in effect, in accordance with section 3.3 of the amended E.O. 12333. I understand that several of the newer elements of the Intelligence Community, such as the ODNI, DHS Intelligence & Analysis, and the Coast Guard intelligence element have drafted U.S. person rules and are currently coordinating their guidelines with the Department of Justice and the ODNI. A few other elements are also updating or revising their U.S. person rules. If confirmed, I expect to be actively involved in this process. I understand that there is an effort to harmonize these guidelines across the Intelligence Community to as great an extent as possible, given the varying missions and requirements of the different components of the Intelligence Community. This project certainly seems desirable, particularly as we move to a more integrated Intelligence Community with ever greater information-sharing.

f. Procedures under section 2.4 on the use of intelligence collection techniques to ensure that the Intelligence Community uses the least intrusive techniques feasible within the U.S. or directed at U.S. persons abroad.

g. Procedures under section 2.9 on undisclosed participation in any organization in the United States by anyone acting on behalf of an IC element.

ANSWER: The guidelines discussed in my answer to question 7e also include the procedures regarding the requirement for the use of least intrusive techniques and the procedures for undisclosed participation in organizations. These provisions of Executive Order 12333 are unchanged from the prior version of the order, except for the addition of a requirement for the Attorney General to consult the Director of National Intelligence before approving guidelines for use of these procedures. If confirmed, I intend to play an active role in that consultation process.

Implementation of the FISA Amendments Act of 2008

QUESTION 8:

Under section 702 of the Foreign Intelligence Surveillance Act, as added by the FISA Amendments Act of 2008 (FISA Amendments Act), the Attorney General and the DNI may authorize jointly, for a period up to one year from the effective date of the authorization, the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information. The FISA Amendments Act was signed into law in July 2008. Thus, the process for one or more new annual authorizations may occur at some time proximate to the first anniversary of the FISA Amendments Act and annually thereafter. The FISA Amendments Act also provide for semiannual or annual assessments and reviews, as described in section 702(l) of FISA.

a. Describe your understanding of the matters that the Attorney General and DNI, with the assistance of the General Counsel of the Office of the DNI (GC/ODNI), should evaluate in order to determine, on the basis of the first year's experience under the FISA Amendments Act (and annually thereafter), whether there should be revisions in the substance or implementation of (1) targeting procedures, (2) minimization procedures, and (3) guidelines required by the FISA Amendments Act, in order to ensure both their effectiveness and their compliance with any applicable constitutional or statutory requirements.

ANSWER: Under the FISA Amendments Act, as under other statutes and Executive Order 12333, the Intelligence Community has the responsibility both to protect the nation from foreign threats and to protect the civil liberties of Americans. At this point, of course, I do not have knowledge of the classified details of how the Intelligence Community has implemented the FISA Amendments Act. However, section 702(l) of the Act requires the Director of National Intelligence and the Attorney General jointly to conduct semi-annual assessments of compliance with the targeting and minimization procedures adopted in accordance with sections 702(d) and (e), and with the guidelines adopted under section 702(f) to ensure that applications for court orders are properly filed and that the substantive limitations of section 702(b) are complied with. At its core, this assessment is concerned with ensuring that the targets of surveillance under section 702 are really in a foreign country and are not U.S. persons, and that the privacy and civil liberties interests of U.S. persons who may be in communication with the target are protected.

It is my understanding that the Office of General Counsel participates in these semi-annual reviews and other reviews required by FISA. I would expect that the information obtained from these reviews would serve as the basis for evaluating whether changes are required to the targeting or minimization procedures or to the guidelines.

b. Describe how the semiannual or annual assessments and reviews required by the FISA Amendments Act should be integrated, both in substance and timing, into the process by which the Attorney General and DNI consider whether there should be revisions for the next annual authorization or authorizations under the FISA Amendments Act, including in applicable targeting and minimization procedures and guidelines.

ANSWER: Without a detailed knowledge of the implementation of the FISA Amendments Act it would be premature for me to speculate on the appropriate timing or substance of the assessments and reviews required by the statute. However, as noted above, the data obtained from the reviews and assessments should inform any reauthorizations under the Act.

c. In addition to the matters described in the FISA Amendments Act for semiannual or annual assessment or review, are there additional matters that should be evaluated periodically by the Attorney General or the DNI to improve and ensure the lawful and effective administration of the FISA Amendments Act?

ANSWER: It is also premature for me to comment on additional matters that should be reviewed to improve oversight of the FISA Amendments Act without a better understanding of the precise manner in which the authorities granted by the Act have been used and in which the existing oversight and implementation authorities have been employed. However, if confirmed, I look forward to discussing the issue with the Director, the Attorney General, relevant officials of the Intelligence Community, and the Congress.

QUESTION 9:

Title III of the FISA Amendments Act of 2008 provides for a comprehensive report by certain inspectors general on the President's Surveillance Program during the period beginning on September 11, 2001 and ending January 17, 2001. The final report is to be submitted, within one year of the signing of the law in July 2008, in unclassified form but may include a classified annex.

a. Describe your understanding of the purpose of a public report.

Answer: I believe that the report will provide an important mechanism for ensuring that the facts about this program are available to Congress and the American people, consistent with the protection of intelligence sources and methods. Because the FISA Amendments Act provides for the dismissal of ongoing litigation related to these activities, this report will help to ensure appropriate accountability for the program.

b. Describe the responsibility that you anticipate that the GC/ODNI will have in recommending what should be declassified and the standards that should be applied to that determination.

ANSWER: In general, section 1.3(b)(9) of Executive Order 12333 gives the Director of National Intelligence considerable authority over the classification and declassification process for information classified by the Intelligence Community. Transparency into the workings of the government is vital and I believe information that is of interest to the public should be made publicly available to the greatest extent possible. However, balancing that public interest with national security concerns is a difficult challenge. Executive Order 12958 requires that information be declassified when it no longer meets the standards for classification, and also contemplates that at times the public interest in the disclosure of certain information will outweigh the need to protect it. Certainly there are times when information that is of interest to the public can be disclosed without revealing truly sensitive intelligence sources and methods.

I expect that the unclassified report required by the FISA Amendments Act will be a good example of the balancing required in this difficult area and I would expect the General Counsel of the ODNI to play an important role in striking the proper balance in this context.

December 2009 Sunset of Three FISA Provisions

QUESTION 10:

Three FISA provisions—lone wolf coverage, roving wiretaps, and orders for documents—sunset on December 31, 2009.

a. In your view, what evidence and issues should be considered by the Administration and by Congress in the consideration of whether to modify these provisions and either extend the sunsets or make the provisions, with or without amendments, permanent?

ANSWER: As a general matter, I think that the experience of the government in executing these authorities, the value of the information obtained, the degree of intrusion upon civil liberties, and the extent of the continued need for these authorities would all be relevant factors to consider. Without knowing precisely how these authorities have been implemented by the government, I cannot comment more specifically, but if confirmed I expect that I will work with the Congress in evaluating these provisions.

b. Are there any benefits, in your view, in aligning the sunset of these provisions with the sunset under the FISA Amendments Act of 2008 for Title VII of FISA on procedures regarding persons outside of the United States?

ANSWER: Again, without knowing precisely how the authorities have been implemented, it is difficult to assess the impact of aligning the sunsets of these provisions.

Declassification of FISA Opinions

QUESTION 11:

At the end of last year, the FISA Court of Review released to the public a redacted version of its most recent opinion. What are your views regarding the issues to be considered in creating a regular process under which important rulings of law and key decisions of the FISA Court and the FISA Court of Review could be publicly released in an unclassified form?

Answer: Balancing the public interest with national security concerns always presents a difficult challenge. There is a public interest to be served in the release of important rulings of law and key decisions of the FISA Court and the FISA Court of Review, including providing a better understanding of the Court's decision-making process and permitting informed public participation in debate over issues relating to FISA. However, these are unique courts whose entire docket relates to the collection of foreign intelligence. Release of these opinions has the potential to expose details of critical intelligence operations, sources, and methods. In my view, the Intelligence Community and the Department of Justice should identify opinions of legal significance the release of which would serve the public interest, and work with the Court to consider release to the extent it can be done in a manner that protects national security information and intelligence activities.

Evaluation of Office of the Director of National Intelligence

QUESTION 12:

Members of the Committee have expressed concern that the ODNI does not have all of the legal authorities necessary to fulfill congressional expectations for the office. Do you have any preliminary observations on strengths or weaknesses of the authorities of the Office with respect to a successful mission of the ODNI? If so, please describe.

ANSWER: I have not yet had the opportunity to observe the operation of the Office of the Director of National Intelligence and therefore do not have any informed observations on the strengths or weaknesses of its authorities. The Office of the Director of National Intelligence is unlike any other organization in the Federal Government, in that it has responsibilities over Intelligence Community elements that reside in six independent Departments and thus remain accountable to the heads of those Departments as well as to the Director. This arrangement clearly has the potential to complicate the job of the Director. Whether the ODNI has all of the authorities necessary to integrate and lead the Intelligence Community is something that will require further study and experience working under the current authorities. If confirmed, I pledge to work with the Committee during the annual Intelligence Authorization process on legislation to implement any additional authorities that may be necessary for the ODNI to carry out its mission.

Pending Legislation

QUESTION 13:

The Senate and House of Representatives have considered legislation over the course of several Congresses on subjects such as providing conditions for the federally compelled disclosure of information by certain persons connected with the news media, the state secrets privilege, and whistleblower protections. In your view, what evidence and issues should be considered by the Administration and by Congress in the consideration of whether legislation on these subjects should be enacted? Please discuss each subject separately.

ANSWER: Each of these legislative proposals shares a common goal–striking an appropriate balance between ensuring transparency and openness in government and protecting the national security. From my current vantage point, it appears that the evidence and issues that the Administration and Congress should consider with regard to such legislation are similar. For example, section 102A(i)(1) of the National Security Act requires the Director of National Intelligence to "protect intelligence sources and methods from unauthorized disclosure," a responsibility shared by everyone who has access to classified information. Accordingly, both Congress and the Administration must assess whether any legislative proposal would put intelligence sources and methods at risk or could result in the unauthorized disclosure of classified information. For example, we should jointly consider whether the legislation would encourage or prevent leaks of classified information. Similarly, both Congress and the Administration should assess whether the legislation respects the President's constitutional obligation to protect and control classified information, and whether it provides appropriate deference to Executive Branch determinations that the disclosure of classified information has or will cause damage to the national security. In addition, Congress and the Administration should assess whether the legislation would impede the effective operations of the Intelligence Community.

At the same time, Congress and the Administration need to evaluate whether existing laws and procedures have hindered the free flow of information to the public or the Congress or have resulted in unjust results in particular cases, and whether these legislative proposals would effectively remedy any such problems. Finally, as these proposals share a common goal, they should be evaluated as a collective whole rather than in isolation.

Cyber Security

QUESTION 14:

The Bush Administration launched a major initiative to improve government cyber security, the Comprehensive National Cybersecurity Initiative (CNCI), with a prominent role for the Intelligence Community. The Obama Administration has undertaken a 60-day review of cyber security.

a. What are the major legal, privacy and civil liberties issues concerning the CNCI, or successor, that you believe should be addressed?

ANSWER: Computer security has been a particular concern of mine since my time at the Justice Department. Our nation's cybersecurity policy addresses a wide range of issues that cut across multiple mission areas and therefore multiple legal authorities. We are faced with adversaries who have the ability to infect our supply chain with malevolently modified hardware and software, to hack remotely into our networks, and to take advantage of insiders to steal, alter, or destroy information and control critical infrastructure systems. Moreover, a pressing but under-appreciated privacy issue is that our sensitive data, including corporate intellectual property, government secrets, and U.S. person data held by government and private industry alike, is not only vulnerable but is actually being stolen by criminal organizations and foreign nations on a daily basis and almost at will.

To guard against exploitation of these vulnerabilities, our government must bring to bear all of its capabilities, including those within the Intelligence Community, to ensure the privacy and security of our global information and communications infrastructure. This will require a focus on intrusion detection and prevention monitoring, information-sharing policies, data accuracy, and analysis. At the same time, we must remain vigilant to ensure that the use of government authorities meant to detect our adversaries and thwart their efforts complies strictly with the Constitution and the law. If confirmed, I will work closely with the ODNI Civil Liberties Protection Officer to ensure that there is adequate oversight of these authorities.

b. What overarching guidelines for the Intelligence Community do you believe should be in place with respect to the implementation of any successor to the CNCI?

ANSWER: I am not fully familiar with the CNCI or the Administration's ongoing study of cybersecurity, the recommendations of which have not yet been made public. If confirmed, I will take an in-depth look into appropriate, overarching guidelines. In doing so, I expect to work closely with the Civil Liberties Protection Officer, as well as the Department of Justice and the elements of the Intelligence Community.

Executive Branch Oversight of Intelligence Activities

QUESTION 15:

Are there improvements, in terms of resources, methodology, and objectives that you believe should be considered concerning Executive Branch oversight of the intelligence activities of the United States Government?

ANSWER: Intelligence oversight is an essential tool to achieve the important goal of balancing the protection of our civil liberties with the protection of our national security. As the chief legal officer for the Office of the Director of National Intelligence, the General Counsel has the responsibility to assist the Director in carrying out his statutory authority under section 102A(f)(4) of the National Security Act to "ensure compliance with the Constitution and laws of the United States." The authorities granted to the Intelligence Community are of necessity powerful ones, and the public needs to be reassured of our continued commitment to compliance with the important limitations imposed by our laws. If confirmed as General Counsel, I will assist the Director in using intelligence oversight to achieve this goal.

It is premature for me to comment on specific improvements that I might recommend in the resources, methodology and objectives of this oversight. However, if confirmed, I would expect that ensuring the Intelligence Community provides timely, accurate, and thorough intelligence oversight reporting will remain a priority for the Office of General Counsel. Moreover, if confirmed, I will consult with my staff, with the General Counsels of all elements of the Intelligence Community, and with Department General Counsels, to determine whether any improvements are needed in intelligence oversight.

Relationship with the Other Officials of the Intelligence Community

QUESTION 16:

What should be the relationship of the General Counsel of the Office of the Director of National Intelligence with respect to the following officers of the Intelligence Community:

a. General Counsel, Central Intelligence Agency

ANSWER: Section 102A(f)(4) of the National Security Act, concerning the responsibility of the Director of National Intelligence to "ensure compliance with the Constitution and laws of the United States" by the Intelligence Community, recognizes the special relationship that the Central Intelligence Agency has to the DNI, by giving him direct responsibility to ensure compliance "by the Central Intelligence Agency" while providing that he should ensure compliance by other elements of the Community "through the host executive departments" containing those elements. The statute thus clearly contemplates a very close working relationship between two agencies and, by extension, their General Counsels. I have known Steve Preston for many years and have great respect for his abilities and judgment, and if we are both confirmed, I look forward to a close and open relationship with him on a wide range of issues.

b. Assistant Attorney General for National Security, Department of Justice

ANSWER: The position of Assistant Attorney General for National Security did not exist during my time at the Department of Justice, but if confirmed, I look forward to the opportunity to work closely with David Kris, whom I have known since we worked together at the Department. Although the National Security Division is not part of the Intelligence Community, its responsibilities obviously touch on many matters of significance to the Community. For example, the General Counsel of ODNI and the Assistant Attorney General for National Security must routinely work together to assist the Director and the Attorney General in their respective authorization and oversight roles under the FISA Amendments Act. The recent Executive Orders on rendition, detention, and interrogation also require a close working relationship between the offices. The General Counsel's Office and the National Security Division have implemented a program to have a detailee from the National Security Division at the ODNI General Counsel's office. I understand that this arrangement has been tremendously valuable to both agencies.

c. Inspector General, Office of the DNI

(see below)

d. Civil Liberties and Privacy Officer, Office of the DNI

ANSWER: I believe that it is essential that the ODNI General Counsel have a close working relationship with both the ODNI Inspector General and the Civil Liberties Protection Officer. If confirmed, I would expect my interactions with these officers to be both formal and informal. On the one hand, because the oversight roles that the three offices fulfill for the ODNI and for the Intelligence Community are very similar, we will need formal processes to coordinate our roles to make sure that we are as effective as possible while minimizing unnecessary duplication. On the other hand, conflict and duplication can best be minimized if the three officers consult informally and work together whenever possible. The three offices have many similar, but distinct, responsibilities and approach those responsibilities from different perspectives. This provides a unique opportunity for collaboration that should allow each of us to get a more comprehensive picture of any problem and also of possible solutions. I have known the new ODNI Inspector General, Roslyn Mazer, for many years and served with her in the Department of Justice; I met Alex Joel, the Civil Liberties Protection Officer, during my preparation for the hearings, and was impressed with his energy and abilities. If confirmed, I look forward to working closely with both of them.

Professional Experience

QUESTION 17:

For each of the following, describe specifically how your experiences will enable you to serve effectively as the General Counsel for the Office of the Director of National Intelligence. Include within each response a description of issues relating to the position that you can identify based on those experiences.

a. Partner, Arnold and Porter LLP

ANSWER: At Arnold & Porter I have represented several employees of the Central Intelligence Agency on matters arising out of their employment, some of which are classified, and have dealt extensively on those matters with the CIA and its Office of General Counsel and Office of Inspector General. These have given me familiarity not only with the particular substantive matters that were the subject of the representations but also with personnel and administrative matters that I believe are relevant to the duties of the General Counsel for the Office of the Director of National Intelligence.

In addition I have represented two clients in criminal matters that related to the intelligence community, one of which involved extensive litigation under the Classified Information Procedures Act (CIPA). It is my understanding that dealing with CIPA issues in individual cases and on a policy basis is part of the responsibility of the Office of General Counsel.

Finally, while at Arnold & Porter I have remained actively involved in matters relating to intelligence policy and national security, through bar associations and speaking and writing engagements. I have also benefited greatly from the knowledge and wisdom of my partner Jeff Smith in this regard.

b. Principal Associate Deputy Attorney General, Department of Justice

ANSWER: See below.

c. Deputy Assistant Attorney General, Criminal Division, Department of Justice

ANSWER: As Deputy Assistant Attorney General in the Criminal Division, and as Principal Associate Deputy Attorney General, I interacted regularly with components of the Intelligence Community on such matters as crimes reports, requests for opinions on the legality of proposed conduct, FISA applications, criminal investigations that involved classified information (including criminal investigations relating to al Qaeda), and covert actions. As a result I acquired a working familiarity with some of the legal authorities governing the Intelligence Community, and how those authorities operate in practice.

I also dealt extensively with matters relating to computer security, privacy and electronic surveillance, which are critical to the effective functioning of the Intelligence Community and to protection of our national security. I helped to create and stand up the Department's Computer Crime and Intellectual Property Section and served as the Department's representative on matters relating to encryption and the Communications Assistance to Law Enforcement Act (CALEA).

In addition, I developed personal relationships with other Intelligence Community lawyers that will be important, if I am confirmed, in enabling me to perform the coordinative function for the General Counsel for the Office of the Director of National Intelligence for the intelligence legal community.

More generally, my experience in the Department of Justice familiarized me with the operation of the interagency process, with the mechanisms of congressional oversight, and with the process of developing legislation, all of which will be an important part of my role as General Counsel if I am confirmed. In addition, my years at the Department of Justice gave me valuable experience in managing an office of government lawyers.

d. Special Advisor to the Assistant Secretary of State for European and Canadian Affairs

ANSWER: During my year at the Department of State I was a consumer of intelligence and acquired some understanding of the importance of intelligence to our foreign relations and national security.

e. Assistant U.S. Attorney, Southern District of New York, Department of Justice

ANSWER: One of the important issues that faces the government as a whole, including the General Counsel of the Office of the Director of National Intelligence, is how to handle suspected terrorists who we now have in custody or who may subsequently come into our custody. The President has appointed task forces to analyze these issues and I understand that the Office of General Counsel of ODNI is participating in the work of those task forces. If I am confirmed, I believe that my experience as a prosecutor who has actually investigated and tried criminal cases will be valuable both in helping to make the policy decisions about how our legal system should handle accused terrorists, and in assisting the Intelligence Community in responding to the exigencies of particular cases in the judicial system.

QUESTION 18:

What, if any, conflicts might arise from your private practice if you are confirmed as General Counsel and how would you address these conflicts?

ANSWER: In connection with the nomination process, I have consulted with the Office of Government Ethics and the Office of the Director of National Intelligence's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the ODNI's designated agency ethics official and that has been provided to this Committee.

With respect to my current or former clients, I have represented a State Department employee in a criminal matter and currently represent several present and former employees of the CIA in DOJ, congressional and IG investigations. In addition, my law firm represents a number of telecommunications and high-tech companies on matters on which I have been consulted from time to time. Some of these matters have been classified. My law firm also was appointed by the United States Court of Appeals for the Fourth Circuit to represent Zacarias Moussaoui on appeal. In 2007-08 I assisted the lawyers who handled the matter by providing legal advice about the criminal law and by participating in moot courts.

Should a conflict arise, in accordance with the terms of my ethics agreement, I will not participate personally and substantially in any particular matter involving specific parties in which a former client of mine is a party or represents a party for a period of one year after I last provided service to that client, unless I am first authorized to participate, pursuant to 5 C.F.R. §

2635.502(d). I also understand that I am required to sign the Ethics Pledge (Executive Order 13490) and that I will be bound by its requirements and restrictions. I am not aware of any potential conflicts of interest not covered under the terms of the ethics agreement or the Ethics Pledge.

Opinions of the Office of Legal Counsel

QUESTION 19:

On April 16, 2009, the Department of Justice released four opinions issued by the Office of Legal Counsel (OLC) for the Acting General Counsel or Senior Deputy General Counsel of the Central Intelligence Agency. With respect to these opinions, issued August 1, 2002, May 30, 2005, and two issued on May 10, 2005:

a. From the information contained in the opinions, what are your views concerning the role of the Office of the General Counsel of the Central Intelligence Agency in providing information to the OLC in this matter, and whether any lessons for the future should be learned from these opinions regarding that role for the General Counsel of the Central Intelligence Agency or any other general counsel of an entity of the Intelligence Community, including the General Counsel of the Office of the Director of National Intelligence?

ANSWER: I am not sufficiently familiar with the full details of the interaction between the General Counsel of the Central Intelligence Agency, the Office of Legal Counsel, and other parts of the Executive Branch to offer any specific comments on their role in the preparation of these opinions. In general, however, from my prior experience in government I know that the Office of Legal Counsel's work in providing authoritative legal opinions to the Executive Branch depends upon obtaining full and accurate information from any agency that requests its views. In addition, it is my view, as noted above, that an agency general counsel should provide not only technical legal advice to the agency but judgment and policy guidance. I would expect the General Counsel of the ODNI to be involved in any opinions that relate to the Intelligence Community.

b. If confirmed, will you expect to be informed of requests by agencies of the Intelligence Community for opinions from the Office of Legal Counsel?

ANSWER: Yes. However, it is certainly possible that a Department Secretary could independently ask the Department of Justice for a legal opinion. A close working relationship with the National Security Division, the Office of Legal Counsel, and other offices at the

Department of Justice can help ensure that the General Counsel's Office participates in the process of preparing legal opinions that could affect the Intelligence Community.

c. What is your assessment of the legal reasoning and conclusions of each of these four opinions?

ANSWER: These opinions have been withdrawn by the Department of Justice, indicating that their reasoning and conclusions may not be relied upon. In addition, the President has ordered that interrogation techniques be limited to those authorized by the Army Field Manual, and has established a task force, of which the Director of National Intelligence is co-vice chair, to review interrogation policies for the future. If confirmed, I would expect that I would carefully review any proposed interrogation techniques and ensure that any legal opinions that are rendered are based upon a full understanding of the relevant facts and law.

COMMITTEE QUESTIONS FOR THE RECORD

NOMINATIONS OF ROBERT S. LITT AND STEPHEN W. PRESTON

May 26, 2009

Congressional Notification

Mr. Litt and Mr. Preston, in addition to the responses you have already given concerning congressional notifications, please also respond to the following:

- **Would you both support, in those circumstances in which the legality of an intelligence activity has been evaluated in a legal opinion of the Department of Justice or of a General Counsel's Office in the Intelligence Community, providing that opinion to the congressional intelligence committees?**

Section 502 of the National Security Act requires that the intelligence committees be kept fully and currently informed of all significant intelligence activities, and as I have stated, I believe that the Intelligence Community will benefit from greater congressional oversight and input into important decisions. In many instances, legal opinions rendered by the Department of Justice may be important to that oversight. If confirmed, I will work to ensure that the committees have the information they need to conduct effective oversight, including relevant legal opinions. In some instances, where applicable privileges may be involved, I will work cooperatively with the committee to find alternative avenues of accommodating congressional oversight interests.

- **With respect to the content of limited briefings, what measures would you support to provide for complete records of any such briefings? For example, the establishment of a DNI registry of them? The submission by the DNI or the DCIA of a written statement to the Chairman and Vice Chairman? Non-objection to the creation of a congressional record, through the Committee's cleared reporter or a recording? Other means?**

As Director Blair has said, in the rare cases in which limited briefing is appropriate, such briefings will include a discussion with the Chairman and Vice Chairman of the committee regarding when and how briefing of the full committee membership is appropriate. I believe that this consultation should also include discussion of whether a record of the limited briefing should be prepared and, if so, what type of record would be most appropriate.

- **To determine whether there are matters of continuing interest that were briefed to prior committee leaders but not to the current Committee, would you undertake a review of all limited notifications of the past ten years and provide to the Committee a comprehensive list of them?**

All such limited notifications are under the purview of the President and I do not believe that the General Counsel of the Office of the Director of National Intelligence has the authority to provide such a list. Going forward, Director Blair has committed to briefing the full membership of the intelligence committees, except in rare exceptional cases, and if confirmed, I will work with the Committee to ensure that it has the information it needs to conduct effective oversight.

- **In the limited cases in which notification to a group smaller than the full committees is provided, what is the statutory basis, if any, for limiting the notification to the Gang of Four (the leaders of the two committees) rather than the full Gang of Eight (thereby including the Leaders)?**

Section 502 of the National Security Act provides that the intelligence committees must be kept fully and currently informed "[t]o the extent consistent with due regard for the protection from disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters." In rare circumstances, this might authorize briefing of a smaller group, although I believe this should only be done in consultation with the leadership of the intelligence committees.

There is an interest on the Committee, reflected in legislative proposals in our authorization bills, in changing the notification provisions in the National Security Act to ensure that the full Committee is informed.

- **Do you think the notification provisions need to be amended?**

- **Would you work with this Committee in crafting appropriate amendments?**

Like Director Blair, I believe that effective Congressional oversight of the intelligence community is extremely important and that the notifications to the committee of significant intelligence activities are essential to that oversight. While the Director may, in rare circumstances, brief a smaller group on particularly sensitive matters, the Director has committed that such briefings will include a discussion regarding how and when the full committee membership should be briefed on the matter. The notification requirements contained in the National Security Act represent a careful compromise between the Executive Branch and the Congress in an area where both have significant constitutional authorities, and I do not think it is prudent to alter this fundamental compact. If confirmed, I intend to have an ongoing dialogue with the committees to discuss how the Intelligence Community, and the Office of General Counsel in particular, can better help the intelligence committees conduct effective oversight, including ways to ensure that the committees are kept fully and currently informed.

The Clients of the National Security Lawyer

Mr. Preston, during the hearing you were asked about your response to the prehearing questions about the unclassified conclusions of the CIA Inspector General's report entitled "Procedures Used in Narcotics Airbridge Denial Program in Peru, 1995-2001" and when it might be appropriate to advise clients not to create discoverable documents during civil litigation or while facing the threat of civil litigation. Please provide written responses to these questions:

- **Does the DNI General Counsel have any responsibilities higher than ensuring that the ODNI and all its personnel act in accordance with the law and maintain full and accurate records of their actions?**

A primary responsibility of the General Counsel of the Office of the Director of National Intelligence is to assist the Director of National Intelligence in carrying out his statutory responsibility to ensure that all activities of the

Intelligence Community are conducted in compliance with the law, including any laws relating to the creation and maintenance of full and accurate records. As I have previously stated, I also believe that a General Counsel owes his or her client the benefit of "counsel" in addition to legal advice.

- **Does the DNI General Counsel have any role in representing personnel in investigations by the Department of Justice or by the DNI Inspector General?**

No. The ODNI Office of General Counsel does not represent individuals. Individuals are represented by the Department of Justice, if appropriate, or by private counsel. The Office of General Counsel works with the Department of Justice in appropriate cases to assist the Department in its representation of government personnel.

- **What is the General Counsel's role in litigation to redress harm to individuals allegedly caused by ODNI actions? In your view, is the DNI General Counsel another member of the defense team?**

The primary role in defending litigation rests with the Department of Justice. The role of the ODNI General Counsel in any such litigation is to represent the Office of the Director of National Intelligence and the Intelligence Community as a whole, in the interest of the American public, and to assist the Department of Justice, as requested.

Mr. Litt, please provide your written responses to the same questions above with respect to the General Counsel of the ODNI, including your answer to the question asked at the hearing concerning who is the "client" of the ODNI General Counsel.

I believe that, if confirmed, my primary client in most cases will be the Office of the Director of National Intelligence, and the Intelligence Community as a whole, in the interest of the American public.

Confirming General Counsels

Mr. Litt and Mr. Preston, Congress chose to require Senate confirmation for both the DNI and CIA General Counsel positions. Mr. Preston was specifically asked about his understanding of the purpose of the establishment of a confirmed General Counsel of the Central Intelligence Agency.

- **Mr. Preston, what is your understanding of the purpose of Congress's establishment of a confirmed General Counsel?**

- **Mr. Litt, what is your understanding of the requirement for Senate confirmation of your position?**

I believe that the purpose of ensuring Senate confirmation is twofold: first, so that the Senate is satisfied that the nominee is qualified to perform the duties of the General Counsel, and second, to ensure that the Senate is satisfied that the nominee will be responsive to and cooperative with congressional oversight.

Conflicts

Mr. Litt, you have informed the Committee that you have certain potential conflicts from your representations in private practice and you discussed this issue with Senator Feingold at the hearing.

- **What additional information can you place on the public record about the nature of those conflicts, how you will resolve them, and the extent to which they might affect your ability to provide the DNI with legal counsel?**

I represent several present and former employees of the Central Intelligence Agency in matters relating to the detention and interrogation of suspected terrorists. By statute, under the rules of ethics and by virtue of my ethics agreement that has been provided to the Committee, I will not participate

personally and substantially in any particular matter involving these clients. I have consulted with the ODNI Designated Agency Ethics Official about the scope of that bar, and while its precise contours will have to be determined on a case-by-case basis, I will not participate in any decisions relating to the possible prosecution or investigation of these individuals nor any decisions that would affect the outcome of such matters, including decisions about similarly situated individuals or offering an opinion with respect to the legal status of particular interrogation procedures that may have been employed in the past that relate to the subject of my representation.

A principal function of the Director of National Intelligence, and by extension the General Counsel of ODNI, is to set forward-looking policies and procedures to ensure compliance by the Intelligence Community with the Constitution and laws of the United States. I do not believe my prior representation will impose any limitations on my ability to participate fully in that process as it relates to detention and interrogation going forward.

These recusals would only affect my ability to provide the DNI with legal counsel in narrow areas related to my prior representation. There will remain a wide variety of issues falling within the responsibilities of the Office of General Counsel that I will be able to participate in fully.

Mr. Preston, in addition to informing the Committee about potential conflicts from your private practice, what information can you place on the public record about those conflicts and their resolution?

Conflicting legal opinions

Mr. Litt, in your responses to the Committee's prehearing questions, you noted that you would work with the CIA General Counsel to ensure that legal issues related to the work of the CIA are reviewed and evaluated. You also indicated that you would work with the general counsels of the various intelligence agencies and with attorneys from the Department of Justice with respect to conflicting legal opinions within the Intelligence Community. You also stated that the DNI General Counsel does not have decisional authority to resolve conflicting legal interpretations in the Intelligence Community.

- **Do you think the DNI General Counsel has an independent obligation to assess for the DNI the legality of covert actions and other intelligence programs?**

Yes.

- **If the Department of Justice were to issue an opinion with which you disagreed from a legal standpoint, how would you counsel the DNI?**

If I was unable to resolve the disagreement through discussions with the Department of Justice, I would advise the Director of National Intelligence to raise the issue through appropriate channels, to the President if the situation warrants it.

- **Do you think the DNI General Counsel should have decisional authority to resolve conflicting legal views within the Intelligence Community?**

The Attorney General is the chief legal officer of the United States Government, and generally speaking, the Department of Justice, and more particularly the Office of Legal Counsel, is charged with resolving disputed legal issues within the Executive Branch. If there is a conflict within the Intelligence Community on a legal issue and the ODNI Office of General Counsel is not able to resolve the conflict, if confirmed I would bring the matter to the attention of the Director and refer the issue to the Department of Justice for resolution if necessary.

Mr. Preston, will you undertake to ensure that the ODNI General Counsel has full awareness of significant legal interpretations of your office?

Attorney General Guidelines

Mr. Litt, in your responses to the Committee's prehearing questions, you noted that you expected Attorney General guidelines on information sharing promulgated pursuant to Executive Order 12333 to protect the privacy, civil liberties and statutory rights of US persons.

Please elaborate. In creating those guidelines, how would you recommend the DNI balance the need for information sharing with the privacy interests of US persons?

I believe that privacy and civil liberties interests should always be considered in tandem with proposals for information-sharing. Privacy and civil liberties are often best protected through legal processes, such as procedural and substantive requirements that must be met before information-sharing is permitted in a particular case. In general, the appropriate level of protection in this context should be determined by balancing the severity of the intrusion and the importance of the information to protecting national security. Greater intrusions upon civil liberties and privacy should generally require more stringent predicates and a higher level of approval; on the other hand, exigent circumstances or grave dangers to national security may warrant more flexible procedures. If confirmed, I would work closely with the Civil Liberties Protection Officer and his office in advising the Director with regard to the information-sharing guidelines promulgated pursuant to Executive Order 12333.

- **Are there particular types of records or information about US persons that should never be shared or should this depend on the need for those records?**

Some records should rarely be shared, but I am reluctant to say that there is any category of record that should never be shared regardless of the importance to national security. Even information protected by legally recognized privileges can generally be released under appropriate circumstances, such as pursuant to court order or to prevent a serious crime from occurring. However, as described above, the greater the intrusion on personal privacy, the stronger the procedural and substantive protections should be.

Declassification—IG Reports and OLC Opinions

Mr. Litt, the DNI will likely be involved in recommending whether information about both the Terrorist Surveillance Program and CIA's detention and interrogation program should be declassified, and will likely seek your counsel on those topics. In your responses to the Committee's prehearing questions, you noted that the public interest in the disclosure of certain information may outweigh the need to protect it.

- **In what circumstances do you think disclosure of information is in the public interest?**

In general, I believe that information that relates to matters of national interest should be made publicly available to the greatest extent possible and that there should be a presumption of openness, to enable robust and informed public discussion. However, in some instances countervailing interests, such as the privacy of Americans or national security, may overcome the presumption of openness.

- **Do you support the recent declassification of the four OLC opinions on CIA's detention and interrogation program?**

Yes.

- **Mr. Preston, what are your views on the declassification of the OLC opinions?**

Declassification—FISA Court Opinions

Mr. Litt, in your responses to the Committee's prehearing questions you noted that the Intelligence Community and the Department of Justice should identify FISA court opinions of legal significance whose disclosure would serve the public interest for potential declassification.

- **Do you support having a regular, mandated process for review of those opinions and discussion with the FISA court about possible declassification?**

I believe that any process for declassification of FISA Court opinions of legal significance should be undertaken in consultation with the Department of Justice and the FISA Court, and must protect national security information. If confirmed, I will work with the Department of Justice, to determine the best way to accomplish the goal of informing the public of significant legal interpretations of FISA.

Pending legislation

Mr. Litt, in response to prehearing questions on legislation relating to federally compelled disclosure of information by persons connected to the news media, the state secrets privilege and whistleblower protections, you noted that the various legislative proposals should be evaluated collectively. You also stated that it was important to consider, among other things whether the legislation "provides appropriate deference to Executive Branch determinations that the disclosure of classified information has or will cause damage to national security."

- **How would you envision these legislative proposals be considered collectively? Would you recommend one piece of legislation to deal with all of these issues in the national security context?**

I do not think that it is necessary to have a single piece of legislation. However, I do believe that the Congress, in evaluating each proposal, should consider its

interaction with the other proposals and the possible cumulative effect on national security and the public's right to be informed.

- **With regard to state secrets, would you support providing to the congressional intelligence committees regular reports on the assertion of a state secrets privilege, including the classified declarations by the intelligence or other officials in support of those assertions of privilege?**

President Obama recently said that the Administration will voluntarily report to Congress regarding when and why the state secrets privilege is invoked, to allow for proper congressional oversight, and if confirmed I would support that effort.

Many of these legislative proposals reflect concern that the Executive Branch does not adequately weigh the public interest when classifying information or when evaluating the interest of the coordinate branches, the courts and Congress, or the public's need for information.

- **If you feel that deference should be accorded to Executive Branch determinations relating to the damage to national security from disclosure, how would you recommend addressing the congressional concern about Executive Branch overclassification?**

President Obama recently announced a review of Executive Order 12958, specifically including "[e]ffective measures to address the problem of over classification." The Director of National Intelligence is given considerable responsibilities in the area of classification and declassification by the National Security Act and Executive Order 12333 and I would therefore expect that he would play a significant role in this review, as well as the parallel review of procedures relating to Controlled Unclassified Information. If confirmed, I look forward to discussing these issues with the committee.

Cyber security

Mr. Litt, the Obama Administration has undertaken a 60 day review of the Comprehensive National Cybersecurity Initiative. Although you noted in your responses to the Committee's prehearing questions that our efforts must strictly comply with the Constitution and the law, you did not identify what privacy concerns you thought might be implicated by the government's involvement in this area.

- **What would you identify as the main privacy concerns and civil liberties related to the cybersecurity initiative?**

The privacy and civil liberties concerns related to the cybersecurity initiative arise from the vast amount of personal and private data that is stored on electronic networks or transmitted over electronic communications systems. This information is vulnerable to attack by malevolent individuals, but also may be compromised by government action if adequate safeguards are not provided. The challenge will be to provide robust protection for government and private networks and systems that are essential to our national security and our economy, while at the same time protecting individual privacy from unnecessary intrusion.

- **Do you see a need for legislative changes to support the cybersecurity initiative?**

The review of cybersecurity issues that the President ordered has just been released and I have not yet had an opportunity to review it in detail. If confirmed, however, I expect to be involved in the resolution of any legal issues and will work with the committee on any legislative changes that may be necessary.

Declassified OLC opinions

Mr. Litt, on April 16, 2009, the Department of Justice released four opinions that were issued by the Office of Legal Counsel in the last Administration for the CIA. These opinions have been withdrawn by the Department of Justice.

- **Do you believe that you are limited in any way in commenting on any of these opinions on account of your representation of a client in private practice?**

As I have stated, I do not believe that I can offer an opinion about the legal status of interrogation techniques that may have been employed in the past. While I believe I can comment on some aspects of these opinions there are some areas that I cannot comment upon consistent with my ethical responsibilities.

- **To the extent you are able to comment, and focusing for now on the interpretation of the Fifth and Eighth Amendment in the May 30, 2005 opinion, what is your assessment of its legal reasoning and conclusions?**

The relevant question under the Fifth and Eighth Amendments is whether, considered in the light of traditional government behavior and contemporary practice, the conduct can be said to "shock the conscience." This can be a complicated analysis requiring examination of the totality of the circumstances, including the nature of and the justification for the conduct. Based upon my review of the May 30, 2005, opinions and on commentary I have read, I believe that the opinions gave insufficient consideration to precedents from the courts and the Executive Branch relating to some of the interrogation techniques analyzed in them.

Declassified OLC opinions

Mr. Preston, in response to prehearing questions about the now declassified OLC opinions, you both stated that as the interrogation practices in question had been stopped pursuant to Executive Order 13491, and the law has changed by virtue of the *Hamdan* decision, you did not expect to confront the same issues addressed in the August 2002 and May 2005 opinions. While specific practices have been barred, the federal torture statute addressed in those opinions is unchanged, and, of course, the Fifth and Eighth Amendments are unchanged.

- **If alternative approaches to interrogation are proposed, would you be required to evaluate them in light of the requirements of the Fifth and Eighth Amendments, and federal statutes?**

- **If so, from your prior experience in national security law, do you have any views on the general legal analysis in the now declassified opinions about the U.S. Constitution and the federal torture statute?**

Guidelines under Executive Order 12333

Mr. Preston, in your response to prehearing questions , you state that, if confirmed, one of your priorities will be to review existing guidelines under Executive Order 12333 and determine what changes may be warranted.

- **If confirmed, would you undertake to report to the Committee within three months of the results of your review?**

Views on Pending Legislation

Mr. Preston, in your response to a prehearing question on pending legislation involving the state secrets privilege and other matters, you state that the totality of Administration practices should be considered, not just the few cases that have received public attention.

- **With regard to state secrets, would you support providing to the congressional intelligence committees regular reports on the assertion of a state secrets privilege, including the classified declarations by the intelligence or other officials in support of those assertions of privilege?**

Executive Branch Oversight

Mr. Preston, in your responses to prehearing questions about Executive Branch oversight and the relationship between the CIA General Counsel and other officials of the intelligence community, you emphasize your personal acquaintance with the nominee for the ODNI General Counsel and the new Assistant Attorney General for National Security.

- **Please be more specific about your understanding of the offices and procedures involved in Executive Branch oversight, and what you would do to improve Executive Branch oversight.**

Questions for the Record from Vice Chairman Bond

Mr. Litt:

USA PATRIOT Act

The next national security legislation on the agenda will address the USA PATRIOT Act sunset provisions of the "lone wolf," roving wiretap, and Section 215 FISA business records court orders. Amazingly, we are still waiting for the Administration's position on these relatively simple provisions.

- How would you advise the President on whether these provisions should be made permanent, extended, or allowed to expire?

To form a judgment on the renewal of these provisions I would need to understand how they have been used and the circumstances in which they might be needed in the future. As much of this information is classified I have not had an opportunity to review it. If confirmed I will do so and look forward to discussing these issues with the committee.

FISA Amendments Act

- The FISA Amendments Act will sunset in 2012. What are your views on the FISA Amendments Act?

As with the three sunsetting provisions of the USA PATRIOT Act, I would need to understand how the FISA Amendments Act has been used and the circumstances that led to its enactment, information that is classified. Oversight of the use of the FISA Amendments Act is one of the responsibilities of the Office of General Counsel and if confirmed I intend to be involved in that process.

Management

- Lawyers managing lawyers is probably one of the most challenging tasks facing a general counsel. Could you please explain your vision for how you intend to manage the ODNI's Office of General Counsel?

I believe that management of a law office requires first of all selection of capable, intelligent lawyers with initiative. While I have not yet had the opportunity to work closely with the lawyers in the Office of General Counsel my impressions so far are favorable. Second, it is important to delegate clearly both authority and responsibility, and to ensure that your expectations are clearly understood by the lawyers with whom you are working. Third, regular communication with the lawyers, and feedback on how well they are meeting your expectations, is essential to keep track of what they are doing; it is my understanding that there are already regular staff meetings which I intend, if confirmed, to continue.

State Secrets

The "State Secrets Protection Act" is currently pending before the Senate Judiciary Committee. In my opinion, the bill in its current form significantly erodes the protections of the judicially-recognized State Secrets privilege.

- What are your thoughts on the utility of preserving the common law approach to the State Secrets privilege?

The President has emphasized that the principle behind the State Secrets privilege is "absolutely necessary to protect national security." Like the President, however, I am concerned that the privilege has been overused. The President has proposed several reforms in the use of the privilege, and if confirmed, I will examine whether those reforms would best be accomplished through Executive Branch action or legislation

Extraordinary Renditions

- When you served in the Criminal Division and the DAG's Office during the Clinton Administration, did you support the use of extraordinary renditions in terrorism cases?

To the best of my recollection I did not deal with this issue while I was in the Department of Justice.

- Do you believe that extraordinary rendition should remain in the Intelligence Community's tool box?

The term "extraordinary rendition" has been used in several contexts. I believe that there may be cases where it is appropriate to seize someone abroad and return him to the United States without going through formal extradition processes, and that there may also be cases where it is appropriate to seize someone abroad and send him to a third country. Each of these has been called "extraordinary rendition." In no circumstances, however, do I believe it is appropriate to send someone to a country where it is known that he will face torture, and I believe that any rendition to a third country should only be undertaken when there are satisfactory assurances that the individual will be treated properly.

Media Shield

- One of the biggest problems in the Intelligence Community is the seemingly endless leaks of classified information that reveal our sources and methods. Do you believe that those who leak classified information should be prosecuted to the fullest extent of the law?

Leaks of classified information are very serious and in my view if persons who leak classified information can be identified they should be prosecuted.

- Do you think it would be a good idea to create a statutory privilege for journalists (or people who can quickly qualify as journalists by posting a few blogs on the internet) to protect criminals who leak classified information?

The President has expressed his support for responsible media shield legislation, in view of the critical role that the media play in a free and democratic society. I believe that such legislation can and should be crafted to ensure that leaks of classified information can be effectively investigated and prosecuted, and if confirmed I look forward to working with the Congress to ensure that any legislation that is passed does so.

- Wouldn't such a privilege actually encourage even more unauthorized disclosure of classified information?

Again, I believe that legislation creating a statutory privilege for journalists can and should be crafted in a manner to protect intelligence sources and methods and other classified information and that would not encourage unauthorized disclosure of such information.

Questions for the Record from Senator Whitehouse

Mr. Litt:

Please provide your responses to the questions I asked Mr. Preston at the hearing concerning:

- **how do you intend to balance the President's desire to look forward with your responsibilities as general counsel to assist in the resolution of very significant unresolved issues of the past pertaining to the treatment of detainees; and**

As President Obama has said, it is of critical importance that the Intelligence Community and the nation move forward to address the urgent national security challenges and opportunities facing us, including important decisions as to the appropriate disposition of persons now in our custody or those whom we may detain in the future. I agree, however, that it is important both to be informed about and mindful of past practices in order to ensure that we make the right decisions going forward, and to provide a process that ensures that appropriate actions are taken in regard to these past practices.

- **how will you ensure that your principal, the Director of National Intelligence, has access to channels of information and advice on these issues from career officials who were not themselves associated with decisions that led to the torture of detainees?**

If confirmed, I will ensure that Director Blair receives expert legal advice and counsel from senior lawyers with no prior involvement in those decisions, and with full access to whatever information is necessary for complete and accurate factual determinations to support that advice and counsel.

Questions for the Record from Senator Levin

Mr. Litt:

1. On April 16, 2009, the Department of Justice released four opinions issued by the Office of Legal Counsel (OLC) (dated August 1, 2002, May 30, 2005, and two issued on May 10, 2005). Have you read those OLC opinions?

Yes.

2. Do you believe that the release of the four OLC opinions has jeopardized national security?

No.

3. Do you believe that waterboarding is torture?

The President and the Attorney General have stated that waterboarding is torture and I have no reason to disagree with that conclusion. Moreover, the President has stated that he has banned waterboarding "once and for all" and Director Blair has stated that it will not occur on his watch. I therefore do not expect to be presented with that legal question, but if confirmed, I can promise that waterboarding will not happen on my watch.

4. Do you believe that there are differences between the interrogation techniques as applied by the Central Intelligence Agency (CIA) and as applied in Survival Evasion Resistance Escape (SERE) training?

   While I am not fully familiar either with the manner in which the interrogation techniques were applied by the CIA or with SERE training, materials that I have read indicate that there are differences, for example the fact that SERE training is voluntary and an individual can indicate that he or she wants the technique to stop.

5. General David Petraeus said in a May 10, 2007 letter that "Some may argue that we would be more effective if we sanctioned torture or other expedient methods to obtain information from the enemy. They would be wrong. Beyond the basic fact that such actions are illegal, history shows that they also are frequently neither useful nor necessary. Certainly, extreme physical action can make someone 'talk;' however, what the individual says may be of questionable value." Do you agree with General Petraeus?

Yes.

6. What would you do if the Director of National Intelligence (DNI) made a significant public statement that was erroneous or misleading? What would you do if the DNI refused to correct such a statement?

I am confident from my discussions with him that Director Blair is committed to transparency, accuracy and disclosure to the greatest extent possible, consistent with national security. If the Director of National Intelligence made a significant public statement that I believed was erroneous or misleading I would discuss the matter with him to ascertain whether my understanding was correct and, if so, the reason for the Director's action. If I was not satisfied with the Director's explanations, and could not convince the Director to correct the statement, I would consider resigning my position if the matter was of sufficient importance.

Questions for the Record from Senator Levin

Mr. Preston:

1. On April 16, 2009, the Department of Justice released four opinions issued by the Office of Legal Counsel (OLC) (dated August 1, 2002, May 30, 2005, and two issued on May 10, 2005). Do you believe that the release of those opinions has jeopardized national security?

2. General David Petraeus said in a May 10, 2007 letter that "Some may argue that we would be more effective if we sanctioned torture or other expedient methods to obtain information from the enemy. They would be wrong. Beyond the basic fact that such actions are illegal, history shows that they also are frequently neither useful nor necessary. Certainly, extreme physical action can make someone 'talk;' however, what the individual says may be of questionable value." Do you agree with General Petraeus?

Questions for the Record from Senator Feingold

Mr. Litt:

Congressional notification

In your responses to Committee questions, you indicated that, under Section 502 of the National Security Act, the DNI could limit briefings to the Chairman and Vice Chairman, using the "Gang of Eight" provision from Section 503 "by analogy." This is wrong as a matter of statutory interpretation. Please clarify.

Section 502 of the National Security Act provides that the intelligence committees must be kept fully and currently informed "[t]o the extent consistent with due regard for the protection from disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters." My reference to Section 503 was meant only to indicate by analogy the sorts of circumstances under which I thought that a limited briefing might be appropriate under Section 502.

The warrantless wiretapping program (or Terrorist Surveillance Program) was a collection activity covered under Section 502 of the National Security Act. Was the failure to notify the full Committee a violation of that Act?

Because the program you refer to is classified, I am not familiar with it nor with the reasons why the full Committee was not briefed.

What is your understanding of the legal obligation to notify the congressional intelligence committees of covert action and other intelligence activities <u>prior</u> to their implementation?

Section 503 of the National Security Act requires the President to report "before the initiation of [a] covert action" and provides that if the President does not do so he shall fully inform the intelligence committees in a timely fashion and explain why prior notice was not given. Section 502 requires that the intelligence

committees be kept "fully and currently informed" of intelligence activities, including any "significant anticipated intelligence activity," and that any report relating to a significant anticipated intelligence activity should be in writing and contain a concise statement of the facts. As you know, Director Blair has repeatedly emphasized the importance of timely notification to the committees and keeping the committees fully and currently informed. If confirmed, I will fully support the Director's policies.

Warrantless wiretapping

Based on the Bush Administration's 2006 "white paper" and other public sources, do you believe that the warrantless wiretapping program (Terrorist Surveillance Program) was legal under Justice Jackson's steel seizure case test?

Because the program you refer to is classified, I am not sufficiently familiar with it or with the reasons why it was believed to be necessary to offer a view as to whether it was a valid exercise of the President's authorities.

State secrets

The president has committed to "voluntarily report[ing] to Congress when we have invoked the [state secrets] privilege and why." Will you commit to providing such briefings to Committee members and staff?

Yes.

OLC review

During his confirmation hearing, DNI Blair agreed to send all intelligence programs that pose significant legal questions to the Justice Department's Office of Legal Counsel (OLC), right at the outset. Will you commit to doing this? Will you include the Comprehensive Cybersecurity Initiative?

To the extent that any intelligence issues pose significant legal questions that require the views of the Department of Justice I commit that, if confirmed, I will ensure that they are submitted to the Office of Legal Counsel at the outset. To the

extent that the cybersecurity initiative raises such legal issues, if confirmed I will ensure that they are submitted.

Conflicts of interest

With regard to potential conflicts of interest, you have indicated that you have relied on and will continue to rely on the counsel of the ODNI Designated Agency Ethics Official. That person, however, is an employee of the ODNI Office of the General Counsel (OGC) and thus would be your direct subordinate, should you be confirmed. This raises further questions about objectivity and impartiality. Have you discussed potential conflicts of interest with anyone outside the OGC? Have you had any discussions with the DNI regarding the possibility, should you be confirmed, of designating an ethics official outside the OGC who could provide you counsel and, if so, what was the outcome of those discussions?

The issue you raise is not unique to this particular situation but exists throughout the government. In the Office of the Director of National Intelligence, as in all other federal agencies, the Designated Agency Ethics Officer is subordinate to one or more individuals in the agency to whom he or she gives ethics advice. Thus, for example, the ODNI DAEO is also responsible for giving ethics advice to the Director. The DAEO may call upon experts at the Office of Government Ethics in determining the appropriateness of any potential recusals. I have full confidence in the DAEO's ability to provide objective and impartial ethics advice and to consult with the office of Government Ethics when she deems it advisable.

You have indicated that the "precise contours" of the scope of your potential conflicts of interest have yet to be determined. This raises the question of when you will voluntarily recuse yourself or seek counsel. You have identified questions of prosecution or investigation, as well as reviews of interrogation techniques that are the "subject of [your] representation" of your clients as posing potential conflicts of interest. While the "subject of [your] representation" of your clients may have been narrow, however, you may be familiar with the broader range of activities conducted by your

clients, and your decisions with regard to these activities going forward could affect not only possible prosecution or investigation, but administrative actions or career advancement. What decisions related to detention, interrogation or rendition might prompt you to recuse yourself or seek counsel? Are there other decisions that might affect the interests of your clients still in the Intelligence Community, such as those related to the relative authorities of the CIA and DNI, the role of contractors, or employee benefits? If so, how will you identify them and what course of action would you take?

As I have told the committee, I will not participate in any decisions relating to the possible prosecution or investigation of my former clients nor any decisions that would affect the outcome of such matters, including decisions about similarly situated individuals or offering an opinion with respect to the legal status of particular interrogation procedures that may have been employed in the past that relate to the subject of my representation With respect to the types of other decisions you identify, they do not appear to present a conflict, but I will provide the Designated Agency Ethics Official with the names of these former clients to ensure that I do not participate in any matters from which I should be recused.

Questions for the Record from Senator Feingold

Mr. Preston:

Interrogations

Both the Attorney General and the President have indicated that waterboarding is torture. Is this your professional opinion as well?

You indicated during your confirmation hearing that you believe that the four Office of Legal Counsel (OLC) memos recently declassified and withdrawn are "flawed." Please describe the flaws you have identified in those memos.

Renditions

Director Panetta has left the door open for renditions to other countries of individuals in short-term CIA custody. First, what kinds of assurances and follow-up are necessary to satisfy the United States' obligations under the Convention Against Torture? Second, even if those obligations are met, are there legal requirements that the individual be subject to an open legal process, rather than indefinite extrajudicial detention? And, third, is there an obligation to notify the ICRC of such renditions?

OLC review

During his confirmation hearing, DNI Blair agreed to send all intelligence programs that posed significant legal questions to the Office of the Legal Counsel (OLC), right at the outset. Will you commit to doing this? Will you include any resumption of renditions or short-term CIA detentions, or considerations of interrogation policies that diverge from the Army Field Manual?

State secrets

In your response to Committee questions about state secrets legislation, you indicated that Congress should consider the impact on cases currently being litigated. Since then, the President has committed to "voluntarily report to Congress when we have invoked the privilege and why." Will you commit to providing Committee members and staff briefings on cases involving the CIA in which the privilege has been invoked?

Congressional notification

Do you agree that Section 502 of the National Security Act provides no authority to limit briefings to the Chairman and Vice Chairman and that programs other than covert action must always be notified to the full congressional intelligence committees? Was the failure to notify the full committees of the warrantless wiretapping program (the Terrorist Surveillance Program) a violation of that Act?

What is your understanding of the legal obligation to notify the congressional intelligence committees of covert action and other intelligence activities prior to their implementation?

Inspector General

Do you agree that the CIA Inspector General should have full independence to conduct investigations of CIA activities, regardless of whether the General Counsel has concluded that those activities are legal?

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

May 4, 2009

The Honorable Dianne Feinstein
Chairwoman
Select Committee on Intelligence
United States Senate
Washington, DC 20510-6475

Dear Madam Chairwoman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report file by Robert S. Litt, who has been nominated by President Obama for the position of General Counsel, Office of the Director of National Intelligence.

We have reviewed the report and have also obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Robert I. Cusick
Director

Enclosures

April 30, 2009

Ms. Corin R. Stone
Deputy General Counsel
and Designated Agency Ethics Official
Office of the Director of National Intelligence
2B-200 LX2
Washington, DC 20511

Dear Ms. Stone:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of General Counsel in the Office of the Director of National Intelligence.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Upon confirmation, I will resign from my position as a partner with the law firm of Arnold & Porter, LLP. I currently have a capital account with the firm, and I will receive a refund of that account after my resignation. Until I have received this refund, I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the ability or willingness of the firm to pay this refund, unless I first obtain a written waiver, pursuant to 18 U.S.C. 208(b)(1). Pursuant to the Arnold & Porter LLP, 1999 Partnership Agreement for Participating Equity Partners, I will receive a *pro rata* partnership share of the firm's budgeted income for 2009 through the date of my withdrawal. This payment will be based solely on the firm's budgeted income through the date of my withdrawal from the partnership. I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the ability or willingness of Arnold & Porter, LLP, to pay this *pro rata* partnership share to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1). For a period of one year after my resignation, I also will not participate personally and substantially in any particular matter involving specific parties in which the firm is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). In addition, I will not participate personally and substantially in any particular matter involving specific parties in which a former client of mine is a party or represents a party for a period of one year after I last provided service to that client, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

I will divest my interests in the Citigroup Stock Market Upturn Notes and Citigroup Market-Linked Deposits upon maturity. I will request a temporary written waiver under 18 U.S.C. § 208(b)(1) regarding my financial interest pending my divestiture of them. Until I have obtained such a waiver, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests on the entities tracked by these assets.

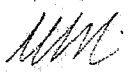
I will request a written waiver for my financial interest under 18 U.S.C. § 208(b)(1) regarding my financial interest in Citigroup Buffer Notes. Until I have obtained such a waiver, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests on the entities tracked by these assets.

Upon confirmation, I will resign from my positions with the following entities: the American Bar Association Criminal Justice Section and the American Bar Association Standing Committee on Law and National Security. For a period of one year after my resignation from these positions, I will not participate personally and substantially in any particular matter involving specific parties in which any of these entities is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

If I rely on a *de minimis* exemption under 5 C.F.R. § 2640.202 with regard to any of my financial interests, I will monitor the value of those interests. If the aggregate value of interests affected by a particular matter increases and exceeds the *de minimis* threshold, I will not participate in the particular matter, unless I first obtain a written waiver under 18 U.S.C. § 208(b)(1).

Finally, I understand that as an appointee, I am required to sign the Ethics Pledge (Exec. Order No. 13490) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this and any other ethics agreement.

Sincerely,



Robert S. Litt

SF278 (Rev. 07/2000)
5 C.F.R Part 2634
U.S. Office of Government Ethics

Form Approved:
OMB No. 3209-0001

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Date of Appointment, Candidacy, Election or Nomination (*Month, Day, Year*)	Reporting Status (*Check appropriate box(es)*)	Incumbent	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate	Termination Filer	Termination Date (*If Applicable*) (*Month, Day, Year*)
		☐		☒	☐	

	Last Name	First Name and Middle Initial
Reporting Individual's Name	Litt	Robert S.
Position for Which Filing	Title of Position: General Counsel	Department or Agency (*If Applicable*): Office of Director of National Intelligence
Location of Present Office (or forwarding address)	Address (*Number, Street, City, State, and ZIP Code*): 655 Twelfth St. NW, Washington, DC 20004	Telephone No. (*Include Area Code*): 202-942-6380
Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held:	
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Senate Select Committee on Intelligence	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No

Certification

I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.

Signature of Reporting Individual: [signature] Date (*Month, Day, Year*): 4/24/09

Other Review (If desired by agency)

Signature of Other Reviewer: Date (*Month, Day, Year*):

Agency Ethics Official's Opinion

On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).

Signature of Designated Agency Ethics Official/Reviewing Official: Claudia Nadig Date (*Month, Day, Year*): 30 April 2009

Office of Government Ethics Use Only

Signature: [signature] Date (*Month, Day, Year*): 5/4/09

Comments of Reviewing Officials (*If additional space is required, use the reverse side of this sheet*)

(*Check box if filing extension granted & indicate number of days ....*) ☐

(*Check box if comments are continued on the reverse side*) ☐

Fee for Late Filing

Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period shall be subject to a $200 fee.

Reporting Periods

Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A—The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B—Not applicable.

Schedule C, Part I (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)—Show any agreements or arrangements as of the date of filing.

Schedule D—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

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Reporting Individual's Name: Robert S. Litt

SCHEDULE A

Page Number: 1 of 8

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual acount of any honoraria over $200 of your spouse).

None ☐

	Assets and Income	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	Amount: $201 - $1,000	Amount: $1,001 - $2,500	Amount: $2,501 - $5,000	Amount: $5,001 - $15,000	Amount: $15,001 - $50,000	Amount: $50,001 - $100,000	Amount: $100,001 - $1,000,000	Amount: Over $1,000,000*	Amount: $1,000,001 - $5,000,000	Amount: Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				x												x						x										
	Doe Jones & Smith, Hometown, State			x																													Law Partnership Income $130,000
	Kempstone Equity Fund					x								x									x										
	IRA: Heartland 500 Index Fund							x						x										x									
1	Arnold & Porter LLP Partnership income (2008) Capital Account					x																											Law Partnership $975,000.00	
2	Partnership income (2009) Trinity University	Value Not ascertainable - quarterly pmts																			x												Spouse salary	
3	Citibank NA Cash Flextronics International C/S American Elec Power C/S		x x	x													x		x		x	x x												
4	General Elec C/S IBM C/S Pactiv Corp C/S		x	x x													x x				x		x	x										
5	Presidential Life Corp C/S Washington REIT ING Growth and Income Fund		x x x											x x			x				x		x	x										
6	Legg Mason Opportunity Trust Templeton Foreign Fund			x x										x x												x x								

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot be Used.

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Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
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Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

None ☐

	Assets and Income	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	Amount: $201 - $1,000	Amount: $1,001 - $2,500	Amount: $2,501 - $5,000	Amount: $5,001 - $15,000	Amount: $15,001 - $50,000	Amount: $50,001 - $100,000	Amount: $100,001 - $1,000,000	Amount: Over $1,000,000*	Amount: $1,000,001 - $5,000,000	Amount: Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Sam Rayburn Power Auth Bond				x														x														
	Alliance Bernstein Intl Value Fund			x									x								x				x								
2	Amcap Fund				x								x								x												
	Baron Growth Fund			x									x								x												
	Calamos Growth Fund				x								x								x												
3	Capital World Growth & Income Fd			x									x								x												
	Federated Intercontinental Fund			x									x								x												
	ING International Value Fund			x									x												x								
4	Perkins Mid Cap Value Fund				x								x											x									
	Lord Abbot Small Cap Blend Fund			x									x								x												
	T. Rowe Price Value Fund			x									x										x										
5	Royce Pennsylvania Mutual Fund			x									x								x												
	Touchstone Mid Cap Growth Fund				x								x								x												
	Van Kampen Growth & Income Fd				x								x								x												
6	Wells Fargo Advantage Small Cap Fd			x									x								x												
	T. Rowe Price Midcap Growth Fund						x						x								x												
7	TIAA Traditional Retirement			x															x			x											
	CREF Stock Fund		x										x								x												
	CREF Growth Fund		x										x								x												
8	CREF Global Equities Fund		x										x								x												
	TIAA Real Estate Fund		x										x								x												
	CREF Money Market Fund			x									x									x											
9	PIMCO Low Duration Fund				x								x								x												
	Western Asset Trust Core Bond Fd				x								x								x												
	Vanguard Growth & Income Fund		x										x											x									

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot be Used.

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Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
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Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)												Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)															
														Type				Amount										
None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 CRM Midcap Value Fund		x											x							x												
TCW Califieo Value Opportunity Fund		x											x							x												
M&T Bank Cash					x													x				x										
2																																
T Alcoa C/S		x														x					x											
3 Freeport McMoran Copper & Gold C/S (T)			x													x						x										
T S&P Midcap Depository Receipts			x										x									x										
T Questar Corp C/S						x										x								x								
4 Rohm & Haas C/S(T)						x										x			x													
T SJW Corp C/S							x									x			x								x					
T Long Island Power Auth. Bonds				x														x					x									
5 NY City Bonds (T)			x															x				x										
T Fidelity Contrafund			x										x			x				x												
T Fidelity Tax Free Bond Fund							x						x											x								
6 Baron Growth Fund (T)			x										x							x												
T Dodge & Cox Stock Fund	x												x										x									
T Eaton Vance Large Cap Value Fd			x										x								x											
7 American Growth Fund (T)			x										x							x												
T Royce Total Return Fund			x										x											x								
T Tweedy Browne Global Value Fund			x										x							x												
8 Vanguard Intermediate Tax Exempt Fd (T)							x						x										x									
T Vanguard Limited Term Tax Ex. Fd							x						x										x									
T Fidelity Municipal Money Market Fd							x						x										x									
9 Burlington Northern Santa Fe C/S (T)					x											x							x									
T California Water Service Holding C/S				x												x							x									
T Devon Energy C/S		x														x				x												

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income (None ☐)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	Amount: $201 - $1,000	Amount: $1,001 - $2,500	Amount: $2,501 - $5,000	Amount: $5,001 - $15,000	Amount: $15,001 - $50,000	Amount: $50,001 - $100,000	Amount: $100,001 - $1,000,000	Amount: Over $1,000,000*	Amount: $1,000,001 - $5,000,000	Amount: Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Exxon Mobil C/S (T)				x												x							x								
T	Newmont Mining C/S			x																	x												
T	Norfolk Southern C/S					x											x								x								
2	NY State Thruway Auth. Bonds (T)				x														x						x								
T	NY State UDC Bonds			x															x					x									
T	Key Bank Account (cash)		x																		x												
3	United Technologies C/S (T)				x												x							x									
	Pacific Life Flexible Premium Variable Life Ins. Policy (Fixed LT Account)		x																x		x												
4	ING Financial Service Fd	x												x								x											
	Western Assets Money Market Fd	x												x								x											
	Delaware International Value Fd	x												x									x										
5	Delaware Value Fund	x												x									x										
	American Funds Europacific Growth Fd	x												x										x									
	American Growth Fund of America	x												x								x											
6	Legg Mason Navigator Value Trust	x												x									x										
	Royce Micro Cap Fund	x												x								x											
	Thornburg Intl Value Fund	x												x								x											
7																																	
	Fidelity US Treas Money Mkt Fd	x												x											x								
T	Ohio State Water Devel. Bonds	x																	x			x											
8	General Electric C/S (T)	x															x			x							x						
T	Citigroup C/S	x																		x		x				x							
	John Hancock Int' Core A Fund		x												x																		
9	John Hancock Regional Bank A				x										x										x								
	El Paso Corp. Common Stock	x															x					x											
	Lockheed Martin Common Stock	x															x				x												

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income (None ☐)	Valuation of Assets: None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Williams & Connolly Retirement Plan:													x							x												
	BlackRock Total Return Portfolio			x										x							x												
	Nicholas Applegate High Yield Fund			x										x							x												
2	Delaware Pooled Trust Global Fixed Income Portfolio			x										x							x												
	Mellon Global Alpha I				x									x							x												
3	PIMCO All Asset Fund			x										x							x												
	Neuberger Berman Large Cap Growth Portfolio				x									x							x												
4	UBS US Equity Fund Y				x									x							x												
	Copper Rock Small Cap Growth			x										x							x												
	Vanguard Extended Market Index			x										x							x												
5	Artio International Equity Fund (All above items held in W&C plan)				x									x							x												
6	Citibank Market-Linked Deposit (Tracks S&P 500)					x													x					x								
7	Citigroup Buffer Notes Based on the Financial Sector SPDR Fund					x													x		x												
8	Citigroup Stock Market Upturn Notes linked to S&P 500				x														x		x												
9	Tenneco Automotive C/S	x															x				x												
	Reassure America Flexible Premium Adjustable Life Ins. Policy				x														x		x			x								

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Do not Complete Schedule B if you are a new entrant, nominee, Vice Presidential or Presidential Candidate

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Part I: Transactions

None ☐

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

	Identification of Assets	Transaction Type (x)			Date (Mo., Day, Yr.)	Amount of Transaction (x)														
		Purchase	Sale	Exchange		$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
	Example: Central Airlines Common	x			2/1/99			x									
1																	
2																	
3																	
4																	
5																	

* This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260; and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source *(Name and Address)*	Brief Description	Value
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

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Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None [x]

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x)											
						$10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples:	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10 %	on demand					x						
1																
2																
3																
4																
5																

* This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: continuing participation in an employee benefit plan (e.g. 401k, deferred compensation; (2) continuation payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits

None [ ]

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example:	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	Pursuant to partnership agreement, I will get my capital account returned to me when I leave the firm. 50% one year after I leave, 50% on second anniversary.	Arnold & Porter, Washington, DC	9/99
2	I will receive a fixed payment based on a pro rata share of the firm's budgeted income for the year 2009. The pro rata share will be based on the date I resign from the firm.	Arnold & Porter, Washington, DC	9/99
3	This will be paid in quarterly distributions with the last payment prior to December 31, 2009.		
4	I will continue to have an interest in Arnold & Porter's 401(k) and defined benefit plans based on my contributions to date. No further contributions will be made by Arnold & Porter.	Arnold & Porter, Washington, DC	9/99
5	My 401(k) plan with my former law firm continues; I have not contributed since I left that firm.	Williams & Connolly, Washington, DC	6/84
6			

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Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (*Name and Address*)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	Trust under will of grandfather for benefit of mother	Testamentary Trust	Trustee	1995	present
2	Trust for benefit of mother	Inter vivos trust	Trustee	1995	present
3	Trust for benefit of oldest daughter	Trust for my oldest child	Trustee	1988	present
	Trust for benefit of youngest daughter	Trust for my youngest child	Trustee	1988	present
4	Trust for benefit of middle daughter	Trust for my middle child	Trustee	1988	present
5	American Bar Assn. Criminal Justice Section	Bar Assn.	Vice Pres. at Large	2006	present
	American Bar Assn. Standing Committee on Law & Nat. Sec.	Bar Assn.	Member, Advisory Committee	2007	present
6	Arnold & Porter	Law firm	Partner	1999	present

Part II: Compensation In Excess Of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate

None ☐

	Source (*Name and Address*)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Arnold & Porter, Washington, DC	Legal Services
	KV Pharmaceuticals, St. Louis, MO	Legal Services
2	Arthur Andersen	Legal Services
	AstraZeneca Inc., Wilmington, DE	Legal Services
3	State of Israel	Legal Services
	Robert W. Olson, Cincinnati, OH	Legal Services
4	Alvin Glickman, New York, NY	Legal Services
	Mark M Richard, Charlottesville, VA	Legal Services
5	Piroska Nagy, London, UK	Legal Services
	Leo Apotheker, Heidelberg, Germany	Legal Services
6	DMTM Partners, Bethesda, MD	Legal Services
	New Zealand Racing Authority, Wellington, NZ	Legal Services

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Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (*Name and Address*)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1					
2					
3					
4					
5					
6					

Part II: Compensation In Excess Of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an incumbent, Termination Filer, or Vice Presidential or Presidential Candidate

None ☐

	Source (*Name and Address*)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Donald Keyser, Fairfax, VA	Legal Services
	Samir Vincent, Arlington, VA	Legal Services
2	Former officers of Chiquita Corp*	Legal Services
	24 confidential clients are not disclosed	
3	* Cyrus Friedheim, Robert Kistinger, Robert Olson, Carl Lindner,	
	Warren Ligan, James Riley, Jeffery Zalla, William Tascalis,	
4	Steve Warshaw, Fred Runk, Keith Lindner	
5		
6		

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SELECT COMMITTEE ON INTELLIGENCE

UNITED STATES SENATE

QUESTIONNAIRE FOR COMPLETION BY PRESIDENTIAL NOMINEES

SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE

QUESTIONNAIRE FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART A - BIOGRAPHICAL INFORMATION

1. NAME: Stephen Woolman Preston
2. DATE AND PLACE OF BIRTH: May 30, 1957; Atlanta, GA
3. MARITAL STATUS: Married
4. SPOUSE'S NAME: [DELETED]
5. SPOUSE'S MAIDEN NAME IF APPLICABLE: [DELETED]
6. NAMES AND AGES OF CHILDREN:

NAME	AGE
[DELETED]	[DELETED]
[DELETED]	[DELETED]

7. EDUCATION SINCE HIGH SCHOOL:

INSTITUTION	DATES ATTENDED	DEGREE RECEIVED	DATE OF DEGREE
Yale University	1975-1979	B.A.	May 1979
Trinity College, University of Dublin	1979-1980	Diploma	May 1980
Harvard University	1980-1983	J.D.	June 1983

8. EMPLOYMENT RECORD (LIST ALL POSITIONS HELD SINCE COLLEGE, INCLUDING MILITARY SERVICE. INDICATE NAME OF EMPLOYER, POSITION, TITLE OR DESCRIPTION, LOCATION, AND DATES OF EMPLOYMENT.)

EMPLOYER	POSITION/TITLE	LOCATION	DATES
Rockywold-Deephaven Camps	Maintenance Worker	Holderness, NH	Summer 1979
The Stag's Head	Barman	Dublin, Ireland	1979-1980
Sutherland, Asbill & Brennan	Summer Associate	Washington, DC	Summer 1981

Arnold & Porter	Summer Associate	Washington, DC	Summer 1982
McCutcheon, Doyle	Summer Associate	San Francisco, CA	Summer 1982
Covington & Burling	Summer Associate	Washington, DC	Summer 1983
Chambers of Hon. Phyllis A. Kravitch U.S. Court of Appeals for the Eleventh Circuit	Law Clerk	Savannah, GA	1983-1984
Center for Law in the Public Interest	Visiting Fellow	Washington, DC	1984-1985
Wilmer, Cutler & Pickering	Associate; Partner	Washington, DC	1986-1993
Department of Defense	Consultant; Deputy General Counsel (Legal Counsel); Principal Deputy General Counsel	Washington, DC	1993-1995
U.S. Department of Justice	Deputy Assistant Attorney General, Civil Division	Washington, DC	1995-1998
Department of the Navy	General Counsel	Washington, DC	1998-2000
Wilmer Cutler Pickering Hale and Dorr LLP	Partner	Washington, DC	2001-present

9. GOVERNMENT EXPERIENCE (INDICATE EXPERIENCE IN OR ASSOCIATION WITH FEDERAL, STATE, OR LOCAL GOVERNMENTS, INCLUDING ADVISORY, CONSULTATIVE, HONORARY, OR OTHER PART-TIME SERVICE OR POSITION. DO NOT REPEAT INFORMATION ALREADY PROVIDED IN QUESTION 8):

   Member, Independent Panel to Review Legal Services in the Department of Defense, appointed by the Secretary of Defense pursuant to the FY2005 Defense Authorization Act (1995)

10. INDICATE ANY SPECIALIZED INTELLIGENCE OR NATIONAL SECURITY EXPERTISE YOU HAVE ACQUIRED HAVING SERVED IN THE POSITIONS DESCRIBED IN QUESTIONS 8 AND/OR 9.

    I have had extensive experience with a wide range of matters relating to intelligence and national security.

    From 1993 to 1995, as Principal Deputy General Counsel of DoD and, for an extended period, Acting General Counsel, I served as the chief legal officer of the Department or his/her deputy, senior legal adviser to SECDEF and DEPSECDEF, and among other things direct reporting senior of the chief counsels of the defense intelligence agencies. From 1998 to 2000, as General Counsel of the Navy, I served as the chief legal officer of the Department and senior legal adviser to SECNAV, with among other things legal and oversight responsibilities for special programs and the Naval Criminal Investigative Service. In these positions, I handled the full range of legal matters confronting the Defense Department, including those relating to terrorist attack and force protection, intelligence, counterintelligence and law enforcement, and technology security. I also dealt frequently with other national security agencies, including the Central Intelligence Agency. In addition, as the Deputy Assistant Attorney General responsible for civil litigation on behalf of the United States in the courts of appeals from 1995 to 1998, I handled a variety of intelligence and other national security matters in litigation.

Since returning to the private sector in 2001, my law practice and other professional activities have been focused largely on national security. I am co-chair of WilmerHale's Defense and National Security Practice Group. My work includes advice to clients on U.S. foreign ownership restrictions and industrial security requirements, and representation in the national security review process conducted by the interagency Committee on Foreign Investment in the United States. I am a member of the Council on Foreign Relations, and I have served on the Board of Directors of the Center for Strategic and Budgetary Assessments (an independent, non-partisan, not-for-profit policy research institute), on the Independent Panel to Review Legal Services in the Department of Defense (appointed by the Secretary of Defense pursuant to the FY2005 Defense Authorization Act), on the ABA's Standing Committee on Law and National Security Advisory Committee, and as legal adviser to the CSIS Commission on Transatlantic Security and Industrial Cooperation in the Twenty-First Century.

11. HONORS AND AWARDS (PROVIDE INFORMATION ON SCHOLARSHIPS, FELLOWSHIPS, HONORARY DEGREES, MILITARY DECORATIONS, CIVILIAN SERVICE CITATIONS, OR ANY OTHER SPECIAL RECOGNITION FOR OUTSTANDING PERFORMANCE OR ACHIEVEMENT):

Phi Beta Kappa (1979)

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

Editor, Harvard Law Review (1982-83)

J.D., *magna cum laude*, Harvard University (1983)

Honoree, Women's Legal Defense Fund (1987)

Resolution, U.S. 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)

12. ORGANIZATIONAL AFFILIATIONS (LIST MEMBERSHIPS IN AND OFFICES HELD WITHIN THE LAST TEN YEARS IN ANY PROFESSIONAL, CIVIC, FRATERNAL, BUSINESS, SCHOLARLY, CULTURAL, CHARITABLE, OR OTHER SIMILAR ORGANIZATIONS):

ORGANIZATION	OFFICE HELD	DATES
All Souls Memorial Episcopal Church	Member; Finance Committee	c. 1997 to present
American Bar Association	Member; Standing Committee on Law and National Security Advisory Committee (past)	1984 to present
American Bar Foundation	Fellow	2001 to present
Center for Strategic and Budgetary Assessments	Board of Directors; Executive Committee	2005 to present
Council on Foreign Relations	Member	2002 to present

District of Columbia Bar	Member	1983 to present
Edward Coke Appellate American Inn of Court	Barrister	2001-2004
Harvard Club of Washington, DC	Member	c. 1984 to present
International Association for the Study of Irish Literatures	Member	c. 1980 to present
Kalorama Citizens Association	Member	c. 1991 to present
Kennedy Center Membership Program	Member	c. 1994 to present
National Capital Area Council, Boy Scouts of America	Cub Scout Den Leader	2006 to present
National Defense Industrial Association	Member	c. 2001 to present
Naval Historical Foundation	Member	c. 2000 to present
Navy League of the United States	Member	c. 2001 to present
Smithsonian Institution Resident Associate Program	Member	c. 1984 to present
United States Navy Memorial	Member	c. 2000 to present
U.S. Naval Institute	Member	c. 2001 to present
Yale Club of Washington, DC	Member	c. 1984 to present

13. PUBLISHED WRITINGS AND SPEECHES (LIST THE TITLES, PUBLISHERS, AND PUBLICATION DATES OF ANY BOOKS, ARTICLES, REPORTS, OR OTHER PUBLISHED MATERIALS YOU HAVE AUTHORED. ALSO LIST ANY PUBLIC SPEECHES YOU HAVE MADE WITHIN THE LAST TEN YEARS FOR WHICH THERE IS A TEXT OR TRANSCRIPT. TO THE EXTENT POSSIBLE, PLEASE PROVIDE A COPY OF EACH SUCH PUBLICATION, TEXT, OR TRANSCRIPT):

Co-author, "CFIUS and Foreign Investment" in *Homeland Security Legal and Policy Issues* (ABA forthcoming) – final draft attached

Speaker, *CFIUS Review of Foreign Investment in the US: The Impact of Recent Developments in the Coming Year* (WilmerHale Webinar February 4, 2009) – replay available at http://www.wilmerhale.com/events/whEventsDetail.aspx?firmEvent=2750

Speaker, *Foreign Investment and National Security Act of 2007* (The Knowledge Congress Webinar May 8, 2008) – replay available at http://www.mediafire.com/?zsjg28moatv

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

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) – attached

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

2008) – attached

Speaker, *Sovereign Wealth Funds: Issues and Legal Policy Implications* (WLF Webinar March 5, 2008) – replay available at http://iiscast.wlf.org/vod_internet.html

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

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

Law firm newsletters not listed.

PART B - QUALIFICATIONS

14. QUALIFICATIONS (DESCRIBE WHY YOU BELIEVE YOU ARE QUALIFIED TO SERVE IN THE POSITION FOR WHICH YOU HAVE BEEN NOMINATED):

As noted above in Item 10, I believe I have had a great deal of relevant experience both during my years in government service – as Principal Deputy and Acting General Counsel of the Department of Defense, and as General Counsel of the Department of the Navy, as well as at the U.S. Department of Justice – and more recently in private practice. At the same time, I recognize that I still have much to learn about the Central Intelligence Agency, and I am striving to do so. I bring to the job strong commitments: to public service and the protection of U.S. national security, to the rule of law in our society and adherence to the law in what we do, and to the exercise of independent judgment and common sense in furtherance of all of these.

PART C - POLITICAL AND FOREIGN AFFILIATIONS

15. POLITICAL ACTIVITIES (LIST ANY MEMBERSHIPS OR OFFICES HELD IN OR FINANCIAL CONTRIBUTIONS OR SERVICES RENDERED TO, ANY POLITICAL PARTY, ELECTION COMMITTEE, POLITICAL ACTION COMMITTEE, OR INDIVIDUAL CANDIDATE DURING THE LAST TEN YEARS):

John Hamilton Congressional Campaign – contribution of $1,000 (2000)

Janet Reno Florida Gubernatorial Campaign – contribution of $500 (2001)

John Schmidt Illinois Gubernatorial Campaign – contribution of $500 (2002)

Robert Donkas Washington, DC, Neighborhood Advisory Council Campaign – contribution of $25 (2003)

John Kerry Presidential Campaign – contribution of $2,000 (2004)

Deval Patrick Massachusetts Gubernatorial Campaign (primary) – contribution of $500 (2005)

Deval Patrick Massachusetts Gubernatorial Campaign – fundraising activity (2005)

Deval Patrick Massachusetts Gubernatorial Campaign (general election) -- contribution of $500 (2006)

Shirley Brandeman Montgomery County, MD, Board of Education Campaign – contribution of $500 (2006)

Brad Miller Congressional Campaign – contribution of $500 (2006)

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

Barack Obama Presidential Campaign – canvassing activity (2008)

Michael Bennet Senatorial Campaign – contribution of $500 (2009)

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

16. CANDIDACY FOR PUBLIC OFFICE (FURNISH DETAILS OF ANY CANDIDACY FOR ELECTIVE PUBLIC OFFICE):

None.

17. FOREIGN AFFILIATIONS

(NOTE: QUESTIONS 17A AND B ARE NOT LIMITED TO RELATIONSHIPS REQUIRING REGISTRATION UNDER THE FOREIGN AGENTS REGISTRATION ACT. QUESTIONS 17A, B, AND C DO NOT CALL FOR A POSITIVE RESPONSE IF THE REPRESENTATION OR TRANSACTION WAS AUTHORIZED BY THE UNITED STATES GOVERNMENT IN CONNECTION WITH YOUR OR YOUR SPOUSE'S EMPLOYMENT IN GOVERNMENT SERVICE.)

A. HAVE YOU OR YOUR SPOUSE EVER REPRESENTED IN ANY CAPACITY (E.G. EMPLOYEE, ATTORNEY, OR POLITICAL/BUSINESS CONSULTANT), WITH OR WITHOUT COMPENSATION, A FOREIGN GOVERNMENT OR AN ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE FULLY DESCRIBE SUCH RELATIONSHIP.

To the best of my knowledge, neither I nor my wife has ever represented a foreign government or, except as noted, an entity controlled by a foreign government. As reflected in Item 35 below, my clients have included a number of foreign businesses, and at least some of them have historically had and may currently have elements of ownership and/or control by a foreign government. For example, Lufthansa and Deutsche Post were previously owned and controlled by the German Government. Lufthansa is no longer owned or controlled by the German Government today. Deutsche Post operates independently of the German Government, but the latter retains some minority ownership interest in the former; whether Deutsche Post is regarded as controlled by the German Government may depend upon the context and applicable standards. As potentially responsive to this question, I note the firm's engagement with Lenovo following its acquisition of IBM's PC business. My understanding is that a Chinese government agency is the largest shareholder of Lenovo's largest shareholder, and that some may regard Lenovo as controlled by the Chinese Government. Our engagement and my involvement were limited to advice on discrete regulatory issues and entailed no contact with Chinese or USG officials. I note also our engagement with Corporación Andina de Fomento, an international development bank established by treaty among several Andean countries. I represented CAF in litigation in the U.S. courts relating to collateral on a loan in default.

B. HAVE ANY OF YOUR OR YOUR SPOUSE'S ASSOCIATES REPRESENTED, IN ANY CAPACITY, WITH OR WITHOUT COMPENSATION, A FOREIGN GOVERNMENT OR AN ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE FULLY DESCRIBE SUCH RELATIONSHIP.

As an international law firm based in the U.S. but with offices overseas (in London, Brussels, Berlin and Frankfurt, and in Beijing), WilmerHale has represented both foreign governments and entities controlled by foreign governments. However, such representations constitute a relatively small part of the firm's overall practice. The firm has compiled a list of "Foreign Government and Foreign Government-Related Entity Clients," attached hereto as Exhibit 17B. This list is comprised of clients of WilmerHale that are foreign governments or foreign government-related entities. The firm has served as counsel providing legal services in connection with litigation, transactions, regulatory, trade and other matters. The list is based on searches of the firm's client database from June 1, 2004 (when Wilmer Cutler Pickering merged with Hale and Dorr) to the present, performed by the firm's New Business/Conflicts Department, as well as information provided by current partners. It is believed to be reasonably comprehensive, but may not be absolutely complete given limitations on available information and search capabilities. Efforts have been made to include entities controlled by a foreign government, but because it is often unclear whether an entity is controlled by a

government, the list may not include some entities arguably controlled by a foreign government, and it may include entities that are owned in part by or affiliated with a foreign government but not necessarily controlled by the government.

C. DURING THE PAST TEN YEARS, HAVE YOU OR YOUR SPOUSE RECEIVED ANY COMPENSATION FROM, OR BEEN INVOLVED IN ANY FINANCIAL OR BUSINESS TRANSACTIONS WITH, A FOREIGN GOVERNMENT OR ANY ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE PROVIDE DETAILS.

No, except to the extent that I share in the income of the partnership and that income has been derived in part from the engagements described in (A) and (B) above.

D. HAVE YOU OR YOUR SPOUSE EVER REGISTERED UNDER THE FOREIGN AGENTS REGISTRATION ACT? IF SO, PLEASE PROVIDE DETAILS.

No.

18. DESCRIBE ANY LOBBYING ACTIVITY DURING THE PAST TEN YEARS, OTHER THAN IN AN OFFICIAL U.S. GOVERNMENT CAPACITY, IN WHICH YOU OR YOUR SPOUSE HAVE ENGAGED FOR THE PURPOSE OF DIRECTLY OR INDIRECTLY INFLUENCING THE PASSAGE, DEFEAT, OR MODIFICATION OF FEDERAL LEGISLATION, OR FOR THE PURPOSE OF AFFECTING THE ADMINISTRATION AND EXECUTION OF FEDERAL LAW OR PUBLIC POLICY.

Since returning to the firm from government service in 2001, my practice has consisted largely of assisting private sector clients with legal and/or policy matters involving or potentially involving one or more federal agencies. Some of those clients do business with the federal government; others do not. Some have needed help in uncovering, reporting and rectifying compliance problems, and resolving related enforcement proceedings and claims. Others have sought advice and representation in connection with federal government review of proposed corporate transactions (e.g., CFIUS). For a typical engagement not limited to advice, the representation has entailed contacts with responsible federal officials and advocacy with reference to the disposition of the particular matter.

PART D - FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST

19. DESCRIBE ANY EMPLOYMENT, BUSINESS RELATIONSHIP, FINANCIAL TRANSACTION, INVESTMENT, ASSOCIATION, OR ACTIVITY (INCLUDING, BUT NOT LIMITED TO, DEALINGS WITH THE FEDERAL GOVERNMENT ON YOUR OWN BEHALF OR ON BEHALF OF A CLIENT), WHICH COULD CREATE, OR APPEAR TO CREATE, A CONFLICT OF INTEREST IN THE POSITION TO WHICH YOU HAVE BEEN NOMINATED.

Under applicable statutes and regulations and the ethics pledge, I will be precluded from personally and substantially participating in any particular matter with specific parties in which I have a financial interest, in which a former client of mine is a party, or in which my former law firm represents a party, for specified periods where applicable and absent waiver where available. In the process of preparing my SF278 and Ethics Agreement, an agency ethics officer, in consultation with the Office of Government Ethics, has determined that certain of my investments might give rise to conflicts of interest. I intend to divest the potentially problematic investments, if confirmed, per my Ethics Agreement. With respect to particular matters in which my former clients are a party or my former firm represents a party, I will be disqualified from such matters for specified periods, unless waived where appropriate.

20. DO YOU INTEND TO SEVER ALL BUSINESS CONNECTIONS WITH YOUR PRESENT EMPLOYERS, FIRMS, BUSINESS ASSOCIATES AND/OR PARTNERSHIPS, OR OTHER ORGANIZATIONS IN THE EVENT THAT YOU ARE CONFIRMED BY THE SENATE? IF NOT, PLEASE EXPLAIN.

In the event that I am confirmed, I intend to sever all business connections with the law firm of which I am a partner, Wilmer Cutler Pickering Hale and Dorr LLP. I also intend to resign from the Board of Directors (and

its Executive Committee) of the Center for Strategic and Budgetary Assessments, and to resign as trustee of two irrevocable life insurance trusts. I intend to remain on the Finance Committee of All Souls Memorial Episcopal Church, and to remain trustee of two testamentary trusts for the benefit of my minor children. Unless advised otherwise, I do not believe any other organizations and my connections with them are of a nature and extent so as to require severance in the event that I am confirmed.

21. DESCRIBE THE FINANCIAL ARRANGEMENTS YOU HAVE MADE OR PLAN TO MAKE, IF YOU ARE CONFIRMED, IN CONNECTION WITH SEVERANCE FROM YOUR CURRENT POSITION. PLEASE INCLUDE SEVERANCE PAY, PENSION RIGHTS, STOCK OPTIONS, DEFERRED INCOME ARRANGEMENTS, AND ANY AND ALL COMPENSATION THAT WILL OR MIGHT BE RECEIVED IN THE FUTURE AS A RESULT OF YOUR CURRENT BUSINESS OR PROFESSIONAL RELATIONSHIPS.

If confirmed, I plan to resign as a partner of Wilmer Cutler Pickering Hale and Dorr LLP. I expect I will receive repayment of my partner capital, and a final 2009 partnership distribution that, with partnership distributions for 2009 already received, will represent that portion of the value of the partnership shares allocated to me for 2009 (under the firm's approved budget for the year) prorated for the number of days in 2009 in which I will have served as a partner (with a reserve for certain taxes to be paid on my behalf after my departure). My understanding is that I will either maintain my account in the firm's 401(k) defined contribution plan or roll it over into another qualifying account, and that I will withdraw from the partner's defined benefit plan, the proceeds to be rolled over into another qualifying account.

22. DO YOU HAVE ANY PLANS, COMMITMENTS, OR AGREEMENTS TO PURSUE OUTSIDE EMPLOYMENT, WITH OR WITHOUT COMPENSATION, DURING YOUR SERVICE WITH THE GOVERNMENT? IF SO, PLEASE PROVIDE DETAILS.

No.

23. AS FAR AS CAN BE FORESEEN, STATE YOUR PLANS AFTER COMPLETING GOVERNMENT SERVICE. PLEASE SPECIFICALLY DESCRIBE ANY AGREEMENTS OR UNDERSTANDINGS, WRITTEN OR UNWRITTEN, CONCERNING EMPLOYMENT AFTER LEAVING GOVERNMENT SERVICE. IN PARTICULAR, DESCRIBE ANY AGREEMENTS, UNDERSTANDINGS, OR OPTIONS TO RETURN TO YOUR CURRENT POSITION.

None.

24. IF YOU ARE PRESENTLY IN GOVERNMENT SERVICE, DURING THE PAST FIVE YEARS OF SUCH SERVICE, HAVE YOU RECEIVED FROM A PERSON OUTSIDE OF GOVERNMENT AN OFFER OR EXPRESSION OF INTEREST TO EMPLOY YOUR SERVICES AFTER YOU LEAVE GOVERNMENT SERVICE? IF YES, PLEASE PROVIDE DETAILS.

Not applicable.

25. IS YOUR SPOUSE EMPLOYED? IF YES AND THE NATURE OF THIS EMPLOYMENT IS RELATED IN ANY WAY TO THE POSITION FOR WHICH YOU ARE SEEKING CONFIRMATION, PLEASE INDICATE YOUR SPOUSE'S EMPLOYER, THE POSITION, AND THE LENGTH OF TIME THE POSITION HAS BEEN HELD. IF YOUR SPOUSE'S EMPLOYMENT IS NOT RELATED TO THE POSITION TO WHICH YOU HAVE BEEN NOMINATED, PLEASE SO STATE.

No.

26. LIST BELOW ALL CORPORATIONS, PARTNERSHIPS, FOUNDATIONS, TRUSTS, OR OTHER ENTITIES TOWARD WHICH YOU OR YOUR SPOUSE HAVE FIDUCIARY OBLIGATIONS OR IN WHICH YOU OR YOUR SPOUSE HAVE HELD DIRECTORSHIPS OR OTHER POSITIONS OF TRUST DURING THE PAST FIVE YEARS.

NAME OF ENTITY	POSITION	DATES HELD	SELF OR SPOUSE
Wilmer Cutler Pickering Hale and Dorr LLP	Partner	2001 to present	Self
EWB Irrevocable Life Insurance Trust	Trustee	2004 to present	Self
HCBIII Irrevocable Life Insurance Trust	Trustee	2004 to present	Self
All Souls Memorial Episcopal Church	Finance Committee	c. 2002 to present	Self
Center for Strategic and Budgetary Assessments	Board of Directors; Executive Committee	2005 to present	Self
Trust u/w/o BWP f/b/o JCP	Trustee	2003 to present	Self
Trust u/w/o BWP f/b/o CSWP	Trustee	2003 to present	Self

27. LIST ALL GIFTS EXCEEDING $100 IN VALUE RECEIVED DURING THE PAST FIVE YEARS BY YOU, YOUR SPOUSE, OR YOUR DEPENDENTS. (NOTE: GIFTS RECEIVED FROM RELATIVES AND GIFTS GIVEN TO YOUR SPOUSE OR DEPENDENT NEED NOT BE INCLUDED UNLESS THE GIFT WAS GIVEN WITH YOUR KNOWLEDGE AND ACQUIESCENCE AND YOU HAD REASON TO BELIEVE THE GIFT WAS GIVEN BECAUSE OF YOUR OFFICIAL POSITION.)

None.

28. LIST ALL SECURITIES, REAL PROPERTY, PARTNERSHIP INTERESTS, OR OTHER INVESTMENTS OR RECEIVABLES WITH A CURRENT MARKET VALUE (OR, IF MARKET VALUE IS NOT ASCERTAINABLE, ESTIMATED CURRENT FAIR VALUE) IN EXCESS OF $1,000. (NOTE: THE INFORMATION PROVIDED IN RESPONSE TO SCHEDULE A OF THE DISCLOSURE FORMS OF THE OFFICE OF GOVERNMENT ETHICS MAY BE INCORPORATED BY REFERENCE, PROVIDED THAT CURRENT VALUATIONS ARE USED.)

DESCRIPTION OF PROPERTY VALUE METHOD OF VALUATION

See Schedule A of SF278 and exhibits thereto (copy attached as Exhibit 28). – [Exhibit DELETED]

29. LIST ALL LOANS OR OTHER INDEBTEDNESS (INCLUDING ANY CONTINGENT LIABILITIES) IN EXCESS OF $10,000. EXCLUDE A MORTGAGE ON YOUR PERSONAL RESIDENCE UNLESS IT IS RENTED OUT, AND LOANS SECURED BY AUTOMOBILES, HOUSEHOLD FURNITURE, OR APPLIANCES. (NOTE: THE INFORMATION PROVIDED IN RESPONSE TO SCHEDULE C OF THE DISCLOSURE FORM OF THE OFFICE OF GOVERNMENT ETHICS MAY BE INCORPORATED BY REFERENCE, PROVIDED THAT CONTINGENT LIABILITIES ARE ALSO INCLUDED.)

NATURE OF OBLIGATION NAME OF OBLIGEE AMOUNT

See Schedule C of SF278 (copy attached as Exhibit 29). – [Exhibit DELETED]

30. ARE YOU OR YOUR SPOUSE NOW IN DEFAULT ON ANY LOAN, DEBT, OR OTHER FINANCIAL OBLIGATION? HAVE YOU OR YOUR SPOUSE BEEN IN DEFAULT ON ANY LOAN, DEBT, OR OTHER FINANCIAL OBLIGATION IN THE PAST TEN YEARS? HAVE YOU OR YOUR SPOUSE EVER BEEN REFUSED CREDIT OR HAD A LOAN APPLICATION DENIED? IF THE ANSWER TO ANY OF THESE QUESTIONS IS YES, PLEASE PROVIDE DETAILS.

No.

31. LIST THE SPECIFIC SOURCES AND AMOUNTS OF ALL INCOME RECEIVED DURING THE LAST FIVE YEARS, INCLUDING ALL SALARIES, FEES, DIVIDENDS, INTEREST, GIFTS, RENTS, ROYALTIES, PATENTS, HONORARIA, AND OTHER ITEMS EXCEEDING $200. (COPIES OF U.S. INCOME TAX RETURNS FOR THESE YEARS MAY BE SUBSTITUTED HERE, BUT THEIR SUBMISSION IS NOT REQUIRED.)

[DELETED]

32. IF ASKED, WILL YOU PROVIDE THE COMMITTEE WITH COPIES OF YOUR AND YOUR SPOUSE'S FEDERAL INCOME TAX RETURNS FOR THE PAST THREE YEARS?

Yes.

33. LIST ALL JURISDICTIONS IN WHICH YOU AND YOUR SPOUSE FILE ANNUAL INCOME TAX RETURNS.

We file Federal and in the District of Columbia every year. I have filed in Georgia, North Carolina and Arkansas in recent years in connection with discrete sales of real property. I have participated in composite returns filed by the law firm in multiple jurisdictions.

34. HAVE YOUR FEDERAL OR STATE TAX RETURNS BEEN THE SUBJECT OF AN AUDIT, INVESTIGATION, OR INQUIRY AT ANY TIME? IF SO, PLEASE PROVIDE DETAILS, INCLUDING THE RESULT OF ANY SUCH PROCEEDING.

No.

35. IF YOU ARE AN ATTORNEY, ACCOUNTANT, OR OTHER PROFESSIONAL, PLEASE LIST ALL CLIENTS AND CUSTOMERS WHOM YOU BILLED MORE THAN $200 WORTH OF SERVICES DURING THE PAST FIVE YEARS. ALSO, LIST ALL JURISDICTIONS IN WHICH YOU ARE LICENSED TO PRACTICE.

See Exhibit 35.

I am a member of the District of Columbia Bar and, as such, licensed to practice law. In addition, I have been admitted to practice before several federal courts.

36. DO YOU INTEND TO PLACE YOUR FINANCIAL HOLDINGS AND THOSE OF YOUR SPOUSE AND DEPENDENT MEMBERS OF YOUR IMMEDIATE HOUSEHOLD IN A BLIND TRUST? IF YES, PLEASE FURNISH DETAILS. IF NO, DESCRIBE OTHER ARRANGEMENTS FOR AVOIDING ANY POTENTIAL CONFLICTS OF INTEREST.

No. Most of our investments are in Exempted Investment Funds or in managed accounts. Per my Ethics Agreement, if confirmed, I intend to divest the managed accounts and holdings therein – with the exception of the managed account with holdings in government bonds (which are not regarded as potentially problematic in terms of conflicts of interest) – and roll over the proceeds into one or more EIFs.

36. IF APPLICABLE, ATTACH THE LAST THREE YEARS OF ANNUAL FINANCIAL DISCLOSURE FORMS YOU HAVE BEEN REQUIRED TO FILE WITH YOUR AGENCY, DEPARTMENT, OR BRANCH OF GOVERNMENT.

Not applicable.

PART E – ETHICAL MATTERS

38. HAVE YOU EVER BEEN THE SUBJECT OF A DISCIPLINARY PROCEEDING OR CITED FOR A BREACH OF ETHICS OR UNPROFESSIONAL CONDUCT BY, OR BEEN THE SUBJECT OF A COMPLAINT TO, ANY COURT, ADMINISTRATIVE AGENCY, PROFESSIONAL ASSOCIATION, DISCIPLINARY COMMITTEE, OR OTHER PROFESSIONAL GROUP? IF SO, PROVIDE DETAILS.

No.

39. HAVE YOU EVER BEEN INVESTIGATED, HELD, ARRESTED, OR CHARGED BY ANY FEDERAL, STATE, OR OTHER LAW ENFORCEMENT AUTHORITY FOR VIOLATION OF ANY FEDERAL STATE, COUNTY, OR MUNICIPAL LAW, REGULATION, OR ORDINANCE, OTHER THAN A MINOR TRAFFIC OFFENSE, OR NAMED AS A DEFENDANT OR OTHERWISE IN ANY INDICTMENT OR INFORMATION RELATING TO SUCH VIOLATION? IF SO, PROVIDE DETAILS.

No.

40. HAVE YOU EVER BEEN CONVICTED OF OR ENTERED A PLEA OF GUILTY OR NOLO CONTENDERE TO ANY CRIMINAL VIOLATION OTHER THAN A MINOR TRAFFIC OFFENSE? IF SO, PROVIDE DETAILS.

No.

41. ARE YOU PRESENTLY OR HAVE YOU EVER BEEN A PARTY IN INTEREST IN ANY ADMINISTRATIVE AGENCY PROCEEDING OR CIVIL LITIGATION? IF SO, PLEASE PROVIDE DETAILS.

No.

42. HAVE YOU BEEN INTERVIEWED OR ASKED TO SUPPLY ANY INFORMATION AS A WITNESS OR OTHERWISE IN CONNECTION WITH ANY CONGRESSIONAL INVESTIGATION, FEDERAL, OR STATE AGENCY PROCEEDING, GRAND JURY INVESTIGATION, OR CRIMINAL OR CIVIL LITIGATION IN THE PAST TEN YEARS? IF SO, PROVIDE DETAILS.

Yes.

In or about 1999, I testified as a witness at a subcommittee hearing of the Senate Judiciary Committee in Washington, DC, concerning a Chinese espionage investigation. At the time of the hearing, I was General Counsel of the Department of the Navy. My testimony concerned matters occurring at the Department of the Navy before I became General Counsel. I testified and was excused.

In 2008, I provided testimony before an Investigating Judge in Athens in connection with a Greek criminal investigation. Specifically, I made a presentation on behalf of a client relating to an aircraft accident. The presentation was of the sort that, in this country, is commonly made by counsel to the prosecutor in the course of a criminal investigation. Because Greek criminal procedure makes no provision for such an informal meeting but rather requires the taking of testimony under oath, I delivered the presentation as a sworn fact witness, albeit one having no personal knowledge of the events and testifying entirely on the basis of hearsay. I testified and was excused.

43. HAS ANY BUSINESS OF WHICH YOU ARE OR WERE AN OFFICER, DIRECTOR, OR PARTNER BEEN A PARTY TO ANY ADMINISTRATIVE AGENCY PROCEEDING OR CRIMINAL OR CIVIL LITIGATION RELEVANT TO THE POSITION TO WHICH YOU HAVE BEEN NOMINATED? IF SO, PROVIDE DETAILS. (WITH RESPECT TO A BUSINESS OF WHICH YOU ARE OR WERE AN OFFICER, YOU NEED ONLY CONSIDER PROCEEDINGS AND LITIGATION THAT OCCURRED WHILE YOU WERE AN OFFICER OF THAT BUSINESS.)

No.

44. HAVE YOU EVER BEEN THE SUBJECT OF ANY INSPECTOR GENERAL INVESTIGATION? IF SO, PROVIDE DETAILS.

No.

PART F – SECURITY INFORMATION

45. HAVE YOU EVER BEEN DENIED ANY SECURITY CLEARANCE OR ACCESS TO CLASSIFIED INFORMATION FOR ANY REASON? IF YES, PLEASE EXPLAIN IN DETAIL.

No.

46. HAVE YOU BEEN REQUIRED TO TAKE A POLYGRAPH EXAMINATION FOR ANY SECURITY CLEARANCE OR ACCESS TO CLASSIFIED INFORMATION? IF YES, PLEASE EXPLAIN.

No.

47. HAVE YOU EVER REFUSED TO SUBMIT TO A POLYGRAPH EXAMINATION? IF YES, PLEASE EXPLAIN.

No.

PART G - ADDITIONAL INFORMATION

48. DESCRIBE IN YOUR OWN WORDS THE CONCEPT OF CONGRESSIONAL OVERSIGHT OF U.S. INTELLIGENCE ACTIVITIES. IN PARTICULAR, CHARACTERIZE WHAT YOU BELIEVE TO BE THE OBLIGATIONS OF THE GENERAL COUNSEL OF THE CENTRAL INTELLIGENCE AGENCY AND THE INTELLIGENCE COMMITTEES OF THE CONGRESS RESPECTIVELY IN THE OVERSIGHT PROCESS.

Congress makes the laws, and the President executes them. In aid of its legislative power, Congress exercises oversight of Executive branch agencies through its respective committees of jurisdiction. Given the highly sensitive and nonpublic nature of U.S. intelligence activities, this oversight role, exercised by the SSCI and the HPSCI with participation by the leadership, is especially important and needs to be done right.

As General Counsel, if confirmed, I will do my utmost, with the Director, to ensure that the Intelligence Committees of the Congress are kept fully and currently informed of the intelligence activities of the Agency, including any significant anticipated intelligence activity and any significant intelligence failure. This is provided for by law, and it is required for the proper functioning of our government. While the law requires reporting to the extent consistent with due regard for the protection from unauthorized disclosure of certain national security information, I understand that the use of restricted briefings in the past has been a source of serious concern. I know that the Director is sensitive to this concern and is endeavoring to improve communication with the Intelligence Committees. I will join him in this effort, to the end of achieving a better-functioning Congressional notification process.

49. EXPLAIN YOUR UNDERSTANDING OF THE RESPONSIBILITIES OF THE GENERAL COUNSEL OF THE CENTRAL INTELLIGENCE AGENCY.

By statute the General Counsel of the Central Intelligence Agency is the chief legal officer of the Agency and shall perform such functions as the Director may prescribe. As the chief legal officer, the General Counsel is the final authority for the Agency in matters of law and legal policy, and his legal opinions are controlling within the Agency. The General Counsel serves as the senior legal adviser to the Director, as well as other Agency officials. He is also a member of the Director's management team, providing not only legal advice, strictly speaking, but also the benefit of his judgment and experience generally. In addition, the General Counsel is the head of the Office of General Counsel. He is responsible for the provision of legal services throughout the Agency and professional supervision of the attorneys providing those services. Finally, the General Counsel is the Agency's senior legal representative outside the Agency – within the Executive branch, before Congress, with liaison services, and to the general public.

AFFIRMATION

I, Stephen W. Preston, DO SWEAR THAT THE ANSWERS I HAVE PROVIDED TO THIS QUESTIONNAIRE ARE ACCURATE AND COMPLETE.

5/13/09 [Original Signed]
(Date) (Name)

[Original Signed]
(Notary)

My commission expires Feb 28, 2011

TO THE CHAIRMAN, SELECT COMMITTEE ON INTELLIGENCE:

In connection with my nomination to be General Counsel of the Central Intelligence Agency, I hereby express my willingness to respond to requests to appear and testify before any duly constituted committee of the Senate.

[Original Signed]
Signature

Date: 5/13/09

Exhibit 17B

Exhibit 17B
to SSCI Questionnaire for
Stephen Woolman Preston

Foreign Government and Foreign Government-Related Entity Clients

Foreign Governments
City of London
Embassy of the Kingdom of Lesotho
European Commission, European Union
Executive Office of Dubai
Government of Canada
Government of El Salvador
Government of Quebec
Government of Singapore
Hellenic Republic
Land Hessen (Federal State of Hessen)
Ministry of Economy, Government of El Salvador
Ministry of Economy, Trade and Industry (METI), Government of Japan
Ministry of Finance, Government of Indonesia
Ministry of Food, Agriculture, Forestry and Fisheries, Republic of Korea
Ministry of Transport, Kingdom of Belgium
Republic of Honduras

Foreign Government-Related Entities
Austrian State Holding Company (OeIAG)
Bank of Sierra Leone
Central Bank of Kenya
Central Bank of Liberia
Corporación Andina de Fomento
Croatia Airlines
Deutsche Bahn AG
Deutsche Post AG
Deutsche Telekom AG
DHL Express
DHL International
Dubai Aerospace Enterprise Ltd.
Emirates
Etihad Airways
Federated States of Micronesia Telecommunications Corporation
Flughafen Kassel GmbH
France Télécom
Grace Semiconductor Manufacturing Company
Industrial and Commercial Bank of China Limited
Lenovo
Marshall Islands National Telecommunications Authority
National Institute of Optics, Astrophysics and Electronics
Waterwegen en Zeekanaal NV
Outokumpu Oyj
Peking University Founder Group Co., Ltd.
Petroliam Nasional Berhad (Petronas)
PKU Resource Group Co., Ltd
Qatar Investment Authority
Royal Bank of Scotland

Sri Lankan Airlines
StatoilHydro ASA
Sudan People's Liberation Movement/Army
Techsnabexport (Tenex)
Temasek
Thai Airways
T-Mobile
Uzbekistan Airways

5/8/09

[DELETED]

Exhibit 28

[DELETED]

Exhibit 29

Exhibit 35

Exhibit 35
to SSCI Questionnaire for
Stephen Woolman Preston

Client Name

Boeing Company, The
Alcatel-Lucent
BP plc
ChoicePoint Inc.
Murray Energy Corp.
J.P. Morgan Chase & Co.
Six Flags, Inc.
Morgan Stanley
Lockheed Martin Corporation
Cobham plc
Invision Technologies
Citigroup
Deutsche Bank AG
Johnson Controls, Inc.
Western Geco
Cisco Systems Inc.
Data Physics Corporation
UGS
Teledyne Technologies Incorporated
Cabot Corporation
Daimler AG
Thomson Reuters Corporation
Siemens PLM Software Inc.
Hewitt Associates LLC
Matter of P
Emerson Radio Corp.
Deutsche Post AG
General Dynamics Corporation
Morganti Group, Inc.
Lufthansa AG
Emergent BioSolutions, Inc.
Navy Federal Credit Union
General Dynamics Advanced Information Systems
Monsanto Company
General Electric Company
Danaher Corporation
Time Warner, Inc.
BP America
Lehman Brothers, Inc.
Global Computer Enterprises Inc.
Fannie Mae
CBS
Dynamics Research Corporation
Julien J. Studley, Inc.
Oracle Corporation
Globalstar
Google, Inc.

Exhibit 35
to SSCI Questionnaire for
Stephen Woolman Preston

Client Name

Lenovo
NOVA Chemicals Corporation
Wyeth
Anheuser-Busch Companies, Inc.
Intel Corporation
Ab Initio Software LLC
Conoco Phillips
AT&T, Inc.
TPG Capital, LP
Qwest Communications International, Inc
T-Mobile
Yale University
Stevens Institute of Technology
SAIC
CA, Inc.
Smiths Group plc
Educational Testing Service
ITT Industries
Hubbell Incorporated
CoreStreet Ltd.
Titan Corporation
World Bank
Infosys Technologies Limited
Silver Lake Partners
EMC Corporation
Pyrotek
Analog Devices, Inc.
Textron, Inc.
HNA Group, Co., Limited
McGraw Hill Companies, The
UBS AG
Sonus Networks
HSBC International
Farallon Capital Management, LLC
Ossur North America
Macquarie Securities (USA) Inc.
Smartmatic
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Period: 1/1/04 - 2/28/09

SELECT COMMITTEE ON INTELLIGENCE UNITED STATES SENATE

Prehearing Questions
For
Stephen W. Preston
Upon his Selection to be
General Counsel
Central Intelligence Agency

Keeping the Intelligence Committee Fully and Currently Informed

QUESTION 1:

Section 502 of the National Security Act of 1947 provides that the obligation to keep the congressional intelligence committees fully and currently informed of all intelligence activities applies to the Director of National Intelligence and to the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities.

a. What is your understanding of the standard for meaningful compliance with this obligation of the Director of the Central Intelligence Agency to keep the congressional intelligence committees, including all their Members, fully and currently informed of intelligence activities?

Answer: Section 502 of the National Security Act obligates the Director of the Central Intelligence Agency – with only limited exceptions – to keep all members of the congressional intelligence committees informed of intelligence activities in a comprehensive and prompt fashion. In my view, meaningful compliance with this standard requires that the "going-in" presumption with respect to reporting and notification under that provision has to be in favor of full, timely provision of information to the entire memberships of the committees. Limitation of reporting or notification under section 502 should be consistent with any established, mutual understandings and implementations of the "due regard" clause.

b. Under what circumstances is it appropriate to brief the Chairman and Vice Chairman and not the full Committee membership?

Answer: In cases involving highly sensitive matters or circumstances, I can conceive that the DCIA might have no viable alternative except to limit notification to the Chairman and Vice Chairman (at least for some period). In considering whether it might be necessary to restrict a given section 502 report, notification or briefing in that manner, I am mindful that section 502—unlike section 503—does not contain an express provision and process for limiting the members to whom the information is provided, and that the congressional intelligence committees need and are entitled to meaningful access to information in order to carry out Congress' constitutional role and responsibilities with respect to intelligence. Accordingly, and again in the majority of cases, section 502 obligates the DCIA (and other Executive branch officials) to keep the congressional intelligence committees fully and currently informed of CIA intelligence activities.

Priorities of the Director of the Central Intelligence Agency

QUESTION 2:

Have you discussed with the Director of the Central Intelligence Agency his specific expectations of you, if confirmed as General Counsel, and his expectations of the Office of the General Counsel as a whole? If so, please describe those expectations.

Answer: The Director and I have discussed my views on the role of the General Counsel, which I believe are aligned with his expectations of me. The General Counsel is the chief legal officer of the Agency and serves as the senior legal adviser to the Director. He is a member of the Director's management team, providing not only legal advice, strictly speaking, but also the benefit of his judgment and experience generally. As head of the Office of General Counsel, he oversees the attorneys providing legal services throughout the Agency, and their professional development is one of his responsibilities.

In our discussions, the Director has underscored the role of the General Counsel in ensuring the Agency's compliance with applicable laws of the United States. I am sure he appreciates counsel who, rather than simply saying it cannot be done, helps to find a lawful and appropriate path from here to there, or advises as to the risks associated with alternative courses of action. At the same time, he has made very clear to me that he wants a General Counsel who has the maturity and the nerve to speak directly and candidly with the Director, without fear or favor. I am confident that I will live up to this expectation.

The Office of the General Counsel

QUESTION 3:

The Senate-confirmed position of General Counsel of the Central Intelligence Agency was created by Public Law 104-293 in 1996.

a. What is your understanding of the history and purpose of the establishment by Congress of the Office of the General Counsel of the Central Intelligence Agency as a Senate-confirmed position?

Answer: It is my understanding that the legislative proposal to establish the General Counsel of the Central Intelligence Agency as a position subject to Senate confirmation was a measure favored by the Senate Select Committee on Intelligence and the Senate. The proposal was not enacted into law the first few times that the Senate adopted it. Section 813(a) of the Intelligence Authorization Act for Fiscal Year 1997 (Public Law 104-293) did

establish the General Counsel of the CIA as a position to be filled by a Presidential appointee with the advice and consent of the Senate.

The Committee, in reporting its FY 1997 Intelligence Authorization bill, stated as follows: "The Committee believes that the confirmation process enhances accountability and strengthens the oversight process. It is also important to note that currently, all elements of the Intelligence Community—except the CIA—are part of departments that have statutory general counsels who are Senate confirmed. Requiring that the CIA's General Counsel be confirmed has been recommended several times over the years, including proposals by the Church Committee and the Iran-Contra Committee. The Senate's version of both the FY 1994 and FY 1995 Intelligence Authorization Bill also contained a provision requiring Senate confirmation of the CIA General Counsel." S. REP. NO. 258, 104th Cong., 2d Sess. 34 (1998).

b. The last Senate-confirmed General Counsel left the office in July 2004. How do you believe the vacancy of nearly five years may have affected the Agency and how would this affect the challenges facing a new Presidentially-appointed, Senate-confirmed General Counsel?

Answer: While it is always preferable to have Presidentially appointed, Senate-confirmed positions filled with confirmed appointees, it is important to recognize the daily contributions of the dedicated and talented career public servants who provide continuity and leadership between Administrations. In the last few weeks, I have met several of the men and women who help lead the Office of General Counsel and believe them to be not only capable, but genuinely devoted to their jobs and the mission of the Agency. I am confident that with their assistance I can handle the challenges I will face if confirmed. One of those challenges will be more thoroughly understanding the structure, staffing and operation of the Office of General Counsel and how the office meets the evolving needs of the Agency. The world is highly dynamic, and organizations tend to be static. If in my judgment changes are needed, then changes will be made.

QUESTION 4:

Although the Attorney General, usually through the Office of Legal Counsel at the Department of Justice, is responsible for the issuance of legal opinions that are authoritative within the Executive Branch, what is your understanding of the responsibility of the General Counsel of the Central Intelligence Agency in ensuring that all activities of the Central Intelligence Agency are undertaken in accordance with the Constitution, treaties, and laws of the United States?

Answer: Perhaps the most important, overarching role of the General Counsel is in ensuring the Agency's compliance with applicable U.S. law in all of its activities. The General Counsel performs his duties in this regard as the senior legal adviser to the Director and other Agency officials, and as head of the Office of General Counsel responsible for providing legal services

throughout the Agency. With respect to legal opinions, as the chief legal officer by statute, the General Counsel is the final authority for the Agency in matters of law and legal policy, and his legal opinions are controlling within the Agency. This includes the ability to make binding determinations on the Agency's own authorities. Thus, ordinarily, there is no need to seek the opinion of the Attorney General in order to ensure that the Agency's activities are undertaken in accordance with the law. However, in matters of exceptional significance or sensitivity, particularly with issues potentially affecting multiple agencies or where there may be conflicting views within the Executive branch, it is not uncommon for the Agency, through the General Counsel, to obtain from the Office of Legal Counsel legal opinions that are authoritative.

QUESTION 5:

The Office of the General Counsel of the Central Intelligence Agency has a myriad of roles and responsibilities. What are your expectations for the Office?

Answer: My expectations for the Office of General Counsel mirror the Director's expressed expectations of me. See Answer to Question 2. I wish to underscore the role of Agency counsel, from the General Counsel on down, in ensuring the Agency's compliance with applicable laws of the United States. I applaud counsel who, rather than simply saying it cannot be done, help to find a lawful and appropriate path from here to there, or advise as to the risks associated with alternative courses of action. At the same time, it is imperative that counsel have the independence and fortitude to speak directly and candidly with their clients, even when the message may be unwelcome. I believe that clients are entitled to receive not only the legal advice of counsel, strictly speaking, but also the benefit of their judgment and experience generally. It may be useful to delineate the two, distinguishing statutory interpretation and similar legal analysis from other relevant considerations, in presenting their views.

a. Do you have any preliminary observations on its responsibilities, performance, and effectiveness?

Answer: As I mentioned in response to Question 3, I have met with some, but not nearly all, of the attorneys in the Office of General Counsel and am beginning to appreciate the broad range of matters the office handles. OGC attorneys deal with issues involving personnel, appropriations, ethics, procurement, civil and criminal litigation, intelligence collection activities, and a host of operational scenarios with legal implications. Given the nature of these matters and the fact that I am currently outside the organization, however, I am not able to make an informed observation on the performance or effectiveness of the office.

b. If confirmed, will you seek to make changes in the numbers or qualifications of attorneys in the office, or in the operations of the office?

Answer: If confirmed, I intend to develop a more thorough understanding of the structure, staffing and operation of the Office of General Counsel and how the office meets the evolving needs of the Agency. My priority will be to ensure that the Director and all Agency elements receive sound legal advice. To be successful in that regard, I believe the office needs to be comprised of talented attorneys at various experience levels. One thing on which I intend to focus is the office's role in supporting the Agency's response to and participation in various inquiries and other matters relating to detainee treatment in the past, and associated staffing. At this preliminary stage, however, I have not made any judgments about this or how I might otherwise seek to make changes in the office.

c. What do you understand your responsibility to be to manage and oversee the legal work of the attorneys from the Office of the General Counsel who are assigned to the various components of the CIA and how would you carry out this responsibility if confirmed?

Answer: The General Counsel is the chief legal officer of the CIA and is responsible for the management and evaluation of all attorneys practicing law on behalf of the Agency. If confirmed, I intend to work with the senior staff in the Office of General Counsel to ensure that I have a window into the legal advice being provided by OGC attorneys throughout the Agency. I intend to hold regular meetings with the division chiefs so that I am kept informed and will expect all attorneys to bring issues to my attention as necessary.

QUESTION 6:

Describe your understanding of the responsibilities of the Director of National Intelligence and the General Counsel of the Office of the Director of National Intelligence in reviewing, and providing legal advice on, the work of the Central Intelligence Agency, including covert actions undertaken by the Central Intelligence Agency.

Answer: The ODNI General Counsel has no direct statutory role in reviewing and providing legal advice on the work of the Central Intelligence Agency. By statute, he is the chief legal officer of ODNI and, of course, the CIA is not a component of ODNI. However, because the CIA is an element of the IC, for which the DNI has statutory and Executive Order oversight responsibilities, the ODNI General Counsel would provide legal guidance to the DNI concerning those responsibilities. In addition, the DNI has the statutory responsibility to ensure that CIA activities are consistent with the Constitution and laws of the U.S. (§ 102A(f)(4) of the National Security Act of 1947, as amended). The DNI would turn to the ODNI General Counsel for legal guidance concerning this responsibility, as well. Although there is no reporting relationship between them, it is incumbent upon the CIA General Counsel and the ODNI General Counsel to work together on matters of mutual interest or responsibility.

QUESTION 7:

Describe your understanding of the responsibilities of the General Counsel of the Central Intelligence Agency in the process set forth in the President's Executive Orders of January 22, 2009, with respect to ensuring lawful interrogations, review, and disposition of individuals detained at Guantanamo Bay Naval Base and closure of detention facilities, and review of detention policy options.

Answer: On 22 January 2009, President Obama signed three Executive Orders, which directed that interagency task forces or reviews be set up to ensure lawful interrogations of individuals in the custody or control of the U.S. in armed conflicts, review the disposition of individuals detained at Guantanamo Bay Naval Base, and review detention policy options for individuals captured or apprehended in connection with counterterrorism operations. The CIA is a named member of, or participates through the ODNI in, all three of these interagency groups. In response to these Executive Orders, Director Panetta established the Director's Review Group on Rendition, Detention and Interrogation to represent the CIA during the course of these Executive Order reviews. It is my understanding that OGC attorneys provide legal guidance to the Director's Review Group – for example, to ensure that protection of intelligence sources and methods is adequately considered – and otherwise participate in the work of the Director's Review Group.

QUESTION 8:

Explain your understanding of the responsibility of the General Counsel of the Central Intelligence Agency to bring issues of legal significance to the attention of the Office of the General Counsel of the Director of National Intelligence and to the General Counsel Forum established by the Office.

Answer: I firmly believe that a close and productive working relationship between the General Counsel of the CIA and the General Counsel of ODNI will be founded upon a shared willingness to collaborate, frequent communication and mutual transparency. Likewise between their respective offices and among the other legal components of the Intelligence Community. Accordingly, in legal matters of likely interest to the DNI or the DCIA (respectively), or of general interest to the IC, I would expect a free flow of information via legal channels both to and from the Agency, including the General Counsel forum where warranted.

QUESTION 9:

Section 8 of the Inspector General Reform Act of 2008 provides that for Inspectors General established under the Inspector General Act of 1978 (the CIA Inspector General was established by separate legislation) each Inspector General shall obtain legal advice from a counsel reporting directly to the Inspector General or another Inspector General. The CIA Inspector General has requested a similar amendment to the CIA Inspector General Act.

a. What is your view of the independence that the CIA Inspector General should have vis-à-vis all officials of the CIA, including the General Counsel, by having separate counsel?

Answer: I understand that the current IG Counsel is an OGC attorney on rotational assignment to the OIG. He is responsible for advising the IG on all legal issues that pertain to or arise from the functions and authorities of the IG as enumerated in Section 17 of the CIA Act and internal regulation. The IG Counsel reports directly to the IG, not the General Counsel. In addition, the IG is permitted by the CIA Act of 1949, as amended, to "appoint and employ such officers and employees as are necessary to carry out his functions." 50 U.S.C. § 403q(e)(7). I understand that the most recent IG cited this provision as authority to hire a second lawyer who is not on rotational assignment from OGC.

From my perspective, the IG has sufficient independence to carry out his responsibilities. At the same time, I am concerned that the current arrangements with respect to counsel for the IG may be sub-optimal. No question, the independence of the IG must be maintained and respected, and so the IG's counsel should be independent in providing legal advice to the IG. It does not follow that the IG's counsel should be entirely separate from the General Counsel and OGC. Nor is it necessarily desirable. Where an IG's counsel is subject to the general professional oversight of the agency's GC, while afforded complete latitude in advising the IG, there are means by which to ensure the quality of legal services provided the IG without compromising independence in the least.

That said, as I have no experience at the Agency with the current arrangements, I don't have a fixed view in this regard. I look forward to developing a good working relationship with the IG, OIG staff and IG lawyers. And if the next IG wishes to, I would be happy to discuss the counsel arrangements further.

b. What is the appropriate role and authority of the CIA Inspector General to conduct reviews of the activities of the Office of the General Counsel and to reach legal conclusions that may differ from that office?

Answer: By law, pursuant to section 20 of the CIA Act of 1949, the General Counsel of the Central Intelligence Agency is the chief legal officer of the Agency. As such, the General Counsel is the final authority for the Agency in matters of law and legal policy, and his legal opinions are controlling within the Agency. In this regard, it is important to note that

section 6 of the Inspector General Reform Act of 2008 (even though not applicable to the CIA IG) expressly provides that amendments are not to be construed to alter the duties and responsibilities of each agency's legal counsel. The President, in signing the Reform Act, also stated the view that "[i]t is important. . .that agencies have structures through which to reach a single, final authoritative determination for the agency of what the law is." Here, OGC remains the structure to reach single, authoritative legal interpretations and advice within CIA.

As for the IG's authority to conduct reviews of the activities of OGC, of course, the office is no different from other elements of the Agency in being amenable to conventional scrutiny for fraud, waste and abuse (although special arrangements may be necessary, for example, to protect privileged communications). However, as the chief legal officer of the Agency, the General Counsel is responsible for the professional supervision of the lawyers serving as such throughout the Agency. It is the General Counsel's responsibility to review their professional performance and address any deficiencies as appropriate.

Guidelines under Executive Order 12333

QUESTION 10:

One of the fundamental documents governing the activities of the Intelligence Community is Executive Order 12333. Under Executive Order 12333, as amended in July 2008, there are requirements for Attorney-General approved guidelines. Explain your understanding of the role of the General Counsel of the Central Intelligence Agency in completing the guidelines and procedures required under the Executive Order. In answering this question, please identify particular guideline requirements that should be of interest to the Central Intelligence Agency.

Answer: As the Committee is aware, intelligence activities by the CIA and the other IC elements are subject to several "layers" of legal regulation and guidance. There are Constitutional requirements, statutory requirements and requirements under Executive Orders, most notably 12333. The previous version of Executive Order 12333 also called for the promulgation of more detailed and largely classified guidelines to address the conduct of specific types of intelligence activities and required that those guidelines to be approved by the Attorney General. A set of such guidelines for CIA were promulgated under EO 12333 in 1982. CIA OGC was deeply involved in working with the Department of Justice to prepare these guidelines. I understand that these guidelines are detailed and classified, and have been provided to the Committee and discussed with the Committee and staff on numerous occasions.

The revised version of EO 12333 retains the requirements for specific, Attorney General-approved guidelines for various types of intelligence activities. This includes guidelines that relate to issues of general "community-wide" interest, as well as guidelines relating to CIA-specific activities. I

expect that CIA, and OGC, will be integrally involved in supporting the DNI and Justice Department in efforts to draft community-wide guidelines, and will be in the lead in working with Justice to prepare the guidelines that relate directly to CIA activities. I have not yet formulated any conclusions as to what existing guidelines will need to be revised or replaced. If confirmed, one of my priorities will be to review the existing guidelines to determine what changes may be warranted.

Inspector General Review of the President's Surveillance Program

QUESTION 11:

Title III of the FISA Amendments Act of 2008 provides for a comprehensive report by certain inspectors general on the President's Surveillance Program during the period beginning on September 11, 2001 and ending January 17, 2007. The final report is to be submitted, within one year of the signing of the law in July 2008, in unclassified form but may include a classified annex. It will include a review of the Office of the Inspector General of the Central Intelligence Agency.

a. Describe your understanding of the purpose of a public report.

Answer: I believe the purpose of a public report is to provide information to the American public about the President's Surveillance Program in order for there to be at least some transparency about the program.

b. Describe the responsibility that you anticipate that the General Counsel of the Central Intelligence Agency will have in recommending what should be declassified and the standards that should be applied to that determination.

Answer: Given that I have no information about whether and, if so, to what extent the CIA participated in this program, I am unable to describe my role if confirmed in making recommendations about declassification of the report.

December 2009 Sunset of Three FISA Provisions

QUESTION 12:

Three FISA provisions—lone wolf coverage, roving wiretaps, and orders for documents—sunset on December 31, 2009.

a. In your view, what evidence and issues should be considered by the Administration and by Congress in the consideration of whether to modify these provisions and either extend the sunsets or make the provisions, with or without amendments, permanent?

Answer: I have not undertaken a review of these provisions in detail, but I understand that in 2005, when these provisions came up for reauthorization, the Department of Justice made a compelling argument that their renewal was warranted in that these provisions continued to address significant but unintended and originally unforeseen gaps in the original FISA law, while at the same time providing reasonable safeguards for the rights of U.S. citizens.

I think it is fair and useful to reexamine these provisions in that same light and see whether they do in fact meet a continuing intelligence need. Obviously, such an evaluation must be based, in large part, on classified information, which I have not yet had the opportunity to review. If confirmed, I will work with other offices in CIA to evaluate the intelligence benefits of these provisions to date, inform the Director of the conclusions of that review, and be happy to discuss the matter with the Committee.

b. Are there any benefits, in your view, in aligning the sunset of these provisions with the sunset under the FISA Amendments Act of 2008 for Title VII of FISA on procedures regarding persons outside of the United States?

Answer: The authorities given in Title VII of the FISA Amendments Act, which provide procedures for targeting persons outside the United States, are very different in nature from the lone wolf, roving wiretap and business records provisions so the benefit to aligning those sunset provisions with the Title VII sunset provision is not direct. However, doing so would ensure that these provisions would continue for the next three years, which, based on my limited understanding, has previously been deemed important to fill a gap in FISA. There may also be some administrative benefit in reviewing all of the provisions that will sunset at one time rather than three years apart.

Pending Legislation

QUESTION 13:

The Senate and House of Representatives have considered legislation over the course of several Congresses on subjects such as providing conditions for the federally compelled disclosure of information by certain persons connected with the news media, the state secrets privilege, and whistleblower protections. In your view, what evidence and issues should be considered by the Administration and by Congress in the consideration of whether legislation on these subjects should be enacted? Please discuss each subject separately.

Answer: My inclination in such matters involving Constitutional questions is to recommend that both the Congress and the Executive branch proceed with caution. Generally speaking, comprehensive factual inquiries should be conducted to the extent necessary to understand the issues involved in application of current Administration practices in these three areas and to identify the problems, if any, that give rise to the question of possible legislative solutions. The totality of Administration practices should be considered, not just the few cases that have received public attention. Equally important, the unintended consequences of legislation should be identified and weighed. From my limited vantage point, I am uncertain that such legislation is necessary, but if confirmed I am eager to become more knowledgeable and to offer informed contributions to the debate on these questions.

With respect to the three subject matters in question, I have the following preliminary observations.

State Secrets Privilege legislation. I believe the following factors should be considered:

- The breadth and scope of the privilege as defined and interpreted by U.S. courts, including the Supreme Court;
- The existing procedural and substantive requirements that limit the invocation of the privilege, and the effectiveness of these requirements;
- Whether Executive branch and, ultimately, Presidential action is sufficient to cure any identified concerns over the invocation of the privilege;
- Whether Congress has the authority under the Constitution to alter the state secrets privilege;
- Whether proposed legislation would impose upon the district courts a responsibility to make national security judgments and, if so, whether that result is Constitutionally permissible, practical and efficient;

- Whether proposed legislation would provide an appropriate level of protection for national security information;

- The impact on cases currently being litigated.

"Media Shield" legislation. The following factors should be considered:

- How to appropriately tailor the definition of the type of journalists to be covered by the legislation, so that only bona fide journalists are included, and terrorists and other criminals are not unintentionally given safe harbor;

- How to effectively define the type of information that is subject to the privilege governed by the legislation;

- How to define the role of the courts in assessing whether and how the privilege should be overridden in light of a demonstrated governmental interest, and with deference for the President's constitutional obligation to protect classified national security information;

Whistleblower legislation. The following factors should be considered:

- Whether the status quo adequately preserves the interests of CIA employees who seek to provide Congress with information about CIA activities;

- Whether classified national security information is adequately protected from unauthorized disclosure;

- Whether the President's ability to grant and deny security clearances as an expression of Constitutional authority is respected.

Cyber Security

QUESTION 14:

The Bush Administration launched a major initiative to improve government cyber security, the Comprehensive National Cybersecurity Initiative (CNCI), with a prominent role for the Intelligence Community. The Obama Administration has undertaken a 60-day review of cyber security.

a. What are the major legal, privacy and civil liberties issues concerning the CNCI, or successor, that you believe should be addressed?

Answer: Although I am not well-versed in this initiative, I imagine that a major legal issue is the establishment of clear "lanes in the road" or areas of responsibility for cyber and cyber security issues, consistent with constitutional and statutory requirements. For example, CIA is an element of the intelligence community, and receives direction from the President, the National Security Council, or the Director of National Intelligence. CIA, or an element of CIA, could not be incorporated into the military chain of command. Additionally, CIA has a statutory prohibition against exercising an internal security function or law enforcement authorities. As a result, any cyber or cyber security effort moving forward would have to incorporate CIA in a manner consistent with the above requirements.

Another significant legal issue is ensuring that the Director of CIA is able to effectively protect CIA information systems from cyber attack while still accomplishing our unique core mission of collecting intelligence. Federal law recognizes the special authority of the Director of CIA to protect CIA information systems, by developing and implementing information security policies, standards and guidelines, in recognition of the unique nature of CIA information systems and the information contained therein. Any cyber security effort should preserve the statutory authority of the Director of CIA to provide for the protection of CIA information systems without having to adhere to a government-wide standard that may not account for CIA's unique sensitivities and needs.

Of course, we must ensure that any effort to address cybersecurity also respects privacy and civil liberties. In particular, the involvement of the Intelligence Community underscores the need for adherence to guidelines on collecting and handling US person information in an appropriate manner.

b. What overarching guidelines for the Intelligence Community do you believe should be in place with respect to the implementation of any successor to the CNCI?

Answer: My understanding is that there exists already sufficient guidance on the collection, retention and dissemination of US Person information. CIA is guided by constitutional protections, statutory requirements, executive orders, and Attorney General-approved guidelines in the conduct of intelligence activities, including any activities related to the CNCI or similar efforts. If confirmed, I will work to ensure that CIA adheres to existing guidelines.

As discussed above, the Intelligence Community needs to have clear guidance on the specific roles and authorities of each entity. This should emphasize that existing guidelines

on, for example, US Person information or other legal, privacy or civil liberties issues are equally applicable to activities implementing the CNCI or similar efforts.

Executive Branch Oversight of Intelligence Activities

QUESTION 15:

Are there improvements, in terms of resources, methodology, and objectives that you believe should be considered concerning Executive Branch oversight of the intelligence activities of the United States Government?

Answer: As part of a continuing effort to enhance the capabilities and effectiveness of CIA, as well as the Intelligence Community writ large, we have to continue to look for ways to improve Executive branch oversight of intelligence activities, in part to make sure those activities are fully responsive to policymaker interests and requirements. At the same time, we must make sure that the oversight process is efficient and not overly burdensome, and that the activities and analysis of the CIA and Intelligence Community are not politicized.

Relationship with the Other Officials of the Intelligence Community

QUESTION 16:

What should be the relationship between the General Counsel of the Central Intelligence Agency and the following officers of the Intelligence Community:

a. General Counsel, Office of the Director of National Intelligence

Answer: A close and productive working relationship between the General Counsel of the CIA and the General Counsel of ODNI is critical and, I firmly believe, will be founded upon a shared willingness to collaborate, frequent communication and mutual transparency. The dealings of their respective offices in the short time since the latter was established have been described to me as highly collaborative. I previously served in government with the nominee for the ODNI position and am confident that we will work well together, if we are confirmed.

b. Assistant Attorney General for National Security, Department of Justice

Answer: A good working relationship between the General Counsel of the CIA and the Assistant Attorney General for the National Security Division is also important. Again, a

collaborative approach and effective communication will be essential in maintaining such a relationship, particularly in matters involving FISA, crimes reporting, and CT and CI investigations and prosecutions. I am previously acquainted with the incumbent Assistant Attorney General and am confident that we will work well together, if I am confirmed

c. Inspector General, Central Intelligence Agency

Answer: A good working relationship between the General Counsel of the CIA and the Inspector General of the CIA is no less desirable and, in my experience, achievable. To be sure, the relationship is somewhat different from others, as the Inspector General must maintain an appropriate measure of independence, and other Agency officials should respect his or her independence (likewise with respect to the General Counsel's statutory role as chief legal officer). But independence is no bar to the collaborative approach and effective communication that are the hallmarks of a functional relationship. While some distance may be needed, there is nothing inherent in the structure that precludes the Inspector General from serving as a valuable member of the Director's management team or that prevents OIG and OGC from collaborating on matters of mutual interest and responsibility.

Professional Experience

QUESTION 17:

For each of the following, describe specifically how your experiences will enable you to serve effectively as the General Counsel of the Central Intelligence Agency. Include within each response a description of issues relating to the position that you can identify based on those experiences.

a. Partner and Co-Chair, Defense, National Security and Government Contracts Practice Group, WilmerHale LLP

Perhaps the single most important contribution of my work at WilmerHale to my preparation for the CIA position is that it has enabled me to remain active in national security-related matters after leaving government service and returning to the private sector. Second, in terms of substantive areas, my work has focused heavily on issues on "the business side" of national security, including industrial security requirements, foreign ownership restrictions, the CFIUS process, government contracts, conflicts of interest, procurement integrity, competitor information, foreign military assistance, U.S. export controls, foreign corrupt payments, contract disputes, suspension and debarment, civil fraud liability and criminal enforcement. Third, WilmerHale has provided a platform from which I have participated in a series of projects and enterprises relating to national security, including service on the Board of Directors of the Center for Strategic and Budgetary Assessments (an independent,

non-partisan, not-for-profit policy research institute), on the Independent Panel to Review Legal Services in the Department of Defense (appointed by the Secretary of Defense pursuant to the FY2005 Defense Authorization Act), on the ABA's Standing Committee on Law and National Security Advisory Committee, and as legal adviser to the CSIS Commission on Transatlantic Security and Industrial Cooperation in the Twenty-First Century.

b. General Counsel, Department of the Navy; Acting General Counsel and Principal Deputy General Counsel, Department of Defense

I address my positions at the Pentagon together because they afforded me exposure to many of the same issues and challenges, one from the perspective of a Military Department and its constituent Armed Services, and the other from the perspective of the Office of the Secretary of Defense. First, and perhaps most obvious, I consider both good preparation for the CIA position because they constitute prior experience as the chief legal officer of major components of the national security establishment. From 1993 to 1995, as Principal Deputy General Counsel of DoD and, for an extended period, Acting General Counsel, I served as the chief legal officer of DoD, or deputy, and senior legal adviser to SECDEF and DEPSECDEF. From 1998 to 2000, as General Counsel of the Navy, I served as the chief legal officer of the Navy Department and senior legal adviser to SECNAV. Second, in these positions, I gained valuable experience in a wide range of relevant areas, including terrorist attack and force protection, intelligence, counterintelligence and law enforcement, and technology security. While at DoD, I was the direct reporting senior of the chief counsels of the defense intelligence agencies and ultimately responsible for the legal functions at those agencies. While at the Navy Department, I had legal and oversight responsibilities for special programs and the Naval Criminal Investigative Service. In both positions, I dealt frequently with other national security agencies, including the CIA. Third, in these positions, I became familiar with the interagency generally and the legal offices principally concerned with national security in particular.

c. Deputy Assistant Attorney General, Civil Division, Department of Justice

As the Deputy Assistant Attorney General responsible for civil litigation on behalf of the United States in the courts of appeals from 1995 to 1998, I handled a variety of intelligence and other national security matters in litigation, including issues involving classified information and the protection of sources and methods. Because one role of the General Counsel is to interface with DOJ's litigating divisions, as well as the Solicitor General's Office, this prior experience should be particularly valuable. Moreover, my three years at "Main Justice" yielded an in-depth understanding of the organization, its culture, leadership roles and decision-making processes on which I could usefully draw as the General Counsel of a "client" agency.

QUESTION 18:

What, if any, conflicts might arise from your private practice if you are confirmed as General Counsel and how would you address these conflicts?

Answer: Under applicable statutes and regulations and the ethics pledge, I will be precluded from personally and substantially participating in any particular matter with specific parties in which I have a financial interest, in which a former client of mine is a party, or in which my former law firm represents a party, for specified periods where applicable and absent waiver where available. In the process of preparing my SF278 and Ethics Agreement, an agency ethics officer, in consultation with the Office of Government Ethics, has determined that certain of my investments might give rise to conflicts of interest. I intend to divest the potentially problematic investments, if confirmed, per my Ethics Agreement. With respect to particular matters in which my former clients are a party or my former firm represents a party, I will be disqualified from such matters for specified periods, unless waived where appropriate.

Opinions of the Office of Legal Counsel

QUESTION 19:

On April 16, 2009, the Department of Justice released four opinions issued by the Office of Legal Counsel (OLC) for the Acting General Counsel or Senior Deputy General Counsel of the Central Intelligence Agency. With respect to these opinions, issued August 1, 2002, May 30, 2005, and two issued on May 10, 2005:

a. From the information contained in the opinions, what are your views concerning the role of the Office of the General Counsel of the Central Intelligence Agency in providing information to the OLC in this matter, and whether any lessons for the future should be learned from these opinions regarding that role?

Answer: From the four opinions, and based on the limited information of which I am aware, my understanding is that the Office of General Counsel facilitated the Agency's efforts to obtain definitive legal guidance from the Department of Justice concerning interrogation techniques and conditions of confinement. Specifically, OGC, through the Acting General Counsel, requested that OLC provide the legal opinions in question, and OGC was evidently the principal channel through which factual information utilized by OLC in its analysis was obtained from the Agency.

I do not know the details of how the CIA interrogation program and "enhanced interrogation techniques" came about, the manner in which the OLC opinions were commissioned, generated and issued, or the specific actions taken by OGC attorneys in this regard. The

question invites forward-looking suggestions based not on findings of fault, but on the nature of the OLC opinion process employed here. On that basis, I can think of three lessons for the future:

First, in matters of exceptional significance or sensitivity, particularly with issues potentially affecting multiple agencies or where there may be conflicting views within the Executive branch, it is entirely appropriate for the Agency though OGC to seek definitive legal guidance from the Department of Justice.

Second, where OLC's analysis will depend heavily on factual circumstances as represented by the Agency, it is important that OGC ensure that the information provided is as complete, accurate and current as possible. I am not aware of any material deficiencies in this regard, but wish to underscore the importance.

Third, the General Counsel has the duty to exercise his own independent judgment in matters of law relating to the Agency. When it is appropriate or necessary for the Agency to seek guidance from the Department of Justice, as General Counsel, I would try to develop a view on the relevant legal question, to the extent that time and expertise permit, so that I could fully engage with OLC on the question. OLC opinions are properly treated as authoritative as to the law within the Executive branch. If I had a serious disagreement with an opinion, however, I would make my disagreement known to the Director, Justice Department leadership and others, as appropriate.

b. What is your assessment of the legal reasoning and conclusions of each of these four opinions?

Answer: The Department of Justice itself, in the prior Administration, publicly repudiated the reasoning of the unclassified August 1, 2001 opinion, which provided the legal analysis on which the previously classified August 1, 2001 opinion was based, taking the extraordinary step of formally withdrawing the former and later superseding the latter. While I have of course reviewed the four opinions recently released, I have not made a close study of the legal reasoning and conclusions. Clearly they have flaws that the Department itself has recognized, having now withdrawn all four. Since these opinions issued, the practices in question have been stopped pursuant to Executive Order 13491, and the law has changed by virtue of the Supreme Court's decision in *Hamdan v. Rumsfeld* and the passage of the Detainee Treatment Act of 2005, so I do not expect to confront the same issues addressed in the opinions. Should a similarly important issue be the subject of OLC review in the future, I would, as noted above, become sufficiently familiar with the facts and guiding legal principles to be able to fully engage with the Department of Justice.

CIA Inspector General Report on Narcotics Airbridge Denial Program in Peru, 1995-2001

QUESTION 20:

In November 2008, Representative Hoekstra released five unclassified conclusions from the CIA Inspector General's report entitled "Procedures Used in Narcotics Airbridge Denial Program in Peru, 1995-2001." Referring to the Office of General Counsel, one of those conclusions stated: "Seeking to avoid both criminal charges against Agency officers and civil liability, OGC advised Agency managers to avoid written products lest they be subject to legal scrutiny."

a. What is your view of the role of the General Counsel and attorneys in the Office of the General Counsel in advising Agency managers concerning the possibility of legal scrutiny, including whether a CIA General Counsel or OGC attorney should advise them to avoid written products?

Answer: I have not yet had access to the Inspector General's report of investigation concerning the Airbridge Denial Program in Peru and, therefore, I am not able to specifically address this conclusion, the context in which it was reached, or the accuracy of the report.

As a general proposition, I believe that OGC attorneys have a legitimate role to play in advising CIA personnel on mitigating potential civil liability. In a given case, it may be entirely appropriate for OGC attorneys to advise their clients not to create discoverable documents during civil litigation or while facing the threat of civil litigation.

b. What is your view of the other portions of the IG report that Representative Hoekstra released and how would you, as General Counsel, address the matters discussed there?

Answer: I am unable to provide views on the Peru incident and the Inspector General's report without first reviewing that report and other documentation regarding the case. I understand that the Agency has impaneled an Accountability Board that is currently reviewing the Peru incident and the Inspector General's report, and preparing recommendations to the Director. If confirmed, I expect I will advise the Director about the conclusions and recommendations contained in the Inspector General's report, as well as those presented by the Accountability Board.

Intelligence Relationships and Charges of Terrorism or Human Rights Violations

QUESTION 21:

The Central Intelligence Agency conducts reviews prior to approving contacts with individuals about whom there are allegations of terrorism or human rights violations involving a potential foreign intelligence contact.

a. What is your understanding of the legal issues that must be considered with respect to such contacts?

Answer: First, in cases involving possible violations of U.S. law, the Office of General Counsel would have to determine if a crimes report to DOJ is required or other appropriate steps must be taken regarding the allegation. Second, the Agency would have to balance the risks and benefits of a relationship with such a contact when deciding to pursue or continue a relationship with a contact that may have violated US law. Third, I believe DOJ would have to be involved in order to help delineate the parameters of any ongoing association.

b. If confirmed, what factors should be considered with respect to whether or not the review process should be revised?

Answer: Without knowing the details of the process currently in place, I believe any review should encourage timely and informed decision-making that is based on a comprehensive assessment of the value of the relationship to the United States balanced against the scope, severity, and credibility of the possible human rights violations or other allegations.

RESPONSES OF STEPHEN W. PRESTON

COMMITTEE QUESTIONS FOR THE RECORD

NOMINATIONS OF ROBERT S. LITT AND STEPHEN W. PRESTON

Congressional Notification

Mr. Litt and Mr. Preston, in addition to the responses you have already given concerning congressional notifications, please also respond to the following:

Q: Would you both support, in those circumstances in which the legality of an intelligence activity has been evaluated in a legal opinion of the Department of Justice or of a General Counsel's Office in the Intelligence Community, providing that opinion to the congressional intelligence committees?

A: I would support providing a legal opinion to the intelligence committees where appropriate in order to keep the committees fully and currently informed of intelligence activities as required by section 502 of the National Security Act of 1947. I do not support an absolute rule – either precluding disclosure of any legal opinion of the Justice Department or of an OGC in the IC to the committees in any instance, or requiring disclosure of all legal opinions of the Justice Department or of an OGC in the IC to the committees in all instances. This is a judgment to be made on a case-by-case basis in light of the particular circumstances and considerations presented.

Q: With respect to the content of limited briefings, what measures would you support to provide for complete records of any such briefings? For example, the establishment of a DNI registry of them? The submission by the DNI or the DCIA of a written statement to the Chairman and Vice Chairman? Non-objection to the creation of a congressional record, through the Committee's cleared reporter or a recording? Other means?

A: I am not sufficiently familiar with the historical practices in conducting and memorializing limited briefings to offer a specific recommendation at this point. I understand that this is a matter of significant concern to the Committee and others, particularly of late, and, if confirmed, I will work

with Director Panetta to address this concern. With respect to briefings by the CIA, I expect that there are means by which the Agency can record the fact and substance of a briefing in a manner that is reliable, accessible as needed, and protective against unauthorized disclosure of classified information.

Q: To determine whether there are matters of continuing interest that were briefed to prior committee leaders but not to the current Committee, would you undertake a review of all limited notifications of the past ten years and provide to the Committee a comprehensive list of them?

A: Again, while I am not conversant with the history of limited notifications, my sense at present is that I would support undertaking an effort of this sort to the extent appropriate in order to keep the committees fully and currently informed of intelligence activities as required by section 502 of the National Security Act of 1947, subject to any direction Director Panetta may provide and coordination with others as appropriate. The focus, I expect, would be on any ongoing intelligence activities that were briefed to prior committee leadership but never disclosed to the full committee.

Q: In the limited cases in which notification to a group smaller than the full committees is provided, what is the statutory basis, if any, for limiting the notification to the Gang of Four (the leaders of the two committees) rather than the full Gang of Eight (thereby including the Leaders)?

A: With respect to intelligence activities other than covert actions, under section 502 of the National Security Act of 1947, the Agency is required to keep the intelligence committees fully and currently informed "[t]o the extent consistent with due regard for the protection from unauthorized disclosure of classified information" that is exceptionally sensitive. The "due regard" clause is a qualification on the obligation, requiring the Agency to inform the committees in a manner consistent with due regard for the protection from unauthorized disclosure of such classified information. I am not sufficiently familiar with the historical practices in providing notification to a group smaller than the full committee to say what circumstances and considerations have led to limiting the notification to the Gang of Four rather than the full Gang of Eight in the past, but any such limitation founded on section 502 must be based on a considered judgment

that it is necessary under the "due regard" clause. Section 503 of the Act, of course, governs covert actions.

There is an interest on the Committee, reflected in legislative proposals in our authorization bills, in changing the notification provisions in the National Security Act to ensure that the full Committee is informed.

Q: Do you think the notification provisions need to be amended?

A: At this point, I do not think that the notification provisions need to be amended. Those provisions reflect a delicate balancing of constitutional interests between the Executive branch and the Congress that ought not be unnecessarily disturbed. At the same time, I am keenly aware of the Committee's concerns with limited briefings, records of same and related issues, and I am committed to working with Director Panetta in addressing these concerns, to the end of improving communication between the Agency and the Committee and, specifically, ensuring that the provisions of section 502 are properly followed. Rather than legislative changes, I favor leadership-level discussions between the Agency and the Committee aimed at developing a common understanding on the issues of concern and on practical procedures to ensure that the full Committee is informed as required by law.

Q: Would you work with this Committee in crafting appropriate amendments?

A: As noted above, I favor discussions between the Agency and the Committee because I think much can be done to improve notification within the current framework. Subject to any direction Director Panetta may provide and coordination with others as appropriate, I would be happy to work with the Committee on legislative proposals or otherwise to address legal issues that may arise during my tenure.

The Clients of the National Security Lawyer

Mr. Preston, during the hearing you were asked about your response to the prehearing questions about the unclassified conclusions of the CIA Inspector General's report entitled "Procedures Used in Narcotics Airbridge Denial Program in Peru, 1995-2001" and when it might be appropriate to advise clients not to create discoverable documents during civil litigation or while facing the threat of civil litigation. Please provide written responses to these questions:

Q: Does the CIA General Counsel have any responsibilities higher than ensuring that the CIA and all its personnel act in accordance with the law and maintain full and accurate records of their actions?

A: At the most fundamental level, the General Counsel, like every lawyer in the Office of General Counsel, is sworn to uphold and protect the Constitution of the United States. That is an obligation that is not be taken lightly and underlies virtually everything the General Counsel does. Moreover, as I said in my responses to prehearing questions, "[p]erhaps the most important, overarching role of the General Counsel is in ensuring the Agency's compliance with applicable U.S. law in all of its activities." By "the Agency," I mean to include the people who comprise the Agency. And by "compliance with applicable U.S. law in all of its activities," I would include maintaining full and accurate records where the maintenance of records is required by law or otherwise undertaken.

Q: Does the CIA General Counsel have any role in representing personnel in investigations by the Department of Justice or by the CIA Inspector General?

A: No, the General Counsel represents the Agency, and ultimately the United States and the people of the United States. He takes his direction from the Director. Although the Agency is, in an important sense, the men and women who comprise the Agency, the General Counsel has no role in representing any individual in his or her personal capacity in investigations by the Justice Department or by the CIA IG.

Q: What is the General Counsel's role in litigation to redress harm to individuals allegedly caused by CIA actions? In your view, is the CIA General Counsel another member of the defense team?

A: In connection with litigation to redress harm to individuals allegedly caused by CIA actions, the General Counsel represents the Agency. He has no role in representing any individual in his or her personal capacity. Depending on the forum and the defendant(s), defense of litigation may be the responsibility of the Department of Justice with support from CIA OGC – in which case the General Counsel functions as the senior representative of the Justice Department's "client" agency – or the responsibility of CIA OGC – specifically, OGC attorneys reporting to the General Counsel. The General Counsel may bring to a given case a perspective different from

those most actively involved in the defense, but his focus remains on the interests of the Agency.

Confirming General Counsels

Mr. Litt and Mr. Preston, Congress chose to require Senate confirmation for both the DNI and CIA General Counsel positions. Mr. Preston was specifically asked about his understanding of the purpose of the establishment of a confirmed General Counsel of the Central Intelligence Agency.

Q: Mr. Preston, what is your understanding of the purpose of Congress's establishment of a confirmed General Counsel?

A: I regard the requirement of the Senate's advice and consent as an indication of the importance of the position and of the incumbent's role in ensuring the Agency's compliance with applicable U.S. law. In addition, the Committee, in reporting its FY 1997 Intelligence Authorization bill, stated as follows: "The Committee believes that the confirmation process enhances accountability and strengthens the oversight process." S. REP. NO. 258, 104th Cong., 2d Sess. 34 (1998). See also my response to prehearing question 3(a).

Conflicts

Q: Mr. Preston, in addition to informing the Committee about potential conflicts from your private practice, what information can you place on the public record about those conflicts and their resolution?

A: During my tenure as General Counsel, there may arise matters in which a former client of mine is a party or my former law firm represents a party. Pursuant to the terms of my ethics agreement and the Ethics Pledge (Executive Order No. 13490) to which I will be bound if confirmed, I will not participate personally and substantially in any particular matter involving specific parties in which my former law firm is a party or represents a party for a period of two years after my resignation, unless I am first authorized to participate pursuant to 5 C.F.R. 2635.502(d) and paragraph 3 of Executive Order 13490. I also will not participate personally and substantially in any particular matter involving specific parties in which a former client of mine is a party or represents a party for a period of two years after my

resignation, unless I am first authorized to participate pursuant to 5 C.F.R. 2635.502(d) and paragraph 3 of Executive Order 13490.

Upon confirmation and assumption of duties as General Counsel, I will execute a formal recusal in which I will detail the screening arrangement to be used in any particular matter from which I am recused.

In the circumstance that the Director determines my participation is necessary in a matter involving my former firm or a former client from which I am otherwise recused, I will consult with the agency ethics official, who will in turn consult with the Office of Government Ethics, to determine whether an authorization to participate pursuant to 5 C.F.R. 2635.502(d) and a waiver of paragraph 3 of the Executive Order, is appropriate.

Conflicting legal opinions

Mr. Litt, in your responses to the Committee's prehearing questions, you noted that you would work with the CIA General Counsel to ensure that legal issues related to the work of the CIA are reviewed and evaluated. You also indicated that you would work with the general counsels of the various intelligence agencies and with attorneys from the Department of Justice with respect to conflicting legal opinions within the Intelligence Community. You also stated that the DNI General Counsel does not have decisional authority to resolve conflicting legal interpretations in the Intelligence Community.

Q: Mr. Preston, will you ensure that the ODNI General Counsel has full awareness of significant legal interpretations by your office?

A: The working relationship between ODNI OGC and CIA OGC has been described to me as highly collaborative. In legal matters of Director-level interest or of general interest to the IC, I would expect a free flow of information from CIA OGC to ODNI OGC (and vice versa). In this fashion, the ODNI GC should become fully aware of significant legal interpretations by CIA OGC. Moreover, if I learn of a legal interpretation of which the ODNI GC is not aware that I believe he should be, I will see to it that he is made fully aware of it.

Declassification—IG Reports and OLC Opinions

Mr. Litt, the DNI will likely be involved in recommending whether information about both the Terrorist Surveillance Program and CIA's detention and interrogation program should be declassified, and will likely seek your counsel on those topics. In your responses to the Committee's prehearing questions, you noted that the public interest in the disclosure of certain information may outweigh the need to protect it.

Q: Mr. Preston, what are your views on the declassification of the OLC opinions?

A: I support the President's decision to declassify the four OLC opinions.

Declassified OLC opinions

Mr. Preston, in response to prehearing questions about the now declassified OLC opinions, you both stated that as the interrogation practices in question had been stopped pursuant to Executive Order 13491, and the law has changed by virtue of the *Hamdan* decision, you did not expect to confront the same issues addressed in the August 2002 and May 2005 opinions. While specific practices have been barred, the federal torture statute addressed in those opinions is unchanged, and, of course, the Fifth and Eighth Amendments are unchanged.

Q: If alternative approaches to interrogation are proposed, would you be required to evaluate them in light of the requirements of the Fifth and Eighth Amendments, and federal statutes?

A: Executive Order 13491 prohibits the use of interrogation techniques not authorized by and listed in the Army Field Manual. The Executive Order also establishes a Special Task Force, chaired by the Attorney General, to determine what if any additional or different techniques necessary to protect national security may be warranted. If alternative approaches to interrogation are proposed, I expect that they would be evaluated under currently applicable U.S. law.

When the U.S. Senate ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1984, it did so with the following reservation: "That the United States considers itself bound by the obligation under article 16 to prevent 'cruel, inhuman or degrading treatment or punishment,' only insofar as the term 'cruel,

inhuman or degrading treatment or punishment' means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States." This reservation was carried over to the Detainee Treatment Act of 2005. The Detainee Treatment Act prohibits cruel, inhuman and degrading treatment or punishment of detainees, defined as the cruel, unusual and inhumane conduct prohibited by the 5th, 8th and 14th Amendments. In Hamdan v. Rumsfeld (2006), the Supreme Court held that Common Article 3 of the Geneva Conventions applies to terrorist detainees. The Military Commissions Act of 2006 criminalizes cruel or inhuman treatment, listing it with torture and seven other specific activities as among the "grave breaches" of Common Article 3 that constitute a war crime under the War Crimes Act.

The federal torture statute remains applicable, but cruel, inhuman and degrading is generally considered to be a lower threshold/stricter requirement than torture. I would anticipate that any new interrogation techniques to be recommended would have to be evaluated not only under the torture statute and any other federal statutes that applied, but also under the standards of the 5th, 8th, and 14th Amendments per the Detainee Treatment Act, as well as under Common Article 3 of the Geneva Conventions.

Q: If so, from your prior experience in national security law, do you have any views on the general legal analysis in the now declassified opinions about the U.S. Constitution and the federal torture statute?

A: I have no prior experience with the federal torture statute and am not an expert in the relevant constitutional jurisprudence. However, as noted in my responses to the prehearing questions and in my testimony at the hearing, I believe that the now declassified OLC opinions are flawed. The Department of Justice itself, in the prior Administration, publicly repudiated the reasoning of the unclassified August 1, 2002 opinion and formally withdrew it, later superseding the now declassified August 1, 2002 opinion. The Justice Department has since determined the four opinions to be flawed, having now withdrawn all four. If alternative approaches to interrogation are proposed, I expect that their lawfulness would be assessed by the Department of Justice. In that event, as previously noted, I would become sufficiently familiar with the facts and guiding legal principles to be able to

fully engage with the Justice Department. I would not be bound in any respect by the legal analysis in the now declassified OLC opinions.

Guidelines under Executive Order 12333

Mr. Preston, in your response to prehearing questions , you state that, if confirmed, one of your priorities will be to review existing guidelines under Executive Order 12333 and determine what changes may be warranted.

Q: If confirmed, would you undertake to report to the Committee within three months of the results of your review?

A: I believe this is a fair request, and I will do my best to accommodate the Committee. Because I am not familiar with the existing guidelines or progress towards implementing the current version of Executive Order 12333, I cannot commit to the formal reporting of my views by a certain date or independent of the Agency. That said, I would hope to be in a position to engage with the Committee within a three-month timeframe, subject to any direction Director Panetta may provide and coordination with others as appropriate.

Views on Pending Legislation

Mr. Preston, in your response to a prehearing question on pending legislation involving the state secrets privilege and other matters, you state that the totality of Administration practices should be considered, not just the few cases that have received public attention.

Q: With regard to state secrets, would you support providing to the congressional intelligence committees regular reports on the assertion of a state secrets privilege, including the classified declarations by the intelligence or other officials in support of those assertions of privilege?

A: In remarks delivered at the National Archives on May 21, 2009, the President said, with reference to the State Secrets privilege: "We plan to embrace several principles for reform. We will apply a stricter legal test to material that can be protected under the State Secrets privilege. We will not assert the privilege in court without first following a formal process, including review by a Justice Department committee and the personal approval of the Attorney General. Finally, each year we will voluntarily report to Congress when we have invoked the privilege and why, because

there must be proper oversight of our actions." I support the President's decision to change the practices associated with assertion of the State Secrets privilege in these respects, including instituting regular reports to the appropriate oversight committees. Whether to include classified declarations in such reports is, I believe, a judgment to be made on a case-by-case basis in light of the specific circumstances and considerations presented.

Executive Branch Oversight

Mr. Preston, in your responses to prehearing questions about Executive Branch oversight and the relationship between the CIA General Counsel and other officials of the intelligence community, you emphasize your personal acquaintance with the nominee for the ODNI General Counsel and the new Assistant Attorney General for National Security.

Q: Please be more specific about your understanding of the offices and procedures involved in Executive Branch oversight, and what you would do to improve Executive Branch oversight.

A: The DNI has statutory and Executive Order oversight responsibilities for the CIA and the IC generally. Under section 104A(b) of the National Security Act of 1947, the DCIA reports to the DNI "regarding the activities of the [CIA]." In addition, under section 102A(f)(4) of the Act, the DNI has the statutory responsibility to ensure that CIA activities are consistent with the Constitution and laws of the United States. The ODNI GC in turn serves as the senior legal adviser to the DNI. The Assistant Attorney General for National Security (AAG-NSD) has certain responsibilities for oversight and execution with respect to FISA applications, and CT and CI investigations and prosecutions, among other things. Because I am not yet familiar with the procedures and interactions between CIA OGC and ODNI OGC and between CIA OGC and OAAG-NSD – the latter offices having been created since the time of my prior government service -- I am unable to describe them with particularity or to make specific recommendations concerning Executive Branch oversight. As previously noted, I believe that highly functional relationships with the ODNI GC and the AAG-NSD are very important. While my prior acquaintance with the ODNI GC nominee and the current AAG-NSD will no doubt help, I am confident that I will have well-functioning relationships with each, no matter who the incumbent is, because I view it as imperative in order for us to get the job done.

QUESTIONS FOR THE RECORD FROM VICE CHAIRMAN BOND

USA PATRIOT Act

The next national security legislation on the agenda will address the USA PATRIOT Act sunset provisions of the "lone wolf," roving wiretap, and Section 215 FISA business records court orders. Amazingly, we are still waiting for the Administration's position on these relatively simple provisions.

Q: How would you advise the President on whether these provisions should be made permanent, extended, or allowed to expire?

A: I have not yet been briefed on the details of how the Intelligence Community has used these authorities, so it would be premature for me to advise the President or anyone else on the reauthorization of these provisions at this time. However, among the factors I believe should be considered in determining whether these provisions should be continued are the extent to which the use of these authorities has resulted in intelligence gains for the U.S. and whether the use of these authorities has significantly affected the civil liberty interests of U.S. persons.

FISA Amendments Act

Q: The FISA Amendments Act will sunset in 2012. What are your views on the FISA Amendments Act?

A: I think the FISA Amendments Act, providing procedures for targeting persons outside the United States, was important in supplying a statutory basis and judicial process for certain surveillance previously challenged as unlawful. At this time, I do not have a view on renewal in 2012.

Management

Q: Lawyers managing lawyers is probably one of the most challenging tasks facing a general counsel. Could you please explain your vision for how you intend to manage the CIA's Office of General Counsel?

A: I have considerable prior experience running the law offices of large federal agencies – the Department of Defense Office of General Counsel and Defense Legal Services Agency, and the Department of the Navy Office of the General Counsel – and managing government attorneys many of whom are collocated with their "client" components within the agency. In my

experience, in addition to basic leadership skills, the following are useful and effective:

Exercising ultimate responsibility for the professional supervision and evaluation of all attorneys providing legal services within the agency;

Maintaining a good supervisory structure and relying on senior staff who are experienced managers;

Providing multiple opportunities for direct communication with rank and file lawyers and support staff; and

Offering rotation and other forms of career enrichment.

State Secrets

The "State Secrets Protection Act" is currently pending before the Senate Judiciary Committee. In my opinion, the bill in its current form significantly erodes the protections of the judicially-recognized State Secrets privilege.

Q: You have served as the Deputy Assistant Attorney General in the Department of Justice's Civil Division. What are your thoughts on the utility of preserving the common law approach to the State Secrets privilege?

A: State Secrets is an important and time-honored, judicially recognized privilege. I would be concerned about any legislative proposal that might impinge upon the President's constitutional responsibility to protect national security information, put in the hands of the courts matters they may not be constitutionally or institutionally competent to decide, and under-protect national security information from disclosure. In remarks delivered at the National Archives on May 21, 2009, the President said, with reference to the State Secrets privilege: "We plan to embrace several principles for reform. We will apply a stricter legal test to material that can be protected under the State Secrets privilege. We will not assert the privilege in court without first following a formal process, including review by a Justice Department committee and the personal approval of the Attorney General. Finally, each year we will voluntarily report to Congress when we have invoked the privilege and why, because there must be proper oversight of our actions." I support the President's decision to change the practices associated with assertion of the State Secrets privilege in these

respects. In my view, these reforms address the issue of "over-use" of the privilege without eroding the protections of or eliminating the common law approach to the privilege.

Extraordinary Renditions

Q: Do you support the use of extraordinary renditions in terrorism cases? Should the technique remain in the Intelligence Community's tool box?

A: I am not aware of any legal determination that rendition per se is unlawful. Indeed, "extraordinary renditions" are specifically authorized in the U.S. Attorneys Manual as a means to bring individuals overseas into the Untied States to stand trial. While renditions per se are not unlawful, they must not be used for an unlawful purpose. I am also not aware of any policy decision to prohibit renditions. To the contrary, the practice is one of the things being studied by the Special Task Force chaired by the Attorney General under Executive Order 13491. I look forward to the recommendations of the Special Task Force and, assuming it remains in the "tool box," am prepared to support lawful rendition in appropriate cases.

Media Shield

Q: One of the biggest problems in the Intelligence Community is the seemingly endless leaks of classified information that reveal our sources and methods. Do you believe that those who leak classified information should be prosecuted to the fullest extent of the law?

A: Yes. At the same time, I understand that there may be considerable difficulty in identifying the source of a leak and that the judgment whether to prosecute the source of a leak may be influenced by the nature and extent of additional disclosure that prosecution would likely entail.

Q: Do you think it would be a good idea to create a statutory privilege for journalists (or people who can quickly qualify as journalists by posting a few blogs on the internet) to protect criminals who leak classified information?

A: See my response to prehearing question no. 13 for a more detailed discussion. In short, I understand the general concern underlying the question and note three specific concerns:

How to appropriately tailor the definition of the type of journalists to be covered by the legislation, so that only bona fide journalists are included;

How to effectively define the type of information that is subject to the privilege governed by the legislation; and

How to define the role of the courts in assessing whether and how the privilege should be overridden in light of a demonstrated governmental interest, and with deference for the President's constitutional obligation to protect classified national security information.

Q: Wouldn't such a privilege actually encourage even more unauthorized disclosure of classified information?

A: I do not know. In my view any such legislation should be framed so as not to encourage leaks, to the extent possible.

QUESTIONS FOR THE RECORD FROM SENATOR LEVIN

Q: On April 16, 2009, the Department of Justice released four opinions issued by the Office of Legal Counsel (OLC) (dated August 1, 2002, May 30, 2005, and two issued on May 10, 2005). Do you believe that the release of those opinions has jeopardized national security?

A: I support the President's decision to release the four OLC opinions. The potential impact on national security, positive or negative, was among the considerations informing the President's decision, and the President explained his thinking in this regard in his statement on April 16, 2009.

Q: General David Petraeus said in a May 10, 2007 letter that "Some may argue that we would be more effective if we sanctioned torture or other expedient methods to obtain information from the enemy. They would be wrong. Beyond the basic fact that such actions are illegal, history shows that they also are frequently neither useful nor necessary. Certainly, extreme physical action can make someone 'talk;' however, what the individual says may be of questionable value." Do you agree with General Petraeus?

A: Yes, I agree with General Petraeus that sanctioning torture would be wrong. I also agree that torture is illegal. As the effectiveness of interrogation techniques is an area in which I have no training or experience, I am not in a position to assess the utility of extreme physical

action as a means of obtaining valuable information or its necessity as opposed to alternative techniques. But I have no basis for disagreeing with General Petraeus in this regard. Finally, I should reiterate that, by order of the President, the Agency does not and will not engage in torture. If I am confirmed, it certainly will not during my tenure as General Counsel.

QUESTIONS FOR THE RECORD FROM SENATOR FEINGOLD

Interrogations

Q. Both the Attorney General and the President have indicated that waterboarding is torture. Is this your professional opinion as well?

A: As I testified at the hearing, I support the President's and the Attorney General's conclusion that waterboarding is torture, and the President's decision that the United States will not engage in the practice going forward. I have not made an independent legal judgment with respect to past conduct under the federal torture statute, but I have no reason to disagree with the conclusion reached by the President and the Attorney General.

Q: You indicated during your confirmation hearing that you believe that the four Office of Legal Counsel (OLC) memos recently declassified and withdrawn are "flawed." Please describe the flaws you have identified in those memos.

A: Some flaws apparent to me after reviewing the four OLC opinions (without examining applicable precedents or otherwise conducting any legal research) are as follows:

One problem with all of the memos is the assumption that the Geneva Conventions, including Common Article 3 and its proscriptions against inhumane treatment, violence to life or person (including cruel treatment) and outrages upon personal dignity (including humiliating and degrading treatment), were inapplicable. The error of this assumption was conclusively established by the Supreme Court in Hamdan v. Rumsfeld.

In the unclassified August 1, 2002 memo (portions of which the previously classified August 1, 2002 memo referred to):

The discussion of the President's Commander-in-Chief power and the defenses of necessity and self-defense in the unclassified August 1, 2002

memo overreaches and betrays a result-orientation not typical in OLC jurisprudence.

The proposition that physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury such as organ failure, impairment of bodily function or even death was erroneous and later recognized as such.

The proposition that there is no concept of physical suffering amounting to torture apart from physical pain was erroneous and later recognized as such.

The proposition, in the May 10, 2005 Techniques memo (and unclassified December 30, 2004 memo), that physical suffering amounting to torture must be extreme in intensity and significantly protracted in duration or persistent over time – as opposed to extreme in intensity and difficult to endure, as for physical pain – was dubious and insufficiently supported.

The May 10, 2005 Combined Techniques memo is flawed at least to the extent that the analysis of individual techniques is flawed. In addition, in its effort to show that the whole is nothing more than the sum of its parts, the memo loses sight of the possibility that the repeated application of certain techniques in the course of an interrogation could supply the "protracted" or "persistent" physical suffering (or "prolonged" or "extended" mental harm) found absent in any single application.

The May 30, 2005 memo rejects U.S. military doctrine as reflected in the Army Field Manual as a possible measure of what would "shock the conscience" on the basis that a policy premised on the applicability of the Geneva Conventions does not constitute controlling evidence of executive tradition and contemporary practice with respect to untraditional armed conflict where those treaties do not apply. The Court in Hamdan, of course, overturned this erroneous premise.

Renditions

Q: Director Panetta has left the door open for renditions to other countries of individuals in short-term CIA custody. First, what kinds of assurances and follow-up are necessary to satisfy the United States' obligations under the Convention Against Torture? Second, even if those obligations are met, are there legal requirements that the

individual be subject to an open legal process, rather than indefinite extrajudicial detention? And, third, is there an obligation to notify the ICRC of such renditions?

A: Article 3 of the Convention Against Torture forbids transferring a person to another country "where there are substantial grounds for believing that he would be in danger of being subjected to torture." When the Senate ratified the Convention Against Torture, it did so with an understanding that the phrase, "where there are substantial grounds for believing that he would be in danger of being subjected to torture" means "if it is more likely than not that he would be tortured." Therefore, the United States may not render a person to another country where it is more likely than not that the person would be tortured. In determining whether it is more likely than not a person would be torture, the United States is charged by Article 3 of the Convention to "take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."

I am not aware of a legal requirement that a country must agree to submit a person to an open legal process as a condition of rendering a person there. The United States could make a policy choice to seek such a commitment and, if it did so, I would ensure that policy choice was respected.

Finally, Executive Order 13491 would require the CIA to notify the ICRC of CIA detainees "consistent with Department of Defense regulations and policies."

OLC Review

Q: During his confirmation hearing, DNI Blair agreed to send all intelligence programs that posed significant legal questions to the Office of the Legal Counsel (OLC), right at the outset. Will you commit to doing this? Will you include any resumption of renditions or short-term CIA detentions, or considerations of interrogation policies that diverge from the Army Field Manual?

A: In matters of exceptional significance or sensitivity, particularly with issues potentially affecting multiple agencies, where there may be conflicting views within the Executive branch, or with issues outside the Agency's expertise, I believe that it is entirely appropriate and wise to seek learned and authoritative legal guidance from the Department of Justice. Although I

do not think it is necessary to submit all intelligence programs or all significant legal questions to OLC for review/analysis, I have every intention to make liberal use of OLC when confronted with legal issues arising from intelligence programs. Moreover, with respect to the particular activities cited – resumption of renditions and divergence from the Army Field Manual – it is difficult to imagine either occurring without substantial consultation with OLC. I certainly would want the benefit of OLC's legal analysis.

State Secrets

Q: In your response to Committee questions about state secrets legislation, you indicated that Congress should consider the impact on cases currently being litigated. Since then, the President has committed to "voluntarily report to Congress when we have invoked the privilege and why." Will you commit to providing Committee members and staff briefings on cases involving the CIA in which the privilege has been invoked?

A: In remarks delivered at the National Archives on May 21, 2009, the President said, with reference to the State Secrets privilege: "We plan to embrace several principles for reform. We will apply a stricter legal test to material that can be protected under the State Secrets privilege. We will not assert the privilege in court without first following a formal process, including review by a Justice Department committee and the personal approval of the Attorney General. Finally, each year we will voluntarily report to Congress when we have invoked the privilege and why, because there must be proper oversight of our actions." I support the President's decision to change the practices associated with assertion of the State Secrets privilege in these respects, including instituting regular reports to the intelligence committees. While I am not sure what form such reporting will take, I would favor reporting to the entire membership of the Committee as the norm (with staff as appropriate).

Congressional Notification

Q: Do you agree that Section 502 of the National Security Act provides no authority to limit briefings to the Chairman and Vice Chairman and that programs other than covert action must always be notified to the full congressional intelligence committees? Was the failure to notify the

full committees of the warrantless wiretapping program (the Terrorist Surveillance Program) a violation of that Act?

A: With respect to intelligence activities other than covert actions, under section 502 of the National Security Act of 1947, the Agency is required to keep the intelligence committees fully and currently informed "[t]o the extent consistent with due regard for the protection from unauthorized disclosure of classified information" that is exceptionally sensitive. The "due regard" clause is a qualification on the obligation, requiring the Agency to inform the committees in a manner consistent with due regard for the protection from unauthorized disclosure of such classified information. Thus the law requires the complete and timely provision of information to the intelligence committees and admits of exception only in extraordinary circumstances. In my view, the norm should be to provide information to the entire membership of the committees.

Q: What is your understanding of the legal obligation to notify the congressional intelligence committees of covert action and other intelligence activities prior to their implementation?

A: With respect to covert actions, section 503 of the National Security Act of 1947 requires that a finding be reported to the intelligence committees "before the initiation of the covert activity," but also provides for notice "in a timely fashion" where prior notice is not given. With respect to intelligence activities other than covert actions, section 502 of the Act does not include the same "before the initiation" language, but does include "significant anticipated intelligence activities" among the intelligence activities to be reported, subject to the "due regard" clause. In my view, the norm should be to provide information prior to implementation.

Inspector General

Q: Do you agree that the CIA Inspector General should have full independence to conduct investigations of CIA activities, regardless of whether the General Counsel has concluded that those activities are legal?

A: I believe that the Inspector General should have full independence to conduct investigations of CIA activities within the scope of the Inspector General's statutory authority. By law, pursuant to section 20 of the CIA Act of 1949, the General Counsel of the Central Intelligence Agency is the chief

legal officer of the Agency. As such, the General Counsel is the final authority for the Agency in matters of law and legal policy, and his legal opinions are controlling within the Agency. Rather than the General Counsel unilaterally declaring lawful activities already under investigation or the Inspector General initiating an investigation of activities previously determined to have been lawful, this strikes me as a prime example of where the two ought to work together to ensure that the considered opinions of the former and the full independence of the latter are both respected.

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

May 20, 2009

The Honorable Dianne Feinstein
Chairwoman
Select Committee on Intelligence
United States Senate
Washington, DC 20510-6475

Dear Madam Chairwoman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Stephen W. Preston, who has been nominated by President Obama for the position of General Counsel, Central Intelligence Agency.

We have reviewed the report and have also obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Robert I. Cusick
Director

Enclosures

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Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

SSCI# 8000 - 2149

Form Approved: OMB No. 3209-0001

Date of Appointment, Candidacy, Election or Nomination (*Month, Day, Year*)	Reporting Status (*Check appropriate boxes*)	Incumbent	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate	Termination Filer	Termination Date (*If Applicable*) (*Month, Day, Year*)
		☐		☒	☐	

	Last Name	First Name and Middle Initial
Reporting Individual's Name	Preston	Stephen W.
Position for Which Filing	Title of Position: General Counsel	Department or Agency (*If Applicable*): Central Intelligence Agency
Location of Present Office (or forwarding address)	Address (*Number, Street, City, State, and ZIP Code*): 1875 Pennsylvania Avenue, NW, Washington, DC 20006	Telephone No. (*Include Area Code*): 202 663 6900
Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held	

Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination	Do You Intend to Create a Qualified Diversified Trust?
	Senate Select Committee on Intelligence	☐ Yes ☒ No

Certification	Signature of Reporting Individual	Date (*Month, Day, Year*)
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	[signature]	5/12/09
Other Review (If desired by agency)	Signature of Other Reviewer	Date (*Month, Day, Year*)
	[signature] Melissa Wiechec Berrigan	13 May 09
Agency Ethics Official's Opinion	Signature of Designated Agency Ethics Official/Reviewing Official	Date (*Month, Day, Year*)
On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	[signature]	5/10/09
Office of Government Ethics Use Only	Signature	Date (*Month, Day, Year*)
	[signature]	5/20/09

Comments of Reviewing Officials (*If additional space is required, use the reverse side of this sheet*)

(*Check box if filing extension granted & indicate number of days* _____) ☐

(*Check box if comments are continued on the reverse side*) ☐

Fee for Late Filing

Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period shall be subject to a $200 fee.

Reporting Periods

Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A—The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B—Not applicable.

Schedule C, Part I (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)— Show any agreements or arrangements as of the date of filing.

Schedule D—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only

OGE Use Only

MAY 14 2009

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Reporting Individual's Name	SCHEDULE A	Page Number
Preston, Stephen W.		A1

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual acount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income	Valuation of Assets: None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Income Type: Dividends	Rent and Royalties	Interest	Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				X												X						X									
	Doe Jones & Smith, Hometown, State			X																											Law Partnership Income $150,000	
	Kempstone Equity Fund					X								X										X								
	IRA: Heartland 500 Index Fund							X						X											X							
1	(DC) JP Morgan U.S. Large Core Plus Fund				X									X									X									
2	(S) IRA & (DC) American Funds Growth Fund of America			X										X								X										
3	IRA, (S) IRA & (DC) Keeley Small Cap Value Fund			X										X							X											
4	IRA, (S) IRA & (DC) Thornburg International Value Fund				X									X									X									
5	(DC) Loomis Sayles Bond Fund			X										X										X								
6	(DC) Kinetics Paradigm Fund			X										X								X										

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot be Used.

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Reporting Individual's Name	SCHEDULE A continued	Page Number
Preston, Stephen W.	(Use only if needed)	A2

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

BLOCK A (None ☐)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 (DC) Franklin Income Fund			X										X										X									
2 IRA Ivy Asset Strategy Fund			X										X									X										
3 (DC) First Trust Strategic Income Plus Closed End Fund Series 11			X										X							X												
4 MMKT, (J) MMKT & (DC) MMKT Schwab Advisor Cash Reserves Fund						X							X									X										
5 (S) IRA Fairholme fund		X											X								X											
6 American International Group Common	X																			X												
7 3M Company Common		X														X					X											
8 Coca Cola Common		X														X				X												
9 Genuine Parts Common		X														X					X											

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Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
Preston, Stephen W.		A3

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)														Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)																		
															Type				Amount														
None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 (J) Resource Real Estate Investors 5 LP (housing complexes in GA,TX,MD,AR & mezzanine debt on property in MD)				X												X				X												
2 (J) Breckinridge Capital Advisors Intermediate Tax-Exempt Portfolio (For holdings see Exhibit A.)							X								X		X			D				I							
3 (J) Tradewinds Global Investors International Value ADR Strategy (For holdings see Exhibit B.)						X									X									X							
4 (S) Brandes Investment Partners Global Equity Portfolio (For holdings see Exhibit C.)						X									X		X			I				D							
5 (S) Lateef Investment Advisors Taxable All Cap Growth Equity Strategy (For holdings see Exhibit D.)						X																		D							
6 Horizon Asset Management Core Value Strategy (For holdings see Exhibit E.)					X										X								X								
7 JP Morgan Investment Management U.S. Large Cap Equity - Tax Aware Strategy (For holdings see Exhibit F.)									X						X										X						
8 401(k) Rainier Large Cap Equity Fund					X								X							X											
9 401(k) Dodge & Cox Balanced Fund				X									X							X											

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Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
Preston, Stephen W.		A4

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)																				
																Type				Amount																	
	None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	401(k) Causeway International Value Fund			X										X								X												
2	401(k) Columbia Small Cap Core Fund			X										X								X												
3	401(k) Marsico Growth Fund		X											X								X												
4	CitiBank checking					X													X			X												
5	(J) Sun Trust checking			X															X		X													
6	(J) Loudoun County, VA, real property residential property									X											X													
7	Rabun County, GA, real property, vacant lot							X													X													
8	1/4 ownership Macon County, NC, real property, vacant lots					X														X						X								
9	WilmerHale defined benefit plan						X														X													

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
Preston, Stephen W.		A5

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)													Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)																
																Type			Amount											
None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Wilmer Cutler Pickering Hale and Dorr LLP (Law partnership income - no bonuses)																															Law partnership income $1,463,631	
2 Wilmer Cutler Pickering Hale and Dorr LLP (Partner capital and interest)						X											X								X							
3 Wilmer Cutler Pickering Hale and Dorr LLP (2009 distribution receivable)						X													X													
4																																
5																																
6																																
7																																
8																																
9																																

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Do not Complete Schedule B if you are a new entrant, nominee, Vice Presidential or Presidential Candidate

Reporting Individual's Name	SCHEDULE B	Page Number
Preston, Stephen W.		B1

Part I: Transactions

None ☐

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

	Identification of Assets	Transaction Type (x)			Date (*Mo., Day, Yr.*)	Amount of Transaction (x)												
		Purchase	Sale	Exchange		$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
	Example: Central Airlines Common	x			2/1/99			x									
1	Not Applicable																
2																	
3																	
4																	
5																	

* This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260; and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source *(Name and Address)*	Brief Description	Value
	Examples: Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1	Not Applicable		
2			
3			
4			
5			

Prior Editions Cannot Be Used.

SF 278 (Rev. 03/2000)
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Do not Complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name	**SCHEDULE B continued** (Use only if needed)	Page Number

Part I: Transactions

	Identification of Assets	Transaction Type (x)			Date *(Mo., Day, Yr.)*	Amount of Transaction (x)											
		Purchase	Sale	Exchange		$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
	Example: Central Airlines Common	x			2/1/99			x									
1																	
2																	
3																	
4																	
5																	
6																	
7																	
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* This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

SF 278 (Rev. 03/2000)
5 C.F.R Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE C	Page Number
Preston, Stephen W.		C1

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None [X]

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x)											
						$10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples:	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10 %	on demand					x						
1	None															
2																
3																
4																
5																

* This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: continuing participation in an employee benefit plan (e.g. 401k, deferred compensation; (2) continuation payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits

None [ ]

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example:	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	Upon confirmation, I will resign from the firm. I will receive repayment of my partner capital prior to federal appointment.	Wilmer Cutler Pickering Hale and Dorr LLP Washington, DC	3/01
2	I will receive final 2009 partnership distribution prior to federal appointment for portion of 2009 in which I served as partner (reserve held by firm for taxes to be paid after my departure).		
3	I will either maintain my account in the firm's 401(k) defined contribution plan or roll it over into another qualifying account. I will withdraw from the partners' defined benefit plan, the proceeds to be rolled over into another qualifying account.		
4	I have no agreement or arrangement for future employment.		
5			
6			

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Reporting Individual's Name	SCHEDULE D	Page Number
Preston, Stephen W.		D1

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (*Name and Address*)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	Wilmer Cutler Pickering Hale and Dorr LLP Washington, DC	Law firm	Partner	3/01	Present
2	EWB Irrevocable Trust Washington, DC	Irrevocable life insurance trust	Trustee	3/04	Present
3	HCBIII Irrevocable Trust Washington, DC	Irrevocable life insurance trust	Trustee	3/04	Present
4	Center for Strategic and Budgetary Assessments Washington, DC	Not-for-profit research institute	Board of Directors (uncompensated)	9/05	Present
5	Trust u/w/o BWP f/b/o JCP Washington, DC	Testamentary trust	Trustee	3/03	Present
6	Trust u/w/o BWP f/b/o CSWP Washington, DC	Testamentary trust	Trustee	3/03	Present

Part II: Compensation In Excess Of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate

None ☐

	Source (*Name and Address*)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Wilmer Cutler Pickering Hale and Dorr LLP Washington, DC	Legal services
2	See Exhibit G for list of WilmerHale clients and legal services.	
3		
4		
5		
6		

Prior Editions Cannot Be Used.

Exhibit A

(J) Breckinridge Capital Advisors Intermediate Tax-Exempt Portfolio

	VALUE	INCOME	TYPE
SCHWAB MUNICIPAL MONEY FUND- SWEEP SHARES TOTAL	$15,001-50,000	$201-1,000	EIF
CLARK CNTY NEV BOND BK 6.000% 07/01/10 B/EDTD 07/01/00 Total	$15,001-50,000	$1,001-2,500	Interest
DALLAS TEX INDPT SCHDIST RFDG 5.500% 02/15/16 B/EDTD 03/15/02 CLB Total	$1,000-15,000	$201-1,000	Interest
DALLAS TEX INDPT SCHDIST RFDG 5.500% 02/15/16 B/EDTD 03/15/02 PRF Total	$15,001-50,000	$1,001-2,500	Interest
DISTRICT COLUMBIA RFDG SER B 5.500% 06/01/09 B/EDTD 07/15/99 Total	$15,001-50,000	$1,001-2,500	Interest
FOREST HILLS MICH 5% GO UTX DUE 05/01/14 Total	$15,001-50,000	$1,001-2,500	Interest
ILLINOIS ST SALES TAX REV RFDG-FIRST SER FGIC-MBIA RE 5.500% 06/15/13 B/EDTD 05/02/02 Total	$15,001-50,000	$1,001-2,500	Interest
INDIANA TRANSN FIN AUTH HWY REV SER A CPN 5.250% DUE06/01/15 Total	$15,001-50,000	$1,001-2,500	Interest
LAFAYETTE LA PUB IM 5% REV DUE 05/01/17 Total	$15,001-50,000	$2,501-5,000	Interest
MISSOURI ST HEALTH EDL FACS AUTH EDL FACS REV WASHINGTON UNIV-SER A 5.000% 02/15/15 B/E Total	$15,001-50,000	$2,501-5,000	Interest
OHIO ST 5% GO LTX DUE 03/01/16 Total	$15,001-50,000	$2,501-5,000	Interest
PLANO TEX INDPT SCH DIST RFDG 5.250% 02/15/13 B/EDTD 02/01/01 CLB Total	$15,001-50,000	$1,001-2,500	Interest
SALT LAKE SANDY UTAHMET WTR DIST WTR REV 5.000% 07/01/13 B/EDTD 03/24/04 Total	$15,001-50,000	$1,001-2,500	Interest
SAN ANTONIO TEX 5% GO LTX DUE 02/01/14 Total	$15,001-50,000	$1,001-2,500	Interest
SEATTLE WASH DRAIN WASTEWATER REV RFDG 5.000% 02/01/17 B/EDTD 11/01/06 Total	$15,001-50,000	$2,501-5,000	Interest
SOUTH CAROLINA TRAN 5% REV DUE 10/01/17 Total	$15,001-50,000	$1,001-2,500	Interest
TAMPA FLA WTR & SWR 5% REV DUE 10/01/16 Total	$15,001-50,000	$1,001-2,500	Interest
UNIVERSITY TEX UNIV 5% REV DUE 08/15/11 Total	$15,001-50,000	$1,001-2,500	Interest
WASHINGTON ST MOTOR VEHICLE FUEL TAX SER C 5.000% 01/01/08 B/EDTD 01/15/02 Total	None (less than $1,000)	$1,001-2,500	Interest
WAYNE CNTY MICH MICHTRANSN FD 5.300% 10/01/13 B/EDTD 11/01/99 CLB Total	$15,001-50,000	$1,001-2,500	Interest
WHITE SETTLEMENT TEXINDPT SCH DIST SCH BLDG 5.000% 08/15/14 B/EDTD 07/15/05 Total	$15,001-50,000	$1,001-2,500	Interest
WILLIAMSON CNTY TENNRFDG-RURAL SCH 5.000% 04/01/12 B/EDTD 02/01/04 Total	$15,001-50,000	$1,001-2,500	Interest

Exhibit B

(J) Tradewinds Global Investors International Value ADR Strategy

Asset Name	Value($)	Type	Income
AEGON N V NY REGISTRY SH	$1,001-15,000	Dividends	None (less than $201)
ALCATELLUCENT	$1,001-15,000		None (less than $201)
ALUMINA LTD SPONSORED ADR	$1,001-15,000	Dividends	$201-$1,000
ANGLOGOLD ASHANTI LTD SPONSORED ADR	$1,001-15,000		None (less than $201)
BARRICK GOLD CORP COM	$1,001-15,000		None (less than $201)
BP PLC SPONSORED ADR	$1,001-15,000	Dividends	$201-$1,000
SCHWAB ADVISOR CASH RESERVES FUND- PREMIER SWEEP SHARES	$15,001-50,000	EIF	$201-$1,000
CAMECO CORP COM	$1,001-15,000		None (less than $201)
SCHWAB CASH PREMIER SWEEP	$1,001-15,000	EIF	$201-$1,000
CENTRAIS ELETRICAS BRASILEIR SPON ADR PFD B	$1,001-15,000	Dividends	$201-$1,000
CENTRAIS ELETRICAS BRASILEIR SPONSORED ADR	None (less than $201)		None (less than $201)
COMPANHIA DE SANEAMENTO BASI SPONSORED ADR	$1,001-15,000		None (less than $201)
DAI NIPPON PRTG LTD JAPAN SPON ADR ISIN#US2338063066	$1,001-15,000		None (less than $201)
DAIWA HOUSE IND LTD ADRF1 ADR REP 10 ORD	$1,001-15,000		None (less than $201)
ERICSSON L M TEL CO ADR B SEK 10	$1,001-15,000	Dividends	$201-$1,000
FUJIFILM HLDGS CORP ADR 2 ORD	$1,001-15,000		None (less than $201)
GEMALTO NV ADR FUNSPONSORED ADR	$1,001-15,000		None (less than $201)
GOLD FIELDS LTD NEW SPONSORED ADR	$1,001-15,000	Dividends	$201-$1,000
HACHIJUNI BANK LTD ADR	$1,001-15,000		None (less than $201)
IVANHOE MINES LTD COM	$1,001-15,000		None (less than $201)
KOREA ELECTRIC PWR SPONSORED ADR	$1,001-15,000		None (less than $201)
LIHIR GOLD LTD SPONSORED ADR	$1,001-15,000		None (less than $201)
MAGNA INTL INC CL A	$1,001-15,000		None (less than $201)
MITSUI SUMITOMO INS GROUP HLDGS INC	$1,001-15,000		None (less than $201)
NEWCREST MNG LTD SPONSORED ADR	$1,001-15,000		None (less than $201)
NEWMONT MINING CORP COM	$1,001-15,000		None (less than $201)
NEXEN INC COM	$1,001-15,000		None (less than $201)
NIPPON TELEG & TEL CORP SPONSORED ADR	$1,001-15,000		None (less than $201)
NOKIA CORP SPONSORED ADR	$1,001-15,000		None (less than $201)
NOVARTIS A G SPONSORED ADR	$1,001-15,000		None (less than $201)

Asset Name	Value($)	Type	Income
PANASONIC CORP ADR	$1,001-15,000		None (less than $201)
PROMISE CO LTD ADR	$1,001-15,000		None (less than $201)
ROHM CO LTD ADR FUNSPONSORED ADR	$1,001-15,000		None (less than $201)
ROYAL DUTCH SHELL PLC SPON ADR B	$1,001-15,000	Dividends	$201-$1,000
SANOFI AVENTIS SPONSORED ADR	$1,001-15,000	Dividends	$201-$1,000
SEGA SAMMY HLDGS INCSPONS ADR REPSTG COMSEGA SAMMY HLDGS INC	$1,001-15,000		None (less than $201)
SEKISUI HOUSE	$1,001-15,000		None (less than $201)
SEVEN I HOLDINGS CO LTD ADR	$1,001-15,000		None (less than $201)
SHISEIDO CO LTD	$1,001-15,000		None (less than $201)
SIEMENS A G SPONSORED ADR	$1,001-15,000	Dividends	$201-$1,000
SK TELECOM LTD SPONSORED ADR	$1,001-15,000		None (less than $201)
SOCIETE GENERALE	$1,001-15,000		None (less than $201)
STORA ENSO CORP SPON ADR REP R	$1,001-15,000	Dividends	$201-$1,000
SUMITOMO TR & BKG LTD SPONS ADR ISIN #US8656252066	$1,001-15,000		None (less than $201)
SUNCOR ENERGY INC COM	$1,001-15,000		None (less than $201)
SWISSCOM AG SPONSORED ADR	$1,001-15,000	Dividends	$201-$1,000
TDK CORP AMERN DEP SH	$1,001-15,000		None (less than $201)
TECHNIP NEW SPONSORED ADR	$1,001-15,000		None (less than $201)
TELECOM ITALIA S P A NEW SPON ADR SVGS	$1,001-15,000	Dividends	$1,001-2,500
UBS AG SHS NEW	$1,001-15,000		None (less than $201)
UNITED UTILS GROUP PLC SPONSORED ADR	$1,001-15,000	Dividends	$2,501-5,000
VODAFONE GROUP PLC NEW SPONS ADR NEW	$1,001-15,000	Dividends	$201-$1,000
WACOAL HOLDINGS CORP ADR	$1,001-15,000		None (less than $201)
WOLTERS KLUWER S	$1,001-15,000		None (less than $201)
CHARLES SCHWAB CASH RESERVES PREMIER SWEEP	None (less than $201)	EIF	$201-$1,000
ASTRAZENECA PLC SPONSORED ADR	None (less than $201)	Dividends	$201-$1,000
IMPALA PLATINUM HLDG LTD	None (less than $201)	Dividends	$201-$1,000
ISHARES TR MSCI EAFE INDEX	None (less than $201)	EIF	$2,501-5,000
TOMKINS PLC SPONSORED ADR	None (less than $201)	Dividends	$201-$1,000
KT CORP SPONSORED ADR	None (less than $201)	Dividends	$201-$1,000
TOPPAN PRTG LTD	None (less than $201)	Dividends	$201-$1,000
UPM KYMMENE CORP	None (less than $201)	Dividends	$201-$1,000

Exhibit C

(S) Brandes Investment Partners Global Equity Portfolio

Asset Name		Value($)	Type	Income
AEGON N V NY REGISTRY SH		$1,001-15,000		None (less than $201)
AKZO NOBEL NV SPONSORED ADR		$1,001-15,000	Dividends	$201-1,000
ALCATELLUCENT		None (or less than $1,001)		None (less than $201)
ASTRAZENECA PLC SPONSORED ADR		$1,001-15,000	Dividends	$201-1,000
AT&T INC COM		$1,001-15,000	Dividends	$201-1,000
BANK OF AMERICA CORPORATION COM		$1,001-15,000	Dividends	$201-1,000
BB&T CORP COM		$1,001-15,000	Dividends	$201-1,000
BOSTON SCIENTIFIC		$1,001-15,000		None (less than $201)
BRASIL TELECOM PARTICIPACOES SPON ADR PFD		$1,001-15,000	Dividends	$201-1,000
BRISTOL MYERSSQUIBB		$1,001-15,000	Dividends	$201-1,000
CANON INC ADR		$1,001-15,000		None (less than $201)
FIDELITY CASH MM		None (or less than $1,001)	EIF	$201-1,000
CIT GROUP INC COM		None (or less than $1,001)		None (less than $201)
CITIGROUP INC COM		None (or less than $1,001)	Dividends	$201-1,000
CONTAX PARTICIPACOES SP ADR		None (or less than $1,001)		None (less than $201)
DELL INC COM		$1,001-15,000		None (less than $201)
DEUTSCHE TELEKOM AG SPONSORED ADR		$15,001 -50,000	Dividends	$1,001-2,500
DOW CHEM CO COM		$1,001-15,000	Dividends	$201-1,000
EASTMAN KODAK CO COM		None (or less than $1,001)	Dividends	$201-1,000
EBAY INC COM		$1,001-15,000		None (less than $201)
ERICSSON L M TEL CO ADR B SEK 10		$1,001-15,000	Dividends	$201-1,000
FAIRPOINT COMMUNICATIONS INC COM		None (or less than $1,001)		None (less than $201)
FIDELITY TAX-FREE MONEY MARKET		$1,001-15,000	EIF	None (less than $201)
FIFTH THIRD BANCORP COM		None (or less than $1,001)	Dividends	$201-1,000
FORD MTR CO DEL COM PAR 0.01		None (or less than $1,001)		None (less than $201)
FRANCE TELECOM SPONSORED ADR		$1,001-15,000	Dividends	$201-1,000
FUJIFILM HLDGS CORP ADR 2 ORD		$1,001-15,000		None (less than $201)
GANNETT INC COM		$1,001-15,000	Dividends	$201-1,000
GENERAL ELECTRIC CO		$1,001-15,000		None (less than $201)
GLAXOSMITHKLINE PLC SPONSORED ADR		$1,001-15,000	Dividends	$201-1,000

Asset Name		Value($)	Type	Income
HITACHI LIMITED ADR 10 COM		$1,001-15,000		None (less than $201)
HOME DEPOT INC COM		$1,001-15,000	Dividends	$201-1,000
HSBC HLDGS PLC SPON ADR NEW		$1,001-15,000	Dividends	$201-1,000
INTEL CORP COM		$1,001-15,000	Dividends	$201-1,000
J SAINSBURY PLC SPONSORED ADR NEW		$1,001-15,000		None (less than $201)
KEYCORP NEW COM		$1,001-15,000		None (less than $201)
KONINKLIJKE AHOLD N V SPON ADR 2007		$1,001-15,000		None (less than $201)
KT CORP SPONSORED ADR		$1,001-15,000		None (less than $201)
MARKS SPENCER		$1,001-15,000	Dividends	$201-1,000
MASCO CORP COM		$1,001-15,000		None (less than $201)
MCCLATCHY CO CL A		None (or less than $1,001)		None (less than $201)
MICRON TECHNOLOGY INC COM		$1,001-15,000		None (less than $201)
MICROSOFT CORP COM		$1,001-15,000	Dividends	$201-1,000
MITSUBISHI UFJ FINL GROUP IN SPONSORED ADR		$1,001-15,000	Dividends	$201-1,000
MITSUI SUMITOMO INS GROUP HLDGS INC		$1,001-15,000		None (less than $201)
MIZUHO FINL GROUP INC SPONSORED ADR		$1,001-15,000	Dividends	$201-1,000
MOTOROLA INC COM		$1,001-15,000	Dividends	$201-1,000
NIPPON TELEG & TEL CORP SPONSORED ADR		$1,001-15,000	Dividends	$201-1,000
NISSAN MOTORS SPONSORED ADR		$1,001-15,000		None (less than $201)
NOKIA CORP SPONSORED ADR		$1,001-15,000		None (less than $201)
PFIZER INC		$1,001-15,000	Dividends	$1,001-2,500
PNC FINL SVCS GROUP INC COM		$1,001-15,000		None (less than $201)
PORTUGAL TELECOM SGPS S A SPONSORED ADR		$1,001-15,000	Dividends	$201-1,000
REGIONS FINANCIAL CORP NEW COM		$1,001-15,000		None (less than $201)
ROYAL BK SCOTLAND GROUP PLC SPONS ADR 20 ORD		None (or less than $1,001)	Dividends	$1,001-2,500
SAFEWAY INC COM NEW		$1,001-15,000		None (less than $201)
SANOFI AVENTIS SPONSORED ADR		$1,001-15,000	Dividends	$201-1,000
SARA LEE CORP COM		$1,001-15,000	Dividends	$201-1,000
SCHERING PLOUGH CORP COM		$1,001-15,000		None (less than $201)
SLM CORP COM		$1,001-15,000		None (less than $201)
SONY CORP ADR NEW		$1,001-15,000		None (less than $201)
STMICROELECTRONICS N V NY REGISTRY		$1,001-15,000	Dividends	$201-1,000
SUMITOMO MITSUI FINANCIAL GROUP		$1,001-15,000	Dividends	$201-1,000
SUNTRUST BKS INC COM		None (or less than $1,001)		None (less than $201)
SUPERVALU INC COM		$1,001-15,000		None (less than $201)
TELE NORTE LESTE PART S A SPON ADR PFD		$1,001-15,000	Dividends	$1,001-2,500

Asset Name		Value($)	Type	Income
TELECOM ITALIA S P A NEW SPON ADR ORD		$1,001-15,000	Dividends	$1,001-2,500
TELECOMUNICACOES BRASILEIRAS SPONSORED ADR		None (or less than $1,001)	Dividends	$201-1,000
TELEFONICA S A SPONSORED ADR		$1,001-15,000		None (less than $201)
TELEFONOS DE MEXICO S A B SPON ADR ORD L		$1,001-15,000		None (less than $201)
TELEMIG CELULAR PART S A SPON ADR PFD		None (or less than $1,001)		None (less than $201)
TELMEX INTERNACIONAL SAB DE SPONS ADR SR L		$1,001-15,000		None (less than $201)
TEXAS INSTRS INC COM		$1,001-15,000		None (less than $201)
TIM PARTICIPACOES S A SPONS ADR PFD		$1,001-15,000		None (less than $201)
TOKIO MARINE HOLDINGS SPONS ADR		$1,001-15,000		None (less than $201)
TYCO ELECTRONICS LTD COM NEW		$1,001-15,000		None (less than $201)
UNILEVER N V N Y SHS NEW		$1,001-15,000	Dividends	$201-1,000
VALERO ENERGY CORP NEW COM		$1,001-15,000		None (less than $201)
VERIZON COMMUNICATIONS INC COM		$1,001-15,000	Dividends	$201-1,000
VIVO PARTICIPACOES S A SPON ADR PFD NEW		$1,001-15,000		None (less than $201)
WELLS FARGO & CO NEW COM		$1,001-15,000		None (less than $201)
WYETH COM		$1,001-15,000	Dividends	$201-1,000
XEROX CORPORATION		$1,001-15,000		None (less than $201)
AMERICAN INTERNATIONAL GROUP		None (or less than $1,001)	Dividends	$201-1,000
FEDERAL HOME LN MTG CORP		None (or less than $1,001)	Dividends	$201-1,000
FEDERAL NATL MTG ASSN COM		None (or less than $1,001)	Dividends	$201-1,000
GENERAL MOTORS		None (or less than $1,001)	Dividends	$201-1,000
WACHOVIA		None (or less than $1,001)	Dividends	$201-1,000

Exhibit D

(S) Lateef Investment Advisors Taxable Allcap Growth Equity Strategy
(Previously managed by Private Capital Management)

Asset Name		Value($)	Type	Income
AUTOMATIC DATA PROCESSING IN COM		$15,001-50,000	Dividends	$201-1,000
BERKSHIRE HATHAWAY INC DEL CL B		$15,001-50,000		None (or less than $201)
SCHWAB MUNICIPAL MONEY FUND- SWEEP SHARES		$50,001-$100,000	EIF	$2,501-5,000
COLGATE PALMOLIVE CO COM		$15,001-50,000	Dividends	$201-1,000
COSTCO WHOLESALE CORP NEW		$15,001-50,000		None (or less than $201)
DENTSPLY INTL INC NEW COM		$15,001-50,000		None (or less than $201)
DISNEY INC		$15,001-50,000	Dividends	$201-1,000
ECOLAB INC COM		$15,001-50,000		None (or less than $201)
EMC CORPORATION		$15,001-50,000		None (or less than $201)
EXPEDITORS INTL WASH INC COM		$15,001-50,000	Dividends	$201-1,000
FASTENAL CO COM		$15,001-50,000	Dividends	$201-1,000
ITT EDUCATIONAL SERVICES INC COM		$15,001-50,000		None (or less than $201)
LIBERTY GLOBAL INC COM SER A		$1,001-15,000		None (or less than $201)
NASDAQ OMX GROUP INC COM		$15,001-50,000		None (or less than $201)
QUALCOMM INC COM		$15,001-50,000		None (or less than $201)
ROCKWELL COLLINS INC COM		$15,001-50,000	Dividends	$201-1,000
SCRIPPS NETWORKS INTERACT IN CL A COM		$15,001-50,000		None (or less than $201)
SUNCOR ENERGY INC COM		$15,001-50,000		None (or less than $201)
VISA INC COM CL A		$15,001-50,000		None (or less than $201)
BANK OF HAWAII CORP		None (less than $1,001)	Dividends	$201-1,000
BOYD GAMING CORP		None (less than $1,001)	Dividends	$201-1,000
CA INC COM		None (less than $1,001)	Dividends	$201-1,000
EASTMAN KODAK CO COM		None (less than $1,001)	Dividends	$201-1,000
FIRST FIN HLDGS INC		None (less than $1,001)	Dividends	$201-1,000
FIRST NIAGARA FIN GP INC COM		None (less than $1,001)	Dividends	$201-1,000
FULTON FINL CORP		None (less than $1,001)	Dividends	$201-1,000
GLACIER BANCORP		None (less than $1,001)	Dividends	$201-1,000
HEARST-ARGYLE TELEVISION		None (less than $1,001)	Dividends	$201-1,000
HEWLETT PACKARD		None (less than $1,001)	Dividends	$201-1,000

Asset Name		Value($)	Type	Income
HUNTINGTON BANCSHARES		None (less than $1,001)	Dividends	$201-1,000
INTERNATIONAL GAME TECH		None (less than $1,001)	Dividends	$201-1,000
MINE SAFETY APPLIANCES		None (less than $1,001)	Dividends	$201-1,000
MOTOROLA		None (less than $1,001)	Dividends	$201-1,000
NORTHERN TR CORP		None (less than $1,001)	Dividends	$201-1,000
OCEANFIRST FINL		None (less than $1,001)	Dividends	$201-1,000
PROVIDENT NEW YORK BANCORP		None (less than $1,001)	Dividends	$201-1,000
RAYMOND JAMES FINANCIAL INC		None (less than $1,001)	Dividends	$201-1,000
ROYAL CARIBBEAN CRUISES		None (less than $1,001)	Dividends	$201-1,000
SOTHEBYS COM		None (less than $1,001)	Dividends	$201-1,000
STERLING FINL CORP		None (less than $1,001)	Dividends	$201-1,000
VALLEY NATL BANCORP		None (less than $1,001)	Dividends	$201-1,000
WINDSTREAM CORP		None (less than $1,001)	Dividends	$201-1,000

Exhibit E

Horizon Asset Management Core Value Strategy

Asset Name	Value($)	Type	Income
ALLEGHENY ENERGY INC COM	$1,001-15,000		None (or less than $201)
ANGLO AMERN PLC ADR NEW	$1,001-15,000		None (or less than $201)
AOL TIME WARNER INC	$1,001-15,000		None (or less than $201)
BEIJING CAPITAL INTERNATIONAL AIRPORT CO LTD BCIA SHS H ISIN#CNE100000221	$1,001-15,000		None (or less than $201)
BERKSHIRE HATHAWAY INC DEL CL B	$1,001-15,000		None (or less than $201)
SCHWAB U.S. TREASURY MONEY FUND	$15,001-50,000	EIF	None (or less than $201)
BROOKFIELD ASSET MGMT INC CL A LTD VT SH	$1,001-15,000	Dividends	$201-1,000
BURLINGTON NORTHN SANTA FE C COM	$1,001-15,000		None (or less than $201)
CARNIVAL CORP	$1,001-15,000		None (or less than $201)
CHINA LIFE INS CO LTD SPON ADR REP H	$1,001-15,000		None (or less than $201)
CHINA UNICOM (HONG KONG) LTD SPONSORED ADR	$1,001-15,000		None (or less than $201)
CME GROUP INC COM	$1,001-15,000		None (or less than $201)
CNOOC LTD SPONSORED ADR	$1,001-15,000	Dividends	$201-1,000
DISNEY INC	$1,001-15,000		None (or less than $201)
EL PASO CORP COM	$1,001-15,000		None (or less than $201)
ENCANA CORP COM	$1,001-15,000	Dividends	$201-1,000
GAZPROM O A O SPON ADR REG S ISIN#US3682872078	$1,001-15,000		None (or less than $201)
HENDERSON LAND DEVELOPMENT CO LTD SHS ISIN#HK0012000102	$1,001-15,000		None (or less than $201)
HONG KONG EXCHANGES AND CLEARING LTD ISIN#HK0388045442 SHS	$1,001-15,000	Dividends	$201-1,000
HUANENG PWR INTL INC SPON ADR H SHS	$1,001-15,000	Dividends	$201-1,000
ICICI BK LTD ADR	$1,001-15,000		None (or less than $201)
IMPERIAL OIL LTD COM NEW	$1,001-15,000		None (or less than $201)
LEGG MASON INC COM	$1,001-15,000		None (or less than $201)
LEUCADIA NATL CORP COM	$1,001-15,000		None (or less than $201)
LONDON STOCK EXCHANGGROUP PLC LONDON ISIN#GB00B0SWJX34	$1,001-15,000	Dividends	$201-1,000
MASTERCARD INC CL A	$1,001-15,000		None (or less than $201)
NASDAQ OMX GROUP INC COM	$1,001-15,000		None (or less than $201)
NYSE EURONEXT COM	$1,001-15,000	Dividends	$201-1,000

Asset Name	Value($)	Type	Income
PHILIP MORRIS INTL INC COM	$1,001-15,000		None (or less than $201)
RELIANT ENERGY INC COM	$1,001-15,000		None (or less than $201)
UNION PAC CORP COM	$1,001-15,000		None (or less than $201)
BANK OF NEW YORK	None (or less than $1,001)	Dividends	$201-1,000
FEDERAL NATAL MTG ASSN COM	None (or less than $1,001)	Dividends	$201-1,000
SIERRA PAC RES	None (or less than $1,001)	Dividends	$201-1,000
SPDR TR UNIT SER 1	None (or less than $1,001)	EIF	$1,001-2,500

Exhibit F

JP Morgan Investment Management U.S. Large Cap Equity- Tax Aware Strategy
(Previously managed by State Street Global Advisors)

Asset Name		Value($)	Type	Income
3M CO COM		$100,001-250,000	Dividends	$5,001-15,000
ABBOTT LABS COM		$15,001-50,000	Dividends	$201-1,000
ACE LTD SHS		$1,001-15,000		None (or less than $201)
ADVANCE AUTO PARTS INC COM		$15,001-50,000		None (or less than $201)
AETNA INC NEW COM		$1,001-15,000		None (or less than $201)
ALCOA INC COM		$15,001-50,000	Dividends	$2,501-5,000
ALTRIA GROUP INC COM		$1,001-15,000		None (or less than $201)
AMERIPRISE FINL INC COM		$1,001-15,000		None (or less than $201)
AOL TIME WARNER INC		$15,001-50,000		None (or less than $201)
APACHE CORP COM		$15,001-50,000		None (or less than $201)
APPLE INC COM		$100,001-250,000		None (or less than $201)
AT&T INC COM		$15,001-50,000		None (or less than $201)
AXIS CAPITAL HOLDINGS SHS		$1,001-15,000		None (or less than $201)
BANK OF AMERICA CORPORATION COM		$1,001-15,000	Dividends	$2,501-5,000
BANK OF NEW YORK MELLON CORP		$15,001-50,000	Dividends	$201-1,000
BB&T CORP COM		$1,001-15,000		None (or less than $201)
BRISTOL MYERSSQUIBB		$50,001-100,000	Dividends	$2,501-5,000
SCHWAB ADVISOR CASH RESERVES FUND- PREMIER SWEEP SHARES		$15,001-50,000	EIF	$201-1,000
CATERPILLAR INC DEL COM		$1,001-15,000		None (or less than $201)
CELGENE CORP COM		$15,001-50,000		None (or less than $201)
CISCO SYS INC COM		$50,001-100,000		None (or less than $201)
CONOCOPHILLIPS COM		$1,001-15,000		None (or less than $201)
CORNING INC COM		$15,001-50,000	Dividends	$201-1,000
COVIDIEN LTD COM		$1,001-15,000		None (or less than $201)
CVS CAREMARK CORPORATION COM		$15,001-50,000	Dividends	$201-1,000
D R HORTON INC COM		$1,001-15,000		None (or less than $201)
DEERE & CO COM		$1,001-15,000		None (or less than $201)
DEVON ENERGY CORP NEW COM		$1,001-15,000		None (or less than $201)
DISNEY INC		$15,001-50,000		None (or less than $201)
DUPONT DE NEMOURS		$15,001-50,000	Dividends	$2,501-5,000

Asset Name		Value($)	Type	Income
ECOLAB INC COM		$1,001-15,000		None (or less than $201)
EDISON INTL COM		$1,001-15,000		None (or less than $201)
EXELON CORP COM		$15,001-50,000		None (or less than $201)
EXXON MOBIL CORP		$100,001-250,000	Dividends	$5,001-15,000
FIRSTENERGY CORP COM		$1,001-15,000	Dividends	$201-1,000
GENERAL ELECTRIC CO		$50,001-100,000	Dividends	$5,001-15,000
GENERAL MLS INC COM		$1,001-15,000		None (or less than $201)
GILEAD SCIENCES INC COM		$50,001-100,000		None (or less than $201)
GOLDMAN SACHS GROUP INC COM		$15,001-50,000	Dividends	$201-1,000
GOOGLE INC CL A		$15,001-50,000		None (or less than $201)
HESS CORP COM		$1,001-15,000		None (or less than $201)
HEWLETTPACKARD CO		$100,001-250,000	Dividends	$1,001-2,500
IBM		$15,001-50,000		None (or less than $201)
JOHNSON JOHNSON		$100,001-250,000	Dividends	$5,001-15,000
JOHNSON CTLS INC COM		$1,001-15,000		None (or less than $201)
JUNIPER NETWORKS INC COM		$1,001-15,000		None (or less than $201)
KOHLS CORP COM		$1,001-15,000		None (or less than $201)
LAM RESEARCH CORP COM		$1,001-15,000		None (or less than $201)
LILLY ELI & CO COM		$50,001-100,000	Dividends	$5,001-15,000
MARATHON OIL CORP COM		$1,001-15,000	Dividends	$201-1,000
MERCK CO		$15,001-50,000		None (or less than $201)
METLIFE INC COM		$1,001-15,000		None (or less than $201)
MICROSOFT CORP COM		$15,001-50,000	Dividends	$201-1,000
MONSANTO CO NEW COM		$1,001-15,000	Dividends	$201-1,000
MORGAN STANLEY COM NEW		$15,001-50,000	Dividends	$1,001-2,500
NIKE INC CL B		$15,001-50,000		None (or less than $201)
NORFOLK SOUTHERN CORP COM		$15,001-50,000		None (or less than $201)
OCCIDENTAL PETROLEUM CORP		$15,001-50,000		None (or less than $201)
PACCAR INC COM		$1,001-15,000		None (or less than $201)
PEPSICO INC		$15,001-50,000		None (or less than $201)
PFIZER INC		$15,001-50,000		None (or less than $201)
PHILIP MORRIS INTL INC COM		$1,001-15,000		None (or less than $201)
PROCTER GAMBLE CO		$15,001-50,000	Dividends	$201-1,000
QUALCOMM INC COM		$15,001-50,000		None (or less than $201)
SAFEWAY INC COM NEW		$1,001-15,000		None (or less than $201)
SCHERING PLOUGH CORP COM		$1,001-15,000	Dividends	$201-1,000

Asset Name		Value($)	Type	Income
SCHLUMBERGER LTD COM		$15,001-50,000		None (or less than $201)
STAPLES INC COM		$1,001-15,000		None (or less than $201)
SYSCO CORP COM		$1,001-15,000		None (or less than $201)
TD AMERITRADE HLDG CORP COM		$1,001-15,000		None (or less than $201)
TORCHMARK CORP COM		$50,001-100,000	Dividends	$2,501-5,000
TRAVELERS COMPANIES INC COM		$1,001-15,000		None (or less than $201)
URBAN OUTFITTERS INC COM		$1,001-15,000		None (or less than $201)
US BANCORP DEL COM NEW		$1,001-15,000		None (or less than $201)
VERIZON COMMUNICATIONS INC COM		$15,001-50,000		None (or less than $201)
WAL MART STORES INC COM		$15,001-50,000	Dividends	$201-1,000
WELLS FARGO & CO NEW COM		$15,001-50,000	Dividends	$1,001-2,500
WYETH COM		$1,001-15,000		None (or less than $201)
XILINX INC COM		$15,001-50,000		None (or less than $201)
YAHOO INC COM		$1,001-15,000		None (or less than $201)
YUM BRANDS INC COM		$1,001-15,000		None (or less than $201)
ZIMMER HLDGS INC COM		$1,001-15,000		None (or less than $201)
WACHOVIA		None(or less than $1,001)	Dividends	$5,001-15,000
ABB LTD.		None(or less than $1,001)	Dividends	$1,001-2,500
CARNIVAL CORP		None(or less than $1,001)	Dividends	$1,001-2,500
CITIGROUP		None(or less than $1,001)	Dividends	$1,001-2,500
CME GROUP		None(or less than $1,001)	Dividends	$1,001-2,500
FRANKLIN RES INC COM		None(or less than $1,001)	Dividends	$201-1,000
FREEPORT-MCMORAN COPPER & GO		None(or less than $1,001)	Dividends	$201-1,000
HALLIBURTON		None(or less than $1,001)	Dividends	$201-1,000
INTERNATIONAL GAME TECHNOL		None(or less than $1,001)	Dividends	$201-1,000
INTL PAPER CO COM		None(or less than $1,001)	Dividends	$201-1,000
JP MORGAN CHASE & CO		None(or less than $1,001)	Dividends	$1,001-2,500
LINEAR TECH CORP COM		None(or less than $1,001)	Dividends	$201-1,000
LORILLARD INC COM		None(or less than $1,001)	Dividends	$201-1,000
NOBLE CORP SHS		None(or less than $1,001)	Dividends	$201-1,000
TELEFLEX		None(or less than $1,001)	Dividends	$1,001-2,500
TORCHMARK CORP COM		None(or less than $1,001)	Dividends	$2,501-5,000
WRIGLEY WM JR CO		None(or less than $1,001)	Dividends	$201-1,000

Exhibit G
to SF-278 for
Stephen W. Preston

Client	Legal Services
Boeing Company, The Chicago, IL	Investigations/Litigation
Alcatel-Lucent Murray Hill, NJ	Regulatory Compliance
Citigroup New York, NY	Regulatory Compliance
Navy Federal Credit Union Vienna, VA	Investigations/Litigation
Google, Inc. Mountain View, CA	Regulatory Compliance
Siemens PLM Software Inc. Plano, TX	Investigations/Litigation
NOVA Chemicals Corporation Moon Township, PA	Regulatory Compliance
ChoicePoint Inc. Alpharetta, GA	Regulatory Compliance
Morgan Stanley New York, NY	Regulatory Compliance
Data Physics Corporation San Jose, CA	Investigations/Litigation
Murray Energy Corp. Pepper Pike, OH	Investigations/Litigation
Hewitt Associates LLC Chicago, IL	Investigations/Litigation
Stuart Piltch Eagleville, PA	Investigations/Litigation
Deutsche Post AG Bonn, Germany	Regulatory Compliance
General Dynamics Advanced Information Systems Fairfax, VA	Investigations/Litigation
Morganti Group, Inc. Danbury, CT	Investigations/Litigation
Danaher Corporation Washington, DC	Investigations/Litigation

Exhibit G
to SF-278 for
Stephen W. Preston

Client	Legal Services
Global Computer Enterprises Inc. Reston, VA	Investigations/Litigation
Emerson Radio Corp. Parsippany, NJ	Investigations/Litigation
Dynamics Research Corporation Andover, MA	Investigations/Litigation
Deutsche Bank AG New York, NY	Regulatory Compliance
J.P. Morgan Chase & Co. New York, NY	Investigations/Litigation
Cobham plc Wimbourne, UK	Regulatory Compliance
UGS Plano, TX	Regulatory Compliance
Cabot Corporation Boston, MA	Regulatory Compliance
Johnson Controls, Inc. Milwaukee, WI	Investigations/Litigation
BP plc London, UK	Investigations/Litigation
Lufthansa AG Frankfurt, Germany	Regulatory Compliance
Teledyne Technologies Incorporated Thousand Oaks, CA	Investigations/Litigation
General Dynamics Corporation Falls Church, VA	Regulatory Compliance
Monsanto Company St. Louis, MO	Investigations/Litigation
General Electric Company Fairfield, CT	Investigations/Litigation
BP America Warrenville, IL	Investigations/Litigation

Period: 1/1/07 - 2/28/09

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