S. HRG. 112–306

NOMINATION OF LISA O. MONACO TO BE ASSISTANT ATTORNEY GENERAL FOR NATIONAL SECURITY, DEPARTMENT OF JUSTICE

HEARING

BEFORE THE

SELECT COMMITTEE ON INTELLIGENCE

OF THE

UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

MAY 17, 2011

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NOMINATION OF LISA O. MONACO TO BE ASSISTANT ATTORNEY GENERAL FOR NATIONAL SECURITY, DEPARTMENT OF JUSTICE

TUESDAY, MAY 17, 2011

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

The Committee met, pursuant to notice, at 2:37 p.m., at 3:37 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, and Risch.

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

Chairman FEINSTEIN. The Committee will come to order.

We meet today in open session to consider the President's nomination of Lisa Monaco to be the Assistant Attorney General for National Security, replacing David Kris, who resigned in March of this year.

Ms. Monaco was approved by the Senate Judiciary Committee, of which I am a member, by a unanimous vote on May 9th. And her nomination was referred under Senate rules to this Committee, the Intelligence Committee. Now, that's consistent with the joint jurisdiction that both of our committees have over national security of the Department of Justice.

The Assistant Attorney General for National Security is a fairly new position, but it's a very important one. This position represents the government before the Foreign Intelligence Surveillance Act court and serves as a senior adviser to the Attorney General on matters relating to national security, such as intelligence collection, detention, and counterintelligence.

I might just say—most people don't know—the FISA court, the Foreign Intelligence Surveillance Act Court, is capable of meeting 24/7, 365 days a year. I believe it has 11 judges, all appointed by the Chief Justice of the Supreme Court. So they are ones that review certain intelligence-related matters.

This Assistant Attorney General serves as the primary liaison to the Director of National Intelligence for the Department of Justice.

We are all mindful of the need to fill this position quickly, especially in light of the May strike against Osama bin Ladin. The strike provided for a collection of a large cache of al-Qa'ida docu-

ments, communications, and videos that will no doubt lead to new counterterrorism leads.

A Senate-confirmed official at the Department of Justice has to sign off on applications to the FISA court and other investigative techniques. So having Ms. Monaco in place quickly will allow the government to move much more quickly.

Of course, the strike against bin Ladin may also lead to reprisal attacks. So this is a time of an additional potential threat of terrorism to this country. And the Attorney General, the intelligence community, the FBI, and the entire administration need to have their teams in place.

Ms. Monaco has already testified before the Judiciary Committee. She's responded to written questions for the Judiciary Committee and for this Committee. Her views and positions are already a matter of public record.

Let me just quickly describe her background. She has served as the Principal Associate Deputy Attorney General or acted in that capacity and served as Associate Deputy Attorney General from January of 2009 through February of 2010. She has considerable experience with the FBI, having served as chief of staff to Director Bob Mueller for two years.

She spent six years as an Assistant United States Attorney for the District of Columbia, where she received the Attorney General's award for exceptional service, the Department of Justice's highest award.

She also received the Department of Justice awards for special achievement, not one year, but in 2002, 2003, and 2005. She skipped a year there, which we'll have to find out about.

[Laughter.]

She received her law degree from the University of Chicago Law School in 1997, her B.A. from Harvard in 1990. Her nomination has received support from a range of individuals, with letters submitted on her behalf from former Attorney General Michael B. Mukasey, former Assistant Attorney General for National Security Kenneth Wainstein, and former senior officials at the FBI and Department of Justice, which I now request be placed in the record.

[The information referred to follows:]

O'MELVENY & MYERS LLP

BEIJING
BRUSSELS
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HONG KONG
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NEWPORT BEACH

1625 Eye Street, NW
Washington, D.C. 20006-4001
TELEPHONE (202) 383-5300
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www.omm.com

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WRITER'S DIRECT DIAL
(202) 383-5118

WRITER'S E-MAIL ADDRESS
kwainstein@omm.com

April 12, 2011

VIA E-MAIL AND FEDEX

The Honorable Dianne Feinstein, Chairman
The Honorable Saxby Chambliss, Vice Chairman
Senate Select Committee on Intelligence
211 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Feinstein and Vice Chairman Chambliss:

Please accept this letter in strong support of the President's nomination of Lisa Monaco for the position of Assistant Attorney General for National Security.

I served in that position when the National Security Division was first established, and I carry a deep affection for the Division's members and a personal interest in knowing that they have strong and effective leadership. Based on my decade of work experience and friendship with Lisa, I am convinced that she is the person who can provide that leadership.

As you know, the AAG for National Security sits astride the intersection of the Justice Department's law enforcement and intelligence programs. As such, the job requires a deep understanding of both programs and an ability to channel their different practices, personnel and priorities toward the overriding objective of protecting our national security. Over the course of her exceptional Justice Department career, Lisa has gained the experience and insights necessary to meet these demanding job requirements.

First, Lisa has an in-depth knowledge of the workings of law enforcement, thanks to her six years in the trenches as a prosecutor in the District of Columbia U.S. Attorney's Office handling everything from violent crime cases to the complex fraud trial against a group of former Enron executives. This experience gave Lisa a strong ability to analyze and assess the merits of a criminal case and the sound judgment required to handle the myriad tactical and strategic calls that must be made in the course of a significant investigation.

Importantly, her prosecutorial experience has also honed her understanding that aggressive investigative activities can -- and must -- be carried out hand-in-hand with the protection of privacy and civil liberties. On many occasions, Lisa and I have analyzed the

privacy implications of a certain course of investigative action, and I have always been struck by the depth of both her legal analysis and her commitment to civil liberties.

Lisa has equally extensive practical experience in the field of intelligence law. As the FBI Director's counselor and Chief-of-Staff and in the Office of the Deputy Attorney General, Lisa has been actively involved in many of the significant national security investigations over the past five years. That operational experience has given her an important familiarity with Intelligence Community processes and personnel, and has honed her judgment in the difficult issues that arise in the course of intelligence operations.

In addition, Lisa brings to the job a seasoned perspective on high-level management in the Department of Justice. From her early experience as a counselor to Attorney General Reno to her management of the FBI Director's office and the Deputy Attorney General's agenda, Lisa has shown an aptitude for leadership. She recognizes that effective management requires one to both master the subject matter of the job and lead by example and inspiration. She also understands that management requires an intense focus on bridging differences and building consensus -- a skill that is particularly important in the national security realm which involves so many actors at every level of state, federal and foreign government, all of whom have their own perspectives and agendas. Her consistent success at the highest levels of the Justice Department is evidence that Lisa is fully equipped with these skills and applies them very effectively.

Lisa also recognizes one other important truism -- that national security operations are no place for politics. As we all recognize, it is vital to the credibility and effectiveness of the National Security Division -- and the national security program as a whole -- that its leaders assess their options without regard to politics. Lisa has been doing just that for many years now, and her non-political reputation will serve her well in the tough decisions she will have to make as Assistant Attorney General.

I applaud the President's nomination of someone of Lisa's caliber for this important position. I believe Lisa is ideally suited to serve as Assistant Attorney General, and that the Department and the Nation will be very well served with her at the helm of the National Security Division. Please do not hesitate to contact me if I can provide further information that would assist the Committee in its consideration of this important nomination.

Sincerely,

[SIGNATURE]

Kenneth L. Wainstein
O'MELVENY & MYERS LLP

Nomination of Lisa Monaco as Assistant Attorney General for National Security, Department of Justice
Statement of Support

I am writing this letter to support the nomination of Lisa Monaco as Assistant Attorney General for National Security. Ms. Monaco and I first met in 2005, when I joined the FBI from CIA as the deputy director of the then-new National Security Branch at the Bureau. At the FBI, Ms. Monaco and I worked on policy and intelligence issues that required executive attention; Ms. Monaco's presence at the daily morning threat briefing when she returned to the Department of Justice allowed us to continue working together through the time of my departure from government in 2010.

Ms. Monaco has key professional and personal characteristics that make her an excellent choice for the position of Assistant Attorney General. She has field experience as a prosecutor and senior-level knowledge of both investigations (FBI) and prosecutions (DoJ headquarters). Her years sitting at the daily morning intelligence briefings, watching both foreign intelligence and the evolution of the FBI's domestic intelligence capability, also have given her unique exposure to different dimensions of national security work. Her professional experience is broad, and almost unique. I saw her bring this wealth of experience to bear every day as we wrestled with difficult challenges, and her ability to look at a new problem and apply what she knew showed the rare combination of flexibility and great expertise.

Ms. Monaco's responses to complicated problems we faced consistently showed good judgment, even in the most trying of circumstances, along with acute intelligence. She was among the smartest professionals with whom I worked. But she balanced thoughtfulness and an incisive intelligence with the willingness to ask questions in areas where she lacked knowledge. In the fast-moving world of domestic intelligence and complex national security investigations, this mix of intellect, experience, and judgment is guaranteed to help her succeed, particularly when these talents are combined with the humility she has to ask good questions and seek counsel.

Ms. Monaco has other personal traits that ensure she would succeed. In particular, her personable style will help maintain morale in a workforce that faces stress every day, nearly a decade after the events of 9/11. DoJ has highly capable lawyers and support staff; her style will help the Department retain this cadre.

Given Ms. Monaco's background across different aspects of national security problems, and her leadership style, I feel privileged to add my name to the long list of former government officials who know her and believe she would be a superb Assistant Attorney General. And a superb leader.

Sincerely,

Philip Mudd

Senator Dianne Feinstein
Chair, Senate Select Committee on Intelligence
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

April 8, 2011

Senator Saxby Chambliss
Vice-Chair, Senate Select Committee on Intelligence
416 Russell Senate Office Building
Washington, D.C. 20510

Dear Chair Feinstein and Vice-Chair Chambliss,

It is an honor and pleasure for me to unconditionally support the nomination of Lisa Monaco for the position of Assistant Attorney General of the Department of Justice National Security Division.

During my tenure as FBI Assistant Director for the Counterterrorism Division and subsequently as the Executive Assistant Director for the National Security Branch, I worked with Ms. Monaco on a day-to-day basis. Ms. Monaco was detailed to the FBI as Special Counsel and then Chief of Staff for Director Robert Mueller. Not only did she work with FBI Agents and Analysts, but she skillfully interacted with other agencies in the U.S. Intelligence Community as well as with our international partners to resolve terrorism threats facing our country. In this capacity, we enjoyed a close and productive working relationship. I found her to be an intelligent, well prepared, and a dedicated professional, tirelessly focused on our mission. Ms. Monaco can be credited with helping to successfully safeguard national security in a volatile and dangerous period when tenacity, adaptability, and precision decision-making were paramount. Because she consistently fulfilled these requirements, she was considered a valued member of our team.

Ms. Monaco's Department of Justice experience as a career prosecutor and her understanding of the FBI National Security Branch mission and operations make her exceptionally well qualified to lead the National Security Division. I highly recommend her for this important position.

Sincerely,

Willie T. Hulon

April 5, 2011

The Honorable Dianne Feinstein
Chair, Senate Select Committee on Intelligence
United States Senate
331 Hart Senate Office Building
Washington, DC 20510

The Honorable Saxby Chambliss
Vice Chair, Senate Select Committee on Intelligence
416 Russell Senate Office Building
Washington, DC 20570

Dear Senator Feinstein, Vice Chair Chambliss and Members of the Senate Select Committee on Intelligence,

As a career national security professional and former Assistant Director of the FBI's Counterterrorism Division, I write in strong support of the nomination of Lisa Monaco for Assistant Attorney General for National Security, Department of Justice.

I had the good fortune to work directly with Lisa Monaco while serving as an FBI executive. Lisa is exceptionally well qualified to serve in the capacity of Assistant Attorney General for National Security, and would bring to the position a keen and unique insight for the nuance of national security matters. During the time I spent working directly with Lisa, I observed first hand her absolute dedication to the fight to protect our national security. The creation of the NSD was a critical reform of the Department of Justice, which was of course enacted through the help of this committee. The NSD has subsequently evolved to play a significant role to protect our nation from a continuing barrage of national security threats.

The successful leadership at the NSD is more important than ever to protect us from those national security threats. I believe from personal observation that Lisa's combination of prosecutorial and operational experience gained throughout her career in the Department of Justice exceptionally suits her to lead the Division. Her experience also contributes to her understanding of how agents, intelligence analysts and prosecutors work together to detect, deter and disrupt national security threats. In a prior role I served as Special Agent in Charge of the FBI National Security Division in New York City. It was here that I learned the tremendous importance prosecutors make working together directly with and alongside investigators. Lisa Monaco understands this integration, and its synergy with intelligence gathering and the rule of law, and I believe she will excel in the position of Assistant Attorney General if confirmed. She has my highest recommendation and support.

Sincerely,

Joseph Billy, Jr.

Dale L. Watson
One Dulles Center
13200 Woodland Park Road
Herndon, Virginia 20171

April 13, 2011

VIA FAX

The Honorable Dianne Feinstein
Senate Select Committee on Intelligence
United State Senate

The Honorable Saxby Chambliss
Vice-Chair, Senate Select Committee on Intelligence

Dear Chairman Feinstein, Vice-Chair Saxby, and Members of the Senate Select Committee on Intelligence:

I write in strong support of the nomination of Lisa Monaco for Assistant Attorney General for National Security, Department of Justice.

As you recall, I was the Executive Assistant Director for Counterterrorism and Counterintelligence at the Federal Bureau of Investigation (FBI) until my retirement in October 2002. Since my retirement, I have continued to follow the career of Ms. Monaco which included an assignment with the FBI working as Director Mueller's Chief of Staff. Based upon her experience and assignments, I believe she would be an outstanding Assistant Attorney General for National Security.

She has demonstrated her absolute dedication for the fight to protect our National Security. I am confident that the Intelligence Community will benefit from the steady leadership that Ms. Monaco is prepared to provide, and that Ms. Monaco will continue the progress the division has made in providing leadership on National Security matters critical to our nation.

Sincerely,

[SIGNATURE]
Dale L. Watson

So I want to welcome you, Ms. Monaco. And I think this will be a relatively brief hearing, particularly since you've already been through the Judiciary Committee. So if I may turn to a distinguished member of the Intelligence Committee who is now acting as vice chairman of that Committee, Senator Risch.

Senator RISCH. Thank you very much, Madam Chairman. I'm anxious to get on with the hearing, and I'll submit any comments for the record.

Chairman FEINSTEIN. Okay. Very good. Do you have a statement that you would like to make?

STATEMENT OF LISA O. MONACO, ASSISTANT ATTORNEY GENERAL FOR NATIONAL SECURITY-DESIGNATE

Ms. MONACO. I do, Madam Chairman. And if I might at this time also introduce the members of my family who are here with me today.

Chairman FEINSTEIN. Please do.

Ms. MONACO. I'm very happy that my parents, Dr. Anthony Monaco and Mary Lou Monaco could be here from my hometown of Newton, Massachusetts. I'm very thankful for their support. My brother Mark and his wife Jennifer Monaco are here from New York, and I'm especially happy that they brought their children, my niece Sophia and my nephew Nicholas——

Chairman FEINSTEIN. Hi.

Ms. MONACO [continuing]. To come and be part of this proceeding. I think they're particularly happy, however, that they got a day off from school.

Chairman FEINSTEIN. I think that's more important. No?

They're saying, no, it isn't.

[Laughter.]

Ms. MONACO. I think we'll probably have a debate about that later.

I'm also very thankful that I have a few friends in the audience and colleagues from the Department, including colleagues from the National Security Division. And I'm particularly honored that they're here today.

Madam Chairman, if I could make a few brief remarks.

Chairman FEINSTEIN. Please do.

Ms. MONACO. Thank you very much, Madam Chairman and Vice Chairman Risch. I want to thank the Committee for holding this hearing. I know you have extremely pressing business before you, and I appreciate the thoughtful consideration being given to this nomination.

At the outset, I would like to thank the President for his confidence in nominating me and the Attorney General for his support. I am tremendously honored to be here today.

In my statement before the Judiciary Committee a few weeks ago, I discussed the changes the Department has undergone since September 11th. I won't repeat those remarks here except to say that, over the course of my career, I have been privileged to participate in those changes. As a senior adviser, as the Chairman noted, and chief of staff at the FBI, I worked with Director Mueller to help advance the FBI's transformation from a law enforcement or-

ganization focused on investigating crime after the fact to a national security organization focused on preventing the next attack.

I've also seen the evolution of the National Security Division into a highly effective organization, and I've had the opportunity to work with colleagues across the intelligence community.

These changes reflect an intelligence-led approach to combating national security threats. And, if confirmed, I will be honored to continue that focus alongside the dedicated men and women of the National Security Division and their equally dedicated partners in the intelligence community.

Thanks to this Committee and to the Congress, the Assistant Attorney General for National Security sits astride the law enforcement and intelligence responsibility of the Justice Department. And, if confirmed, I will serve as a bridge between the department and the intelligence community. This is a critical role and one which this Committee had the wise judgment to create.

The mission of the National Security Division, quite simply, is to prevent terrorism and to protect the American people. As someone who has worked in both the Congress and in the executive branch, I know this Committee plays an important role in combating national security threats. I recognize that oversight helps promote accountability, and I understand the need to be responsive appropriately and quickly to congressional oversight. I am committed to forming strong and cooperative relationships in that regard.

Every morning for the last several years, I have sat alongside talented analysts, agents and national security professionals and reviewed intelligence and assessed how the country is responding to the latest threat streams. This experience has taught me that our nation faces complex and evolving threats. To combat them, we must be aggressive and agile in our approach, and we must do so consistent with the rule of law. If confirmed, I pledge to give my all to that effort.

Thank you very much, and I welcome the Committee's questions.

[The prepared statement of Ms. Monaco follows:]

Opening Statement of Lisa O. Monaco

May 17, 2011

Thank you, Madam Chairman. And thank you, Vice Chairman Chambliss.

I want to thank the Committee for taking this time to consider my nomination. I know this Committee has extremely pressing business before it and many demands on its time. I appreciate the thoughtful consideration being given to this nomination.

At the outset, I would like to thank the President for his confidence in nominating me, and the Attorney General for his support. I am tremendously honored to be considered for this position.

I would not be sitting before you today if not for my parents. Their love and support have enabled me to enjoy many blessings. Of all the good fortune my three brothers and I have enjoyed, the greatest gift our parents have given us is their example – in the choices they have made, large and small. They have taught us about hard work, integrity and what it means to live one's values. Because of these lessons I am able to appear here today.

Over my career in the Department of Justice I have been privileged to work in a number of different capacities. As a federal prosecutor I saw the importance of rigorous legal argument and the power of the criminal justice system. As a senior advisor and Chief of Staff at the FBI, as well as in my roles in the Deputy Attorney General's Office, I have worked closely with colleagues across the Intelligence Community on many operational and policy matters. I have seen the value of bringing all capabilities to bear against emerging threats. Having joined the Department before the tragic events of September 11, 2001, I have participated in the fundamental changes in how the Department fulfills its national security functions. I have been privileged to work with Director Mueller to help advance the transformation of the FBI from primarily a law enforcement agency focused on investigating crime after the fact to a national security organization focused on preventing the next attack before it happens. I also witnessed the creation of the National Security Division and its maturation over the past several years into a highly effective organization. This transformation and the reorientation of the Department's national security apparatus after September 11 reflect a focus on an intelligence-led approach to combating national security threats. If confirmed, I will be privileged to continue this focus working alongside the dedicated men and women of the National Security Division and their equally dedicated partners in the Intelligence Community.

The Assistant Attorney General for National Security sits astride the law enforcement and intelligence responsibilities of the Department of Justice. This position embodies an evolution in how the Department approaches its top priority: protecting the security of the American people. The National Security Division brings intelligence lawyers together with agents and prosecutors to focus on the most serious threats – be they terrorists plotting attacks against us or spies bent on

stealing our secrets. Because Congress had the wisdom to remove barriers – both legal and structural – to allow committed professionals to share their information, their talent and their missions, today we are better able to detect, deter and disrupt national security threats. We are also better able to take advantage of the other reforms that this body has enacted – chief among them the lowering of the proverbial wall between law enforcement and intelligence. In the National Security Division, the Department now has a focal point for its interactions with the Intelligence Community on matters relating to the development of policy, coordinating law enforcement and intelligence activities, maximizing our ability to combat threats and ensuring intelligence collection is carried out appropriately under law. If confirmed, I will serve as a bridge between the Intelligence Community and the Department of Justice. This is a critical role for the National Security Division and one which this Committee had the wise judgment to create.

The creation of the National Security Division followed the creation of the National Security Branch of the FBI and the transformation of that organization into a security service. Today, the NSB and the NSD have formed a very effective partnership. If I am confirmed, one of my priorities will be to continue and build upon that partnership.

The mission of the Division fundamentally is to work with the FBI and other elements of the Intelligence Community and the military to prevent terrorism and to protect the American people. I also know that Congress has an important role to play in meeting these threats. I recognize that Congressional oversight helps promote accountability, especially with regard to national security authorities and the Intelligence Community. This Committee performs an important function in overseeing the intelligence activities of the Executive Branch. As someone who has worked in both Congress and the Executive Branch, I understand the need to respond appropriately and quickly to Congressional oversight. I am committed to building strong and cooperative relationships in that regard. If confirmed, my goal will be to help ensure that Congress receives information responsive to its oversight needs consistent with law enforcement and national security responsibilities in a thorough and expeditious manner.

Every morning for the last five and a half years, alongside talented analysts, agents and other national security professionals, I have started each day with a review of recent intelligence and an update on how the country is responding to threat streams. This experience has taught me that our Nation faces complex and evolving national security threats. To combat them we must be aggressive and agile in our approach and we must do so consistent with the rule of law. If confirmed, I pledge to give my all to that effort.

Thank you.

Chairman FEINSTEIN. Thank you very much. And we will begin with five standard questions that just require a yes or no answer.

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

Ms. MONACO. Yes.

Chairman FEINSTEIN. Do you agree to send officials from the Department of Justice and designated staff when invited?

Ms. MONACO. Yes.

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

Ms. MONACO. Yes.

Chairman FEINSTEIN. Will you ensure that the Department of Justice and its officials provide such material to the Committee when requested?

Ms. MONACO. Yes.

Chairman FEINSTEIN. Do you agree to inform and fully brief to the fullest extent possible all members of this Committee of intelligence activities and covert actions rather than only the Chairman and Vice Chairman?

Ms. MONACO. Yes.

Chairman FEINSTEIN. Thank you very much.

And now, I'd like to ask this question because this is very pertinent to something we're going to be doing before the end of this month.

Three provisions of the Foreign Intelligence Surveillance Act, commonly referred to as FISA, are due to expire. They were part of PATRIOT Act provisions. As you know, we are working to extend the provisions, preferably to 2013. These three expiring provisions are: one, roving wiretaps to monitor foreign intelligence targets who attempt to thwart FISA surveillance such as by rapidly changing cellphones; two, what's called the lone-wolf provision to monitor a non-United States person who engages in international terrorism but it is unknown whether he is connected to a specific international terrorist group; and three, the business records provision to obtain records as part of a foreign intelligence investigation.

I'd like you to elaborate on your answer to the Committee's prehearing questions on this topic. And please tell us how the expiration of these three provisions would affect DOJ's intelligence and law enforcement work at this very critical period.

Ms. MONACO. Well, Chairman, as you noted in your opening remarks, we are at a critical juncture and facing a stepped-up threat, and we need to be able to respond to that with all the leads that we receive in any number of different areas.

The provisions that you mention are absolutely critical to that effort. The roving wiretap provision, as you mentioned, enables investigators to essentially have the same tools that criminal investigators have had for years and years, an ability to keep up with those who would thwart the government's surveillance efforts.

If these provisions were to expire, we would be, I think, quite diminished in our ability to keep up with both rapidly evolving threats like those who use sophisticated means to try and thwart our surveillance effort and it would diminish our ability to keep up with threat streams as they come in.

The business records——

Chairman FEINSTEIN. Could you give us a couple of examples of lone-wolf attacks in this country?

Ms. MONACO. Certainly, Senator. As this Committee is well aware and having received a number of briefings in other settings about the threat we face, I think I number of experts—the DNI and the FBI director have spoken about the particular threat we face from those who are self-radicalized, those who are not necessarily part of al-Qa'ida or directed by al-Qa'ida but rather inspired by al-Qa'ida's violent message.

And individuals such as Nidal Hasan from the tragic events at Fort Hood, those type of individuals, who we may not be able to directly associate with al-Qa'ida but who are inspired, are the type of people that we need to have that tool, the lone-wolf tool.

I would note, of course, for the Committee that that tool can only be used against non-U.S. persons. It has not been used to date, but it is certainly a tool that we need in order to be able to keep up with the evolving threat that we face.

Chairman FEINSTEIN. And the business records provision and why that's important in the United States?

Ms. MONACO. Certainly. The business records provision, as you noted, allows agents and investigators to obtain critical building-block pieces of evidence in order to use, frankly, more intrusive methods down the line. It's a critical way to get information to build a case. It enables investigators to get things like hotel records, FedEx records, the type of things that, quite frankly, are very important in plots like the package plot that we saw last year. In order to get information from a shipping company to determine the origin of a plot like that, we need the business records exceptions.

Chairman FEINSTEIN. Was the business records provision used in the Najibullah Zazi attempted attack with the goods from the——

Ms. MONACO. The peroxide?

Chairman FEINSTEIN. The peroxide——

Ms. MONACO. I think I know what you're referring to. Yes, Senator, that is exactly the type of plot that we need that provision for. You're alluding to, I think, the ability of the investigators to track down the purchase of the peroxide that formed the base for the explosive device that Najibullah Zazi was plotting to use in September of 2009.

Chairman FEINSTEIN. Thank you. Thank you very much.

Senator Risch.

Senator RISCH. Madam Chairman, this candidate has been well vetted by the Judiciary Committee, and I think that she has received high marks from virtually everyone I've talked to, so I'm going to pass. I was particularly impressed with her analysis of the expiring FISA provisions. And obviously we're going to have a spirited debate on some of those, but her view on them is important, I believe. So thank you, Madam Chairman.

Chairman FEINSTEIN. Thank you very much.

I may have one other question on this—but I may not, too.

Senator RISCH. That's Okay.

Chairman FEINSTEIN. Let me speak about one thing, and that's in the subject of increased leak prosecutions by DOJ.

In responding to the Committee's prehearing questions, you provided short status reports on four major prosecutions where the Department of Justice charged individuals in connection with unlawful disclosure of classified information to the media. Could you put the number and complexity of these prosecutions in historical context?

Ms. MONACO. Thank you, Madam Chairman.

As you noted, just a few of the summaries that I provided in my response to the prehearing questions I think reflect a stepped-up effort and, indeed, a priority placed on the prosecution of leak matters in the Department. These, I think, in the last 18 months—I'm going to estimate here—I think it's twice as many as has been done historically in this area.

These are very, very important prosecutions. This Committee has, I think appropriately, pressed the Department and the intelligence community to bring these matters, to focus on these matters, to ensure that unauthorized disclosures are prosecuted and pursued, either by criminal means or the use of administrative sanctions.

Leaks do tremendous damage. I know from my time at the FBI what they can do to an investigation, to a prosecution, frankly, to the lives of sources that are very important to these investigations. And they do tremendous damage to our ability to use specific methods, if those methods are disclosed, and to use those methods for collecting intelligence.

If I'm confirmed, it would be my priority to continue the aggressive pursuit of these cases, challenging as they may be, but those challenges should not slow us down in aggressively pursuing those matters.

Chairman FEINSTEIN. Thank you very much.

Senator Wyden.

Senator WYDEN. Thank you very much, Madam Chairman. Let me just apologize for being late and also missing an earlier statement.

Chairman FEINSTEIN. I saw you on the floor.

Senator WYDEN. Today has been bedlam, even by Senate standards, and I apologize for that to you.

Chairman FEINSTEIN. No problem.

Senator WYDEN. Ms. Monaco, welcome. And I want to start by talking about the matter you and I talked about in the office, and that really is my philosophy with respect to national security law.

I think it is absolutely essential to protect the operations and methods that are employed day in, day out by the courageous people who serve us in the intelligence community. I think protecting those sources and methods is just sacrosanct, and I feel it as strongly as anything that relates to my public duty.

But I also believe that all intelligence activities have to be conducted within the boundaries of public law. And as you know, when we talked in the office, I make a major distinction between public law and the operations and methods that I feel so strongly about protecting. Members of the public won't always know the details, obviously, about what intelligence agencies are doing but they also ought to be able to look at the law and figure out what actions are permitted and what actions are prohibited.

In other words, the government is allowed to conduct these secret operations to protect national security, but I don't think our government ought to be able to write secret law. Do you disagree with that judgment?

Ms. MONACO. Well, first, thank you very much, Senator, for taking the time to meet with me last week, and I very much enjoyed our conversation. I appreciate your taking that time.

I did review the correspondence that you mentioned and, as we discussed, in this setting, I think I will simply refer to it in a general way, since it is classified. But I reviewed the points that you asked me to in that correspondence, and I think that there are very valid points that you made in that correspondence.

I think that we need to ensure that we balance the need to keep certain information secret, to protect, as you noted, the intelligence sources and methods. But on the other hand, there is a tremendous value in making clear to the public how we use these authorities. It engenders trust, I think, in the way the government uses those authorities, and we rely—those of us in positions of trust rely on the public's trust in how we exercise our duties.

And I understand the Committee's interest and importance of your knowing how we're exercising those functions, because you stand in the shoes of the public in exercising your oversight responsibility. So in short, I think the points you made in the correspondence that we discussed are quite valid.

Senator WYDEN. I think that's helpful. And, of course, you know, we're talking only in this unique language that you have for an open intelligence hearing. You then agree with me—and this is the part I want to nail down—that the application of secret law is wrong, because that's what I'm raising in the letter.

And this is right at the heart, you know, of my concern—protect the operations and methods, but I want to see an end to all of this secret law. Because I think and we certainly see this on the PATRIOT Act, if the public thinks that the law is this, and the law ends up actually being that, that's a prescription for trouble.

And so what I really need to get on the record—and obviously I haven't talked about any of the points raised in the letter or anything that relates to operations and methods—is I want to get on the record whether you share my view that the way law is being applied secretly is wrong.

Ms. MONACO. Well, Senator, I absolutely agree that we need to make as much of the types of documents that you're referring to public as possible. There is a process, as I think the Committee is aware, to try and make sure the FISA court opinions that can be made public and the portions of them that can be made public are—that that is done to the fullest extent possible. I share your view that we need to make sure that we protect the sources and methods, and I think that we can do that while at the same time making clear and making public how we're applying the law in the open for evaluation of the Congress and the public.

Senator WYDEN. Do you agree that the government's official interpretation of the law should be public? That is to me a yes-or-no answer.

Ms. MONACO. Well, respectfully, Senator, the whole notion and the reason we have the FISA court is sometimes the manner in

which we're applying the authorities and the facts surrounding them have to necessarily be kept secret from our adversaries so that those tools can't be used against us. I certainly agree that we need to make as much public as possible and to be as transparent as possible in how we're using the authorities that the Congress has given us.

Senator WYDEN. Are key interpretations of the PATRIOT Act classified?

Ms. MONACO. I think that there are a number of applications and orders from the FISA court that are in the process of being reviewed pursuant to a process that the Committee has been notified of.

Senator WYDEN. Well, it seems pretty clear to me that key interpretations of the PATRIOT Act are classified. That's the problem and I don't think the Department's releasing a bunch of statistics are going to clear that, you know, up. I mean, the big problem in my view is that the American people are being kept in the dark about their government's interpretation of a major surveillance law. And I think most Members of Congress aren't aware of how it's being applied either, even though they're being asked to vote for it. And I don't think this situation is sustainable.

And my own view is, is when members of the public find out how their government is secretly interpreting the PATRIOT Act, they're going to insist on significant reforms. And I will only tell you: I think you're very highly qualified, but I still don't get a sense of urgency or conviction that this issue of secret law is of any real concern, because when I've asked specifically about it, you've either said it's complicated and there are other kinds of issues or referred me to something else.

So if you're confirmed, I can assure you, you're going to keep hearing from me about this, because I think secret law is an increasing, you know, problem in this country. The American people are fair-minded and they understand this is a very dangerous world with very significant threats. And they want our operations and methods, as I do, protected so our men and women who serve in the intelligence community can do their job and know that they can do it with the maximum amount of personal safety, but that's very different than secret applications of statutes like the PATRIOT Act.

Madam Chair, what's your pleasure? I had a couple of other questions, but I am well over my time, and I can wait for another round.

Chairman FEINSTEIN. Well, why don't you go ahead and ask them, because I think we're ready to wrap it up.

Senator WYDEN. Well, I thank you.

Let me ask you about the FISA court opinions, which involves, of course, both secrecy and the law.

In 2008, Senator Rockefeller and I wrote a letter to the Attorney General, the Director of National Intelligence and the Chief Justice of the Foreign Intelligence Surveillance Court expressing our view that there ought to be a more regular process for reviewing, redacting, and then publishing the courts' major opinions.

Now, I believe it makes sense to classify routine warrant applications that contain information about sensitive intelligence sources

and methods, but a few of the court's decisions actually contain important rulings on the meaning of national surveillance law. And it's been my judgment that these decisions ought to be redacted and declassified so that the Congress and the public can better understand how national security statutes are being interpreted by the judicial branch.

Now, in 2009, Senator Rockefeller and I followed up and we were told that the executive branch was working with the FISA court to set up this process. We've been updated a couple of times about what the new process would look like. But again, nothing has really changed. There haven't been any declassified court opinions as yet. And given this process has now been two years in the making, when can you tell the Committee that we might see some declassified opinions?

Ms. MONACO. Well, Senator, as I understand it—and I know this was raised and I tried to respond to some extent in my prehearing questions, but as I understand it, there is a process under way by which the National Security Division reviews opinions and orders from the FISA court, and pursuant to the section, of course, of FISA that requires that the Committee be provided with significant interpretations and constructions in those opinions, that those documents are reviewed by the National Security Division and then, of course, shared with the intelligence community so that determinations can be made as to what can be declassified.

These are, of course, judicial documents, as you noted. And I know there has been considerable discussion with a number of judges on the FISA court so that they too understand and agree that we should be providing as much of that material in an unclassified form as possible.

So I know that there is a process under way for the substance of the opinions to be reviewed and for the intelligence community to determine what can be declassified. And if I am confirmed, I think one of my first priorities would be to check in and determine the status of that full review and to see when you can be provided a number of those opinions.

Senator WYDEN. Well, the process is two years in the making. I mean, what can you tell me is likely to change? When you tell me that you're going to review the process, that's what people have been doing for two years and nothing has changed. So what are you going to do differently?

Ms. MONACO. Well, I think I'm going to have to make a determination. I don't have the facts in front of me. I think what would be the wise course, from my perspective, is to—if I'm confirmed—to get the facts on the ground, to do my own due diligence to determine what procedures have been set up. Are there efficiencies that can be realized? Are there things that could be done in a more expedited fashion—and make those assessments. I simply haven't been in a position in order to do that yet.

Senator WYDEN. I'm going to wrap up.

I just want to convey in the strongest possible way that I think business as usual is unacceptable. And you have very fine, you know, qualifications, but I am still very troubled about your thinking with respect to secret law. I think that is going to be an increasing problem as the American people think the statute is really

being applied over here. They're going to find out it's over there and it's going to undermine, you know, public confidence.

And after two years of persistent efforts to try to get a fresh approach with respect to FISA opinions and making them publicly, you know, available when there aren't any national security risks to the public and say we're just going to study it some more—isn't acceptable to me.

Madam Chair, you've given me an awful lot of time and I thank you for the usual Chair-Feinstein courtesy and grace.

Chairman FEINSTEIN. You're very welcome. Your views are well-known and somewhat appreciated.

[Laughter.]

I'd like to thank you very much for this hearing. I want to wish you well. We'd like to keep the record open for a couple of days so members can ask questions. And so I'd ask that those questions be submitted by Thursday.

If you could respond very quickly, we could vote on your nomination next Tuesday and then hopefully move it very quickly. You have been through consecutive review of two Committees. So I think a number of Senators are very well aware of your views and your qualifications.

So I thank you and your family, and particularly your niece and nephew for being here and being so polite and quiet, which is sometimes a problem for young people.

[Laughter.]

So thank you very much, and the hearing is adjourned.

Ms. MONACO. Thank you very much, Madam Chairman.

[Whereupon, at 4:09 p.m., the Committee adjourned.]

Supplemental Material

SELECT COMMITTEE ON INTELLIGENCE

UNITED STATES SENATE

QUESTIONNAIRE FOR COMPLETION BY PRESIDENTIAL NOMINEES

REVISED: MARCH 2011

SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE

QUESTIONNAIRE FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART A - BIOGRAPHICAL INFORMATION

1. NAME: Lisa Oudens Monaco

2. DATE AND PLACE OF BIRTH: February 25, 1968; Boston, Massachusetts

3. MARITAL STATUS: Single

4. SPOUSE'S NAME: N/A

5. SPOUSE'S MAIDEN NAME IF APPLICABLE: N/A

6. NAMES AND AGES OF CHILDREN: N/A

NAME	AGE

7. EDUCATION SINCE HIGH SCHOOL:

INSTITUTION	DATES ATTENDED	DEGREE RECEIVED	DATE OF DEGREE
Harvard University	9/86 – 6/90	A.B.	June 1990
University of Chicago Law School	9/94-6/97	J.D.	June 1997

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
U. S. Dept. of Justice	Principal Associate Deputy Attorney General (Acting, 2/10-1/11)	Washington, DC	2/10-present
	Associate Deputy Attorney General	Washington, DC	1/09-2/10

EMPLOYER	POSITION/TITLE	LOCATION	DATES
Federal Bureau of Investigation	Chief of Staff	Washington, DC	9/07-1/09
	Deputy Chief of Staff and Counselor	Washington, DC	4/07-9/07
	Special Counsel to the Director	Washington, DC	1/06-4/07(detail)
Enron Task Force U.S Department of Justice	Assistant U.S. Attorney	Washington, DC & Houston, TX	5/04-1/06(detail)
U.S. Attorney's Office for the District of Columbia	Assistant U.S. Attorney	Washington, DC	1/01-4/07
U. S. Department Of Justice	Counsel to the Attorney General	Washington, DC	11/98-1/01
Honorable Jane R. Roth United States Court of Appeals for the Third Circuit	Law Clerk	Wilmington, DE	9/97-7/98
Hogan and Hartson, LLP	Summer Associate	Washington, DC	6/96-9/96
White House Counsel's Office	Intern	Washington, DC	7/96-8/96
U.S. Department of Justice	Intern	Washington, DC	7/95-9/95
Honorable Wendell P. Gardner Superior Court of the District of Columbia	Intern	Washington, DC	6/95-7/95
U.S Senate Committee on the Judiciary	Research Coordinator	Washington, DC	7/92-9/94
Health Care Advisory Board	Senior Associate	Washington, DC	6/91-6/92
The Wilson Quarterly Woodrow Wilson International Center for Scholars Smithsonian Institution	Research Assistant	Washington, DC	7/90-691

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 response to 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.

Throughout the positions I have held at the Department of Justice, first as a line prosecutor and later during my time at the FBI, I have gained national security experience from both an operational and prosecutorial perspective. Since 2006, I have devoted the vast majority of my time to working on national security issues, first at the FBI and later at the Deputy Attorney General's Office. At the FBI, I provided advice and guidance to Director Mueller on a range of national security matters and worked with the FBI's leadership team to develop the FBI's National Security Branch and to further the integration of intelligence across all facets of that organization. I helped manage the Bureau's national security assets and worked to advance the FBI's transformation from a law enforcement agency to a national security organization focused on preventing terrorist attacks. Among other things, I gained an understanding of and appreciation for, the FBI's national security program and operations, the Bureau's role as an element of the intelligence community, and the importance of FISA as an intelligence collection tool from which the whole intelligence community benefits. In the Deputy Attorney General's Office, I have helped to supervise the national security functions of the Department, including the NSD, U.S. Attorneys Offices, the FBI and components of the DEA. In my time at the FBI and the Justice Department I have worked with partners in the intelligence community and in the interagency process and have developed an understanding of the national security architecture of the federal government. As a result of all these experiences, I have gained broader understanding of the range and complexity of national security issues confronting the Department's components and United States Attorneys Offices as well as the importance of striking the appropriate balance of intelligence community equities, legal requirements and prosecutorial interests.

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):

Editor-in-Chief, University of Chicago Law School Roundtable, September 1996-June 1997
Attorney General's Award for Exceptional Service, September 12, 2006
Department of Justice Special Achievement Awards, September 2002; August 2003; December 2005
Elizabeth Cary Agassiz Certificate of Merit, Harvard College

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
New York Bar	Member	April 14, 1998 - present
Edward Bennett Williams Inn of Court	Associate-at-Large	2002 to present
Washington Sports Club	No office held	1990 (est.) – present

I may have had a brief membership to the American Bar Association in approximately 2007 (no office held). I may have had a free membership in the Harvard Club shortly after graduation from college. In addition, I may have briefly been a member of the Harvard Club of Washington, D.C. when I moved here in 1990. I could not locate any records of those memberships.

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.) IF ASKED, WILL YOU PROVIDE A COPY OF EACH REQUESTED PUBLICATION, TEXT, OR TRANSCRIPT?

I have done my best to identify all books, articles, reports, letters to the editor, editorials and other published material, including through a review of my personal files and searches of electronic databases. I have also done my best to identify speeches or talks I have given by reviewing my calendars, personal files and publicly available electronic databases, although there may be some I do not recall that I have not been able to find. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

Give the People What They Want: The Failure of Responsive Lawmaking, The University of Chicago Law School Roundtable, Vol. 3, No. 2 (1996). (Law School note)

Seminar on Domestic Preparedness, Harvard University. In October, 2000, I spoke to a small seminar at the John F. Kennedy School of Government. No transcript is available.

Edward Bennett Williams Inn of Court, "Let's Make a Deal – How to deal with the prosecution in white collar cases." I was part of a panel discussion. October 17, 2002. No notes or transcript available.

American Bar Association, Young National Security Lawyers. I was part of a panel discussion on the "law of leaks" and media leak legislation. I cannot recall the precise date but believe it was in the spring of 2004. No notes or transcript available.

Edward Bennett Williams Inn of Court, Electronic Evidence. I was a panelist for a discussion of electronic evidence in criminal prosecutions. I cannot recall the precise date but I believe this was in the spring of 2004. No notes or transcript available.

Federal Bureau of Investigation, All Employee Conference, Indianapolis, Indiana Field Office of the FBI. I gave a presentation to assembled agents and employees on the investigation and subsequent prosecutions arising from the collapse of the Enron Corporation. November 2, 2006.

American Bar Association Annual Meeting, Media, Privacy and Defamation Law Committee Litigation Committee, San Francisco, California. I was part of a panel discussion about the FBI and balancing national security and civil liberties. August 11, 2007.

KWA Women's Speakers Series, The Belmont Hill School, Belmont, Massachusetts. I spoke about the FBI after 9/11. November 8, 2007.

National Security Fellows Program, John F. Kennedy School of Government, Harvard University, Cambridge, Massachusetts. I was a guest speaker for a meeting of government officials participating in the Kennedy School's National Security fellows program. November 9, 2007.

American Bar Association, Litigation Section Leadership Meeting, San Diego, California. I was part of a panel discussion on national security issues. January 2008. No notes or transcript are available. My recollection is that I addressed topics similar to those listed above regarding the FBI's role as an intelligence-focused national security organization.

Securities Enforcement Coordination Conference, Securities and Exchange Commission. I was a panelist with other prosecutors and SEC lawyers to discuss parallel proceedings in white collar cases. March 11, 2008.

YWCA, Women in Power Speakers Series, Palm Beach, Florida. I spoke about women in careers in law and national security. April 22, 2008.

Women in International Regulatory Law Symposium, "Challenges in International Security," I was part of a panel discussion regarding international security issues. June 18, 2008.

American Bar Association, Criminal Justice Section, Third Annual National Institute on Securities Fraud, "Subprime Meltdown: Reactions and Actions by the SEC and DOJ." Arlington, Virginia. I was part of a panel discussion on the Department's response to the subprime meltdown. October 2, 2008.

American University, International Studies Course, Washington, D.C. I was a guest speaker for a college-level international studies course. October 28, 2008.

Women's White Collar Bar Luncheon, Patton Boggs, LLP, Washington, DC. I gave brief remarks and fielded questions about the Department's priorities. January 26, 2010.

Edward Bennett Williams Inn of Court, Lessons from Guantanamo. I introduced the panelists. February 18, 2010.

Fordham Law School, Evidence Course, New York, New York. I was a guest speaker along with the General Counsel of the FBI at a first-year evidence class. We fielded questions about national security issues and careers in the Department of Justice and the Federal Bureau of Investigation. April 19, 2010.

Practicing Law Institute, Enforcement 2010: Multi-Agency Enforcement Efforts in the New Decade, New York, New York. I was part of a panel discussion about dealing with enforcement agencies. June 1, 2010. A webcast of this panel is available at: http://www.pli.edu/Content.aspx?dsNav=Ny:True,Ro:0,N:4294963167-167&ID=72109

Georgetown Law School, Legislation Course, September 21, 2010. I was a guest speaker regarding my experiences working in different branches of government.

PART B - QUALIFICATIONS

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

If I am confirmed, I will bring a combination of prosecutorial and intelligence experience to the position of Assistant Attorney General for National Security. At the FBI and the Department of Justice, I have developed expertise in the area of national security by working on intelligence investigations, national security-related and other criminal investigations and prosecutions, and other legal, operational and policy challenges relating to the Department's national security mission. During my tenure at the FBI, I gained firsthand experience working within the Intelligence Community to understand the role that effective and coordinated intelligence operations play in safeguarding our nation's security. As a lawyer as well as a national security official, I have a keen appreciation of the significant threats we face as a nation and the importance of effectively addressing those challenges in a manner that promotes the nation's security while also preserving our fundamental rights and liberties.

My experiences at the FBI and the Justice Department have taught me the value of congressional oversight in advancing national security activities while exercising oversight of those activities. In my career working with agents, analysts and lawyers across the government I have developed an appreciation of the challenges confronting national security professionals and prosecutors as they pursue their mission of developing intelligence, sharing information, and working together to disrupt national security threats and protect the nation. My experience has also given me an understanding of the importance of protecting intelligence sources and methods.

I understand the importance of using all tools in order to combat the national security threats we face and of doing so consistent with statute, executive order, relevant regulations, and the Constitution. Drawing on my experience as a prosecutor as well as the perspective I have gained at the FBI and with the Department of Justice working on the operational aspects of national security investigations, I will exercise independent judgment in managing the Department's national security functions while ensuring that the Division's activities are properly coordinated with the nation's other national security activities when appropriate. I will do the same in providing advice to and advancing partnerships with the Division's partners within the intelligence community and in working cooperatively with congressional oversight committees.

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):

I have never held any office related to a political party, committee or candidate. In July 2004, I contributed $250 to the presidential campaign of Senator John Kerry. In October 2004, I contributed $250 to the Congressional campaign of Jon P. Jennings.

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

I have never been a candidate for elective office.

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.

No.

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.

No.

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.

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.

I have not engaged in lobbying activity outside my duties as a government employee.

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.

I am not aware of any employment, relationship, transaction, investment, association or activity that could create, or appear to create, a conflict of interest.

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.

N/A. I am currently employed by the United States Government.

I serve as the trustee or trust protector of trusts established for the benefit of a niece and nephew and one for the benefit of a friend's children. I do not have a vested interest in any of those trusts, and my role will cease if I am confirmed as Assistant Attorney General.

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.

N/A. I am currently employed by the United States Government.

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.

I am currently a government employee and have been for the entirety of my legal career. I have not formulated any plans for employment upon the completion of my government service. I have no agreements or understandings, written or unwritten, concerning employment after my government service.

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.

I have occasionally received calls from head hunters, however, I have not engaged in any discussion with regard to specific employment opportunities after leaving government service.

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.

N/A.

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
Gantz/Watson Trust	Trustee	06/06-present	Self
Nicholas C. Monaco Trust	Trustee	1/99-present	Self
Sophia T. Monaco Trust	Trustee	12/04-present	Self
Monaco Family Trust	Trust Protector	2/07-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.)

In 2008, my family threw a 40th Birthday for me and invited numerous friends and family members. Some of the gifts I received may have exceeded $100. None of the gifts were given to me as a result of my official position.

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
Please see SF-278		

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
Please see SF-278		

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.

I am not in default on any loan, debt or other financial obligation nor have I ever been to my knowledge. I have never been refused credit or had a loan application denied.

In 2004, I became aware of a number of unpaid parking tickets within the city of Chicago. As soon as I learned of these outstanding tickets I paid them in full.

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.)

[INFORMATION REDACTED]

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.

I file a federal tax return and a District of Columbia tax return.

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.

With the exception of my work as a summer associate in 1996, I have not engaged in the private practice of law.

I am a member of the New York Bar.

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. My financial holdings consist of ownership of the condominium in which I reside, a diversified mutual fund and IRA account, a retirement account, and cash on hand. I serve as the trustee or trust protector of trusts created for the benefit of a niece and nephew and one trust for the benefit of a friend's children. I do not have a vested interest in any of those trusts.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice'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 Department's Designated Agency Ethics Official.

37. IF APPLICABLE, LIST THE LAST THREE YEARS OF ANNUAL FINANCIAL DISCLOSURE REPORTS YOU HAVE BEEN REQUIRED TO FILE WITH YOUR AGENCY, DEPARTMENT, OR BRANCH OF GOVERNMENT. IF ASKED, WILL YOU PROVIDE A COPY OF THESE REPORTS?

2010; 2009; 2008. Yes, I will provide these reports upon request.

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.

During my time both at the FBI and the Department, I have been asked by the Department of Justice Office of Inspector General (OIG) to provide information related to my job responsibilities in connection with audits and reviews conducted by that Office. I was interviewed in connection with an investigation conducted by the OIG regarding the disclosure to the media of grand jury information because I was among those who knew the information that was disclosed. I have no reason to believe I was the subject of this investigation and was not contacted again about the matter.

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. As noted in response to question 42 above, I have been interviewed by the Office of the Inspector General (OIG) but have no reason to believe that I have been the subject of any OIG investigation.

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.

Yes. Prior to my service as a detailee at the Federal Bureau of Investigation I was required to take a polygraph for access to classified information. Prior to becoming a full-time employee at the Federal Bureau of Investigation I was required to take a polygraph as part of the hiring process.

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 ASSISTANT ATTORNEY GENERAL FOR NATIONAL SECURITY OF THE DEPARTMENT OF JUSTICE AND THE INTELLIGENCE COMMITTEES OF THE CONGRESS RESPECTIVELY IN THE OVERSIGHT PROCESS.

Appropriate oversight is essential to the effective conduct of intelligence activities. The obligation of the Assistant Attorney General for National Security is to assist the Committee in carrying out its legitimate oversight duties and to foster a cooperative relationship with the intelligence community and oversight committees.

49. EXPLAIN YOUR UNDERSTANDING OF THE RESPONSIBILITIES OF THE ASSISTANT ATTORNEY GENERAL FOR NATIONAL SECURITY OF THE DEPARTMENT OF JUSTICE.

Congress had the foresight to create the National Security Division (NSD) to ensure greater coordination and unity of purpose between prosecutors and law enforcement agencies and intelligence attorneys and the intelligence community in order to strengthen the effectiveness of the Department's national security efforts. The responsibility of the Assistant Attorney General for National Security (AAG) is to further that mission and to lead the NSD in carrying out the functions and duties prescribed in the Division's implementing statutes and regulations. These duties include, but are not limited to, oversight and approval (upon designation) of FISA applications, representing the Executive Branch before the FISA Court, coordination of the Department's national security investigations and prosecutions and generally to ensure that the Department is carrying forth its national security mission in a coordinated fashion. The AAG serves as the Department's primary liaison to the Director of National Intelligence and assists the Attorney General and the Deputy Attorney General in ensuring that intelligence matters are carried out consistent with the rule of law. The AAG should ensure that the Division is a resource for United States Attorneys, the FBI, and the rest of the intelligence community in order to provide advice, guidance and expertise in carrying out national security operations be they intelligence investigations, operations or prosecutions. The AAG should continue to pursue and advance the partnerships with the FBI and other intelligence community elements begun and established under previous incumbents to ensure that a threat-based, intelligence-driven strategy of addressing national security threats continues to be a priority. The AAG should ensure that the Department is carrying out its national security functions consistent with statute, Executive Order, appropriate regulations, and the Constitution.

AFFIRMATION

I, Lisa O. Monaco, DO SWEAR THAT THE ANSWERS I HAVE PROVIDED TO THIS QUESTIONNAIRE ARE ACCURATE AND COMPLETE.

4/22/2011 [SIGNATURE]
(Date) (Name)

[SIGNATURE]
(Notary)

Melanie L. Dix
Notary Public, District of Columbia
My Commission Expires 01-01-2013

TO THE CHAIRMAN, SELECT COMMITTEE ON INTELLIGENCE:

In connection with my nomination to be the Assistant Attorney General for National Security of the Department of Justice, I hereby express my willingness to respond to requests to appear and testify before any duly constituted committee of the Senate.

[SIGNATURE]

Signature

Date: 4/22/2011

SELECT COMMITTEE ON INTELLIGENCE UNITED STATES SENATE

Prehearing Questions
for
Lisa O. Monaco
Upon her Nomination to be
The Assistant Attorney General for National Security

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 not only to the Director of National Intelligence (DNI) but to the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities. Section 503 establishes a similar requirement concerning covert actions. Sections 502(a)(2) and 503(b)(2) provide that these officials shall furnish to the congressional intelligence committees any information or material concerning intelligence activities or covert actions, including the legal basis for them, that is requested by either of the committees in order to carry out its authorized responsibilities. 28 C.F.R. § 0.72(a) provides that the Assistant Attorney General for National Security (AAG/NS) shall conduct, handle, or supervise the briefing of Congress, as appropriate, on matters relating to the national security activities of the United States.

a. What is your understanding of the obligation of the Attorney General and the Director of the Federal Bureau of Investigation (FBI) to keep the congressional intelligence committees, including all their Members, fully and currently informed?

Answer: As I understand it, the obligation imposed by Section 502 of the National Security Act of 1947 is keep the Intelligence Committees of the Congress "fully and currently" informed of "significant intelligence activities" and that obligation includes providing information regarding "significant intelligence failures." I also understand that the National Security Act further specifies that this responsibility must be exercised "consistent with the due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters." These obligations apply to the Director of National Intelligence and to "the heads of all departments." As the question further explains, the applicable regulation provides that the Assistant Attorney General for National Security shall "brief Congress, as appropriate, on matters relating to the national security activities of the United States," and shall "advise and assist the Attorney General in carrying out his responsibilities...related to intelligence, counterintelligence, or national security matters."

b. To what activities of the Department of Justice (Department), including the FBI, does this obligation ordinarily apply?

Answer: As I understand it this obligation applies to "intelligence activities," which ordinarily includes many of the activities of the FBI's National Security Branch and to the related activities of the National Security Division of the Department of Justice. This obligation would also apply to the activities of the Drug Enforcement Administration's Office of National Security Intelligence, which is an Intelligence Community element.

c. What is your understanding of the obligation of the Attorney General to provide to the congressional intelligence committees any information or material concerning the legal basis for intelligence activities or covert actions which either committee requests in order to carry out its legislative or oversight responsibilities?

Answer: I understand that the Congress and the Intelligence Committees have a unique and important role in authorizing and overseeing national security activities of the Executive Branch, and I recognize that it is important for the Committees to receive information on the legal basis for intelligence activities or covert actions as provided under sections 502 and 503. The intelligence agencies have the obligation to provide that information to the Committees. The Attorney General, like all department heads, has responsibility for ensuring that Intelligence Community elements within his department fulfill this obligation.

d. The Committee utilizes detailed information on the overall national security threat environment and other intelligence matters to appropriately fulfill its intelligence authorization and oversight functions. Do you agree that the Department should comply with requests from the Committee for information relating to intelligence matters? Do you agree that the Department and FBI should fully brief the Committee on potential counterterrorism and counterintelligence threats to the United States, as well as FBI intelligence-related activities to thwart such threats?

Answer: Yes. I would expect that the Committees would be briefed on significant counterterrorism and counterintelligence threats in the context of briefings about intelligence activities. The obligation to keep the committees "fully and currently informed" encompasses an expectation that the committees will be provided with information sufficient to understand counterterrorism and counterintelligence threats and activities. Since September 11, 2001, the FBI has substantially transformed itself into an intelligence-focused, threat-driven agency whose first priority is to identify and disrupt national security threats. I understand the seriousness with which the Department and in particular, the FBI, takes the fulfillment of its intelligence mission and that it is important to keep the Committee informed about those matters.

Liaison to the Director of National Intelligence

QUESTION 2: Pursuant to 28 U.S.C. §507A(b)(2), the AAG/NS shall serve as primary liaison to the DNI for the Department. In response to a prehearing question during his nomination proceeding, David Kris summarized a report published by the Department in April 2008 on the liaison relationship between the National Security Division (NSD) and the DNI.

a. What is your understanding of how this responsibility has been performed in the time since that report?

Answer: I understand that since the creation of the National Security Division (NSD), the Assistant Attorney General for National Security (AAG), has formed a strong relationship with the Office of the Director of National Intelligence (ODNI) and the Office of General Counsel for ODNI. The AAG regularly consults with the ODNI and with the Office of the General Counsel. In addition, the NSD staff and DNI staff meet regularly on issues related to FISA, the NSD's responsibility to represent the Executive Branch before the Foreign Intelligence Surveillance Court (FISC) as well as on counterintelligence matters, the handling of United States person information in multiple contexts and on numerous operational, and legal and policy issues that arise in the course of intelligence investigations and operations.

b. Have you discussed with the DNI, and with personnel in the Office of the Director of National Intelligence (ODNI), your respective understandings of that responsibility? If so, describe.

Answer: Yes. I have met with the Director of National Intelligence as well as with the General Counsel of the ODNI and discussed with both of them the role of the AAG as the primary liaison to the DNI for the Department. In particular, we have discussed issues of priority to the Intelligence Community, and the importance that NSD places on its responsibilities in representing the Executive Branch before the FISC and in providing expeditious and accurate legal advice and guidance to the Intelligence Community.

c. Describe the principal matters that should be addressed in performing this responsibility.

Answer: As the Department's primary liaison to the DNI, the AAG and by extension NSD as a whole, should ensure that there is a strong and productive relationship with the Intelligence Community in order to facilitate timely collection of intelligence consistent with the law. The matters that should be addressed in this regard include NSD's responsibility to represent the Executive Branch before the FISC, its work with Intelligence Community elements to develop and implement guidelines for activity under

Executive Order 12333, and its role in coordinating with its partners in the Intelligence Community on matters of law and policy that arise in investigations and intelligence operations.

d. Given the extensive role of the NSD in intelligence matters, do you believe the NSD should be made a part of the Intelligence Community and funded through the National Intelligence Program?

Answer: NSD has an important role as a provider of advice and guidance to the Intelligence Community and in representing the Executive Branch before the FISC. NSD also performs an important oversight function with regard to the FBI's activities. For that reason, I believe it is important for NSD to foster and maintain productive, respectful working relationships with its partners in the Intelligence Community, including the FBI. However, I also believe that it is important for NSD's effectiveness that it maintain its position structurally outside the Intelligence Community in order to better, and more legitimately, exercise independent judgment in the discharge of its oversight functions and its representation of the government before the FISC. In addition, the NSD has the unique prosecutorial role in conducting and overseeing national security prosecutions and its placement formally outside the Intelligence Community better enables it to perform that function with the appropriate level of independence required to ensure the integrity of the prosecutorial process.

Priorities of the Attorney General

QUESTION 3: Have you discussed with the Attorney General his specific expectations of you, if confirmed as Assistant Attorney General, and his expectations of the NSD as a whole? If so, please describe those expectations.

Answer: I have discussed with the Attorney General his expectations of the AAG and of NSD in general in fulfilling the Department's top priority of protecting against national security threats. I understand that the Attorney General believes the NSD is responsible for leading the Department's coordinated approach to national security matters and providing a single area of focus within the Department for its national security functions. If I am confirmed, I expect to communicate consistently with the Attorney General to ensure that the Division is fulfilling its mission to address the Department's top priority.

Evaluation of National Security Division

QUESTION 4: On the basis of your experience in the Department, and the observations or recommendations of preceding Assistant Attorneys General for National Security, do you have

any observations on the strengths or weaknesses of the NSD, including matters which you would like to study further, relating to organization, tasks, allocation of personnel, skills and training, or any other factors that you believe are relevant to a successful mission for the NSD? If so, please describe.

Answer: Based on my experience at the Department of Justice – including at the FBI – and on my work with each of the previous Assistant Attorneys General, I believe NSD has successfully implemented the goals of the legislation guiding its creation. Today, NSD leads the Department's efforts to centrally manage counterterrorism and counterintelligence prosecutions, foreign intelligence surveillance, and coordination of policy and operations on national security issues. NSD has established a comprehensive oversight program and is continuing to develop training for the Intelligence Community elements to enable them to maintain their operational effectiveness in a manner that is consistent with the applicable laws. Having been in senior positions in the Department of Justice and the FBI, I was personally able to witness former Assistant Attorneys Generals Ken Wainstein and Pat Rowan establish a coherent structure to realize the key goals of NSD's creation -- to integrate intelligence lawyers with prosecutors and agents in order to focus all the Department's national security functions under one roof. The prior leadership focused increased resources to ensure productive and efficient work of the Office of Intelligence which performs the critical function of representing the Executive Branch before the FISC. David Kris built upon that structure and furthered the maturation of a distinct national security culture. Based on my experience, I believe the current structure and focus of the Division are sound.

If confirmed, it would be my priority to ensure the Division is able to adapt to and anticipate future threats to the national security. To that end, I will make it a priority to review the operations of the Division and to learn more from its national security professionals and partners in the Intelligence Community.

Oversight of Intelligence Activities

QUESTION 5: 28 C.F.R. § 0.72(17) provides that the Assistant Attorney General for National Security shall provide oversight of intelligence, counterintelligence, and national security matters by executive branch agencies to ensure conformity with applicable law, regulations, and departmental objectives and report to the Attorney General.

a. What is your understanding of the NSD's oversight role, including the manner in which it has been exercised, concerning intelligence activities of the FBI?

Answer: The NSD is responsible for overseeing and coordinating the foreign intelligence, counterintelligence and counterterrorism activities of the Department to

ensure its national security activities are conducted in conformity with applicable laws, regulations, and the Constitution. NSD performs oversight through its representation of the Executive Branch before the FISC and through the Oversight Section of its Office of Intelligence. In addition to its role as government counsel before the FISC, NSD also conducts other oversight functions in its review of investigative activities of the FBI including:

- Review of certain investigative activities under the Attorney General Guidelines
- Implementation and compliance reviews of FISA minimization procedures in FBI Field Offices
- Review of the accuracy of FISA applications
- Review of certain undercover operations regarding national security

Through its National Security Reviews conducted with lawyers from FBI's Office of General Counsel, NSD reviews national security investigations conducted by FBI Field Offices. These National Security Reviews include review of the use of National Security Letters by the FBI.

b. What is your understanding of the NSD's oversight role, including the manner in which it has been exercised, concerning intelligence activities, and related prosecutorial activities, undertaken in the offices of United States Attorneys?

Answer: NSD is responsible for ensuring that national security activities conducted by United States Attorneys Offices are coordinated pursuant to a national program. As part of the Department's coordinated national security program, NSD develops, enforces and supervises the application of most Federal criminal laws related to counterterrorism and counterespionage. Through its authority to approve the use of certain statutes in national security prosecutions, NSD seeks to ensure a coordinated and consistent approach in combating national security threats. NSD also ensures that the Department's national security activities are coordinated with other members of the Executive Branch's national security apparatus and provides notification to Congress as appropriate.

NSD interacts with United States Attorneys Offices in many other ways as well. NSD utilizes the Anti-Terrorism Advisory Councils (ATACs) in each United States Attorneys Office as a mechanism for coordination between NSD's counterterrorism and counterintelligence prosecutors and counterespionage prosecutors in the field. The ATAC program facilitates a process of information sharing and coordination that serves as the focal point for the Department's national security initiatives.

NSD also provides support and training to United States Attorneys Offices and works with the Executive Office of United States Attorneys (EOUSA) to ensure a robust mechanism for exchanges with the United States Attorney community and Main Justice.

If confirmed, my goal would be to continue to advance the partnership between United States Attorneys Offices and NSD in pursuing the Department's top priority of combating terrorism and protecting the American people, while ensuring prosecutions are carried out in a manner consistent with Intelligence Community equities.

c. What is your understanding of the NSD's oversight role, including the manner in which it has been exercised, concerning intelligence activities of IC elements outside of the Department of Justice?

Answer: My understanding is that NSD exercises its oversight responsibilities with respect to elements of the Intelligence Community outside of the Department of Justice in several ways. First, through its role as the government's representative before the FISC, NSD reviews all FISA applications from outside the Department of Justice and monitors Intelligence Community elements' compliance with orders from the FISC. Together with the Office of the Director of National Intelligence, NSD reviews acquisition under Section 702 of FISA to ensure compliance with targeting and minimization procedures in place from authorities granted under that statute. In addition NSD performs oversight through its role as the liaison to the Director of National Intelligence. In that role, NSD reviews policies that require consultation and approval by the Attorney General under Executive Order12333.

d. Are there improvements, in terms of resources, methodology, and objectives in the conduct of this oversight that you believe should be considered?

Answer: If I am confirmed, one of my top priorities will be to gain a full understanding of the current oversight activities being performed by NSD – including the resources and methods currently devoted to those efforts – in order to evaluate whether any changes or adjustments should be made to those efforts.

e. What are the most significant lessons that have been learned with respect to the conformity with applicable law, regulations and departmental objectives of entities subject to NSD oversight?

Answer: Based on my experience in the Department, including my time at the FBI, I believe significant lessons have been learned by those entities subject to NSD's oversight. For instance, in the wake of the Inspector General's report on the use of

National Security Letters, the FBI and NSD put into place a series of reforms and compliance mechanisms to ensure this vital national security tool is used with appropriate predication and documentation, that there are processes and procedures in place to minimize human error and that there is a robust program of review after the fact to monitor compliance and to identify and correct expeditiously any instances of noncompliance.

Administration of the Foreign Intelligence Surveillance Act—Section 215 Applications

QUESTION 6: 28 C.F.R. § 0.72(6) provides that the Assistant Attorney General for National Security shall administer the Foreign Intelligence Surveillance Act (FISA). Audits by the Inspector General of the Department of Justice in 2007 and 2008 found that the processing of FBI requests for Section 215 orders for "tangible things" (Title V of FISA) had been subject to significant delays. The audits found the FBI had not used Section 215 orders as effectively as it could have because of legal, bureaucratic, or other impediments to obtaining these orders.

a. What is your understanding of the findings of the IG audits and the response of the Department? Please include in this response your assessment whether problems identified in these audits, with respect to processing of Section 215 applications, have been adequately addressed.

Answer: The Inspector General audited the Department of Justice on the use of its investigative authority under Section 215 of the Patriot Act, pursuant to the USA Patriot Improvement and Reauthorization Act of 2005. The Inspector General's audits of 2007 and 2008 collectively focused upon the use of Section 215 authority in the period from 2002 through 2006. As I understand it, 2006 was the last year analyzed by the Inspector General audits. Since that time the Department of Justice has undergone many changes relating to the use of Section 215 authority. One of the most consequential of these changes was the formation of the National Security Division itself, which was created in 2006 for the very purpose of bringing the full national security resources of the Department into one consolidated Division, in part to streamline and coordinate the Department's national security efforts. Specifically, the creation of the National Security Division resulted in the creation of a new Operations Section within the Office of Intelligence, as well as additional resources, and enhanced training on FISA matters. Based on my experience within the Department, it is my sense that the National Security Division has worked to make requests for operational authority under FISA - including Section 215 requests - more efficient while maintaining the highest standards for the Department of Justice's work before the FISA Court.

If I am confirmed, one of the areas of important focus will be the overall functioning of the Division with regard to its representation before the Foreign Intelligence Surveillance Court. I will endeavor to understand fully the Section 215 review process and to minimize any delays.

b. What additional steps should be taken by the Department to ensure that unnecessary delays are eliminated?

Answer: Although my current responsibilities do not involve interaction with the processing of Section 215 authority by the National Security Division's Office of Intelligence, if confirmed as the Assistant Attorney General for National Security, I would review the operations and, if I identified efficiencies that could be made consistent with the overall integrity of the process, implement those efficiencies.

c. Given that Section 215 applications to the FISA Court are submitted without an Attorney General certification, would you support attorneys from the Office of General Counsel of the FBI presenting applications directly to the FISA Court?

Answer: The National Security Division's Office of Intelligence represents all Executive Branch agencies before the FISA Court. This is consistent with NSD regulations and the practice of the Department of Justice in which attorneys from litigating divisions and United States Attorneys Offices appear on behalf of investigative agencies. I understand that attorneys from the Office of Intelligence have developed significant expertise through NSD's frequent dealings with the FISC. Because of the unique nature of the practice before the FISA court, the Intelligence Community benefits from having consistency in representation before the FISC. I understand that FBI lawyers regularly are present at FISC proceedings offering important insight and assistance.

Obtaining Approvals from the Department/National Security Undercover Operations

QUESTION 7: In general, if a particular investigative authority has been under-utilized because of administrative burdens imposed by the Department of Justice, are you committed to eliminating unnecessary administrative burdens so that intelligence professionals are more willing to use the authority?

Answer: Yes. If I am confirmed, my goal will be to provide advice and guidance, working in partnership with the Intelligence Community, and to ensure that agents and operators have the tools they need to keep pace with the evolving threat.

a. In particular, how long does it now take for the FBI to obtain authority for exemptions in national security undercover operations?

Answer: In my current duties, I am sometimes involved with this authorization process and I understand that the length of the process varies depending upon several factors, including the complexity of the undercover operation, the policy interests presented by the proposed operation, and the amount of information contained in the authorization request. I understand that these exemption requests can vary and, while some can be reviewed in short order, others may require additional time for consideration of the issues they raise. If I am confirmed, I would want to understand whether there are concerns with the current process and whether there are any efficiencies that may be realized.

b. What steps have been taken to implement Section 366 of the Intelligence Authorization Act for Fiscal Year 2010 (Public Law 111-259) which changes the delegation level for approval of exemptions within the FBI and the Department for national security undercover operations? Has this statutory change improved the process for obtaining such exemptions?

Answer: It is my understanding that changes to the delegation level for approval of exemptions are currently being considered within the Department.

c. What additional steps should be taken by the Department to ensure that unnecessary delays are eliminated?

Answer: Should I become the Assistant Attorney General for National Security, I will review all processes within the National Security Division, including the process for reviewing undercover exemptions, to determine whether additional efficiencies are possible and advisable. If I am confirmed, I will focus on eliminating unnecessary delays in this and other processes vital to the operational functions of national security investigators.

Reauthorization of FISA Provisions

QUESTION 8: Three FISA provisions—lone wolf coverage, roving wiretaps, and orders for business records and other tangible things—sunset on May 27, 2011. A fourth, collection against persons reasonably believed to be outside the United States which was added by the FISA Amendments Act of 2008, sunsets on December 31, 2012.

a. Do you support, and for what principal reasons, reauthorization for a period of years or making permanent these provisions?

Answer: I believe the reauthorization of these expiring provisions is critically important to the nation's security. I believe these provisions should be reauthorized for as long as possible in order to provide the agents and operators in the field with clarity

and stability in the tools they use. This clarity and stability could be achieved through a permanent reauthorization of these critical tools. If Congress determines that it should revisit these authorities, and if I am confirmed as the Assistant Attorney General for National Security, I will work with Congress to ensure that the operators charged with detecting and disrupting threats have the tools they need to do so consistent with the rule of law.

Based on my experience, the three expiring provisions are critical tools that have given national security investigators many of the same capabilities that have long been available to criminal investigators. For instance, the roving wire tap provision has permitted investigators to track spies and terrorists who are trying to evade surveillance and the business record provision has permitted investigators access to key documents and data in national security, espionage and terrorism cases. The lone wolf provision, although not used to date, permits investigators to keep up with the growing threat of the lone or self-radicalized offender.

b. What is the impact of additional short-term extensions for one year or less of the authorities now scheduled to sunset on May 27?

Answer: Each time these authorities are reauthorized for only a short period it creates uncertainty about whether and for how long they will remain in effect. This uncertainty contributes to a lack of stability in the tools available to agents and operators and it diverts resources that would be otherwise spent on national security matters.

c. Does the Department of Justice support the alignment of the four authorities with respect to any future sunset date?

Answer: Yes.

Declassification of FISA Opinions

QUESTION 9: On February 28, 2011, the Department of Justice wrote to this Committee to confirm that representatives of the ODNI Office of General Counsel and the NSD had established a process to declassify relevant opinions of the FISA courts (both the Foreign Intelligence Surveillance Court and the Court of Review) without compromising intelligence sources and methods or other properly classified information.

a. Is the Department applying this process not only to new decisions but also to prior decisions that contain important rulings of law?

Answer: Yes, to my knowledge.

b. Please describe the concrete steps that the Department and the ODNI are taking, if any, to review both new and previous opinions of the FISA courts for declassification?

Answer: I understand that the National Security Division has provided the ODNI with all of the opinions and orders that have been submitted to Congress pursuant to FISA Section 601(c), that is, opinions issued by the FISA Courts that include significant constructions or interpretations of FISA, and the review process is ongoing.

c. Please describe the priority that you will give to this effort if confirmed.

Answer: If confirmed, I will work to ensure that the Department continues to work with the ODNI to make this important body of law as accessible as possible, consistent with national security, and in a manner that protects intelligence sources and methods, and other properly classified and sensitive information.

National Security Letters and Administrative Subpoenas

QUESTION 10: National security investigators seeking certain types of records must use specific national security letter authorities, each with its own statutory requirements. In the USA PATRIOT Improvement and Reauthorization Act of 2005, Congress directed the undertaking of a Department of Justice Inspector General audit on the use of national security letters.

a. What is your understanding of the administrative reforms implemented by the FBI in response to that audit?

Answer: Following the report of the Inspector General (IG) in 2007 on the FBI's use of National Security Letters, the FBI took a number of steps to address the problems identified in that report. These steps included structural, procedural and operational reforms. Among the reforms instituted as a result of the IG's report, the FBI has implemented an automated system (the NSL Subsystem) that allows standardized implementation and issuance of NSLs pursuant to the appropriate statute and minimizes the ability of human error to result in the issuance of NSLs under the wrong statutory provision. The FBI also now requires that predication for the requested NSL be documented in an electronic communication. That documentation is retained and available for audit. The FBI now requires legal review within the Field Office or Headquarters Division that is seeking the NSL.

The FBI also established the first ever federal government compliance office modeled on corporate compliance programs -- the FBI's Office of Integrity and Compliance. This Office reports to the Deputy Director of the FBI and provides for a layered system of checks to ensure NSL policies and procedures are being carried out and complied with consistent with their design. It also serves to provide an early warning system of any noncompliance. Finally, in the wake of the IG's reports, a comprehensive system of oversight has been implemented in which NSD and attorneys from the FBI Office of General Counsel conduct National Security Reviews in FBI Field Offices around the country, reviewing national security investigations, including the use of NSLs, to ensure compliance with applicable statutes and policies. The IG's 2008 report noted the significant progress made by the FBI in adopting corrective actions to address the problems identified in the prior report.

b. What is your view on whether to place into law any administrative improvements, any other changes to improve the effectiveness or lawfulness of national security letters, or to enact further improvements in response to any judicial decisions about national security letters?

Answer: In general, I believe the system of reporting and oversight mechanisms that has grown up around the use of NSLs has worked well since the IG audit. As a result of Congressional reporting requirements and the Executive Branch's adoption of reforms in response to identified shortcomings from the IG, there is now a robust system of training, legal review, compliance and oversight for the use of this vital tool. To the extent additional protections can be implemented without adverse operational effect on the use of these vital tools, we should explore them. For instance, I understand the Department has worked with the Intelligence Community and Congressional staff to codify procedures that the Department has put in place to address the Doe v. Mukasey decision identifying the need for a process of government-initiated litigation to challenge NSL nondisclosure provisions.

c. Please compare the availability of administrative subpoenas to investigators in solely criminal matters—regarding the procedures for those subpoenas, their scope, or any other relevant comparison—with the national security letters available in national security investigations.

Answer: There are numerous instances where Congress has granted federal agencies administrative subpoena power to make an administrative or civil investigatory demand compelling document production or testimony without prior judicial approval. In criminal investigations, administrative subpoenas are routinely used in cases such as those involving health care fraud, child abuse, and Inspector General investigations.

While the scope and exercise of these authorities vary by statute, many authorize federal agencies to issue subpoenas for testimony, documents, and records, provide for judicial enforcement, and include non-disclosure requirements.

National Security Letters (NSLs) are an invaluable investigative tool similar to administrative subpoenas that allow the FBI to obtain information of great foreign intelligence value from records in which an individual has no constitutionally-protected privacy interest and in a manner that is far less intrusive than many other investigative tools. Compared with the scope and exercise of administrative subpoenas used in criminal investigations, the exercise of NSLs is limited in two important respects. First, NSLs are only available for authorized national security investigations (international terrorism or foreign intelligence/counterintelligence investigations), not general criminal investigations or domestic terrorism investigations. Second, unlike some administrative subpoenas, NSLs can only be used to seek certain transactional information permitted under the five NSL provisions, and cannot be used to acquire the content of any communications. With these appropriate limitations in place, use of NSL authorities has significantly aided the FBI's performance of its national security mission.

d. What is your view of the pros and cons of creating a single statutory national security administrative subpoena? Is this a concept that you would support? If so, please describe the scope and procedures that should be applicable to any such administrative subpoena authority.

Answer: While the adoption of a single NSL statute to replace the current regime of five separate authorities may have some appeal in terms of simplicity and clarity, I would be reluctant to adopt a new regime for the use of this tool at this juncture. Substantial lessons have been learned, through the IG's reviews, the adoption of new training, procedures and processes as well as the creation of new NSL information technology infrastructure, all with the purpose of ensuring these tools are being used appropriately. One of the primary findings of the IG was that agents needed better guidance, training and clarity in the use of NSLs. As a result the FBI adopted the reforms noted above in response to question 10a. The FBI is now accustomed to the system and has incorporated it into standard FBI practice. The development and implementation of yet another new regime – albeit one that seeks to consolidate these authorities into one statute – risks injecting new uncertainty in operations and requiring yet more new training and procedures. At this time, and in light of the successful implementation of corrective actions as noted by the IG, I do not think a new administrative regime is necessary.

High Value Detainee Interrogation Group

QUESTION 11: What is your assessment of the effectiveness of the High Value Detainee Interrogation Group? In answering this question, please include your assessment of its effectiveness with respect to interrogation of terrorist suspects in different settings and circumstances, such as those in custody within the United States, those in U.S. custody outside the United States, and those in the custody of foreign countries.

Answer: The High Value Detainee Interrogation Group (HIG) was developed as a result of an interagency task force that included representatives from across the Intelligence Community. The purpose of the HIG is to integrate the most critical resources from across the government – including experienced interrogators, subject matter experts, intelligence analysts, and linguists – to conduct interrogations of terrorists, wherever they are encountered with the best expertise focused on targets of the most intelligence value. I understand that elements of the HIG have been deployed both internationally and domestically and that the HIG has contributed to the productive interrogation of terrorists suspects in all these settings.

Unauthorized Disclosures of Classified Information

QUESTION 12: 28 C.F.R. § 0.72(a) assigns to the Assistant Attorney General for National Security the responsibility to advise the Attorney General, the Office of Management and Budget, and the White House on matters relating to the national security. In addition, the Assistant Attorney General is assigned the responsibility to prosecute crimes involving national security, foreign relations, and terrorism.

a. Describe the personnel resources, both attorneys and others, within the NSD that are devoted to the prosecution of media leak cases, and how the NSD divides responsibility on these matters with the Criminal Division.

   Answer: The Counterespionage Section of the National Security Division supervises the investigation and prosecution of espionage and related statutes, and provides coordination and advice on cases involving unauthorized disclosures of classified information. It is my understanding that currently, the Counterespionage Section is composed of 21 attorneys and 11 non-attorneys.

   If the National Security Division is recused from a case, matters may be handled through the Criminal Division. The Criminal Division also retains responsibility for some cases which predated the formation of the National Security Division.

b. Describe the role that the NSD has played since its inception in media leak prosecutions in United States district courts and on appeal to the U.S. courts of appeals. Please

provide up-to-date information on the status of major prosecutions during the last two years.

Answer: The NSD's Counterespionage Section, working with the FBI and other agencies, pursues cases in which government employees and contractors entrusted with national defense information are suspected of willfully disclosing such classified information to those not entitled to it, including to members of the news media. NSD has also provided support to other agencies investigating and prosecuting unlawful leaks of classified information

There have been a number of significant prosecutions in the past two years wherein the NSD or Criminal Division, working in conjunction with the relevant United States Attorney Office, has charged individuals in connection with the unlawful disclosure of classified information to the media:

- Jeffrey Sterling – (Criminal Division) -- On Jan. 6, 2011, former CIA officer Jeffrey Alexander Sterling was arrested pursuant to a Dec. 22, 2010 indictment in the Eastern District of Virginia charging him with six counts of unauthorized disclosure of national defense information, and one count each of unlawful retention of national defense information, mail fraud, unauthorized conveyance of government property and obstruction of justice. The indictment alleges that Sterling engaged in a scheme to disclose information concerning a classified program and a human asset – first, in connection with a possible newspaper story to be written by an author employed by a national newspaper in early 2003, and, later, in connection with a book published by the author in 2006. This prosecution is pending.

- Stephen Kim – (National Security Division) -- On Aug. 27, 2010, prosecutors in the District of Columbia unsealed a federal indictment charging Stephen Jin-Woo Kim with unlawfully disclosing national defense information to a reporter for a national news organization and for making false statements to the FBI. Kim was an employee of a federal contractor at a national laboratory who was on detail to the State Department at the time of the alleged disclosure. According to the indictment, in June 2009, Kim knowingly and willfully disclosed information contained in a classified intelligence report to a reporter for a national news organization. This prosecution is pending.

- Thomas Drake – (Criminal Division) -- On April 15, 2010, a federal grand jury in the District of Maryland returned a 10-count indictment charging former National Security Agency (NSA) senior executive Thomas A. Drake with the willful

retention of classified information, obstruction of justice and making false statements. According to the indictment, Drake was a high-ranking NSA employee from 2001 through 2008, where he had access to highly classified documents and information. The indictment alleges that between approximately February 2006 and November 2007, a newspaper reporter published a series of articles about the NSA. The indictment alleges that Drake served as a source for many of those articles, including articles that contained classified information. This prosecution is pending.

- Shamai Leibowitz – (National Security Division) -- On Dec. 17, 2009, Shamai Kedem Leibowitz pleaded guilty in the District of Maryland to a one-count information charging him with disclosing to an unauthorized person five FBI documents that contained classified information concerning the communication intelligence activities of the United States. From January 2009 through August 2009, Leibowitz was employed by the FBI as a contract linguist. In April 2009, he caused five classified documents to be furnished to a person who was the host of an Internet blog. The recipient then published on the blog information derived from the classified documents. On May 24, 2010, Leibowitz was sentenced to 20 months in prison followed by three years supervised release.

c. Are there any steps that the Department could take to increase the number of individuals who are prosecuted for making unauthorized disclosures of classified information to members of the news media? If so, please describe.

Answer: As the cases referenced above indicate, the Department of Justice has been engaged in the last several years in efforts to identify and prosecute individuals responsible for unauthorized disclosures. Based on my experience in the Department, while finding the source of such a classified leak is often a daunting task, when the Department is able to compile solid evidence to prove in court beyond a reasonable doubt, the government will pursue criminal prosecution. Over the past two years, the NSD has been working closely with the Intelligence Community to expedite and improve the handling of such cases, as well as to ensure that the Intelligence Community and other agencies may utilize remedies of their own to address employees suspected of leaking classified information in those instances where criminal prosecution is not feasible.

d. Are there any steps that should be taken to improve the civil enforcement of nondisclosure agreements under the authority of *Snepp v. United States*? If so, please describe.

Answer: I have not had an opportunity to fully review the use of civil enforcement authority and therefore am not in a position to provide recommendations regarding possible changes to those authorities at this time. It is my understanding that the Department's Civil Division is responsible for enforcement of nondisclosure agreements under Snepp and that that division uses that authority in the context of enjoining authors from publishing books that the government may learn in advance contain information subject to such an agreement. I further understand that the Civil Division may also use this authority to enjoin publishers from making additional copies of books already published if its use has been limited.

e. Are there any additional steps that the U.S. government as a whole should take to prevent the unauthorized disclosures of classified information from occurring? If so, please describe.

Answer: As noted in response to question 12c above, there are a number of agencies involved in the investigation and prosecution of leak cases, and those efforts are a priority. I believe continued enforcement efforts regarding unauthorized disclosures and leaks may have a deterrent effect. In addition, where prosecution is not feasible, use of administrative penalties should also be considered.

f. Please describe the prepublication review responsibilities of the NSD and the administrative and judicial review which is available to an officer or employee, or former officer or employee, with respect to the Department's exercise of prepublication authorities, including those applicable to the FBI. In answering this question, please provide your evaluation of the extent to which present and former officers and employees of the Department adhere to their prepublication obligations.

Answer: The pre-publication review process is described in detail in 28 CFR 17.18.

In short, DOJ employees who sign non-disclosure agreements for access to Secure Compartmented Information agree to submit any writings or texts of prepared remarks to the Assistant Attorney General for National Security for pre-publication review. The AAG for National Security (or the AAG's designee) is responsible for reviewing each submission to ensure that it does not contain any national security information. I further understand the National Security Division has established a specific unit for pre-publication and Declassification Review. I further understand that an employee's obligation continues even if the individual is no longer employed by the Department of Justice. Decisions of the AAG for National Security can be appealed to the Deputy Attorney General. Submitters who are not satisfied with the Deputy Attorney General's determination may obtain judicial review in the U.S. District Court.

The obligation to submit material rests with the employee (or former employee). I am not aware of the extent to which current or former employees adhere to their obligation and therefore cannot provide an informed evaluation at this time.

g. Please describe how the NSD ensures the protection of information within the organization itself, including the use of auditing and monitoring of information technology systems. Who is responsible for counterintelligence and security at NSD?

Answer: I am informed that the NSD employs multiple practices, procedures, and layers of physical and technical security to safeguard information within the organization. All Justice Department employees, including all NSD employees, must complete annual training on information security. Furthermore, all NSD attorneys must possess and maintain a Top Secret security clearance, which must be updated every five years and includes non-disclosure requirements. All NSD employees also receive mandatory initial and refresher briefings on the proper handling of classified information from the Department security officials. FBI and intelligence community officials also provide additional counterintelligence awareness training to new NSD attorneys and paralegals, including information on safeguarding classified information.

In addition to vetting and training its personnel, the NSD has its own dedicated security staff to coordinate the oversight of information security within the division. NSD security staff members conduct random, periodic inspections of all sections within NSD and provide regular, recurring security briefings to NSD employees.

Furthermore, the NSD maintains Sensitive Compartmented Information Facilities (SCIFs) as well as secure classified computer networks, safes, faxes, telephone and video equipment for the proper handling of classified information. With respect to information technology systems, NSD is required to comply with regulations set forth by the Office of Management and Budget as well as the Committee on National Security Systems regarding the security of information technology systems that process national security information. NSD information technology systems are also subject to annual reviews by information technology security officials in the Justice Department's Justice Management Division as well as periodic audits and reviews by the Justice Department's Office of Inspector General.

Free Flow of Information Act

QUESTION 13: In the past Congress, the House and Senate considered legislation on federally compelled disclosure of information from the news media through subpoena, court order, or other compulsory legal process. What is your opinion of the Free Flow of Information Act of

2009, S. 449, as reported from the Senate Judiciary Committee on December 11, 2009, and any modifications that should be made in that proposed legislation?

Answer: While I have not had occasion to revisit the referenced legislation and to study it in detail, my understanding is that S.448[1] reflects work between the Administration and the bill's sponsors to balance the protection of journalists' confidential sources with the Government's responsibility to take measures necessary to protect national security and enforce our criminal laws. Under current Department policy, the United States Attorneys Manual (USAM) provides for careful review and ultimately approval by the Attorney General before the government can seek to compel information from a journalist. As I understand S.448, as amended, it requires the Attorney General to certify that the request for compelled disclosure is made in a manner consistent with the requirements in the USAM and the significant protections for the news media already contained therein from subpoenas that might impair the newsgathering function. S. 448 also includes the requirements – also contained in the USAM – that the Government exhaust all reasonable alternative sources of the protected information, show there are reasonable grounds to believe a crime has occurred, and demonstrate reasonable grounds for believing that the information is essential to the investigation or prosecution. At the same time, S. 448 contains important protections for national security. It provides that in cases where the material sought would assist the Government in preventing, mitigating or identifying an act of terrorism or other significant harm to national security, the court could compel the production of the information without triggering the bill's balancing test. S.448 also would permit the Government to make its submissions in camera and ex parte where necessary, thereby fostering protection of national security information and intelligence sources and methods. Should the bill be reintroduced I would want to consult with professionals within the National Security Division and others, and consider carefully whether any modifications to the bill as reported would be appropriate.

Attorney General Guidelines for Domestic FBI Operations/Miranda Warnings

QUESTION 14: In September 2008, Attorney General Mukasey issued guidelines on the domestic operations of the Federal Bureau of Investigation. To implement the guidelines, the FBI developed and put into effect a Domestic Investigations and Operations Guide, referred to as the DIOG. Revisions to the DIOG have been under consideration within the Department for some time.

a. What is your understanding of the main decisions made by the Attorney General in the September 2008 guidelines for domestic FBI operations?

[1] The question refers to S.449. However, S.448, as amended, was reported from the Judiciary Committee as the Free Flow of Information Act of 2009 on December 11, 2009.

Answer: The September 2008 guidelines issued by Attorney General Mukasey sought to harmonize into one set of guidelines what had previously been several different sets of guidelines that govern the FBI's domestic operations. For example, under the prior guidelines, if a matter were labeled as "criminal," an FBI agent could conduct physical or photographic surveillance based on a tip; the procedural requirements were more exacting in national security investigations. Similarly, human sources could be tasked to seek information when the purpose was to check leads in ordinary criminal investigations, but the standards were more restrictive when the purpose was to gather information about threats to the national security. The 2008 guidelines addressed these differences and established two categories of investigative activity – assessments and predicated investigations -- regardless of whether the investigation was categorized as a criminal or national security investigation.

The most significant change brought about by the 2008 Guidelines was the establishment of consistent policy for the FBI when it is acting proactively to identify threats and vulnerabilities, whether from criminals, terrorists or spies. The guidelines sought to further the FBI's change from a reactive model (where agents must wait to receive leads before acting) to a model that emphasizes the early detection, intervention, and prevention of terrorist attacks and other criminal activities. For instance, the ability to conduct assessments enables the FBI to conduct important intelligence gathering central to its ability to detect and disrupt national security and criminal threats by using non-intrusive investigative techniques. Assessments must have a proper purpose but need not be based on specific factual predication of criminal activity. As a matter of FBI policy, assessments conducted in sensitive circumstances – such as those affecting a religious institution – must be conducted pursuant to specific levels of supervisory approval. The need for clear, consistent policy in this area was a critical aspect of the FBI's effort to continue to transform itself from a law enforcement agency (focusing on solving crimes after the fact) into an intelligence-driven organization that anticipates threats to the national security and public safety before they have fully materialized.

The 2008 guidelines also confirmed that national security activities present special needs for coordination and information sharing with other components and agencies. Finally, the guidelines recognized the importance of effective oversight by, among other things, requiring notification and reports to NSD concerning the initiation of national security and foreign intelligence activities in various contexts

b. What is your understanding of the principal concerns raised by civil liberties groups and others about these Attorney General guidelines, such as concerns about pretext interviews and physical surveillance?

Answer: I understand that some have raised concerns regarding those portions of the 2008 Guidelines which permit FBI agents to conduct assessments, and in particular the ability of agents within an assessment to task informants, conduct "pretext interviews," and conduct physical surveillance (i.e., surveillance that does not involve intrusion where there is a reasonable expectation of privacy). I also understand that some have expressed concern that these techniques were not previously available to investigators for use during threat assessments, although some were permissible under the General Crimes Guidelines for the prompt and limited checking of leads. I also understand that some were concerned generally about the notion of the FBI collecting any information regarding individuals if there is not individualized suspicion that the person has committed a crime or poses a national security risk. I further understand that some have expressed concern about the use of race and ethnicity as a factor that can sometimes be relevant during an assessment.

c. In what ways, and how well or not, do you believe that the Attorney General guidelines and the implementing FBI DIOG address those concerns?

Answer: I believe the 2008 Guidelines and DIOG strike a proper balance between providing agents the tools they need to identify threats and vulnerabilities proactively and protecting privacy and civil liberties. The balance is enhanced by transparency: the vast majority of the Guidelines are unclassified, a departure from previous National Security guidelines, and the FBI made large portions of the DIOG public. The Department and the FBI briefed the Guidelines and the DIOG to their oversight committees as well as major civil rights and civil liberties groups. That level of transparency has facilitated the identification and understanding of the manner in which information is and is not used.

In addition, while the Attorney General Guidelines permit a range of activity, the implementing rules adopted by the FBI in the form of the DIOG further guide and in some instances limit the ability of agents to operate to the full limits of those guidelines. Moreover, the FBI has imposed reasonable requirements for legal review and supervisory approval for activities that involve especially sensitive circumstances to ensure that the tools they have been given are being exercised carefully and consistently. The FBI provided extensive training and has conducted several audits of assessments to ensure the tools provided have been used appropriately. Finally, I understand that the National Security Division has added a review of assessments during the course of the "National Security Reviews" that it conducts.

d. Do you believe the Attorney General guidelines and the DIOG provide sufficient flexibility for the FBI to investigate aggressively alleged terrorists and spies?

Answer: As noted above, I understand the Attorney General Guidelines and the DIOG do provide agents the flexibility they need to identify and investigate national security threats consistent with the rule of law. If confirmed, I would intent to consult with the FBI and the professionals within NSD to determine what changes or adjustments, if any, may be needed to ensure that operators have the tools they need and that they are using them consistent with applicable statutes, regulations and the Constitution.

e. Are there any revisions that you believe should be made either to the guidelines or the FBI's policies implementing the guidelines?

Answer: I understand that the next iteration of the DIOG is currently under development. If I am confirmed, I will make it a priority to understand what changes are being considered that may or may not be necessary.

f. What is your view of the FBI policy, incorporated into the DIOG, on Custodial Interrogation for Public Safety and Intelligence Gathering Purposes of Operational Terrorists Arrested Inside the United States with respect to advising terrorist suspects arrested in the United States of their *Miranda* rights? Is there a legal requirement that all terrorist suspects arrested in the United States be advised of their *Miranda* rights prior to custodial interrogation? Under what circumstances do you believe a terrorist suspect should be interrogated based upon exceptions to or without regard to *Miranda, Quarles,* and presentment requirements?

Answer: The policy recently issued by the FBI and incorporated into the DIOG makes clear that the first priority for interrogation of terrorists is to gather intelligence. The policy also directs agents to use, to the fullest extent, the public safety exception to the Miranda rule, as articulated by the Supreme Court in Quarles v. New York, in order to gather immediate threat information. The policy recognizes that the terrorism threat we face is complex and evolving, and that agents must exhaust all appropriate avenues of inquiry to identify any threat posed by an operational terrorist that they may confront. The FBI policy reflects that reality and makes clear that gathering intelligence is the first priority. I believe that is sound policy.

With regard to the administration of Miranda warnings to terrorist suspects, there is no legal requirement to provide a terrorist suspect with Miranda warnings prior to custodial interrogation. The consequence of not providing Miranda warnings prior to custodial interrogation is that the statements received will not be admissible in court if the questions exceed the scope of the Quarles exception.

Because we face an adaptable and evolving terrorist threat, we must use all tools at our disposal to detect and disrupt threats. This includes using the public safety exception to

Miranda in order to gather intelligence and to identify any imminent threat posed by that individual or others with whom they may be working. If I am confirmed, I would make it a priority to ensure that we bring all tools to the table to detect and disrupt national security threats – military, intelligence, diplomatic as well as prosecution in either the civilian justice system or the reformed military commission system.

Counterterrorism Prosecutions

QUESTION 15: 28 C.F.R. § 0.72(a)(8) assigns to the Assistant Attorney General for National Security the responsibility to prosecute and coordinate prosecutions and investigations targeting individuals and organizations involved in terrorist acts at home or against U.S. persons or interests abroad, or that assist in the financing of or providing support to those acts.

a. Describe the personnel resources, both attorneys and others, within the NSD that are devoted to the prosecution of terrorism cases.

Answer: The NSD's Counterterrorism Section ("CTS") supervises a coordinated national counterterrorism enforcement program through close collaboration with Justice Department leadership, the National Security Branch of the FBI, the Intelligence Community and the 93 U.S. Attorney's Offices around the country. I understand that currently, the Counterterrorism Section is composed of 53 attorneys and 18 non-attorneys.

b. Describe the role that the NSD has played since its inception in terrorism prosecutions in United States district courts and on appeal to the U.S. courts of appeals. Please provide up-to-date information on the status of major prosecutions during the last two years.

Answer: The CTS seeks to assist, through investigation and prosecution, in preventing and disrupting acts of terrorism anywhere in the world that impact on significant U.S. interests and persons. The section's responsibilities include overseeing the investigation and prosecution of domestic and international terrorism cases; participating in terrorism prosecutions within district courts and, with assistance from NSD's appellate attorneys, before courts of appeals; participating in the systematic collection and analysis of information relating to the investigation and prosecution of terrorism cases; and coordinating with other U.S. government agencies to facilitate prevention of terrorist activity through daily detection and analysis and to provide information and support to the field.

Below are examples of major public terrorism prosecutions during the past two years:

- Khalid Aldawsari -- On Feb. 23, 2011, in the Northern District of Texas, Khalid Ali-M Aldawsari was arrested on a federal charge of attempted use of a weapon of mass destruction. According to the complaint, Aldawsari researched online how to construct an Improvised Explosive Device (IED), had acquired most of the ingredients and equipment necessary to construct an IED and conducted online research of potential U.S. targets. In addition, Aldawsari had allegedly described his desire for violent *jihad* and martyrdom in blog postings and a personal journal. This prosecution remains pending.

- Faruq Muhammad -- On Jan. 19, 2011, Faruq Khalil Muhammad 'Isa was arrested in Canada pursuant to a Jan. 14, 2011 criminal complaint in the Eastern District of New York charging him with conspiring to kill Americans abroad and providing material support to that terrorist conspiracy. Faruq was charged in connection with his alleged support for a multinational terrorist network that conducted multiple suicide bombings in Iraq and that is responsible for the deaths of five American soldiers during a suicide truck bomb attack in Iraq in April 2009. This prosecution remains pending.

- Antonio Martinez -- On Dec. 8, 2010, Antonio Martinez, aka Muhammed Hussain, was arrested in the District of Maryland on a criminal complaint for allegedly attempting to murder federal officers and employees and allegedly attempting to use a weapon of mass destruction in connection with a plot to detonate what he believed to be a vehicle bomb at an Armed Forces recruiting center in Catonsville, Md. The arrest was the result of an undercover operation in which Martinez had been monitored closely as his alleged bomb plot developed. The vehicle bomb was inert. This prosecution remains pending.

- Faisal Shahzad – On May 4, 2010 in the Southern District of New York, Faisal Shahzad was charged with attempting to detonate a car bomb in New York's Times Square on the evening of May 1, 2010. Shahzad was charged with attempting to use a weapon of mass destruction, attempting to kill or maim persons in the United States and other violations. He was later indicted on June 17, 2010 on ten counts and pleaded guilty to all counts of the indictment on June 21, 2010. In pleading guilty, Shahzad admitted that, in Dec. 2009, he received explosives training in Pakistan from trainers affiliated with Tehrik-e-Taliban (TTP), the Pakistani Taliban. He also admitted that he received nearly $5,000 in cash in

Massachusetts in Feb. 2010 from a co-conspirator in Pakistan whom he understood worked for TTP and that, in April 2010, he received an additional $7,000 in cash in Ronkonkoma, N.Y., also sent at the co-conspirator's direction. Shahzad was sentenced to life in prison on Oct. 5, 2010.

- David Headley et al -- In March 2010, David Coleman Headley pleaded guilty in the Northern District of Illinois to a dozen federal terrorism charges, admitting that he participated in planning the November 2008 terrorist attacks in Mumbai, India, as well as later planning to attack a Danish newspaper. Among other things, Headley admitted that he attended training camps in Pakistan operated by the terrorist organization, *Lashkar e Tayyiba* on five separate occasions between 2002 and 2005 and that he later traveled five times to India on behalf of *Lashkar* members to surveil targets in advance of the Mumbai attacks that killed approximately 164 people, including six Americans. He also admitted that he conspired with accused Pakistani terror leader Ilyas Kashmiri and others in plotting an attack on a Danish newspaper. This prosecution is pending.

- Najibullah Zazi et al -- In February 2010, Najibullah Zazi pleaded guilty in the Eastern District of New York to a three-count superseding information charging him with conspiracy to use weapons of mass destruction against persons or property in the United States, conspiracy to commit murder in a foreign country and providing material support to al-Qaeda. Among other things, Zazi admitted that he received bomb-making training from al-Qaeda and brought explosives materials to New York as part of an al-Qaeda plot to conduct coordinated suicide bombings on the New York subway system in September 2009. In April 2010, Zazi's associate Zarein Ahmedzay pleaded guilty to terrorism violations stemming from, among other activities, his role in the al-Qaeda plot to bomb New York's subway system. Another alleged Zazi associate, Adis Medunjanin, has also been charged in connection with his alleged role in the subway plot and awaits trial. In July 2010, prosecutors in the Eastern District of New York brought a superseding indictment against additional members of the al-Qaeda conspiracy to carry out the New York plot and a related plot against a target in the United Kingdom. The superseding indictment charged Adnan El Shukrijumah, an accused senior al-Qaeda leader, for his alleged role in working with other al-Qaeda leaders to recruit Zazi, Ahmedzay and Medunjanin to carry out the attacks on the New York subway. Also charged in the superseding indictment are Abid

Naseer and Tariq Ur Rehman, who allegedly participated in a separate plot to bomb targets in the United Kingdom in 2009, as well as Ferid Imam, Adis Medunjanin, and a defendant known as "Ahmad." This prosecution is pending.

- Umar Farouk Abdulmutallab -- On Dec. 26, 2009, Umar Farouk Abdulmutallab was charged by criminal complaint in the Eastern District of Michigan with attempting to destroy Northwest Airlines flight 253, which was carrying 289 people, as the aircraft made its final approach to Detroit Metropolitan Airport on Dec. 25, 2009 by attempting to detonate an explosive device containing PETN and TATP that was concealed in his underwear. He was later indicted on Jan. 6, 2010 on charges of attempted use of a weapon of mass destruction, attempted murder, attempt to destroy an aircraft, placing a destructive device on an aircraft, use and possession of a firearm / destructive device during a crime of violence. Abdulmutallab was charged with additional violations, including terrorism transcending national boundaries, in a superseding indictment returned Dec. 15, 2010. This prosecution is pending.

c. Describe the role that the NSD has played with respect to decisions whether to prosecute before U.S. military commissions, and what role it will play, if any, in prosecutions before military commissions.

Answer: NSD attorneys provided advice and support to the Attorney General and the interagency task force in identifying cases that could be prosecuted in military commissions. The Justice Department and NSD stand ready to assist and support the Defense Department's Office of Military Commissions in the prosecution of Guantanamo Bay detainees before military commissions. Historically, at the request of the Defense Department and the Chief Prosecutor for military commissions, NSD has worked and continues to work in partnership with the Office of Military Commissions Chief Prosecutor's Office in investigating and prosecuting military commission cases.

Counterespionage Prosecutions

QUESTION 16: 28 C.F.R. § 0.72(a)(7) assigns to the Assistant Attorney General for National Security the responsibility to prosecute federal crimes involving national security, foreign relations and terrorism, including espionage statutes.

a. Describe the personnel resources, both attorneys and others, within the NSD that are devoted to the prosecution of espionage cases.

Answer: As noted in response to question 12.a., the Counterespionage Section of the National Security Division supervises the investigation and prosecution of espionage and related statutes. I understand that currently, the Counterespionage Section is composed of 21 attorneys and 11 non-attorneys.

b. Describe the role that the NSD has played since its inception in espionage prosecutions in United States district courts and on appeal to the U.S. courts of appeals. Please provide up-to-date information on the status of major prosecutions during the last two years.

Answer: The NSD's Counterespionage Section supervises the investigation and prosecution of cases involving espionage and related statutes, as well as the export of military and strategic commodities and technology. The section has executive responsibility for authorizing the prosecution of cases under criminal statutes relating to espionage, sabotage, neutrality, and atomic energy. It participates in espionage prosecutions within district courts and, with assistance from NSD's appellate attorneys, before courts of appeals. It also provides legal advice to U.S. Attorney's Offices and investigative agencies on all matters within its area of responsibility, which includes 88 federal statutes affecting national security.

Below are examples of major public espionage prosecutions during the past two years. This list does not include any of the Counterespionage Section's export enforcement prosecutions.

- Noshir Gowadia – On Jan. 24, 2011, a federal judge in the District of Hawaii sentenced Noshir Gowadia to 32 years in prison for communicating classified national defense information to the People's Republic of China (PRC), illegally exporting military technical data, as well as money laundering, filing false tax returns and other offenses. On Aug. 9, 2010, a federal jury found Gowadia guilty of 14 criminal violations, including five criminal offenses relating to his design for the PRC of a low-signature cruise missile exhaust system capable of rendering a PRC cruise missile resistant to detection by infrared missiles, as well as three counts of illegally communicating classified information regarding lock-on range for infrared missiles against the U.S. B-2 bomber to persons not authorized to receive such information. Gowadia was also convicted of unlawfully exporting classified information about the B-2, illegally retaining information related to U.S. national defense at his home, money laundering and filing false tax returns for the years 2001 and 2002.

- Glenn Shriver – On Jan. 21, 2011, Glenn Duffie Shriver was sentenced to 48 months in prison after pleading guilty on Oct. 22, 2010 in the Eastern District of Virginia to a one-count criminal information charging him with conspiracy to transmit national defense information to a person not entitled to it, namely intelligence officers of the People's Republic of China (PRC). According to a statement of facts, Shriver lived in the PRC both as an undergraduate student and after graduation. While living in China in October 2004, Shriver developed a relationship with three individuals whom he came to learn were PRC intelligence officers. At the request of these agents, Shriver agreed to return to the United States and apply for positions in U.S. intelligence agencies or law enforcement organizations that would afford him access to classified national defense information, which he would then transmit to the PRC officers in return for cash.

- Harold & Nathaniel Nicholson – On Jan. 18, 2011, Harold James Nicholson was sentenced to eight years in prison after pleading guilty on Nov. 8, 2010, in the District of Oregon to conspiracy to act as an agent of a foreign government and conspiracy to commit international money laundering. Nicholson, a former CIA employee, has been serving a 283-month sentence at the Federal Correctional Institution (FCI) in Sheridan, Oregon, for a 1997 conviction of conspiracy to commit espionage. The judge ordered him to serve the eight year prison sentence consecutive to the current sentence he is already serving. Harold Nicholson admitted that from 2006 to December 2008, with the assistance of his son, Nathaniel, he acted on behalf of the Russian Federation, passed information to the Russian Federation, and received cash proceeds for his past espionage activities while in prison. On Aug. 27, 2009, Nathaniel Nicholson pleaded guilty to conspiracy to act as an agent of the Russian government and conspiracy to commit money laundering.

- Leonardo & Marjorie Mascheroni – On Sept. 17, 2010, in the District of New Mexico, Dr. Pedro Leonardo Mascheroni and his wife, Marjorie Roxby Mascheroni, both former employees of Los Alamos National Laboratory, were arrested on charges of communicating classified nuclear weapons data to a person they believed to be a Venezuelan government official and conspiracy to participate in the development of an atomic weapon for Venezuela. The indictment charges the Mascheronis with conspiracy to communicate and communicating Restricted Data;

conspiracy to and attempting to participate in the development of an atomic weapon; conspiracy to convey and conveying records and things of value of the United States; as well as making false statements. The charges stem from Dr. Mascheroni's alleged discussions with an undercover FBI agent posing as a Venezuelan government official, during which Dr. Mascheroni allegedlu presented his plan for helping Venezuela develop nuclear weapons. No classified information was sought by or passed to the government of Venezuela in the case, nor were any Venezuelan government officials charged with any crimes in the case. The prosecution remains pending.

- Walter and Gwendolyn Myers – On July 16, 2010, Walter Kendall Myers, a former State Department official, and his wife, Gwendolyn Steingraber Myers, were sentenced to life in prison and 81 months in prison, respectively, for their roles in a nearly 30-year conspiracy to provide highly-classified U.S. national defense information to the Republic of Cuba. On Nov. 20, 2009, Kendall Meyers pleaded guilty to one count of conspiracy to commit espionage and two counts of wire fraud, while his wife pleaded guilty to one count of conspiracy to gather and transmit national defense information. In 1979, a Cuban intelligence officer recruited both of them to be Cuban agents, a role in which they served for the next 30 years. In April 2009, the FBI launched an undercover operation against the pair, during which the Myerses made a series of statements about their past activities on behalf of Cuban intelligence, which the FBI was able to corroborate through other evidence gathered in the investigation, resulting in their arrest in June 2009.

- Russian "Illegals" Case -- On June 28, 2010, eight Russian nationals were arrested for carrying out long-term, "deep-cover" assignments in the United States on behalf of the Russian Federation, and two additional defendants were also arrested for participating in the same Russian intelligence program in the United States. In total, eleven defendants, including the 10 arrested, were charged in the Southern District of New York with conspiring to act as unlawful agents of the Russian Federation within the United States. Nine of the defendants were also charged with conspiracy to commit money laundering. The arrests were the result of a multi-year investigation of a network of U.S.-based agents of the foreign intelligence organ of the Russian Federation (known as the "SVR"). The targets of the probe included covert SVR agents who assumed false

identities and lived in America on long-term, deep-cover assignments. These secret agents, commonly known as "illegals" in the intelligence community, worked to hide all connections between themselves and Russia, even as they acted at the direction of the SVR. The "illegals" network in America served one primary, long term goal: to become sufficiently "Americanized" such that they could gather information about the United States for Russia, and could successfully recruit sources who were in, or were able to infiltrate, U.S. policy-making circles. On July 8, 2010, all of the arrested defendants pleaded guilty to conspiring to serve as secret agents of the Russian Federation within the United States and agreed to be immediately removed from the United States. All of them were required to disclose their true identities in court and to forfeit certain assets attributable to the criminal offenses. The United States subsequently transferred these individuals to the custody of the Russian Federation. In exchange, the Russian Federation released to U.S custody four individuals who had been incarcerated in Russia for alleged contact with Western intelligence agencies

- David Nozette – On Oct. 19, 2009, David Nozette, a Maryland scientist who once worked in varying capacities for the Department of Energy, Department of Defense and the National Aeronautics and Space Administration, was charged with attempted espionage for attempting to deliver classified national defense information to an individual Nozette believed to be an Israeli intelligence officer, but who was, in fact, an undercover employee of the FBI. On March 17, 2010, a superseding indictment was returned containing an additional count, charging Nozette with attempting to deliver to a foreign government (Israel) documents and information relating to the national defense of the United States, specifically classified information on a U.S. Navy system that involved satellite information. The indictment does not allege that the government of Israel or anyone acting on its behalf committed any offense under U.S. laws in this case. This prosecution remains pending.

- James Fondren – On Sept. 25, 2009, James Wilbur Fondren Jr., a Pentagon official who served as the Deputy Director of the Washington Liaison Office, U.S. Pacific Command, was convicted in the Eastern District of Virginia on one charge of unlawfully communicating classified information to an agent of the People's Republic of China (PRC) and two counts of making false statements to the FBI. From November 2004 to

February 2008, Fondren provided certain classified Defense Department documents and other information to Tai Shen Kuo, an agent of the PRC, who he was aware maintained a close relationship with an official of the PRC. Fondren provided classified information via "opinion papers" that he sold to Kuo. Fondren also provided Kuo with sensitive, but unclassified Defense Department publications. On Jan. 22, 2010, Fondren was sentenced to 36 months in prison, followed by two years of supervised release.

OLC Opinions on Matters within Responsibility of the National Security Division

QUESTION 17: With respect to opinions of the Office of Legal Counsel (OLC) on matters within or related to the responsibilities of the NSD, or if preceding the establishment of the Division were related to such matters as electronic surveillance, physical searches, or other methods of national security investigations that would now be of interest to the Division, will you, if confirmed, undertake to do the following:

a. Provide to the Committee a comprehensive list and description of OLC opinions on these subjects for opinions that remain OLC precedent or are of significant historical value in understanding the development of the Government's legal theories in support of the matters addressed in the opinions.

b. Provide to the Committee copies of those opinions, for handling in accordance with their classification, which are identified by or on behalf of the Committee as useful to it in the performance of its legislative and oversight responsibilities.

c. Promptly update the list and description as new opinions are issued with respect to the legal basis for intelligence activities or covert actions and provide such new opinions to the Committee on request.

d. If your answer to any part of Question 17 is no, or is qualified, please describe the basis, if any, for the Department to decline to provide information or material requested by the Committee under sections 502 or 503 of the National Security Act of 1947 for the purpose of being fully and currently informed about the legal basis for intelligence activities or covert actions, including the level of authorization in the Executive Branch required for any such refusal.

Answer: I appreciate the importance of the Committee's oversight role and its interest in the legal basis for intelligence activities or covert actions. However, as a nominee, I am not in a position to offer commitments as to how the Department may respond to particular document requests. I understand, however, that in order for the Committee to

perform its oversight function it is important for it to receive information on the legal basis for intelligence activities or covert action. I further understand that the intelligence agencies provide that information to the Committees. The Attorney General has the responsibility, like all department heads, for ensuring that the Intelligence Community elements within his department fulfill this obligation. If confirmed, I would work to cooperate with the committee and to accommodate its legitimate oversight needs.

State Secrets

QUESTION 18: The Attorney General's September 23, 2009 memorandum on state secrets states: "The Department will provide periodic reports to appropriate oversight committees of Congress with respect to all cases in which the Department invokes the privilege on behalf of departments or agencies in litigation, explaining the basis for invoking the privilege."

a. Have you worked directly on the formulation or implementation of the policies set forth in the Attorney General's memorandum? If so, please describe.

Answer: As Associate Deputy Attorney General I participated in the review of the then pending litigation in which the Department had asserted the State Secrets privilege on behalf of client agencies and in the formulation of Attorney General's policy announced in September 2009. I have provided advice and recommendations to the Deputy Attorney General on the implementation of that policy.

b. Has the Department implemented the commitment of the Attorney General to provide the reports promised in the Attorney General's memorandum? If so, or if not, please describe.

Answer: Yes. I understand that by letter of April 29, 2011, the Department provided to Chairman Feinstein and Vice Chairman Chambliss the Department's first periodic report regarding the Department's application of new procedures and standards governing the assertion of the state secrets privilege in litigation.

c. Has the Department declined, or failed to respond to, requests by the Committee for classified declarations filed by the heads of elements of the Intelligence Community in support of the assertion of the state secrets privilege in matters relating to intelligence activities or covert actions? If so, please describe the legal basis, if any, for not providing to the Committee those declarations, including the level of authorization in the Executive Branch required for any such refusal.

Answer: In an April 29, 2011, letter to Chairman Feinstein and Vice Chairman Chambliss, the Department indicated that it does not object to the relevant agencies providing the declaration in the Al-Aulaqi matter, in which the judgment is final. The letter also notes that intelligence officials have made the Committee aware of the classified facts underlying the assertion of the privilege in the Shubert matter and that the Office of the Director of National Intelligence and the National Security Agency are prepared to brief the Committee regarding the substance of the classified submissions in that matter.

Requests for Certain Documents

QUESTION 19: In responding to the following, please review the August 3, September 29, October 5, November 19, and December 9, 2010, correspondence with the Department of Justice regarding requests for certain documents relating to the work of the Guantanamo Bay Detainee Review Task Force, including any September 2009 Attorney General memorandum or other guidance or recommendations related to the Task Force process, the unredacted recommendations contained in the Task Force assessments of each Guantanamo detainee, and a list of the 92 detainees approved for transfer as of August 28, 2009.

a. Did the Attorney General provide in or about September 2009 any guidance or recommendations in any form to Executive Branch officials or employees, whether in or outside of the Department of Justice, on any presumption that should be applied in favor of transferring or releasing a certain category of detainees? If so, will the Department now provide those documents to the Committee?

Answer: I appreciate the importance of the Committee's oversight role and its interest in the legal basis for intelligence activities or covert actions. However, as a nominee, I am not in a position to speak for the Department in regard to these matters. I understand, however that they are under active consideration within the Department.

b. Will the Department now provide the unredacted recommendations contained in the Task Force assessments of each Guantanamo detainee and the list of the 92 detainees approved for transfer as of August 28, 2009 that were requested in the referenced correspondence?

Answer: As a nominee, I am not in a position to speak for the Department in regard to these matters. However, I am aware that they are under active consideration within the Department and that there is an ongoing effort to accommodate the Committee's legitimate oversight interests. If I am confirmed, I would look forward to working with the Committee to help ensure that such requests receive prompt and respectful consideration.

c. If the Department is declining to provide these requested documents to the Committee, please describe the specific factual and legal basis for not doing so. Also, please state whether you concur in that decision and your rationale.

Answer: I appreciate the Committee's interest in the requested materials and understand the Department is engaged in a process with the Committee to try to accommodate the Committee's requests. I understand the Committee's interest in this issue and its legitimate oversight concerns with how the Executive Branch exercises its national security authorities. If I am confirmed, I will work with others in the Department and the Committee to accommodate its legitimate oversight needs.

d. Do you believe that the "deliberative process" privilege allows the Department to withhold the documents and information requested by the referenced correspondence? If so, please describe the specific factual and legal basis for this assertion.

Answer: I have not undertaken a legal analysis of the documents requested in the referenced correspondence to determine the application of any privileges. As a general matter, I understand that concerns are sometimes raised about the exposure of internal deliberations outside the Executive Branch for fear that it will chill the exchange of candid advice and recommendations. Based on my years of work in the Department, I understand that Congress, and in particular the Intelligence Committees, play an important role in promoting accountability with regard to the Executive's intelligence activities. If I am confirmed, I will work with the Committee to facilitate cooperation with the oversight process.

Professional Experience

QUESTION 20: For each of the following, describe specifically how your experiences will enable you to serve effectively as the Assistant Attorney General for National Security. Include within each response a description of issues relating to the NSD that you can identify based on those experiences.

a. Principal Associate Deputy Attorney General and Associate Deputy Attorney General, Department of Justice;

Answer: In the Deputy Attorney General's Office, I have helped to supervise the national security functions of the Department, including the National Security Division (NSD), United States Attorneys Offices, the FBI and components of the Drug Enforcement Administration. I have assisted the Deputy Attorney General in the oversight and management of counterterrorism and espionage prosecutions, the litigation

before the Foreign Intelligence Surveillance Court and approval of certain functions and exemptions under Attorney General Guidelines.

I have worked with partners in the Intelligence Community and in the interagency process and have developed an understanding of the national security architecture of the federal government. In my career working with agents, analysts and lawyers across the government I have developed an appreciation of the challenges confronting national security professionals and prosecutors as they pursue their mission of developing intelligence, sharing information, and working together to disrupt national security threats and protect the nation. As a result of all these experiences, I have gained a broader understanding of the range and complexity of national security issues confronting the Department's components and United States Attorneys Offices as well as the importance of striking the appropriate balance of Intelligence Community equities, legal requirements and prosecutorial interests.

Through my experience in the Deputy Attorney General's Office, I have developed a clear understanding of the overall mission of the National Security Division, why it was created and how its operates as to further its mission to provide one place within the Department in which national security functions are coordinated. I understand the importance of using all tools in order to combat the national security threats we face and of doing so consistent with statute, executive order, relevant regulations, and the Constitution. Drawing on my experience as a prosecutor as well as the perspective I have gained at the FBI and with the Department of Justice working on the operational aspects of national security investigations, I will exercise independent judgment in managing the Department's national security functions while ensuring that the Division's activities are properly coordinated with the nation's other national security activities when appropriate. I will do the same in providing advice to and advancing partnerships with the Division's partners within the Intelligence Community and in working cooperatively with congressional oversight committees.

b. Chief of Staff to the Director, Federal Bureau of Investigation;

Answer: At the FBI, I provided advice and guidance to Director Mueller on a range of national security matters and worked with the FBI's leadership team to develop the FBI's National Security Branch and to further the integration of intelligence across all facets of that organization. I helped manage the Bureau's national security assets and worked to advance the FBI's transformation from a law enforcement agency to a national security organization focused on preventing terrorist attacks. Among other things, I gained an understanding of and appreciation for the FBI's national security program and operations, the Bureau's role as an element of the Intelligence Community, and the importance of FISA as an intelligence collection tool from which the whole Intelligence Community

benefits. I gained an understanding of the FISA process from the FBI's perspective and the assistance the FBI provides to other members of the Intelligence Community. My experience at the FBI provided me an understanding of the need to be accurate and expeditious in the preparation and presentation of applications to the FISC. Finally, during my tenure at the FBI, I gained firsthand experience working within the Intelligence Community to understand the role that effective and coordinated intelligence operations play in safeguarding our nation's security.

c. Enron Task Force, Department of Justice;

Answer: As an Assistant United States Attorney (AUSA) on detail to the Department of Justice Criminal Division and the Enron Task Force, I put my experience as a criminal prosecutor to work on large and complex investigations. This experience will serve me well at NSD in overseeing complex national security prosecutions and investigations.

d. Assistant U.S. Attorney, Office of the U.S. Attorney for the District of Columbia.

Answer: As an Assistant United States Attorney (AUSA), I learned the value of rigorous analysis and legal argument and how to build and prosecute an effective criminal case. This experience will be valuable in ensuring that as prosecutors and investigators we are both aggressive and careful in exercising the power to bring criminal charges.

Questions for the Record from Vice Chairman Saxby Chambliss

FISA

The House Judiciary Committee reported a bill last week that makes permanent the FISA lone wolf agent of a foreign power provision, and extends the sunset on FISA business records and roving wiretaps to 2017.

- **Do you support this House bill?**

  Answer: Yes. These authorities should be extended for as long as possible to ensure that the critical national security tools they provide can continue to be used without interruption. The House Judiciary Committee bill would fulfill this goal by extending two of these provisions for six years and make permanent the lone wolf provision. I also would support the agreement that reportedly has been reached between Senate and House leaders to extend the three expiring provisions until 2015. Either bill would ensure that these authorities remain in effect and would avoid the instability and uncertainty caused by recurring short term extensions.

- **Do short-term sunsets provide any operational advantage in national security investigations?**

  Answer: No.

Committee Oversight

In your oral testimony before the Committee, you agreed to provide the Committee with documents or other any materials requested by the Committee in order for the Committee to carry out its oversight and legislative responsibilities. You also agreed to ensure that the Department of Justice and its officials provide such material to the Committee when requested.

- **Do you agree that a request from the Vice Chairman is a request from the Committee? If not, please explain the legal and policy reasoning for this view?**

  Answer: I understand that the Senate Select Committee on Intelligence has always worked cooperatively and that the Chairman and Vice Chairman regularly join in each other's requests. Especially in light of the tradition of bipartisan cooperation on the Select Committee and because of the need to ensure that national security matters are addressed in a timely and cooperative manner, it would be my goal, if confirmed, to work with others in the Department to respond to all Congressional requests for information, particularly requests from the Vice Chairman, in a timely and respectful manner. I would try to ensure that the Committee's concerns and interests are understood within the

Department and would do whatever I could to ensure that the Committee's oversight needs are met.

- **Will you provide the Committee with any documents or information requested by the Chairman or Vice Chairman?**

  Answer: As I indicated in my opening statement before the Committee and in my statement for the record, I understand the importance to the Committee of receiving prompt responses to its oversight requests. If confirmed, I will ensure that I work with others in the Department to respond to and fulfill all such requests, whether raised by the Chairman or the Vice Chairman, to the fullest extent possible in a timely and respectful manner.

- **Will you ensure that the Department of Justice and its officials provide such material when requested by the Chairman or Vice Chairman?**

  Answer: If confirmed, I will work with others in the Department to respond to requests for such material, in a timely and respectful manner. I will work to ensure that the Department and the Intelligence Community understand the concerns and requests of the Committee and I will do everything I can to ensure that those requests receive the prompt, respectful response that they deserve.

Committee Oversight - continued

In your current position as the Principal Associate Deputy Attorney General, you serve as the Deputy Attorney General's primary advisor on national security and other matters. Yet, in a number of your responses to the Committee's prehearing questions, you declined to discuss outstanding congressional requests for information from DoJ, asserting that "as a nominee," you were not in a position to speak for the Department.

- **Please explain why you are not in a position to speak to this issue.**

  Answer: I understand there are a number of pending requests from the Committee concerning documents related to the Guantanamo Review process, certain OLC opinions and classified declarations from the intelligence community in ongoing state secrets litigation. However, I do not have the authority to speak for or to render a decision on these matters for the Department or for the other government agencies involved. I understand that there are ongoing discussions about how to accommodate these requests. If confirmed, my perspective will be to ensure that national security considerations are paramount and I will work with others in the Department to ensure that all such requests for information receive a timely and respectful response. In so doing, I would consider it my responsibility to ensure that the Department and others in the Intelligence Community fully understand and take into account the Committee's strong interest in exercising its

oversight responsibilities and that the Committee is provided as much information as possible in order to fulfill that critical function.

- **Are you aware of the September 2009 memorandum from the Attorney General recommending that a certain category of detainees be presumed to be eligible for transfer? Did you have any involvement in the drafting of this memorandum?**

Answer: I am aware that the Vice Chairman has requested an Attorney General memorandum of September 2009 that was referenced in correspondence between the Department and the Vice Chairman and noted in the prehearing questions I received from the Committee. I did not draft the referenced memorandum but as an Associate Deputy Attorney General focusing on national security matters during the referenced time period, I participated in reviewing it. My approach on detainee matters generally has been to consistently prioritize national security considerations.

- **A CIA assessment said the AG's memo recommended that "Guantanamo Review participants should apply a presumption in favor of transfer any detainee" in a certain category. Please explain what category of detainees this memo pertained to and your understanding of what the AG recommended.**

Answer: I am not familiar with the referenced assessment and because the requested information would be contained in confidential communications between the Attorney General and members of the National Security Council, I am not able to discuss its contents. I understand, however, that the Committee has been offered a briefing about this matter and the considerations confronting the Guantanamo Review Task Force at the time.

Guantanamo Bay

I understand that the Pentagon is considering allowing family members to visit detainees housed at Guantanamo Bay. Presumably, this means KSM, Abu Zubaydah, and other high value detainees could have family come see them even as they prepare for military commissions.

- **What concerns could these visits pose from a prosecutorial perspective and is there any way to fully mitigate those concerns?**

Answer: My only awareness of the issue of potential family visits at Guantanamo comes from news reports. Based on those reports, I understand that the Department of Defense, which maintains the security for that facility, is considering whether to permit such visits. Although I have not consulted with the Department of Defense, in light of the fact that some Guantanamo detainees will be prosecuted in military commissions, I believe that the Office of the Military Commission Prosecutor could have concerns about the

potential effects of such visits on prosecutions. I do not know whether there may be protocols and procedures that could be implemented to mitigate any concerns.

- **Is the Department of Justice, including the National Security Division, weighing in on this decision? Do you have an opinion as to whether these visits are appropriate?**

  Answer: I do not know whether the Department of Justice has been consulted, and I would want to have a complete understanding of the facts before offering an opinion as to whether such visits would be appropriate.

- **Who would pay for these terrorists' family members to visit them, the U.S. taxpayer, the families themselves, or someone else?**

  Answer: I am not aware of what arrangements the Department of Defense would make with respect to the costs of such visits.

Guantanamo Bay - continued

In your Committee questionnaire, you noted that, in February 2010, you introduced the panelists in a discussion entitled, "Lessons from Guantanamo."

- **Given your experiences with the FBI and DoJ, what lessons have you learned from Guantanamo?**

  Answer: My experiences have reinforced my view that we must ensure that decision-makers consider all information from the military, intelligence, and law enforcement communities in making critical decisions regarding disposition of detainees in order to ensure that the risk of recidivism posed by the transfer of a detainee is fully considered and weighed against any other disposition. With regard to detainee matters, my overriding and ultimate concern is the national security implications of decisions in this area.

- **Do you believe we are losing valuable intelligence by not having a comprehensive program to capture, detain, and question terrorists in U.S. custody outside war zones?**

  Answer: Obtaining intelligence must always be our paramount concern, and I am not aware of instances in which intelligence has been lost in the course of the capture, detention, and interrogation of terrorists in U.S. custody. If I am confirmed, I will do my utmost to ensure that we are able to use all lawful tools and that we ensure flexibility for the operators and agents in the field. In any situation in which we obtain custody of, or can obtain access to, a terrorist, the first priority should be to obtain intelligence and to identify any plot or threat to the homeland or to United States interests.

Administrative Subpoenas

Right now, there are different National Security Letter authorities that apply to different types of records. For example, there is one type of NSL for bank records, one for toll records, one for credit reports, and so on. In certain criminal investigations, however, agents can use a single administrative subpoena and get almost any records. In your responses to the Committee's questions, you noted your reluctance to replace all the different NSL authorities with a single Administrative Subpoena authority.

- **Can you explain what operational advantage there is to using multiple types of NSLs instead of one Administrative Subpoena?**

Answer: My overriding concern is ensuring that national security investigators have the tools they need to get information critical to detecting and disrupting threats. I understand that an administrative subpoena regime could aid that effort. I do not believe there is an operational advantage to using multiple types of NSLs. Rather, what I intended to convey in my prior response is that whatever advantage might be gained by consolidating authorities might be offset by the disruptions this could cause to a system that is currently working well. In the wake of the Inspector General's 2007 review of the use of NSLs, substantial changes were put in place to improve the issuance, training and compliance mechanisms under the existing NSL statutes. (These changes and reforms are described in the prehearing responses I provided to the Committee). Of course, if I am confirmed, I would look forward to working with the Committee to consider the advantages of any proposed statutory changes and the ways to minimize any disruptions or compliance issues.

Interrogation

Counterterrorism attorneys within the National Security Division are often working closely with FBI agents on the front lines when terrorists, like the Christmas Day bomber Abdulmutallab, are captured inside the United States. These attorneys often provide advice on whether or when a suspect must be *Mirandized.*

- **What guidance will you give these attorneys to follow in assessing whether a suspect must be *Mirandized?***

Answer: In any situation involving an operational terrorist the first priority should be to obtain intelligence about any plots or threats to the homeland or to U.S. interests, and to disrupt and incapacitate the threat presented by the suspect. There is no legal requirement that an individual be provided *Miranda* warnings if the purpose of the interrogation is to secure intelligence. The operators and agents on the ground will generally be in the best position to determine the appropriate course of action in a given situation, and I believe they should be given as many tools as possible and the flexibility to use them. Among other things, my approach in such cases would be to encourage the use of the public safety exception to the *Miranda* rule to the fullest extent possible to

ensure that critical intelligence is obtained. The agents on the ground in any particular situation will be in the best position to determine whether they have exhausted all avenues to identify threats. Ultimately, whether and when to provide *Miranda* warnings will be a fact intensive and case specific situation.

- **Will you inform them that there are alternatives to *Mirandizing* a suspect and bringing him into federal court?**

Answer: I would inform them of all available legal alternatives to ensure that we obtain critical intelligence about any plots or threats to the homeland or to U.S. interests. As with all decisions about operational terrorists that come into the custody of United States, there would be consultation with the rest of the national security community in order to determine the best, most effective means of disrupting the particular threat. During those consultations, other agencies would have the opportunity to raise alternatives for disrupting a particular threat. I would ensure that the attorneys working on these matters in the National Security Division were aware of all these options.

Question for the Record from Senator James E. Risch

During your Senate Judiciary Committee confirmation hearing you were asked the question "With whom do you believe we are at war?" In response you answered, "Pursuant to the Authorization for the Use of Military Force enacted by the Congress in September 2001, the United States is engaged in hostilities with Al Qaeda, the Taliban and associated forces." Please define the battlefield for this war, as you view it, in as much detail as possible.

Answer: The scope of the battlefield is a complicated question, subject to numerous governing laws, and has broad implications for matters on which the Department of Defense would be expert. At a minimum, the battlefield includes those areas where the United States military is deployed and engaged in armed hostilities such as in Iraq and Afghanistan. However, in my view, and based on my understanding, the authority conferred by the Authorization for the Use of Military Force (AUMF) extends more broadly to those persons or organizations that "planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons." As such, it is my understanding that wherever we confront Al Qaeda, the Taliban and associated forces the United States can exercise all appropriate authority enacted by Congress in the AUMF.