

HEARING TO CONSIDER THE NOMINATION  
OF COURTNEY SIMMONS ELWOOD TO BE  
GENERAL COUNSEL OF THE CENTRAL  
INTELLIGENCE AGENCY

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HEARING  
BEFORE THE  
SELECT COMMITTEE ON INTELLIGENCE  
OF THE  
UNITED STATES SENATE  
ONE HUNDRED FIFTEENTH CONGRESS  
FIRST SESSION

WEDNESDAY, APRIL 26, 2017

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# CONTENTS

**APRIL 26, 2017**

## OPENING STATEMENTS

Burr, Hon. Richard, Chairman, a U.S. Senator from North Carolina .....	1
Warner, Hon. Mark R., Vice Chairman, a U.S. Senator from Virginia .....	3

## WITNESSES

Kaine, Hon. Tim, a U.S. Senator from Virginia .....	4
Elwood, Courtney, nominated to be General Counsel .....	6
Prepared Statement .....	9

## SUPPLEMENTAL MATERIAL

Questionnaire for Completion by Presidential Nominees .....	32
Prehearing Questions and Responses .....	49
Follow up Questions for Mrs. Elwood from Senators Wyden and Heinrich .....	68



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**WEDNESDAY, APRIL 26, 2017**

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

The Committee met, pursuant to notice, at 10:08 a.m. in Room SD-106, Dirksen Senate Office Building, Hon. Richard Burr (Chairman of the Committee) presiding.

Committee Members Present: Senators Burr (presiding), Warner, Collins, Blunt, Lankford, Cotton, Cornyn, Feinstein, Wyden, Heinrich, King, and Harris.

**OPENING STATEMENT OF HON. RICHARD BURR, CHAIRMAN, A  
U.S. SENATOR FROM NORTH CAROLINA**

Chairman BURR. I'd like to call the hearing to order. I'd like to welcome our witness today, Mrs. Courtney Elwood, President Trump's nominee to be the next General Counsel of the Central Intelligence Agency. Courtney, congratulations on your nomination. And I'd like to recognize your husband John—John, wave your hand there.

[Mr. Elwood waves.]

Thank you John for the support you give to Courtney.

Courtney, you've served the country with distinction in your previous posts at the White House and the Department of Justice, and we appreciate your continued willingness to serve.

Our goal in conducting this hearing is to enable the committee to consider Mrs. Elwood's qualifications and to allow for thoughtful deliberation by our members. She's already provided substantive written questions—answers to more than 90 questions presented by the committee and its members. Today, of course, members will be able to ask additional questions and to hear from Mrs. Elwood in this open session.

Courtney comes in front of the committee with a distinguished legal career. After graduating Yale Law School in 1994, Courtney clerked for the U.S. District Court of Appeals for the Fourth Circuit, after which she went to clerk for Chief Justice William Rehnquist of the Supreme Court. Courtney then took a job as an associate with the firm of Kellogg Hansen, where she is now a partner.

In January 2001, she left the firm to serve as Associate Counsel to the President, rising through the ranks to Deputy Counsel to the Vice President and then Deputy Chief of Staff and Counselor to the Attorney General. During the extremely difficult time in the days and weeks and months after 9/11, Mrs. Elwood provided sound legal counsel to our Nation's leaders as they considered what tools the intelligence community needed to combat terrorism and to secure our Nation.

Mrs. Elwood, you've been asked to serve as the chief legal officer of the Central Intelligence Agency at a time when the Agency and the intelligence community as a whole face complex legal questions and a host of challenging priorities. The CIA's General Counsel must provide sound and timely legal advice to the Director and must manage an office responsible for legal oversight and compliance at the world's premier intelligence agency.

But, more than that, the CIA General Counsel maintains a vital public trust. Part of your job will be to ensure for the American people that above all the Agency operates lawfully, ethically, and morally. Since you left government service, the nature and number of challenges and threats the intelligence community is tracking have multiplied significantly. While Americans continue to engage in robust debate about which intelligence authorities are right, appropriate, and lawful, I expect you to ensure that the Agency operates within the bounds of the law and to ensure that the Office of General Counsel is positioned to provide the best legal advice possible to Director Pompeo and to the Agency as a whole.

This committee has received letters of support from your current and former colleagues and a letter of support signed by those that have served in both Democrat and Republican administrations. Your former colleagues praised your acumen, integrity, and judgment, and—and I quote—"deep respect for the rule of law."

Jack Goldsmith, a professor at the Harvard Law School who has known you since you were a law student at Yale, referred to you as "a superb, independent-minded lawyer." A letter from the D.C. Bar Association Committee on National Security Law, Policy, and Practices highlighted your deep-seated commitment to the rule of law and to our democratic principles. And your colleague Ben Powell, former General Counsel to the DNI, had this to say: "She's simply one of the finest lawyers and persons I've ever worked with in my career."

After meeting you, it's easy to see how you've garnered such widespread, consistent accolades. I know that your strong moral compass and sharp legal mind will serve you well as the General Counsel of the Central Intelligence Agency.

As I mentioned to Director Pompeo during his nomination hearing, I can assure you that this committee will continue to faithfully follow its charter and conduct vigorous and real-time oversight over the intelligence community, its operations, and its activities. We'll ask difficult questions, probing questions, of you and your staff, and we expect honest, complete, and, more importantly, timely responses.

I look forward to supporting your nomination and ensuring its consideration without delay. Thank you again for being here and for your service to the country. I look forward to your testimony.

I now recognize the Vice Chairman for any opening statements he might make.

**STATEMENT OF HON. MARK R. WARNER, VICE CHAIRMAN, A  
U.S. SENATOR FROM VIRGINIA**

Vice Chairman WARNER. Thank you, Mr. Chairman.

Welcome, Mrs. Elwood. Again, congratulations on your nomination to serve as General Counsel of the CIA. I see John as well, although I do have to question to a degree your legal judgment by bringing my friend Tim Kaine as an introducing factor, but I will overlook that.

[Laughter.]

Obviously, this position is tremendous responsibility, one that requires a careful review of the qualifications and character of the individual nominated. I echo a lot of the comments that the Chairman has made.

If confirmed, you'll be sitting at a critical intersection between intelligence and policymaking. As the CIA's top legal officer, the Director will turn to you to make judgments on whether a contemplated activity is legal or not. This job requires a leader with unimpeachable integrity and unwavering commitment to the Constitution and laws of the United States, who will apply both sound legal analysis and good judgment to the task of providing counsel to the agency.

During our conversation when we had a chance to visit, you and I agreed that politics has no place in the CIA General Counsel's Office. We discussed the need to follow the law, including the Army Field Manual, to ensure that torture does not tarnish the reputation of the intelligence community or this country again.

Mrs. Elwood, during my questions I will again want your public assurance today that you will always seek to provide unbiased, unvarnished, and timely legal counsel to the Director of the CIA, even when doing so might be inconvenient or uncomfortable.

Obviously, there will be a number of challenges that will require that kind of legal judgment going forward. Those challenges will include making sure we continue to protect the privacy and civil liberties of Americans; the increasing use and relevance of vast amounts of public information creates a significant challenge and opportunity for the whole CIA and the whole IC. We've got to always make sure that we are protecting the privacy and civil liberties of United States citizens as we take on these new tools moving forward.

An issue I know a number of us on the committee have been very concerned about and I think will come back again is encryption. Again, related to privacy concerns, the intelligence community needs to find ways to access the communications of our adversaries while protecting privacy rights and American commercial ingenuity. I believe we cannot tie the hands of our technology leaders by unilaterally disarming them with possible security loopholes.

An area again that this committee has looked on is information-sharing. The rapid change of information technology enables significant sharing of classified information and we must work to find ways to have the appropriate level of sharing.

Finally, a subject that has had a lot of the attention of the committee recently. Chairman Burr and I have committed to conduct a review of the intelligence supporting the intelligence community's assessment that Russia, at the direction of President Vladimir Putin, sought to influence the 2016 U.S. presidential election. It's important that all Americans fully understand the extent of Russia's involvement.

It is vital that the CIA, pursuant to your legal guidance, support our investigation to the maximum extent possible and allow this committee to follow the facts wherever they may lead. This is a charge I take seriously, all the members of the committee take seriously, on behalf of the American people, and we will continue to pursue this both thoroughly and expeditiously.

I will again during my questions ask you to commit to me and all members of the committee that you will fully cooperate with this review and that you will do all you can to ensure that we're provided the information we will require to conduct it.

With that, again thank you for being here, Mrs. Elwood, and I look forward to today's hearing.

Thank you, Mr. Chairman.

Chairman BURR. Thank you, Vice Chairman.

I'd like to at this time recognize our colleague the distinguished Senator from Virginia Tim Kaine, who will introduce Mrs. Elwood. Senator Kaine.

#### **STATEMENT OF HON. TIM KAINE, A U.S. SENATOR FROM VIRGINIA**

Senator KAINE. Thank you, Mr. Chair, Vice Chair, and members of the committee. This is an honor. One of my favorite things to do in the Senate is bring talented Virginians before the body who are committed to public service and Mrs. Elwood is such an individual.

I'm just going to warn you, doing this in front of my senior Senator and also the only Alexandria native in the Senate, Senator King from Maine, makes me feel a little bit nervous. Some of you need to know that, the non-Virginians here need to know, that Mrs. Elwood lives down the street from Senator Warner. On that score, Mark, will you take your Christmas lights down?

[Laughter.]

That was a joke. Actually, she has trick or treated at Senator Warner's house and the first test of her discretion as an intel professional will be not revealing costumes that she's seen over the years.

[Laughter.]

As I said, it's always rewarding. I know all of us feel this way about our states, that we have deep talent pools of wonderful people who are public servants, and public servants often don't get the thanks that they deserve. They don't get the appreciation they deserve. But bringing somebody before this committee or others who is willing to serve in a really important position does give me a real sense of pride.

I think that people who arrive here are the creatures of their experience. So frequently that experience begins with an upbringing and lessons learned as kids through parents, teachers, grand-



parents, counselors, or other mentors. With Mrs. Elwood, that's no exception. She had a foundation in family that really laid the groundwork for her public service career.

Her father, the late General Edwin Simmons, served in World War II, Korea, and Vietnam as a United States Marine, and his legacy continues in the Marine Corps today. One of the buildings at Marine Corps University in Quantico is named after her dad. Her mother was a dedicated public servant as well, working and traveling the world in the Foreign Service before settling in Northern Virginia.

Courtney's been a path-breaker in her career. She was in the first class of a high school, Fairfax West Potomac High School, that was formed through the merger of two very competitive high schools and this first class had to create new traditions and bring together folks who had been, at least on the athletic fields, rivals before. Then she went to Washington and Lee for undergrad, where she was in the second class of women and people used to say she must be a feminist because she raised her hand. So she's been willing to be a path-breaker and has had encouragement from family and professors to do that.

When Courtney finished at W&L, as was mentioned, she went to Yale Law School and she worked with our Senate colleagues, the younger Senators Bennet and Coons, who were at Yale Law School the same time as she was.

She's now worked in the legal profession for 20 years and the Chairman went through some of her experience, including public service experience serving as a clerk on the Fourth Circuit, serving in the very prestigious position as a clerk on the Supreme Court for Chief Justice Rehnquist, as counsel in the White House, the Office of Vice President, the Department of Justice. And I also know many of Courtney's law partners in private practice well and it's a private firm that is filled with people that are very public-spirited, Democrats and Republicans. They appreciate those who are public-spirited and I know Courtney has absorbed that lesson from them as well.

Courtney will I know talk about her family. Her husband John is here. The two boys, ages 15 and 12, live in Alexandria. They're in school today.

But I'll just conclude and say that so much of what we do depends upon the talent of the people that we bring into these very, very different positions. With Courtney Elwood you have somebody of a sterling professional background, but more importantly I think for purposes of this position, with a sterling reputation for integrity that is necessary in the CIA General Counsel position. It's my honor to present her to the committee.

As I said to the Chairman, I have a bill being marked up in the HELP Committee. Usually my bills actually go better when I'm not there, but I probably should at least go up to make sure that that's okay. So I hope you'll excuse me so I can head upstairs.

Chairman BURR. Tim, thank you. You are excused. And if you would shepherd my bill through the markup.

Senator Kaine. His is being marked up as well.

Thank you so much.

Senator KING. I was hoping we'd have a chance to question Senator Kaine.

[Laughter.]

Senator HEINRICH. I would second that.

Chairman BURR. I'd prefer to do that in closed session.

[Laughter.]

Mrs. Elwood, would you please stand and raise your right hand.

[Witness stands.]

Do you solemnly swear to give this committee the truth, the full truth, and nothing but the truth, so help you God?

Mrs. ELWOOD. I do.

Chairman BURR. Please be seated.

**STATEMENT OF COURTNEY SIMMONS ELWOOD, NOMINATED  
TO BE GENERAL COUNSEL OF THE CENTRAL INTELLIGENCE  
AGENCY**

Chairman BURR. Courtney, before we move to your statement I'd like to ask you to answer five questions that the committee poses to each nominee who appears before us. They require just a simple yes or no answer for the record.

Do you agree to appear before the committee here or in any other venue when you're invited?

Mrs. ELWOOD. Yes, sir.

Chairman BURR. If confirmed, do you agree to send officials from your office to appear before the committee and designated staff when invited?

Mrs. ELWOOD. Yes, sir.

Chairman BURR. Do you agree to provide documents or any other materials requested by the committee in order for us to carry out our oversight function and legislative responsibilities?

Mrs. ELWOOD. Yes, consistent with the law.

Chairman BURR. Will you both ensure that your office and your staff provide such materials to the committee when requested?

Mrs. ELWOOD. Yes, consistent with the law.

Chairman BURR. Do you agree to inform and fully brief to the fullest extent possible all members of this committee of intelligence activities and covert action, rather than only the Chair and the Vice Chair?

Mrs. ELWOOD. Again, consistent with the law, yes, sir.

Chairman BURR. Thank you very much. We'll now proceed to your opening statement, after which I'll recognize members by seniority for up to five minutes of questions.

Mrs. Elwood, welcome and the floor is yours.

Mrs. ELWOOD. Thank you. Chairman Burr, Vice Chairman Warner, members of the committee: It is an honor to appear before you as the nominee to be General Counsel of the Central Intelligence Agency. I want to thank President Trump and Director Pompeo for their trust and confidence in me.

I also want to thank Senator Kaine for that nice introduction. It was a great privilege and pleasure to meet not just one, but both, of my home State Senators as part of this process.

I'd like to use this opportunity to tell you a little bit more about me and what I view as essential qualifications for a CIA General Counsel. I come from a national security family. As Senator Kaine

alluded, my father devoted his life to the Marine Corps and to this country. He spent 36 years in uniform, seeing active combat in World War II, Korea, and Vietnam. There is little doubt that good intelligence kept him and his men alive during those years. He would later write about the remarkably good intelligence brought by bold foreign agents during his fight at the Chosin Reservoir.

When dad returned home from Vietnam in 1971, he formed the Marine Corps' history division, which he led for 24 years. He was a prolific author of military histories and he supported the work of many other military historians. He did so because he believed that there were lessons to be learned from the great achievements and the mistakes of U.S. warfare, mistakes that future generations must not forget.

My mother in her own way was no less brave and tough than her Marine husband. She overcame poverty and more than her share of life's adversities to have a career in the Foreign Service before she married and raised our family.

The lessons around our kitchen table were about personal responsibility, honor and valor. We were taught to adhere to our principles even if it comes at great personal or professional sacrifice. We were taught there is a clear difference between right and wrong, and we heard stories about America's place in this world as a force for good.

If my parents were alive today, they would take great pride in my being considered for this position. It is thanks to them that I believe I have some of the necessary qualifications.

Chairman Burr has spoken eloquently of the first prerequisite, unwavering integrity. In addressing Director Pompeo's fitness for his position, Chairman Burr rightly observed that because the CIA is an agency that works in the shadows, it requires a leader to be unwavering in integrity, who will ensure that the organization operates lawfully, ethically, and morally. I believe the same holds true for its General Counsel.

I hope and believe that people who know me well would tell you that I'm a person of integrity. I certainly have lived my life with that goal at the forefront of my mind.

A second prerequisite for the job is independence. There have been many times in my life where it would have been easier to go along to get along or to be for what's going to happen, but I haven't done so. When the law or circumstances have required, I have told clients and superiors things they didn't want to hear. If I were not prepared to do the same in this position, I would not accept the challenge. And if confirmed for this position, I will tell the attorneys of the office that I expect the same from them.

But these qualities, integrity and independence, are already embedded in the culture of the CIA. The intelligence community has placed among its core competencies for all senior officers, quote, "the integrity and courage, moral, intellectual, and physical, to seek and speak the truth, to innovate and to change things for the better, regardless of personal or professional risk." It would be an honor to join a community that quietly lives those values and to work side by side with the dedicated and skilled professionals who have labored in anonymity to keep this country safe.

Of course, an effective General Counsel of the CIA must also have strong legal skills. You have heard my background in this respect. I have had the privilege of many great teachers, mentors, and role models, more than I could possibly thank. But today one stands above the rest: Chief Justice William H. Rehnquist.

The Chief showed us it was possible to adhere to your principles without alienating those who hold other views. A prime example is that Justice William Brennan considered the Chief to be his best friend on the Court. The Chief built warm personal relationships with all of his colleagues through his modesty and humor, by being unfailingly civil and fair, by focusing on points of agreement over disagreement, and by listening and making accommodations where possible. I have tried to follow his example in all aspects of my life.

Finally, and with your indulgence, I'd like to take a moment again to recognize my constant and shining example of all the attributes I've mentioned today, my husband of more than 20 years, John Elwood.

There are also two other people whom I'd like to mention and who are dearest to our hearts, our two wonderful children. I hope that 50 years from now they will look back on my service to this country with pride. So that I could give you my undivided attention, they have remained in school today.

With that, I look forward to answering your questions.

[The prepared statement of Mrs. Elwood follows:]

**Statement for the Record of Courtney Simmons Elwood  
before the Senate Select Committee on Intelligence  
April 26, 2017**

Chairman Burr, Vice-Chairman Warner, Members of the Committee – It is an honor to appear before you today as the nominee to be General Counsel of the Central Intelligence Agency.

I want to thank President Trump and Director Pompeo for their trust and confidence in me. I also want to thank Senator Kaine for introducing me. It was a great privilege to meet not just one, but both, of my home-state Senators as part of this process.

I would like to use this opportunity to tell you more about me and what I view as essential qualifications for a CIA General Counsel.

I come from a national security family. My father devoted his life to the Marine Corps and to this country. He spent 36 years in uniform, seeing active combat in World War II, Korea, and Vietnam. There is little doubt that *good intelligence* kept him and his men alive during those years. He would later write of the “remarkably good intelligence” brought by bold foreign agents during his fight at the Chosin Reservoir.

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So with that, I look forward to answering your questions.

Chairman BURR. Mrs. Elwood, thank you for that very fine statement, and I hope that the school is accommodating by letting your kids possibly watch this on TV.

Mrs. Elwood, there's been much discussion about the role of the Central Intelligence Agency and how it played into the detention and interrogation of terrorism subjects as part of the RDI program. Those detention facilities operated by the CIA have long since been closed and President Obama officially ended the program seven years ago. I think the debate space on this subject has become confused and I'm certain that the law is now very clear.

Here's my question: Do you agree that it would require a change in law for the CIA or any government agency to lawfully employ any interrogation techniques beyond those defined in the Army Field Manual?

Mrs. ELWOOD. Yes, sir.

Chairman BURR. The intelligence community is at its strongest when operating with the full confidence that its activities are legal, moral, and ethical, and thereby in line with the public's trust. I think it's also safe to say that increasing judicial and Congressional oversight only increases that public trust.

Do you believe that President Bush's Terrorist Surveillance Program was strengthened when we brought it under FISA Court and Congressional oversight in 2007?

Mrs. ELWOOD. Yes, Mr. Chairman, I agree. I believed at the time and I believe today that the legal foundation for what became known as the President's Terrorist Surveillance Program was strengthened by bringing it under the then existing FISA provisions and the review of the FISA Court.

Chairman BURR. Great.

Before I turn to the Vice Chairman, I'd like to make one final comment in lieu of a question. You noted in your opening statement that a second prerequisite to the job is independence. I and many of my colleagues would agree wholeheartedly with that statement. Being an independent voice is not always easy and you'll be asked repeatedly to speak truth to power when serving as the CIA's General Counsel. I think you've displayed in your career the ability to be independent and I'm confident that you will continue to do so at the CIA. Thank you.

Mrs. ELWOOD. Thank you, Chairman.

Chairman BURR. Vice Chairman.

Vice Chairman WARNER. Thank you, Mr. Chairman.

Mrs. Elwood, again thank you for your very eloquent opening statement and our opportunity to visit. I'm going to revisit some of the things we talked about. Following up on the Chairman's comments about rendition and the fact that the law is very clear in terms of the fact that the Army Field Manual applies to CIA interrogations, one of the things that during the confirmation process of Director Pompeo, he committed to reviewing parts of the classified committee study on rendition and interrogation that are relevant. Will you likewise commit to reading and reviewing those parts of that classified study that are relevant to the office of the General Counsel?

Mrs. ELWOOD. Yes, sir.

Vice Chairman WARNER. This committee is spending an awful lot of time, as you are aware and the press has made aware as well, on the Russia investigation. We have asked, the Chairman and I, and received in many ways unprecedented access and that has been the subject of some fairly extensive discussion. But the Chairman and I have worked through that with the Director of the CIA.

But this is an ongoing process, so we're going to need additional information. My question is: Can you commit to ensuring that this committee will be provided with all the information requested pursuant to our ongoing Russia investigation, and that you yourself will do everything within your power to make sure that this is done, including by making available all necessary materials, intelligence reports, CIA cables, products, and other materials requested as promptly as possible; and finally, to ensure the CIA personnel be made available for interviews as requested by this committee?

Mrs. ELWOOD. Yes, sir, consistent with the law, I do make that commitment. As we expressed in our private conversation, I view the work that the committee is doing as being vitally important, and I'd like to commend your leadership on that. As an American and as a Virginian, I was very pleased by the leadership that you and the Chairman have shown on the investigation. It is very serious work.

Vice Chairman WARNER. Well, this will go to the heart of again independence. There have been times with Director Pompeo—and I understand he has equities as well. But it is absolutely critical that we follow the intelligence wherever it leads. Again, we're going to need your help going forward.

One other question I have—and I know fellow members of the committee have raised this at times. I think we may need a fresh look at the whole Gang of Eight and who's briefed on what, when they're not briefed, the timeliness of those briefings. Will you commit to making sure that those matters that are not involved in Gang of Eight covert action notification and other information regarding time-sensitive tactical matters, that you will commit to fully briefing the whole committee in as timely a manner as possible?

Mrs. ELWOOD. Senator, I have heard in my private conversations with you and others the frustration that you feel or that other members of the committee feel when they don't get briefed in, and I do think that this is an opportunity at this time, with Director Pompeo and Director Coats having sat in the chairs that you sit in, to sort of revisit some of the practices of the past and to make sure that the full committees are briefed to the maximum extent possible consistent with obligations to protect the, in rare instances, exceptionally sensitive information.

Vice Chairman WARNER. I think the Chairman and I both would rather the committee hear all the information that we often have. So I think there have been times—and other members of this committee have brought this up—where under the frame of the Gang of Eight it becomes information that gets caught in that bucket and then never, at least so far, has been able to have been shared with other members. I think it is appropriate to have a fresh look at this issue.



Mrs. ELWOOD. Yes, I certainly will follow the lead of Director Pompeo and Director Coats on this. I will note that Director Coats had commented that it's often a conversation with the leadership on when they extend the briefing to the full committee, that he works or in the past the Director has worked with the Chair and the Vice Chair on timing of extending that.

Vice Chairman WARNER. The more we can get all the members read in on more activities, I think the better.

Thank you, Mr. Chairman.

Chairman BURR. Senator Blunt.

Senator BLUNT. Thank you, Mr. Chairman.

Mrs. Elwood, it's good to have you here. I was appreciative of your testimony and your desire to follow in the public service commitments that both your mother and your father had, very much in line with when I asked you, when we had a chance to visit, why would you take this job? This is a hard job at a hard time, and it's good to have you step forward to do it.

I've got several questions about, frankly, the Terrorist Surveillance Program and not very long to ask them. So if others want to further exhaust your answers, I'd ask you to keep these relatively brief. I notice in a number of questions you were asked to respond to it was about that program.

Give me a sense: What were the jobs you had on 9/11 and then after, and then the rest of your service in the Bush Administration?

Mrs. ELWOOD. Leading up to 9/11, nobody, obviously, was anticipating, at least not at my level. My role in the Associate Counsel's Office had nothing to do with national security, frankly. But we all became sort of focused on national security. We were in the White House on September 11th and immediately thereafter I and a couple members of my office were sent to the Senate and to the House to negotiate the Patriot Act.

Senator BLUNT. Were you working then for the Justice Department or the Vice President?

Mrs. ELWOOD. On September 11th I was working for the—I was Associate Counsel to the President, so I was in the Office of the President. And I stayed in that position until May 2002, when we had our first child. I returned to government service in January or February of 2003. I think it was January of 2003, to the Office of the Vice President, where I stayed until the beginning of

Senator BLUNT. And then you were where?

Mrs. ELWOOD. Then I went with Judge Gonzales to the Attorney General's front office.

Senator BLUNT. And your job there was what?

Mrs. ELWOOD. I was Deputy Chief of Staff and Counselor to the Attorney General. As any staffer in your offices would tell you, it changes by the day, but by and large my portfolio fell under the Associate Attorney General's portfolio, so it would be those components that fall in the Department of Justice under the Associate Attorney General, the Civil Division. In addition, I would monitor the Office of Legal Counsel, the Office of the Solicitor General, the Office of Legal Policy, among others.

Senator BLUNT. What would you have known in that job or what did you know about the Terrorist Surveillance Program?

Mrs. ELWOOD. Senator, I learned—my work on—I learned and my work on the Terrorist Surveillance Program began in December of 2005, when the President publicly disclosed that aspect of the President's surveillance program.

Senator BLUNT. To the best of your knowledge, were you aware of it before that?

Mrs. ELWOOD. No, sir.

Senator BLUNT. Did you have a reason to have a reaction at the time to the critics of the program, critics like David Kris, who is a former Assistant Attorney General for National Security?

Mrs. ELWOOD. Interestingly enough, David and I are old friends and have known each other forever, and once he heard about it he kind of asked me, "So what are the legal authorities that support this?" And we had a conversation. I was aware of the public statements about the legal authorities supporting the program and we had a conversation and some communications about it, and ultimately he did not agree with all of the reasoning, but he recognized that, as I did, that these are complex issues on which reasonable people could disagree.

Senator BLUNT. It would be fair to characterize him as a public critic of the program, wouldn't it?

Mrs. ELWOOD. Yes, sir.

Senator BLUNT. I notice he's one of the people recommending you for this job?

Mrs. ELWOOD. Yes, sir. He very kindly sent a letter of support and actually organized a letter of support on my behalf.

Senator BLUNT. Are there other people who were critics of that program who are included on that list?

Mrs. ELWOOD. I am quite confident that there are people that have signed the letter of support who did not think many of the things that occurred in the Bush Administration would be things that they would agree with. But I don't know of any others who have publicly stated.

Senator BLUNT. How do you think that experience of the Terrorist Surveillance Program and what happened when there was a disagreement, how do you think that would impact the way you would serve in this job?

Mrs. ELWOOD. That's a very interesting question. I think that my experience with respect to that important program and how it was handled initially and then through the reexamination of the legality of the program in 2004, we hope we learned from how things were handled initially and the intense secrecy around the program, even within the Executive Branch. I believe I would be more prepared or would be able to better advise the Director on how to ensure that programs that would necessarily be secret, if they should be disclosed are thoroughly thought through and recognizing that in some instances you'll have to publicly justify how decisions are made on the front end on and on the back end.

Senator BLUNT. Thank you, Mr. Chairman.

Chairman BURR. Senator Feinstein.

Senator FEINSTEIN. Thanks very much, Mr. Chairman.

I just want to begin by saying I was really very pleased to meet you, have an opportunity to speak with you, and I very much respect your experience and your intellect. I'm going to put the ques-

tion that the Chairman asked you in a slightly, well, harsher view, but I think it's a real view. During his campaign, President-elect Trump publicly called for U.S. forces to use torture in the war on terror. He said he'd re-institute waterboarding, which he called a minor form of torture, and bring back, quote, "a hell of a lot worse than waterboarding."

Now, this brought a lot of condemnation from our allies and our own intelligence and security professionals who did not believe that these President EITs were effective in producing operational intelligence. Director Pompeo said at one point early on that he would support the return of waterboarding. Gina Haspel said that she would. When I talked with both of them and asked hard questions, they had made very strong statements against it both in writing and before this committee.

So let me ask you the same question I asked Director Pompeo in his confirmation hearing. If you were ordered by the President—excuse me. If the CIA were ordered by the President to restart the CIA's use of enhanced interrogation techniques that fall outside the Army Field Manual, would you do—what would you do? What would you do as General Counsel?

Mrs. ELWOOD. I absolutely would not follow that order.

Senator FEINSTEIN. But what would you do?

Mrs. ELWOOD. I would inform the President that that would be a violation of the law and I would ensure that the—I am confident that the Director would also impress upon the President that that would be an unlawful act.

Senator FEINSTEIN. So I would specifically take it as your responsibility as General Counsel to do so?

Mrs. ELWOOD. Absolutely.

Senator FEINSTEIN. Okay, thank you.

In your prehearing question you were asked, do you support the standards for detainee treatment specified in the Revised Army Field Manual on Interrogation, as required by Section 1045 of the National Defense Authorization Act for FY16? Could you please here under oath reaffirm your commitment to fully comply with all governing interrogations, including the legal bar on the use of any interrogation method not listed in the Army Field Manual?

Mrs. ELWOOD. Senator Feinstein, I commit not only to ensuring that the CIA complies with the letter, but also the spirit of that law.

Senator FEINSTEIN. Okay. Thank you. That's good.

You informed me earlier this week that you had read the full 500-page declassified executive summary of the Senate Intelligence Committee's study on the CIA's detention and interrogation program. While some may continue to have differences of opinion, the Senate report is fact-based on documents, cables, emails, and to the best of my reading nothing in the report has been refuted.

I think I mentioned to you, if the CIA had a problem with any of it we looked at that, we made some changes where we felt the CIA was correct, and where we felt they were wrong we so noted it. But their view is in that report.

The full report is more than 6,700 pages, with nearly 38,000 footnotes. I believe it's time to acknowledge truthfully what was done and then move forward with strength and resolve to make sure

that a program like this never happens again. Would you commit to this committee that you will read the classified version of the report's findings and conclusions if confirmed as General Counsel?

Mrs. ELWOOD. Yes, Senator Feinstein. I'd be particularly interested in the parts of the report that address the General Counsel's Office.

Senator FEINSTEIN. Thank you, but that's just a small part of the report.

Mrs. ELWOOD. I'll commit to the whole thing, but those are where my—that would be where my focus is.

Senator FEINSTEIN. It's a long lead, but if you look at things like where the Agency has detailed 25 cases where they believed it was responsible for their apprehension, the report classified version details where the information actually came from that led to that.

I think—I feel very strongly that the time is coming for this report to be declassified, that it should not be hidden, that people in government ought to read it, people in areas of responsibility ought to read it, and to shy away from it, because it is an official document now, I think is a mistake. As you know, President Obama did put it in his library, so at least it's perpetuated there.

Second question, use of contractors. This is one of the things that I have been most concerned with, not the least—it wasn't lost on me the three big cases where materials disappeared and security was broken were done by contractors, including the largest one ever, Edward Snowden, and more recently Hal Martin. Previously when I was Chairman I worked with Director Panetta and he had agreed to a decrease of a certain percent every year in the number of contractors, and the number of contractors has gone down.

Government contractors are only supposed to be used if they are performing tasks that are not an inherent governmental function. So intelligence collection clearly is inherently governmental as a function, and I think that we need to continue to reduce the number of contractors.

The question I have for you is: Do you agree that intelligence work is clearly an inherently governmental function?

Mrs. ELWOOD. Senator Feinstein, you raise an excellent point. It does sound like a core government function to me, and I think you raise a very important issue with respect to the use of contractors.

Senator FEINSTEIN. Thank you. I agree with that.

My time has expired. Thank you, Mr. Chairman.

Chairman BURR. Senator Cornyn.

Senator CORNYN. Mrs. Elwood, welcome and congratulations to you and your family on this tremendous honor.

I would—I know you've been asked about the Russia investigation by Senator Warner and I would just suggest that the same challenge that you and Director Pompeo will face and the importance of your integrity, your resilience, and your courage in withstanding outside pressure, the same sorts of characteristics I think are going to need to be demonstrated by this committee to maintain the bipartisan leadership that Chairman Burr and Senator Warner have provided, because there's going to be an awful lot of people who are going to try to influence this committee and get us off track. So the same challenges to our integrity, resilience, and

courage to resist pressure from outside groups you'll be having to demonstrate, we will as well.

I wonder—you've been asked a lot about post-9/11 interrogation and other practices. It really is kind of amazing to me that here we are 16 years after 9/11, the Chairman mentioned 7 years, I think, since some of the practices that have been asked about have long since ended, where we continue to revisit these decisions which were made, I think, consistent with the appropriate legal authority at the time.

I'm very troubled by the idea that you as the General Counsel and the lawyers in the administration will be telling intelligence officers you can do this, you can't do that and if, consistent with legal authority that you identify, they do something, later on they're going to be criticized, perhaps for political or other reasons, for doing what is legally authorized.

So can you tell us, who is the final legal authority on the scope of activities of the Central Intelligence Agency?

Mrs. ELWOOD. Ultimately, under longstanding eighteenth century precedent the Attorney General is the ultimate determiner of the scope of legal authorities of a government agency.

Senator CORNYN. And that's because these cases don't go to court typically, right?

Mrs. ELWOOD. Generally not.

Senator CORNYN. There are of course exceptions, the Hamdan case and others, where there is the Supreme Court. But I think this is an area where people are somewhat confused. They think that this is black letter law and often it's a matter of legal opinion by the Office of Legal Counsel at the Attorney General's Office.

Mrs. ELWOOD. Yes, sir, Senator. As I was alluding to in my conversations with David Kris, on many of these complex issues there is a range of reasonable interpretations and the Department of Justice or the lawyers being asked to provide an opinion give their best reading of the law, but it doesn't mean that there can't be another interpretation that is reasonable. But the Department of Justice ultimately gives its best reading of the law.

Senator CORNYN. And just because somebody disagrees with the legal opinion doesn't mean that the authorities that you've identified or that other lawyers in the administration identify as conferring that authority, it doesn't mean that's wrong either, does it?

Mrs. ELWOOD. That's true, yes, sir.

Senator CORNYN. So I think this is—this is a real problem for the intelligence community, because, as I mentioned during Director Pompeo's confirmation hearing, I like General Hayden's book and concept of playing to the edge, but you're going to be the one that draws that line of demarcation and identifies where that edge is. And if intelligence officers play to the edge in order to maintain our national security here in the United States, I don't want them to be criticized later on or taken to court, publicly humiliated, or even forced to buy liability insurance for doing their job.

Mrs. ELWOOD. Yes, Senator. As part of this process, in preparation for it, I reviewed the transcripts of some people who were nominated to this position, and I noted that some of the Senators were stressing the importance that the lawyers go to the legal limits. So

back not that many years ago, the lawyers were being criticized for being too conservative.

Senator CORNYN. Well, post-9/11 we didn't know as a Nation, certainly didn't know as a government, whether there were going to be follow-on attacks. So you were under a tremendous—or the Agency and our intelligence officials were under tremendous pressure by members of Congress and others to go as far as you legally could, correct?

Mrs. ELWOOD. Yes, sir, absolutely.

Senator CORNYN. And I guess it's just human nature that in the safety and security and after the passage of years, when we don't feel these imminent threats, then we somehow decide, well, maybe we didn't have to go as far as we did.

Well, I appreciate your answers to the questions and I, too, believe that you're eminently qualified for this position. Thank you for your willingness to take it on. Thanks to your family for their support.

Mrs. ELWOOD. Thank you, Senator Cornyn.

Chairman BURR. Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman.

Mrs. Elwood, thank you for our meeting as well. I join my colleagues in appreciating that.

During his confirmation process, I asked Director Pompeo about what he considered to be the boundaries that apply to the surveillance of Americans. He said those boundaries are set by law. You are the nominee to be the General Counsel who, if confirmed, would advise the Director of those boundaries. Because the advice is classified and may not even be known to the committee, it's critical that we get a sense of your views on the law prior to voting.

So to me one of the most important legal matters facing the Agency is how it should handle large amounts of information on Americans who are not suspected of anything. I also asked Director Pompeo about this. He said he would consult with a lawyer and, so to speak, now the committee gets to ask the lawyer.

You have written that the Attorney General Guidelines governing collection on 12333 would impose—and I quote here—“stringent and detailed restrictions on big batches of information that include information on Americans.” I read the guidelines differently. The CIA can actually conduct searches of those batches looking for Americans—looking for information on Americans.

So my question to you deals with the statement you gave us. What stringent restrictions specifically are you talking about?

Mrs. ELWOOD. Senator, as you know, the Attorney General Guidelines are publicly available and they were recently revised. They are public. They're not a secret.

Senator WYDEN. I want to know what you consider to be stringent restrictions.

Mrs. ELWOOD. There are numerous restrictions. It depends upon the particular information at issue. So there are, obviously, less stringent use and retention requirements with respect to publicly available information. But even there, if it's U.S. person information, still the CIA's use of it is restricted. Then there is—it's a 30-page single-spaced document providing a framework—

Senator WYDEN. Give me an example? Because the way I read it, none of this changes the fact that the Agency can conduct searches looking for information on law-abiding Americans where there is no requirement that they're suspected of anything. So I'd just like to hear you tell me, since you stated it in writing, what stringent restrictions would protect that law-abiding American?

Mrs. ELWOOD. Well, for example, Senator, before certain information is queried it has to—the standard that is applied would restrict—it is not simply—they can't go and query anything they want. It has to be for, necessary to an authorized activity, so for the purpose of an authorized activity, and no further query with respect to publicly available information, can't go any further than the necessary extent to further that purpose.

Now, with respect to different categories of information that are collected under different authorities, 702 has a different query standard, as you know, than a bulk collection of information collected under 12333. And I don't want to give the inarticulate—I don't want to be inarticulate about the standards. I want to be precise. And they are spelled out in a public document.

Senator WYDEN. None of this—and I'll hold the record open for this. I'd like to just have you give me some concrete examples of—

Mrs. ELWOOD. I'm happy to do that.

Senator WYDEN. But the point is the answer we've gotten this morning is none of what you have said changes the fact that the Agency can conduct searches looking for information on law-abiding Americans where there is no requirement that they're suspected of anything.

Mrs. ELWOOD. Senator, there has to be a link to an authorized activity of the CIA at a bare minimum, even to search publicly available information. There are more stringent requirements with respect to collections depending upon the type of information involved. So I don't agree with you that there's no restraint on it.

Senator WYDEN. You get me the example of the stringent restrictions.

Let me see if I can get one other question in very quickly. The Agency spied on the committee in 2014, searching our computers. They turned around and filed a crimes report with the Department of Justice against committee staffers. The Inspector General found there was no basis for the crimes report and it was based solely on inaccurate information provided by two attorneys from the CIA's Office of General Counsel.

You, if confirmed, would be supervising those attorneys. Do you think there ought to be any accountability?

Mrs. ELWOOD. Senator, I understand there was an accountability board convened that looked at that issue already—

Senator WYDEN. So—

Mrs. ELWOOD [continuing]. And exonerated the lawyers involved.

Senator WYDEN. But do you believe, you, do you believe there should be any accountability when those lawyers, who would be under your supervision, provide inaccurate information?

Mrs. ELWOOD. Senator, I understand there was already an independent accountability board—

Senator WYDEN. I'm not talking about the past thing. I want to hear about what you'd do going forward, inaccurate information.

Mrs. ELWOOD. Going forward, if there was a situation like that to arise again and if the facts presented themselves in a situation where the lawyers had not done something properly, absolutely I would insist on accountability and proceed accordingly. But that's going forward. I'm not revisiting the past.

Senator WYDEN. Thank you, Mr. Chairman.

Chairman BURR. Senator Heinrich.

Senator HEINRICH. Thank you Mr. Chairman.

Thank you for joining us today, Mrs. Elwood. In reviewing your responses to committee questions, there was one theme that concerned me across your responses, and it's that you repeatedly repeat some very similar verbiage. I want to get this right, but you said at one point that you have not, quote, "had personal experience with," end quote, issues raised by the committee. You, quote, "have not previously had the opportunity to consider," end quote, issues raised by the committee; and that you have not—or that you have, quote, "not done the legal and factual research that would be required to properly answer," end quote, important questions such as whether the CIA's former enhanced interrogation techniques are consistent with the Detainee Treatment Act.

As you know, in this role you will be the principal legal adviser to the CIA Director, and you will be responsible for overseeing the CIA's Office of General Counsel. If confirmed, I hope that your lack of exposure to the important national security issues that we've raised will not encumber your ability to provide thorough, accurate, and effective legal advice to the CIA from day one.

So I want to go from here—since you didn't express strong opinions on some very specific questions that the committee has asked, I'd like to focus more broadly on the scope of authorities granted by covert action authorizations and by presidential memorandums of notification. As I'm sure you know, these authorizations spell out the strategic goals and approved activities of individual covert actions.

Is it your view that the authorized covert actions of the CIA are bound by the text of those authorities and that the CIA may not read into those authorities activities that are not explicitly approved within there?

Mrs. ELWOOD. Senator, I assume that there is vigorous oversight by the General Counsel's Office to ensure that the findings are written carefully and that the activities undertaken under the findings are consistent with the findings. Does that answer your question?

Senator HEINRICH. What I'm saying is that it is my interpretation that those activities have to be explicitly authorized within either a covert action authorization or a presidential memorandum of notification. So is it your view that the authorized covert activities of the Agency are bound by the text of those authorities in terms of explicitly authorizing activities, or can the Agency just read into those authorizations?

Mrs. ELWOOD. I would interpret it as a statute, which is that it would not necessarily have to be explicit, that every potential ac-



tion be explicitly stated in the findings, but that it would have to be a proper interpretation of the findings.

Senator HEINRICH. I'll give you an example that concerns me. The September 17, 2001, memorandum of notification that authorized the CIA capture and detention program, for example, made no reference to interrogations or to coercive interrogation techniques, yet it was repeatedly cited by the Agency as the foundational authorization for that interrogation program. So just putting aside the bigger issues of whether the interrogation techniques themselves were in violation of any laws or treaty obligations, based on the lack of explicit authorization for those techniques in the MoN, do you believe that the use of those techniques was consistent with the approved authorities as written?

Mrs. ELWOOD. Senator, I have neither looked at that particular MoN nor do I know anything beyond the executive summary of the Senate study to answer that question specifically. But I believe that it is fair reading of the—nobody has raised that that was not a fair reading of the notification.

Senator HEINRICH. Well, I'm raising it.

Mrs. ELWOOD. Right.

Senator HEINRICH. So whether or not you've reviewed it isn't relevant to my underlying concern. When the committee receives a covert action finding or a MoN, we need to be confident that the Agency is not exceeding its approved authority. So if you can't give us your view on the proper scope of covert action authorities as a basic principle, it's difficult for me to be confident that under your legal guidance the Agency won't engage in activities that go beyond that legal guidance.

Mrs. ELWOOD. It is a common practice in my 20 years of legal experience and also my experience as a clerk to have a statute or a rule of law provided, and you're not going to have a statute describe every possible activity to fall within the scope of the statute. But there could be a fair reading of the statute that would put things within the statute or without the statute.

I would envision the same sort of legal analysis, legal analysis that I've been doing for more than 20 years, would apply in the context of a memorandum of notification.

Senator HEINRICH. I'm going to yield back my time. I have exceeded it. We're going to go to Senator King of Maine since we're the only—

Senator CORNYN [presiding]. Since I'm the acting Chair, Senator King.

Senator HEINRICH. Thank you. I didn't see you over there, Senator Cornyn.

Senator KING. Thank you.

Mrs. Elwood, thank you very much. Welcome to the committee.

You started your introductory by talking about your dad's experience with military history and I want to commend to my colleagues I'm in the middle of H.R. McMaster's book about Vietnam, "Dereliction of Duty," which I find an extraordinary document with really important insights. I have to mention—you've given me an opportunity to mention what I think is a very important book that should be read by everybody, everyone up here.

Mrs. ELWOOD. Yes, sir. I understand that's now being taught in the officers' training course.

Senator KING. I hope General McMaster is also rereading it himself, given his new position.

In your answer to I think it was Chairman Burr's, one of his opening questions, you said that you thought the 2007 law strengthened the legal basis for the Terrorist Surveillance Program. That implies—does that imply that you believe that there was a legal basis for it? In other words, does the President have inherent Article II power to do warrantless surveillance of U.S. citizens?

Mrs. ELWOOD. Senator, the legal authorities underpinning the Terrorist Surveillance Program, as described in the public white paper I reviewed and then in the much longer, then-classified but largely declassified, opinion of OLC, did not rest entirely on the President's Article II authorities, but also rested first on the authorities provided by the AUMF.

Senator KING. The 2001 AUMF?

Mrs. ELWOOD. Yes, sir.

Senator KING. Let's exclude that for a moment. Do you believe that the President has inherent authority under the Commander-in-Chief provision of Article II to order warrantless surveillance of American citizens, of American persons?

Mrs. ELWOOD. Under existing law, absolutely not.

Senator KING. Thank you. And that gets to a more subtle question along these lines, which is reverse targeting under FISA. As I understand the way FISA is now interpreted, you can surveil foreign persons and there is incidental—there may be so-called “incidental-pickup”—

Mrs. ELWOOD. Collection.

Senator KING [continuing]. Collection on American persons. The question then is, does it take further interaction with the FISA Court in order to query the data that involves the U.S. persons?

Mrs. ELWOOD. The FISA Court, as you know, sets out the parameters, sets out the framework for that type of querying, and then subsequently does not revisit it any time an individual query wants to be taking place. However—

Senator KING. But you see my question. The question is reverse targeting.

Mrs. ELWOOD. Yes.

Senator KING. You can be going after a foreign person, you pick up an American person and that becomes the focus of the query.

Mrs. ELWOOD. Well, reverse targeting is prohibited expressly.

Senator KING. And you don't believe that that is a potential issue or problem because of that express prohibition?

Mrs. ELWOOD. I don't, Senator, because I think that reverse targeting is with the intention of actually picking up a U.S. citizen's or a U.S. person's communication, by creating the fig leaf by targeting somebody at the side that they know they're going to be communicating with.

What we're talking about with respect to incidental collection is just that, incidental. Those queries that are conducted with incidental, there's multiple layers of oversight, the first being the one we discussed with the FISA Court setting the parameters for those.

Senator KING. My understanding is the government has taken the position in the recent past under the prior administration that once that data is in the database then they can query about the U.S. person without further approval of anyone.

Mrs. ELWOOD. No, not—well, without going back to the FISA Court. It would be—I think Director Brennan and perhaps Director Clapper as well said that that would be a big mistake, to require going back to the court again each time there needed to be a query of the—and we're talking here about 702 collection. But there are multiple, multiple lawyers of oversight, including by the Department of Justice, the Office of the DNI in the Executive Branch. There is also—

Senator KING. All that oversight you just enunciated is all within the Executive Branch. I like having an independent body—

Mrs. ELWOOD. Right.

Senator KING [continuing]. Called a court have a role in it.

Mrs. ELWOOD. Well, having a court do it in every warrant, or a warrant or an order on every one of those, would mean that far fewer of them are done. It could seriously hamper the operational impact. I'm looking forward to, if confirmed, getting an opportunity to see how these are implemented—

Senator KING. But you have to understand that this is a bootstrap operation, where you are in fact talking about the authorization of a warrantless examination of a U.S. person's correspondence.

Mrs. ELWOOD. If I might add, sir, there is more than just—there is an independent bipartisan board that also oversees these queries and has looked at it thoroughly and determined there was not a trace—that was their words—“no trace of illegitimate activity” with respect to these sorts of queries.

So it is layer upon layer upon layer already of existing oversight. And you're right that you don't have to go back to the FISA Court each time you want to query, but the FISA Court is involved in setting up the procedures from the front end and there are multiple lawyers of oversight on the back end. And while it may seem that the fox is guarding the henhouse, it's not. This is serious oversight by the ODNI and by the Department of Justice, checking every single query every 60 days.

Senator KING. I'm sure we'll have further discussion on this. I understand your position and appreciate it. I still remain somewhat concerned that you end up with a trove of data that involves American citizens, that can then be queried without further intervention by the court, which to me is the essence of the Fourth Amendment.

But we can follow up.

Mrs. ELWOOD. Absolutely. If I'm confirmed, I would really look forward to that discussion.

Senator KING. Thank you.

Senator CORNYN. Senator Lankford.

Senator LANKFORD. Thank you. It was good to get a chance to visit with you again. I appreciate it. I hope this has been helpful in getting information out, things that you're passionate about.

I always like to be able to remind people that for the folks that serve with the CIA, they don't wear uniforms, they serve all around

the world, they don't get parades, they don't get recognition, no one sees them at restaurant and buys their meal to say thank you, because no one knows who they are.

But would you pass on as you encounter these folks our gratitude.

Mrs. ELWOOD. Absolutely.

Senator LANKFORD. As we try to do face to face as well. Any time I'm in Langley and I walk down the halls, I see people that are walking around the halls, they're thinking about tucking their kids in at night and they're thinking about all these critical things, but they're also counting on having a really good counsel, because they deal with really hard issues, and they need great advice and sometimes they need it really fast.

Mrs. ELWOOD. Thank you, Senator. You make a very valuable point about these men and women who labor in anonymity to keep this country safe.

Senator LANKFORD. Well, grateful to be able to have you engaged. You've got a tremendous background in dealing with a lot of these hard legal issues. You've been around a lot of these hard conversations and been through it. So we're glad to be able to have someone that can engage in that.

I need to ask you one that your predecessor has also said is hard. Recently, in fact this week, Caroline Krass, who is the person you'd be replacing, had a speech and in her speech at Georgetown University Law School, of all the issues that she's dealt with, she listed this. She said: "I think the hardest legal questions were those that surround cyber. It's an evolving area of the law, trying to determine answers to questions like what constitutes a use of force, where are the measures to combat such a use of force."

They're really difficult issues and they're issues that we're struggling with on this committee. They're issues that this committee and other committees have complained about bitterly to the Administration, to say there seems to be no cyber doctrine, and we're well behind the curve on dealing with a clear cyber doctrine issue. This is going to be an area we're going to have to write a new statute, but it's also an area you're going to have to interpret a lot of the issues.

So my question to you is a more general one than just trying to drive down into it. Will you be a part of helping craft a cyber doctrine and will you be willing to interact with this committee to say, this is an area that is too gray, I'm going to have to make a decision that puts the people at the CIA too vulnerable, we need a statute to clarify this and to be able to help us through that process so that we don't put the good people at the CIA at risk in the future, but that we also don't make everyone second-guess what can and can't be done?

Mrs. ELWOOD. Senator, you raise a very, very important issue, and I would be delighted, if confirmed, to work with you on that. That's an issue that other members have raised with me in our conversations as well. And I certainly respect Caroline Krass, who is a long-time friend. We went to law school together and she has been an adviser through this process, and I will look forward to working with her in the future to continue to advise me should I be confirmed in this role.

Senator LANKFORD. This is one of those ongoing issues. As you go through this process, when you get to that spot, just know this committee is thinking about cyber doctrine a lot and how we can actually get that established, how we work agency to agency, how we work through the whole of the United States Government on that, and what is needed legislatively to be able to help provide clarity on that. We look forward to that type of cooperation and direction we're going to go.

Tell me as well—we've talked a lot about protecting the American people. That's the other side of this. The folks that work at the CIA are counting on having a really good counsel. The American people are also counting on having a really good lawyer in the middle of it that's able to push back and to be able to say, no, that is something that violates constitutional rights and freedoms.

You are in many ways the first line of that accountability. Though there's good follow-up, there's good tracking of it, and there's good oversight through the process, the first line of that would be you. So there are a couple of things that we need, that I need to just be able to hear quickly from you. One is that you understand that you're not only the CIA's lawyer, but you're the first line of defense for the American people in protecting their constitutional rights. The second part of that is protecting sources and methods worldwide that are also essential for their security and for national security as well.

Mrs. ELWOOD. Yes, Senator. The client of the General Counsel of the CIA is the Agency as an institution and ultimately the United States, and it is important for the Agency to use the intelligence-gathering tools that Congress has provided, but they must do so lawfully, protecting the privacy rights and civil liberties of all Americans.

Senator LANKFORD. Thank you, Mr. Chairman. I yield back.

Chairman BURR [presiding]. Senator Harris.

Senator HARRIS. Following up on Senator Lankford's question, when the CIA is considering doing something of dubious legal authority and the Director and the men and women of the CIA look to you for guidance, I know, and you've actually stated, the American people generally have a right to make sure that this Agency is following the law, but the American people generally will have no ability or visibility into the process by which you counsel your client, the Agency.

So the question that I have for you is: How will you engage this committee to ensure that there is oversight of this significant, but often secret, legal guidance that you will give the Agency?

Mrs. ELWOOD. Two points that I'd like to make in response to that, Senator Harris. The first is I will obviously provide the Director and the men and women of the Agency with my sound legal advice, but I will also provide them with my judgment. Sometimes things are legal, as you know, but unwise.

Then, with respect to ensuring that this committee is aware, I have a legal obligation, as you know, under the National Security Act to make sure that this committee is informed of the legal basis that underpins any of the CIA's intelligence activities, and I would fully and timely provide that legal advice and legal basis.

Senator HARRIS. How would you propose to do that? For example, would this be through a Congressional notification? Or how can we as a committee expect that you will reach out to us and notify and inform us of those decisions?

Mrs. ELWOOD. There are a couple of different things. One is any time the committee requests information with respect to the legal basis, I have an obligation to respond. Then, secondly, there is a new provision within the National Security Act that requires a notification to the committee of any sort of novel or significant new legal interpretations under the law, and I would obviously comply with that as well.

Senator HARRIS. Let's talk a bit about what we—I'd like to hear about your interpretation of what becomes significant. In your questions for the record you mentioned that and indicated that you would give timely and complete information about the Agency's significant intelligence activities and failures, subject to the limitations around protecting tradecraft and other sensitive information.

Based on your experience, what circumstances would be considered significant and who would make the determination of significance?

Mrs. ELWOOD. Senator Harris, that's an excellent question and I actually have not had firsthand experience with what is significant and what falls under significant. I obviously would look to past practice as well as, frankly, some common sense in determining whether something rises to the level of notification.

Now, I know from just conversations I have had with Congressional affairs, and also reading about it in the history about it, the amount of notifications that this committee gets is extraordinary, multiple a day. So I assume from that that the threshold is fairly low on what is significant, but I don't have any additional information to provide with respect to how I would define that.

Senator HARRIS. What character of, for example, let's talk about the Russia investigation. Would you agree that any information or developments as it relates to Russia's role in the 2016 election would be considered significant?

Mrs. ELWOOD. If something was new that the CIA had information about, I would imagine that would rise to the level of significant.

Senator HARRIS. Well, they've already done it. The election is past. So it would not be new in terms of conduct.

Mrs. ELWOOD. New information.

Senator HARRIS. So you're saying that if there's any information, if it is not new you would not consider that significant in terms of sharing that with this committee?

Mrs. ELWOOD. Well, if it had already been shared, if it was just redundant. But I would examine it, obviously, on a case by case basis and based upon how the office has been doing it for many, many years and be consistent with that.

Senator HARRIS. Are you willing to commit to this committee that if you come across information that relates to that incident of Russia tampering with the 2016 election and if you become aware that that information has not been shared with this committee, that you will share it with this committee because it is significant?

Mrs. ELWOOD. I have no reason to think that it would not rise—that it would be insignificant. It sounds like something that would be significant, given the work that this committee is doing on that investigation.

Senator HARRIS. And that means yes?

Mrs. ELWOOD. Sounds like it.

Senator HARRIS. I'm going to hold you to that. I'm interpreting that as a yes. It sounds like the committee is as well. So thank you for that.

The role of the General Counsel is obviously to provide legal advice to the Agency and the Director. Do you agree that the role of General Counsel requires providing an unbiased legal position on all matters relating to the CIA free from political considerations?

Mrs. ELWOOD. Absolutely.

Senator HARRIS. And if confirmed, will you provide legal guidance even if it ran counter to the Administration's policy or statements during the campaign or afterwards?

Mrs. ELWOOD. Absolutely, Senator.

Senator HARRIS. Thank you.

Chairman BURR. Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman.

First let me say, Mrs. Elwood, that I very much appreciated the office meeting that we had, in which we went over many of the issues that have been raised here today, and I believe that you appear to have an extraordinary background for this very important post.

I do want to get on the record a couple of issues that we discussed in my office. One is I referred to the fact that John Rizzo, CIA's General Counsel during the Agency's enhanced interrogation program, wrote in his autobiography that it was a big mistake that all members of the Intelligence Committees were not briefed on the program until 2006, which was four years after the program began. And indeed, the existence of the program for a time was concealed even from the Secretary of Defense and the Secretary of State.

Do you agree with his view that it was a mistake for Congress not to have been briefed on this program? The Intelligence Committees, I should say.

Mrs. ELWOOD. In a more timely way, yes, should have been briefed in a more timely way, the full committee.

Senator COLLINS. Second, I want to follow up on an issue that several members have mentioned—Senator Lankford, Senator Harris, but in a more direct way. That is, in the private sector when you are counsel to a corporate entity, for example, it's very clear where your loyalties lie and who your client is. I want to talk to you just a little bit more to flesh out what you've already been asked, by asking you, what is your understanding of who would be your primary client as General Counsel of the CIA?

Mrs. ELWOOD. It's a very good question, an important one for all of us government lawyers, if I become one again, to remember. The client for the General Counsel of the CIA is the Agency as an institution and ultimately the United States. Now, casually we think of the Director or the men and women at an agency as being the CIA's client. That is only true in their official capacities. If their

interests diverge with that of the Agency, that CIA lawyer can no longer represent them.

I remember very well when I was in the counsel's office thinking often and being reminded often that we did not represent the President, we represented the Office of the President.

Senator COLLINS. Thank you very much.

Thank you, Mr. Chairman.

Chairman BURR. Senator Cotton.

Senator COTTON. Thank you.

Mrs. Elwood, congratulations on your well-deserved nomination. I want to speak briefly about Presidential Policy Directive 28. The Obama administration through PPD-28 and in other ways spoke about the need to consider and recognize the privacy rights of non-U.S. persons located outside of the United States.

Do you agree that U.S. constitutional and privacy rights do not extend to non-U.S. persons located outside the United States?

Mrs. ELWOOD. It is true that our Constitution—and of course we're talking here about the Bill of Rights—protects the individual rights of United States citizens and individuals in the United States at large. And I am also not aware of any statutory law that extends broad privacy protections to foreigners abroad.

Senator COTTON. Is it a controversial statement of law that the U.S. Constitution and statutes do not extend to non-U.S. persons located outside the United States?

Mrs. ELWOOD. I don't think people would find that controversial.

Senator COTTON. I would agree.

Do you think the CIA should take into account the privacy considerations of hostile intelligence services and would-be terrorists when conducting espionage overseas?

Mrs. ELWOOD. No, sir.

Senator COTTON. I agree.

Can you commit to me that you will read the PCLOB's PPD-28 classified annex regarding the operational impacts on the intelligence community, once you have received your security clearance?

Mrs. ELWOOD. Yes, sir. I look forward to doing that if I'm confirmed.

Senator COTTON. Thank you.

I want to turn my attention to Section 702 now of the Foreign Intelligence Surveillance Act. Director Pompeo stated in a speech a couple weeks ago at CSIS, quote: "CIA steals secrets from our adversaries, hostile entities, and terrorist organizations. We utilize the whole toolkit, fully employing the authorities and capabilities that Congress, the courts, and the Executive Branch have provided to us, consistent with our American ideals." End quote.

Part of that toolkit is Section 702. Director of Intelligence Dan Coats recently called it his top legislative priority to have reauthorized before it expires at the end of the year. Would you please comment on the importance of the Foreign Intelligence Surveillance Act in general and Section 702 in particular to the CIA's mission?

Mrs. ELWOOD. Yes, Senator. I obviously have not had the access to the classified information on the benefits of 702, but I have spoken to and I have read the statements of those who have. And they have, with broad consensus, all concluded that it is a highly effective and valuable tool and it has disrupted—and it's played a key



role in disrupting specific terrorist threats that were aimed at the United States and abroad.

Senator COTTON. Could you please describe some of the various layers of oversight and compliance that occur at the CIA General Counsel's Office, as well as the Department of Justice and ODNI and here at this committee?

Mrs. ELWOOD. Well, there are many, many layers, as I was discussing with Senator King. With respect to inside the General Counsel's Office at the CIA, CIA lawyers provide in-person training and they sit with the officers who are doing the querying. The CIA does not do the collection under the 702, but they do have the authority to do querying.

Outside of the Agency—and the Agency's querying is then audited by the Office of the DNI, as well as the DOJ, on a regular basis, and the General Counsel's Office is involved in those audits.

That same level of oversight occurs at the NSA with respect to ODNI and DOJ audits every 60 days, and indeed every single selector that is used under 702 is audited. Not a single one is missed.

In addition to the Executive Branch oversight, there is of course the inspector generals of the agencies have oversight authority as well. Outside of the Executive Branch, there is a Congressional oversight through the committees. There is also the FISC provides oversight, like I said, in the standards and reviewing and getting reports on any mistakes that are made.

Then there's the fourth layer of oversight, which is related to the Privacy and Civil Liberties Oversight Board, which did a thorough and detailed review of the use of 702, established that it had been a highly effective tool in disrupting specific terrorist plots, and they also found, as I mentioned to Senator King, no trace of illegitimate activity or intentional misuse of the tool.

Senator COTTON. Thank you for the answer and thank you for your willingness to come serve our country once again. And thanks to all the many men and women you will be leading in the Office of General Counsel, which I think is great.

Mrs. ELWOOD. Thank you, sir.

Chairman BURR. Senator Cotton, thank you.

Senator King.

Senator KING. Two very quick follow-ups. One is, I think it's important to note that we've done a lot of talking about the PCLOB. There's only one member confirmed, and I hope that you will use your good offices to try to move that process along, because this is an important part of the overall scheme here and right now we don't have a full complement of board members.

Number two, I couldn't help but notice when you answered the Chairman's sort of five routine questions at the beginning, that you qualified them. When he said, will you keep the committee fully and currently informed, you said: I will, according to the law. I've never heard a witness use that. What's your mental reservation here?

Mrs. ELWOOD. Right, consistent with the law. I'm just holding out—as you know, the statute provides that there are limits with respect to protection of sources and methods. So the Agency is obligated to provide information subject only to withholding specific

operational details about sources and methods. That's what I was referring to.

Senator KING. So that's what you were referring to?

Mrs. ELWOOD. Yes, sir.

Senator KING. I understand that. That is fine. I was hoping there wasn't a broader—

Mrs. ELWOOD. There's no broader principle I was alluding to.

Senator KING. Thank you.

Thank you, Mr. Chairman.

Chairman BURR. Thank you, Senator King.

Let me note for the record that there have been some other witnesses that have qualified for I think the same reason.

Senator Warner.

Vice Chairman WARNER. I would simply say, I know that this will go beyond kind of the focus of your job. This whole revisiting of how we're all briefed, what falls into which bucket, I'm candidly not even fully sure I fully appreciate and understand, although I do think it would be very timely to revisit some of those principles, because I do feel like there are times when Gang of Eight information, which in my mind should normally be things in advance of presidential action that Congress needs to be notified, not necessarily information that is simply sequestered into this very discrete group without having the full benefit of the committee's understanding, would be worthwhile to reexamine.

Mrs. ELWOOD. If confirmed, Senator, I'd be very interested in digging into that and discussing it with you further.

Chairman BURR. I thank all of my colleagues for your thorough questioning of our witness.

Mrs. Elwood, thank you very much for, one, your willingness to serve; two, the expertise you bring to this nomination. I'll work with the Vice Chairman as quickly as we can to have any post-hearing questions presented to you. If you'd expedite those back to us, we'll very quickly set up a confirmation hearing, and hopefully get your nomination to the floor. We need you at CIA yesterday.

Thank you very much.

Mrs. ELWOOD. Thank you for your time. Thank you, Mr. Chairman. Thank you, Vice Chairman.

Chairman BURR. The hearing is adjourned.

[Whereupon, at 11:37 a.m., the hearing was adjourned.]

## **Supplemental Material**

SELECT COMMITTEE ON  
INTELLIGENCE

UNITED STATES SENATE



QUESTIONNAIRE FOR COMPLETION BY  
PRESIDENTIAL NOMINEES

SELECT COMMITTEE ON INTELLIGENCE  
UNITED STATES SENATE

**QUESTIONNAIRE FOR COMPLETION BY  
PRESIDENTIAL NOMINEES**

**PART A - BIOGRAPHICAL INFORMATION**

1. NAME: Courtney Simmons Elwood
2. DATE AND PLACE OF BIRTH: June 6, 1968, Bethesda, MD
3. MARITAL STATUS: Married
4. SPOUSE'S NAME: [REDACTED]
5. SPOUSE'S MAIDEN NAME IF APPLICABLE: n/a
6. NAMES AND AGES OF CHILDREN:

NAME

AGE

[ INFORMATION REDACTED ]

7. EDUCATION SINCE HIGH SCHOOL:

<u>INSTITUTION</u>	<u>DATES ATTENDED</u>	<u>DEGREE RECEIVED</u>	<u>DATE OF DEGREE</u>
Washington and Lee University	1986-1990	Bachelor of Arts	1990
Yale Law School	1991-1994	Juris Doctor	1994

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.)

<u>Employer</u>	<u>Position/Title</u>	<u>Location</u>	<u>Dates</u>
Pier One Imports	Sales Associate/Asst. Mgr.	Alexandria, VA	c. 8/1990-8/1991
Old Town Gardens	Pool Operator	Alexandria, VA	c. summer 1991
U.S. Environmental Protection Office of Toxic Substances	Program Analyst	Washington, D.C.	8/1990-8/1991

<u>Employer</u>	<u>Position/Title</u>	<u>Location</u>	<u>Dates</u>
Wyche, Burgess, Freeman & Parham	Summer Associate	Greenville, SC	Summer 1992
Bradley, Arant, Rose & White	Summer Associate	Birmingham, AL	Summer 1992
The Hon. Ellen Bree Burns U.S. District Court for the District of Connecticut	Law Clerk Intern	New Haven, CT	Fall Term 1992
United States Attorney's Office District of Connecticut	Intern	New Haven, CT	Spring Term 1993
King & Spalding	Summer Associate	Atlanta, GA	Summer 1993
Shea & Gardner	Summer Associate	Washington, D.C.	Summer 1993
United States-Canada Free Trade Agreement Binational Panel <i>In re</i> Certain Softwood Lumber Products from Canada	Assistant to Panelist	New Haven, CT	5/1993-12/1993
The Hon. J. Michael Luttig U.S. Court of Appeals for the Fourth Circuit	Law Clerk	McLean, VA	6/1994-6/1995
The Hon. William H. Rehnquist Supreme Court of the United States	Law Clerk	Washington, D.C.	7/1995-7/1996
Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC	Associate Partner	Washington, D.C.	9/1996-5/1999 5/1999-1/2001
Office of Counsel to the President The White House	Associate Counsel to the President	Washington, D.C.	1/2001-5/2002
Office of the Vice President	Deputy Counsel to the Vice President	Washington, D.C.	1/2003-2/2005
Office of the Attorney General U.S. Dept. of Justice	Counselor to the Attorney General Deputy Chief of Staff and Counselor	Washington, D.C.	2/2005-10/2005 10/2005-6/2007
Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC (as of 3/1/2017 Kellogg, Hansen, Todd, Figel & Frederick, PLLC)	Partner	Washington, D.C.	11/2007-present

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

Advisory Committee on Procedures, U.S. Court of Appeals for the D.C. Circuit, 2012-present.

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

My work in the Office of the Counsel to the President and in the Office of the Attorney General included several matters related to the intelligence community and national security, starting with my presence at the White House on September 11, 2001. On that day and in the days that followed, I was assigned certain projects related to the attacks and to ongoing terrorist threats. Most notably, I was among the small number of White House staff members who worked with members of the intelligence and law-enforcement communities, alongside Members of Congress and their staffs, to draft legislation to ensure that law enforcement and the intelligence community had the tools needed in the fight against terrorism. That legislation became the USA PATRIOT Act. At the Department of Justice, I worked on a variety of national-security related matters including matters involving the Inspector General's review of the FBI's use of National Security Letters; the renewal of the PATRIOT Act; legislation relating to the Foreign Intelligence Surveillance Act; and terrorism-related litigation including cases involving the constitutionality of national security programs and detention of enemy combatants and military commissions.

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):

University Scholar, Washington & Lee University

Oxford Scholar, Washington & Lee University

Phi Eta Sigma

Phi Beta Kappa

Graduation with distinction, *summa cum laude*, Washington & Lee University

Editor and Essays Editor, *Yale Law Journal*

Honorary Inductee, Omicron Delta Kappa, National Leadership Honor Society

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):

<u>ORGANIZATION</u>	<u>OFFICE HELD</u>	<u>DATES</u>
Alexandria Community Rowing	Member	2010-present

<u>ORGANIZATION</u>	<u>OFFICE HELD</u>	<u>DATES</u>
Advisory Committee on Procedures, U.S. Court of Appeals for the D.C. Circuit	Member	2012-present
Army Navy Country Club	Member	2009-2016
District of Columbia Bar	Active Member	12/1997-present
Georgia Bar	Inactive Member in Good Standing	11/1996-present
Omicron Delta Kappa, National Leadership Honor Society Washington & Lee University	Honorary Inductee	4/2015
St. Paul's Church	Member	2005-2012
Yale Law School Association Executive Committee	Member	2016-present

13. PUBLISHED WRITINGS AND SPEECHES (LIST THE TITLES, PUBLISHERS, BLOGS AND PUBLICATION DATES OF ANY BOOKS, ARTICLES, REPORTS, OR OTHER PUBLISHED MATERIALS YOU HAVE AUTHORED. ALSO LIST ANY PUBLIC SPEECHES OR REMARKS YOU HAVE MADE WITHIN THE LAST TEN YEARS FOR WHICH THERE IS A TEXT, TRANSCRIPT, OR VIDEO.) IF ASKED, WILL YOU PROVIDE A COPY OF EACH REQUESTED PUBLICATION, TEXT, TRANSCRIPT, OR VIDEO?

*Unmasking the Rhetoric Purpose: The Supreme Court and Legislative Compromise*, 44 Emory L.J. 117 (1995)

*A Guide to Researching Legislative Compromise and Special Interest Groups*, 13 Legal Reference Serv. Q. Issue 4 (1993)

"Compensatory Damages." in *Business and Commercial Litigation in Federal Courts*, 4<sup>th</sup> ed. (2016) (co-author with Mark C. Hansen and Ariela Migdal)

Remarks at Chief Justice Rehnquist Memorial Service, June 15, 2006 (available at <https://www.c-span.org/video/?193011-1/chief-justice-rehnquist-memorial-service>)

I would be happy to provide a copy of any of these materials if asked.

#### **PART B - QUALIFICATIONS**

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

The General Counsel of the CIA should, of course, be an accomplished and experienced lawyer. She must also have the ability to counsel internal clients and external partners on a wide variety of legal issues—and she must not simply respond to, but must anticipate issues. She must be able communicate clearly, and she must possess the leadership and organizational



skills to supervise and manage a large office. Perhaps above all else, she must have a reputation for acting with integrity, good judgment, and common sense. I believe that I meet these qualifications.

Specifically, I believe that my experience practicing law for more than twenty years, both inside and outside of government, has provided me with the necessary skills and training to be an effective General Counsel of the CIA. In particular, my work as Associate Counsel to the President, Deputy Counsel to the Vice President, and Deputy Chief of Staff and Counselor to the Attorney General is directly analogous to the wide-ranging responsibilities of the General Counsel. During my years in government, I had a broad and dynamic portfolio of matters which spanned matters of legal policy, legislation, and litigation at both the trial and appellate levels, and included advising clients on ethics, contracts, and a wide variety of other issues, in addition to the national-security matters discussed above. Within the Office of the Attorney General (OAG) at the Department of Justice (DOJ), I had primary oversight responsibility for seven DOJ components including the Office of the Solicitor General, the Civil Division, the Office of Legal Counsel, and the Office of Legal Policy. In addition, I supervised others in OAG and consulted on civil matters arising from five additional components.

A key part of the role of General Counsel is representing the CIA in interagency discussions, including with the National Security Council, the Department of Defense, the DOJ, the State Department, as well as other agencies within the Intelligence Community. I have significant experience in the interagency process. At the White House and the Justice Department, I frequently handled issues that required coordination across agencies and coordination between agencies and the White House. At times, my work also involved responding to requests from Congress.

During my career in private practice and public service, I have developed strong professional relationships with individuals who would attest that I am forthright and principled, that I listen to and engage a variety of viewpoints, and that, above all, I have a deep respect for the rule of law. My experience both inside and outside government provides a solid foundation to serve as General Counsel of the CIA.

#### **PART C - POLITICAL AND FOREIGN AFFILIATIONS**

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

John Adams for Virginia – contribution of \$250 (February 2017)

Ed Gillespie for Governor – contribution of \$2500 (January 2017)

Let's Grow Virginia PAC – contribution of \$500 (June 2016)

Marco Rubio for President – contribution of \$500 (February 2016)

Ed Gillespie for Senate – contribution of \$1000 (March 2014)

Ed Gillespie for Senate – contribution of \$1000 (October 2014)

McCain-Palin Victory 2008 – contribution of \$1000 (September 2008)

Republican National Committee – contribution of \$1000 (September 2008)

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

Not applicable.

## 17. FOREIGN AFFILIATIONS

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

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

To the best of my recollection, I have not represented a foreign government or an entity controlled by a foreign government.

My husband, who is a partner at the law firm Vinson & Elkins, LLP, has not represented any foreign government. He has assisted in the representation of corporations that are owned at least in part by a foreign government. Because he is unsure if they are "controlled by a foreign government," we have disclosed below their names and described his representation of two Chinese companies.

MCC (Xiangtan) Heavy Industrial Equipment Co., Ltd./Ceri (Xiangtan) Heavy Industrial Equipment Co., Ltd. In 2016, my husband consulted on arguments for setting aside a default judgment in a civil case in State court in Virginia. My husband has had no contact with company officials.

Sinovel Wind Group Co., Ltd.; Sinovel Wind Group (USA) Co., Ltd. Between 2013 and 2015, my husband was among a group of lawyers who represented the company in seeking to quash service of process in a criminal case in the U.S. District Court in Wisconsin. My husband participated in a handful of conference calls with company officials to discuss the case.

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.

On occasion, attorneys at my law firm, Kellogg, Hansen, Todd, Figel & Frederick, PLLC (formerly Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC), have represented a foreign government or an entity controlled by a foreign government, although such representations constitute a relatively small share of the firm's overall business. The firm has compiled a list of "Foreign Government and Foreign Government-Related Entity Clients," attached hereto as Exhibit 17B. To compile the list, the firm searched its client database, which includes data from 1993 to the present, and queried current partners. The list is believed to be reasonably comprehensive, but may not be absolutely complete given the limitations on available information and search abilities. In addition, although efforts were made to include entities controlled by a foreign government, a foreign government's control of an entity is often unclear or unknown. Therefore the list may not include some entities arguably controlled by a foreign government, and it may include entities that are owned in part by or affiliated with a foreign government, but not controlled by the government.

Vinson & Elkins, LLP (V&E), my husband's firm, is an international law firm that has offices in Asia, Europe and the Middle East and that handles transactions, investments, projects, and disputes worldwide, including on behalf of foreign governments and entities controlled by foreign governments. As with Kellogg, Hansen, such representations constitute a relatively small share of V&E's overall business. In response to Question 17A, I have identified the instances where my husband personally worked on a particular matter for an entity that is owned, at least in part, by a foreign government.

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

My husband and I may have indirectly received compensation through our law-firm distributions for earnings based on the representations described in my response to 17B above. Apart from that, 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.

Since returning to my law firm from government service in 2007, a relatively small part of my practice has consisted of advising clients on legal matters involving federal agencies. I do not recall having appeared before any agency in that period, and I do not believe my work on the matters is known to the agencies.

My husband met with federal government officials in 2010 and in 2014, at the U.S. Justice Department's Office of the Solicitor General after the Supreme Court of the United States called for the views of the United States in cases in which my husband was involved. Following that Office's ordinary practice, it invited lawyers for both sides to present information about the cases to federal officials to assist the government in forming a position. Those two cases were *Kellogg Brown & Root Services, Inc. v. United States ex rel. Carter*, 12-1497, and *Iron Thunderhorse v. Pierce*, 09-1353.

#### **PART D - FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST**

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

Under applicable statutes and regulations and the ethics pledge set forth in Executive Order 13770, if confirmed, I will not personally and substantially participate in any particular matter in which I know I have a financial interest, in which I know a former client of mine is a party or represents a party, or in which I know Kellogg, Hansen, Todd, Figel & Frederick, PLLC, is or represents a party, for specified periods where applicable and absent waiver or authorization where applicable. In addition, for as long as my spouse continues to work for Vinson & Elkins, LLP, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of Vinson & Elkins, LLP, unless I first obtain a written waiver. I also will not participate personally and substantially in any particular matter involving specific parties in which I know a client of my spouse is a party or represents a party, unless I am first authorized to participate pursuant to a waiver. In the process of reviewing my OGE 278e and preparing my Ethics Agreement, an agency ethics officer, in consultation with the Office of Government Ethics, has

determined that one of my investments might give rise to conflicts of interest. If confirmed, I intend to divest the potentially problematic interest, per my Ethics Agreement, which is attached hereto as Exhibit 19.

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

In the event I am confirmed, I intend to sever all business connections with Kellogg, Hansen, Todd, Figel & Frederick, PLLC (formerly, Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC). I also intend to resign from my position as a Member of the Advisory Committee on Procedures, U.S. Court of Appeals for the D.C. Circuit and from my position on the Executive Committee of the Yale Law School Association. Unless advised otherwise, I do not believe any other organizations and my connections with them are of the nature and extent so as to require severance in the event that I am confirmed.

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

If confirmed, I will withdraw from Kellogg, Hansen, Todd, Figel & Frederick, PLLC, formerly known as Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC ("the firm"). I expect I will receive a refund of my capital account and the final LLC distribution for 2016, which is a fixed amount, in a lump-sum payment. Additionally, I will receive the final 2017 LLC distribution for non-contingency fee earnings, which will equal a pro rata amount of my 2016 non-contingency fee distribution based on my number of days at the firm in 2017 prior to my withdrawal, less any amounts previously paid to me in advance on my 2017 distribution. For my 2017 LLC distribution for contingency fee earnings, and subject to the conditions set forth in my Ethics Agreement, the firm will also pay me a standard partner share of any fees received by the firm in four cases listed in the Ethics Agreement. As noted in my OGE 278e, I also plan to maintain my account in the firm's 401(k) defined contribution plan, which is invested in a diversified mutual fund.

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.

I currently serve as the executor of an estate of a family member.

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

None.

24. IF YOU ARE PRESENTLY IN GOVERNMENT SERVICE, DURING THE PAST FIVE YEARS OF SUCH SERVICE, HAVE YOU RECEIVED FROM A PERSON OUTSIDE OF GOVERNMENT AN OFFER OR

EXPRESSION OF INTEREST TO EMPLOY YOUR SERVICES AFTER YOU LEAVE GOVERNMENT SERVICE? IF YES, PLEASE PROVIDE DETAILS.

Not applicable.

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

My husband is employed as a partner at Vinson & Elkins, LLP. He has not represented, and given the nature of his work I do not anticipate that he will represent, any clients in any matters involving the Central Intelligence Agency. Further, in my Ethics Agreement, I agreed that, if confirmed, I will not participate personally and substantially in any particular matter that to my knowledge would have a direct and predictable effect on the financial interests of Vinson & Elkins, LLP, unless I first obtain a written waiver pursuant to 18 U.S.C. § 208(b)(1). I also agreed that I will not personally and substantially participate in any particular matter involving specific parties in which I know a client of my spouse is a party or represents a party, unless I am first authorized to participate pursuant to 5 C.F.R. § 2635.502.

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.

<u>NAME OF ENTITY</u>	<u>POSITION</u>	<u>DATES HELD</u>	<u>SELF OR SPOUSE</u>
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[ INFORMATION REDACTED ]

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.)

For several years, I have exchanged holiday gifts with some of my law partners. Some of the gifts I have received during the past five years likely exceeded \$100 in value, and some of the gifts I have given have exceeded that value, too. All of these gifts were exchanged well before I was considered for the position for which I have been nominated and hence were not given because of any potential official position. My spouse and children have received no reportable gifts.

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.)

See Parts 2, 5, and 6 of my OGE 278e (copy attached as Exhibit 28).

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.)

None.

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

No.

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

[ 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.

My husband and I have filed federal tax returns, and since 2013, we have filed State tax returns in Virginia, Illinois, and California. I have participated in composite returns filed by my law firm in several jurisdictions; in 2015, I participated in the firm's composite returns in Kansas, Massachusetts, New Jersey, New York, and New York City. My husband has participated in composite returns filed by his law firm in multiple jurisdictions.

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

No.

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

See Exhibit 35.

I am a member of the District of Columbia Bar and, as such, licensed to practice law in the District. I am also an inactive member in good standing of the Georgia Bar. In addition, I have been admitted to practice before several courts on an ad hoc basis.

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

No. Most of our investments are in diversified mutual funds. In accordance with my Ethics Agreement, if confirmed, I shall divest my interests in an investment fund that is not a diversified mutual fund and might give rise to a conflict of interest, and I shall roll over proceeds into one or more diversified mutual funds or other non-conflicting assets.

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?

Not applicable.

#### **PART E - ETHICAL MATTERS**

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

No.

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

No.

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

No.

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

No, not that I recall.

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.

Since leaving the Department of Justice in mid-2007, I have not been interviewed or asked to supply information as a witness in connection with any congressional investigation, Federal or State agency proceeding, grand jury investigation, or criminal or civil litigation. As counsel on behalf of clients in private practice, I have provided information in connection with civil litigation and other proceedings.

Toward the end of my time at the Department of Justice, I was interviewed in connection with two investigations conducted jointly by the Office of the Inspector General and the Office of Professional Responsibility. Those investigations resulted in the reports identified below; a discussion of my minor involvement appears on the pages specified in parentheses.

"An Investigation of Allegations of Politicized Hiring and Other Improper Personnel Actions in the Civil Rights Division," dated July 2, 2008 (pp. 50)

"An Investigation of Allegations of Politicized Hiring by Monica Goodling and Other Staff in the Office of the Attorney General," dated July 28, 2008 (pp. 78, 111-13, 127).

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.

Not to my knowledge. I was interviewed as a witness in connection with the two investigations discussed in response to Question 42.



**PART F - SECURITY INFORMATION**

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

No.

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

No.

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

No.

**PART G - ADDITIONAL INFORMATION**

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

To better safeguard individual liberty, the powers of our federal government are checked, separated, and limited. These bedrock principles are embedded in our Constitution and codified in our statutes. The more robust the power, the more crucial it is to have the check to ensure that the constitutional system stays in balance. The relationship between the CIA and the congressional intelligence committees reflects this constitutional framework in practice.

Specifically, the congressional oversight process serves as one check on the powers entrusted to the Nation's intelligence community – powers that are often exercised in secret and thus are not routinely accountable through other constitutional constraints. Congressional oversight of intelligence activities is also necessary for Congress to discharge its express power to legislate. In addition, congressional oversight provides the intelligence community with valuable feedback that improves the conduct and effectiveness of intelligence operations.

To allow the Congress to discharge its duties and provide that important feedback, the Director of the CIA has the affirmative duty to keep the congressional intelligence committees fully and currently informed of intelligence activities and covert actions, including any significant anticipated intelligence activity and any significant intelligence failure, to the extent consistent with due regard for the protection from unauthorized disclosure of certain exceptionally sensitive matters. To the same extent, the Director must also furnish the congressional intelligence committees with any information concerning intelligence activities – including the legal basis under which the activity is being or was conducted – which is requested by either committee in order to carry out its responsibilities. The President also has a statutory obligation to ensure that the congressional intelligence committees are kept properly informed, including an obligation to ensure that any

illegal intelligence activity is reported promptly, along with any corrective action that has been or is planned in connection with such activity. The General Counsel of the CIA should assist in ensuring that these statutory obligations are met with respect to CIA activities. The CIA General Counsel should also play a key role in ensuring that the committees are furnished with the legal basis under which CIA intelligence activity is conducted, when requested, and has a separate statutory obligation to notify the congressional intelligence committees of any significant legal interpretation of the U.S. Constitution or federal law affecting intelligence activities conducted by the CIA.

49. EXPLAIN YOUR UNDERSTANDING OF THE RESPONSIBILITIES OF THE GENERAL COUNSEL OF THE CENTRAL INTELLIGENCE AGENCY.

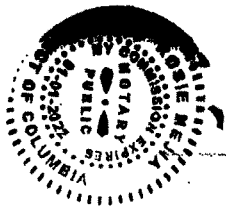
As set forth in the Central Intelligence Act of 1949, the General Counsel is the chief legal officer of the CIA. In that capacity, the General Counsel is the Director's legal adviser and performs such functions as the Director may prescribe to assist him in carrying out his duties as head of the Agency. I understand the responsibilities of the General Counsel would include (i) ensuring that accurate and timely legal advice and guidance on a wide range of topics is provided to the Director, Deputy Director, and to personnel throughout the Agency; (ii) ensuring that the CIA's views on legal issues are known to the appropriate entities within the executive branch and, in particular, to the Office of the Director of National Intelligence; (iii) ensuring that the Agency is properly represented in judicial proceedings where the CIA is a party or has an interest; and (iv) ensuring that the congressional intelligence committees are provided with information, as required by law, to perform their oversight responsibilities, including the responsibility to provide the legal basis under which intelligence activities are being or were conducted and to notify the committees of any significant legal interpretation of the Constitution or federal law affecting CIA-conducted intelligence activities. The General Counsel is also responsible for the efficient management of the Office of the General Counsel and its personnel.

AFFIRMATION

I, Courtney Simmons Elwood, DO SWEAR THAT THE ANSWERS I HAVE PROVIDED TO THIS QUESTIONNAIRE ARE ACCURATE AND COMPLETE.

28 March 2017 [SIGNATURE]  
(Date) (Name)

[SIGNATURE]  
\_\_\_\_\_  
(Notary)



TO THE CHAIRMAN, SELECT COMMITTEE ON INTELLIGENCE:

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

[ SIGNATURE ]  
Signature

Date: 28 March 2017

SELECT COMMITTEE ON  
INTELLIGENCE

UNITED STATES SENATE



**Additional Prehearing Questions  
for  
Mrs. Courtney Elwood  
upon her selection to be  
the General Counsel of the  
Central Intelligence Agency**

*Keeping the Intelligence Committee Fully and Currently Informed***QUESTION 1:**

**Section 502 of the National Security Act of 1947 provides that the obligation to keep the congressional intelligence committees fully and currently informed of all intelligence activities applies to the Director of National Intelligence and to the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities.**

- a. What is your understanding of the standard for meaningful compliance with this obligation of the Director of the Central Intelligence Agency to keep the congressional intelligence committees, including all their Members, fully and currently informed of intelligence activities?**

To allow the Congress to discharge its constitutional duties and provide valuable feedback to the intelligence community, the Director of the CIA has the affirmative duty, under Section 502, to “keep the congressional intelligence committees fully and currently informed” of the Agency’s intelligence activities, including any significant anticipated intelligence activity and any significant intelligence failure; he must do so “consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters.” 50 U.S.C. § 3092(a)(1). To the same extent, the Director must also “furnish the congressional intelligence committees with any information” concerning intelligence activities – “including the legal basis under which the activity is being or was conducted” – which is requested by either committee in order to carry out its responsibilities. 50 U.S.C. § 3092(a)(2).

I understand that standard to mean, in practice, that the congressional intelligence committees should receive accurate, timely, and complete information about the Agency’s significant intelligence activities and failures, subject only to limitations necessary to protect specific operational details about sources, tradecraft, and other exceptionally sensitive information. Director Pompeo has committed that he will comply not only with the letter of the law, but also its spirit, which is to ensure that the Legislative Branch has the intelligence information it needs to perform its important constitutional function. I look forward to helping him meet that commitment, if confirmed.

- b. Under what circumstances is it appropriate to brief the Chairman and Vice Chairman and not the full Committee membership?**

Under Section 503 of the National Security Act, a presidential finding or notification about a covert action “may be reported to the chairmen and ranking minority members of the congressional intelligence committees, the Speaker and minority leader of the House of Representatives, the majority and minority leaders of the Senate, and such other member or members of the congressional leadership as may be included by the

President," "[i]f the President determines that it is essential to limit access" to the finding or notification in order "to meet extraordinary circumstances affecting vital interests of the United States." 50 U.S.C. § 3093(c)(2), (d)(1).

More generally, and with respect to the application of Section 502's obligation to protect "sources and methods or other exceptionally sensitive matters," I would, if confirmed, look to Director Pompeo and Director of National Intelligence Coats, both former members of the congressional intelligence committees, for guidance and historical practice when considering the specific circumstances that might warrant limiting access. Director Coats recently told this committee, in response to questions, that limiting access for non-covert actions would be rare and often a matter of timing, and that, in his experience, the committee leadership has worked with the Executive Branch to determine when to expand access to the information in question.

***Priorities of the Director of the Central Intelligence Agency***

**QUESTION 2:**

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

Director Pompeo and I have discussed his expectations for me, if confirmed as General Counsel. He expects me to discharge ably the responsibilities as the CIA's chief legal officer and to provide effective leadership within the Office of General Counsel (OGC). He also expects me to represent the Agency in interagency discussions, as appropriate, and to serve as a member of his management team, providing him with the benefit of my judgment and experience as well as legal advice.

With respect to the Office as a whole, Director Pompeo has stressed the critical role of faithful adherence to the rule of law in achieving the CIA's mission. He has expressed his respect for and dedication to the hardworking professionals in OGC as members of the CIA workforce. As he told this committee, he will defend and advocate for all CIA employees, will train and support them, and will hold them accountable and demand excellence from them. I am certain that he expects his General Counsel to do the same.

***The Office of the General Counsel***

**QUESTION 3:**

**Although the Attorney General, usually through the Office of Legal Counsel at the Department of Justice, is responsible for the issuance of legal opinions that are authoritative within the Executive Branch, what is your understanding of the responsibility of the General Counsel of the Central Intelligence Agency in ensuring that all activities of the Central Intelligence Agency are undertaken in accordance with the Constitution, treaties, and laws of the United States?**

As set forth in the Central Intelligence Agency Act of 1949, as amended, the General Counsel is the chief legal officer of the CIA. As such, she provides authoritative legal advice and guidance within the Agency. Assisted by other OGC lawyers, the General Counsel has the responsibility to ensure that all activities of the CIA are undertaken in accordance with the Constitution and U.S. law, including any applicable treaty obligations or principles of customary international law that have been implemented in a domestic statute. For non-self-executing treaties, I believe that, the General Counsel should inform the Director in the event that she concludes that CIA activities would be lawful as a matter of U.S. domestic law, but would violate a treaty to which the United States is a party and would likely be considered unlawful by the international community.

**QUESTION 4:**

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

My expectation is that the Office must and will continue to do high-caliber legal work in support of the critical mission of the Agency and in service to the men and women of the workforce. Above all else, the Office must ensure that all CIA activities are conducted in accordance with the Constitution and U.S. law and ensure that the Agency's workforce receives the legal support and the legal services it needs. In addition, I expect OGC lawyers to be not merely reactive but to anticipate issues, and to counsel on the benefits and risks associated with different courses of action. OGC lawyers should also provide their judgment, in addition to their legal analysis, but take care to distinguish between legal opinions and non-legal advice.

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

As noted in my response to Question 3, I believe that OGC's core responsibility is to ensure that all activities of the CIA are undertaken in accordance with the Constitution and U.S. law. I have met only a small number of OGC lawyers to date, and I have been impressed by their dedication to the Agency and the pride they take in their work. If confirmed, I plan to make it a top priority to assess – and to work consistently to improve



– the performance and effectiveness of the Office in discharging all of its responsibilities and in serving the Agency, its workforce, and ultimately the American people.

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

At this time, I have not formed an opinion on the need to make changes in the number or qualifications of the attorneys in the Office, or in its operations. If confirmed, I would want to observe the operations of the Office for a period of time before reaching any conclusions about the need for staffing, organizational, or management changes. I would want to hear from OGC lawyers and from other CIA personnel. I also would need to evaluate the Office's work product, procedures, resources, and recordkeeping, all to assess what is working well and where improvements can be made. My evaluation would be guided by the Director's priorities and goals and would need to take into account the CIA's recent re-organization.

- c. What do you understand your responsibility to be to manage and oversee the legal work of the attorneys from the Office of the General Counsel who are assigned to the various components of the CIA and how would you carry out this responsibility if confirmed?**

The General Counsel is the chief legal officer of the CIA. As such, she is responsible for managing and overseeing the legal work of all OGC lawyers in the Agency, including those attorneys who are assigned to the other components. To carry out this responsibility, I would, if confirmed, ensure that I and OGC's leadership team continually and effectively supervise the legal advice being provided by all OGC lawyers. I would review existing means for evaluating and managing the attorneys' work, and I would work to ensure that all attorneys are receiving the necessary training, support, guidance, and supervision.

#### **QUESTION 5:**

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

Generally speaking, the Director of National Intelligence (DNI) provides coordination and guidance on a range of activities that affect multiple intelligence community elements, including the CIA. The DNI has both an oversight and collaborative role with the Agency and its work, intended to ensure that the CIA's activities are integrated and responsive to the broader national security strategy.

What this means in practice depends upon the particular work in question and the priorities and approach of each DNI. The recent responses provided by Director Coats and Director Pompeo in

response to questions from this committee provide further information about what they envision for their respective roles in connection with several subjects including the collection of foreign intelligence through human sources; the coordination of relationships between elements of the intelligence community and the intelligence and security services of foreign governments; the correlation, evaluation, and dissemination of intelligence related to national security; and covert action. (See, e.g., Director Coats's response to APQ 43 and Director Pompeo's responses to APQs 30-32.)

It is my understanding that previous General Counsels of the CIA and Office of the Director of National Intelligence (ODNI) have had – and have benefitted from – a close and synergetic working relationship. If confirmed, I would hope to continue that practice and anticipate frequent interaction with the General Counsel of ODNI. In particular, I would bring to his or her attention significant matters of legal policy and interpretation concerning CIA activities, as well as legal issues that have broader implications for the intelligence community.

#### **QUESTION 6:**

**Explain your understanding of the responsibility of the General Counsel of the Central Intelligence Agency to bring issues of legal significance to the attention of the Office of the General Counsel of the Director of National Intelligence and to the General Counsel Forum established by the Office.**

The General Counsel of the CIA and the General Counsel of the Office of the Director of National Intelligence both benefit from a close and collaborative professional relationship. If confirmed, I expect to bring to his or her attention significant matters of legal policy and interpretation concerning CIA activities, as well as legal issues that have broader implications for the intelligence community. I would follow the guidance of the General Counsel of the ODNI on the use of the General Counsel Forum.

#### **QUESTION 7:**

**Under what circumstances must covert action involving the use of force comply with treaties to which the United States is a party, including the United Nations Charter and the Geneva Conventions?**

Covert action, like all government activities, must comply with the Constitution and U.S. law, including any applicable treaty obligations or principles of customary international law that have been implemented in a domestic statute. Section 503(a)(5) of the National Security Act of 1947, as amended, provides that a covert action finding “may not authorize any action that would violate the Constitution or any statute of the United States.” 50 U.S.C. § 3093(a)(5). By this language, Congress did not prohibit the President from authorizing a covert action that would violate a non-self-executing treaty or customary international law. However, I understand that, as a general matter, the United States complies with international law to the extent possible in the execution of covert action activities.

**QUESTION 8:**

**The National Security Act places limits on the activities that may be conducted as "covert actions." In particular, covert actions do not include "traditional ... military activities or routine support to such activities." 50 U.S.C. Sec. 3093(e). What is your understanding of the definition of traditional military activities? What is your understanding of the definition of routine support to traditional military activities? What factors would you use in testing whether a proposed covert action involves traditional military activities or routine support to such activities? Please provide one or two illustrative examples.**

I have not previously had the opportunity to consider the definition of "traditional . . . military activities" as used in Section 503(e) of the National Security Act. To determine whether a particular activity falls within its scope, I would look to the common meaning of the phrase and to past practice, and I would consult with the experts on the subject including, as appropriate, lawyers from the Department of Defense and other relevant agencies. The legislative history of Section 503(e) suggests at least four relevant considerations: whether the activity has customarily been considered a military activity; whether the activity is under the direction and control of a military commander; whether the activity is connected to hostilities involving U.S. military forces; and whether the U.S. government's role in the overall operation will be apparent or acknowledged publicly. See S. Rep. No. 102-85, at 44, 46-47 (1991); H.R. Conf. Rep. No. 102-166, at 29-30 (1991).

***Detainee Treatment Policy*****QUESTION 9:**

**Do you support the standards for detainee treatment specified in the revised Army Field Manual on Interrogations, FM 2-22.3, issued in September 2006, and required by Section 1045 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92)?**

Director Pompeo gave the committee his full commitment that, during his tenure, the CIA will fully comply with laws governing interrogation, including the legal bar on the use of any interrogation method not listed in the Army Field Manual 2-22.3. I support that commitment and Section 1045, which has provided a clear and accessible rule to government officers who are asked to participate in interrogations.

***Past Personal Involvement in Relevant Matters***

**QUESTION 10:**

**Please describe your involvement, if any with regard to:**

**a. The September 18, 2001, Authorization of the Use of Military Force;**

In September 2001, I was an Associate Counsel to the President in the Office of the Counsel to the President. I recall that our office was involved in drafting the 2001 Authorization of the Use of Military Force (AUMF), but I do not recall working on it.

**b. The October 16, 2003, Authorization of the Use of Military Force;**

In October 2003, I was Deputy Counsel to the Vice President. I do not recall doing any work on the 2003 AUMF.

**c. Any legal analyses related to lethal operations or programs;**

I do not recall doing any work on legal analyses related to lethal operations or programs in any of the government positions that I held from 2001 to 2007.

**d. The September 17, 2001, Memorandum of Notification or any other covert action Findings or Memoranda of Notification; and**

I did not work on the September 17, 2001, Memorandum of Notification or on any other covert action Findings or Memoranda of Notification.

**e. Any other matters relevant to the authorities of the CIA.**

Immediately after September 11, 2001, I was among the small number of White House staff members who worked with members of the intelligence and law-enforcement communities, alongside Members of Congress and their staffs, to draft legislation to ensure that law enforcement and the intelligence community had the tools needed in the fight against terrorism. That legislation became the USA PATRIOT Act.

At the Justice Department, I worked on a program that I have since learned is affiliated with the CIA. Because that affiliation remains classified, I cannot describe my involvement with that program here.

*Chief of Mission Authority***QUESTION 11:**

**22 U.S.C. 3927 states that: "Under the direction of the President, the chief of mission to a foreign country... shall have full responsibility for the direction, coordination, and supervision of all Government executive branch employees in that country...." Absent direction from the President, is the CIA obligated to cease intelligence activities that do not have the approval of the chief of mission?**

It is important for the CIA and the State Department to work together as partners. If confirmed, I will work with the Legal Adviser to anticipate and resolve any disagreement with the State Department over intelligence activities. Director Pompeo has also said that, if such a disagreement were to arise, he would seek to resolve the issue with the Secretary of State. In the extremely unlikely event that they were unable to resolve the issue, the Director would promptly seek further guidance from the President.

*Surveillance***QUESTION 12:**

**Were you ever read into any of the components of the President's Surveillance Program (PSP), as defined in the Report on the President's Surveillance Program by the Offices of the Inspectors General of the Departments of Defense and Justice, the CIA and the NSA, July 10, 2009? If yes, please provide a date.**

I do not recall being read into the Terrorist Surveillance Program or any other aspect of the President's Surveillance Program (PSP). Please see my responses to Questions 13-16 for a description of my best recollection of my involvement in classified intelligence activities related to the PSP.

**QUESTION 13:**

**Please describe any involvement you may have had with the PSP or its transition to FISA authorities.**

My work on the PSP began after the President publicly acknowledged one aspect of the program, commonly known as the Terrorist Surveillance Program (TSP). At that time in December 2005, I was working at the Justice Department as Deputy Chief of Staff to the Attorney General.

Starting that month and continuing into 2006, Executive Branch officials made a series of public statements on the NSA activities described by the President. The Justice Department reviewed and in many instances drafted those statements. I recall being involved in reviewing at least some of those statements and discussing them with individuals inside and outside the

Department. As Deputy Chief of Staff, I was involved, in particular, whenever the Attorney General made public statements about the TSP. The Department's Office of Legal Counsel (OLC) had responsibility for describing the legal authorities that supported the TSP. I discussed with OLC the analysis contained in the statements, but I did not do my own independent legal analysis.

As described in more detail below in response to Question 16, I supported the effort during that time period to transition the presidentially authorized TSP activities to the authority of the Foreign Intelligence Surveillance Act (FISA). Officials who were working closely on that transition would provide the Attorney General with periodic updates on their progress, and I recall participating in at least some of those discussions. In addition, I had separate discussions with Department officials about the transition in an effort to keep the Attorney General fully informed. I also likely reviewed related materials such as orders or draft orders of the Foreign Intelligence Surveillance Court, although I do not have a specific recollection of those materials today.

During that time period, Department officials were also working on obtaining orders from the FISA court to authorize collection of telephone call detail records pursuant to Section 215 of the PATRIOT Act. I was generally aware of this effort. I do not have a firm recollection of my involvement, but I believe it entailed a few discussions with individual(s) who were working closely on the matter.

#### **QUESTION 14:**

**Did you have any involvement in the development of the Department of Justice's public defense of the PSP after its partial acknowledgment in December 2005? If yes, please detail that involvement.**

Please see my response to Question 13.

#### **QUESTION 15:**

**On January 19, 2006, the Department of Justice issued a White Paper entitled "Legal Authorities Supporting the Activities of the National Security Agency Described by the President." That White Paper stated that: "[t]he NSA activities are supported by the President's well-recognized inherent constitutional authority as Commander in Chief and sole organ for the Nation in foreign affairs to conduct warrantless surveillance of enemy forces for intelligence purposes to detect and disrupt armed attacks on the United States." Do you believe that the program had a sufficient legal basis in the President's Article II authorities? If so, please elaborate.**

Please see my response to Question 16.

**QUESTION 16:**

**The White Paper also stated that the September 18, 2001, Authorization for Use of Military Force “confirmed and supplemented the President’s recognized authority under Article II of the Constitution to conduct such warrantless surveillance to prevent further catastrophic attacks on the homeland.” Do you believe that the AUMF authorized the program? If so, please elaborate.**

The White Paper of January 19, 2006, was prepared by the Justice Department’s Office of Legal Counsel. I reviewed the paper and discussed it with its authors and others, but I did not do my own independent legal analysis. I recall thinking at the time that its analysis was thorough and carefully reasoned and that certain points were compelling. I also thought that the analysis of the FISA provisions presented a difficult question and that reasonable minds could reach different conclusions about it. I therefore supported the effort to transition the collection activities to be undertaken pursuant to FISA authority and orders of the FISA court. Later, after I left the Department, Congress modified relevant provisions of FISA, including certain provisions interpreted in the White Paper, when it passed the FISA Amendments Act of 2008.

The White Paper concluded that the described NSA activities rested both on the President’s inherent Article II authorities and on the authority granted by the Congress in the 2001 AUMF. I have not analyzed the hypothetical question of whether, in the absence of the AUMF, the President’s Article II powers alone would have provided a sufficient legal basis for the described NSA activities, consistent with the then-existing statutory framework in FISA. I therefore am not prepared to offer an opinion on that question.

**QUESTION 17:**

**The White Paper stated that “[f]oreign intelligence collection, especially in the midst of an armed conflict in which the adversary has already launched catastrophic attacks within the United States, fits squarely within the area of ‘special needs, beyond the normal need for law enforcement’ where the Fourth Amendment’s touchstone of reasonableness can be satisfied without resort to a warrant.”**

- a. Do you believe that the NSA program violated the Fourth Amendment’s warrant requirement?**

Although, as noted above, I did not conduct my own independent legal analysis of the issues analyzed in the White Paper, I thought its analysis of the Fourth Amendment’s warrant requirement was solidly grounded in judicial precedent. As the Amendment’s text makes clear and as the Supreme Court has repeatedly said, the “ultimate touchstone of the Fourth Amendment is ‘reasonableness.’” *Riley v. California*, 134 S. Ct. 2473, 2482 (2014) (internal citation and quotation marks omitted). When the TSP was initiated and the White Paper was written, a number of courts had recognized a foreign intelligence exception to the warrant requirement under appropriate circumstances. *See, e.g., United States v. Truong Dinh Hung*, 629 F.2d 908 (4th Cir. 1980); *United States v.*

*Brown*, 484 F.2d 418 (5th Cir. 1973). Those decisions, and the Supreme Court precedent on which they were based, supported the White Paper's conclusion that, under the specific circumstances presented, the NSA activities were not subject to the Fourth Amendment's warrant requirement.

- b. Under what circumstances, if any, does national security allow for warrantless collection under the "special needs" doctrine when the collection would otherwise require a warrant?

I have not done the legal research and analysis required to properly answer that question. That analysis would start with the fact that searches governed by the Fourth Amendment must always be reasonable – whether analyzed under a "special needs" exception or not. Reasonableness, in turn, involves balancing "the degree to which [a search] intrudes upon an individual's privacy" and "the degree to which it is needed for the promotion of legitimate governmental interests." *Samson v. California*, 547 U.S. 843, 848 (2006) (quoting *United States v. Knights*, 534 U.S. 112, 118-19 (2001)). Courts conducting this type of balancing in national security cases have carefully considered both the privacy interests and the national security imperatives that are at stake. See, e.g., *In re Terrorist Bombings of U.S. Embassies in East Africa*, 552 F.3d 157, 172-76 (2d Cir. 2008). As a result, any Fourth Amendment analysis is highly contextual, and a firm and complete understanding of the facts is needed before one can reach a proper conclusion on the application of the Fourth Amendment.

#### QUESTION 18:

The CIA's minimization procedures with regard to Section 702 of FISA state: "CIA personnel may query CIA electronic and data storage systems containing unminimized communications acquired in accordance with section 702 of the Act. [REDACTED] Such queries must be reasonably designed to find and extract foreign intelligence information. CIA will maintain records of all such queries, including but not limited to United States person names and identities, and NSD and ODNI will review CIA's queries for content." What is the role of the Office of the General Counsel in ensuring that queries are "reasonably designed to find and extract foreign intelligence information" and identifying and reporting compliance incidents?

I understand that the Office plays an important role in supporting the Agency's FISA compliance program. I am told that CIA attorneys conduct in-person training on the minimization procedures and are embedded with the operators to answer any question that may arise. OGC lawyers know to report any identified incident of noncompliance to the Department of Justice and the Office of the Director of National Intelligence. OGC lawyers also participate in those agencies' frequent reviews of all of the CIA's U.S. person queries of Section 702-acquired content to ensure that each query satisfies the legal standard referenced in the question. By law, any compliance incident is also reported to the Congress and to the Foreign Intelligence Surveillance Court. If confirmed, I will ensure that the Office continues this important work.



**QUESTION 19:**

**What limitations and reporting requirements apply to U.S. person queries of Section 702-derived metadata?**

As the Privacy and Civil Liberties Oversight Board explained in its July 2014 report, the CIA's current procedures prohibit CIA personnel from querying Section 702-derived metadata for an unauthorized purpose. *See Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act* (July 2, 2014), at 58. The Board recommended that CIA revise its minimization procedures to require that a U.S.-person-metadata query be based on a statement of facts showing that it is reasonably likely to return foreign intelligence information. *Id.* at 12, 139-40. I understand that the CIA plans to implement that recommendation.

**QUESTION 20:**

**Section 702 of FISA prohibits "reverse targeting" of U.S. persons. Given that the CIA can both nominate foreign targets and conduct U.S. person queries intended to return communications of or about U.S. persons, how should the Office of General Counsel guard against any instances of reverse targeting?**

As the question notes, Section 702 prohibits "reverse targeting" of U.S. persons. I understand that OGC lawyers, in coordination with the CIA's FISA Program Office, provide in-person training on this prohibition. OGC lawyers also review and approve every CIA nomination and facilitate the Department of Justice's regular compliance reviews, which specifically look for indications of "reverse targeting."

These and other measures appear to be effective. After a thorough review, the Privacy and Civil Liberties Oversight Board saw "no trace" of any "illegitimate activity associated with the [702] program, or any attempt to intentionally circumvent legal limits." *See Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act* (July 2, 2014) at 11. Still, Director Coats has committed to review how Section 702 is being implemented to determine whether any changes should be made to further strengthen compliance and oversight, including with respect to the reverse targeting prohibition.

**QUESTION 21:**

**Do you believe the CIA should be authorized to monitor U.S. persons' social media activities? If so, under what circumstances and subject to what limitations?**

With its focus on foreign intelligence, the role of the CIA, with respect to U.S. persons, is and should be limited. The CIA may collect information that is publicly available concerning U.S. persons only if it is done in the course of the CIA's duly authorized intelligence activities and in

fulfillment of the CIA's national security responsibilities, and only if the collection complies fully with the Constitution, federal statutes, and presidential directives. In particular, the CIA's collection, retention, and dissemination of information concerning U.S. persons must comply with its recently revised and publicly available Attorney General-approved guidelines, *CIA Intelligence Activities: Procedures Approved by the Attorney General Pursuant to Executive Order 12333* (Attorney General Guidelines).

Like Director Pompeo, I think publicly available information, including public posts on social media, can provide important clues in identifying those who seek to harm Americans here and abroad. I also agree with Director Pompeo that the FBI and other appropriate government agencies have a duty to use publicly available social-media activities as part of their lawfully conducted investigations or intelligence gathering, subject to applicable privacy and other legal restrictions and regulations.

**a. What specific legal authorities would provide the basis for such monitoring?**

The National Security Act of 1947 and the CIA Act of 1949 authorize and direct the CIA Director to conduct intelligence activities by appropriate means, not to include police, subpoena, or law enforcement power or internal security functions. The President, through Executive Order 12333 and other Presidential directives, has given the CIA Director intelligence-related duties and responsibilities and has also placed important limitations on the CIA's intelligence activities. The Attorney General Guidelines, described above, place further limitations on the collection, retention, and dissemination of information concerning U.S. persons. For example, the CIA may not collect information concerning U.S. persons solely for the purpose of monitoring activities protected by the First Amendment. See Attorney General Guidelines § 3.3. Collectively, these and other rules are designed to keep the CIA's focus on its foreign intelligence mission while also protecting privacy.

**QUESTION 22:**

**What limitations apply to the CIA's collection, use and dissemination of information collected in bulk known to include U.S. person information?**

Pursuant to applicable law and the Attorney General Guidelines, the CIA is permitted in some instances to engage in "bulk" collection activities in furtherance of its duly authorized intelligence activities and in fulfillment of the CIA's national security responsibilities. "Bulk" collection activities are activities that, due to technical or operational considerations, acquire data without the use of specific identifiers or terms (e.g., names, phone numbers, or email addresses). The recently revised and publicly available Attorney General Guidelines impose stringent and detailed restrictions on information collected in bulk, as well as unevaluated information, which is generally presumed to contain incidentally acquired information concerning U.S. persons.

**QUESTION 23:**

**In his responses to questions, Director Pompeo wrote, in the context of CIA collection of U.S. person information from foreign entities, that “In very limited circumstances, however, the manner in which a foreign partner collected the information could be so improper that it would not be appropriate for the CIA to receive, use, or further disseminate the information.” What circumstances would prevent the CIA from receiving, using or disseminating that information?**

In response to further questions on this subject, Director Pompeo explained that, in the quoted sentence, he was “indicating that [he] could not rule out a circumstance in which the conduct of a foreign partner is so egregious that CIA would not receive the information.” He went on to explain that “this would be a highly fact-specific determination” which would consider, among other things, the source of the information, the intent of the foreign partner, the nature of the information, and the scope of the information. Because the decision would be based on a consideration of all facts and circumstances and because I have not had personal experience with such a decision, I am unable to offer an opinion beyond what Director Pompeo has already said.

**QUESTION 24:**

**Would the CIA’s receipt of intelligence from a foreign entity, or its subsequent use or dissemination of that intelligence be restricted if it is known to include the communications of U.S. persons engaged in First Amendment-protected political activity, as opposed to those of suspected terrorists or foreign agents?**

Information about U.S. persons must be handled with great care, in full compliance with applicable law and procedures. As noted above, the recently revised Attorney General Guidelines place stringent and detailed restrictions on the CIA’s retention, use, and dissemination of information concerning a U.S. person. I understand those restrictions apply no matter how the CIA received the information and no matter what the U.S. person may be saying in or doing with the collected communication. The Guidelines also prohibit the CIA from “collect[ing] or maintain[ing] information concerning U.S. persons solely for the purpose of monitoring (1) activities protected by the First Amendment or (2) the lawful exercise of other rights secured by the Constitution or laws of the United States.” Attorney General Guidelines § 3.3. The Guidelines also prohibit the CIA from requesting that a foreign entity undertake any activity that the Guidelines prohibit. *Id.*

**QUESTION 25:**

**Section IV ("Processing Raw SIGINT"), paragraph (C)(2) of the Procedures for the Availability or Dissemination of Raw Signals Intelligence Information by the National Security Agency Under Section 2.3 of Executive Order 12333 states that, when raw signals intelligence is shared with IC elements, queries for communications reasonably likely to be to, from, or about a U.S. person or a person located in the United States may be conducted for purposes of targeting that person if the Attorney General determines that the person is an agent of a foreign power or an officer or employee of a foreign power and the purpose of the selection is to acquire significant foreign intelligence or counterintelligence information.**

- a. What rules apply for a query of a U.S. person that is not for purposes of targeting that person? Is Attorney General approval required?**

I have not had experience with the CIA's implementation of the Procedures for the Availability or Dissemination of Raw Signals Intelligence Information by the National Security Agency Under Section 2.3 of Executive Order 12333, or the application of rules that apply to a query of shared raw SIGINT or of signals intelligence collected by the CIA designed to retrieve information concerning a U.S. person.

I would note that the Attorney General Guidelines contain procedures that address querying under certain situations, and I understand that additional protections or enhanced safeguards may also be applied. If confirmed, I will consult with the appropriate experts at the Agency on these issues, and I will seek to ensure each query is conducted carefully, for authorized purposes, and in full compliance with applicable legal requirements.

- b. Do the same rules related to queries of U.S. persons apply for signals intelligence collected by the CIA (as opposed to shared raw SIGINT) and is Attorney General approval required? If not, please describe those rules.**

Please see response to subpart (a).

*Relations with Congress***QUESTION 26:**

The "Gang of Eight" provision in the National Security Act (Section 503(c)(2)) applies to covert action.

- a. Are there circumstances in which the "Gang of Eight" briefings can apply to other than time-sensitive tactical matters? If so, please elaborate.

Section 503 of the National Security Act provides that a presidential finding or notification about a covert action may be reported to only the chairmen and ranking minority members of the congressional intelligence committees, the Speaker and minority leader of the House of Representatives, the majority and minority leaders of the Senate, and such other member or members of the congressional leadership as may be included by the President, "if the President determines that it is essential to limit access" to the finding or notification in order "to meet extraordinary circumstances affecting vital interests of the United States." 50 U.S.C. § 3093(c)(2). Thus the statutory language does not confine limiting access in this manner only to circumstances involving "time-sensitive tactical matters." However, as noted above, Director Coats has said that, based on his experience, limited notifications are often a matter of timing.

- b. Are there circumstances in which it can be used to conceal from the full Committee ongoing programs or significant legal analyses related to intelligence activities? If so, please elaborate.

To invoke the so-called "Gang of Eight" provision, the President must determine that "it is essential to limit access" in order "to meet extraordinary circumstances affecting vital interests of the United States." 50 U.S.C. § 3093(c)(2) (emphasis added). That determination would be highly fact specific. It would not be proper to use the provision to withhold from the full committee information or legal analysis related to intelligence activities in the absence of such a determination.

In addition, as noted in the response to subpart (c), the "due regard" language of Section 502 of the National Security Act recognizes that, in other rare cases, it may be necessary to initially brief only the "Gang of Eight" or the leadership of the congressional intelligence committees. It would not be proper to use that provision to withhold from the full committee information unless the limited access was done for the "protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods and other exceptionally sensitive matters." 50 U.S.C. § 3092(a).

- c. Are there circumstances in which the “Gang of Eight” provision would apply to non-covert action. If so, what would be the statutory basis for such limited notifications?

Section 503, by its terms, applies only to covert action. I understand that, in rare cases involving particularly sensitive non-covert action matters, it may be necessary to initially brief only the “Gang of Eight” or the leadership of the congressional intelligence committees. The statutory basis for such limited notifications is found in the language of National Security Act’s reporting provisions which specify that notifications be made “consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods and other exceptionally sensitive matters.” 50 U.S.C. § 3092(a). In practice, if confirmed, I would look to Director Pompeo and Director Coats, both former members of the congressional intelligence committees, for guidance and historical practice. Director Coats recently told this committee that he expected limited initial notifications for non-covert actions would be rare.

#### *Lethal Authorities*

#### **QUESTION 27:**

In his responses to questions, Director Pompeo stated that “when the United States knows in advance that the specific object of its [lethal] attack is an individual U.S. citizen, it proceeds on the assumption that constitutional rights – in particular, the Fifth Amendment’s Due Process Clause and the Fourth Amendment’s prohibition on unreasonable searches and seizures – attach to the U.S. citizen even while the individual is abroad. Those rights are considered in assessing whether it is lawful to target the individual.”

- a. Please describe how the constitutional rights of U.S. citizens would be applied in this context.

The United States government must consider the constitutional rights of a U.S. citizen before targeting him or her for lethal action. Because I have not had previous experience applying constitutional law in this context – where the United States is considering the use of lethal force against a U.S. citizen abroad – I cannot speak to the specific application of constitutional principles in that context. As this committee knows, the Justice Department has set forth in a white paper its detailed and authoritative framework for that constitutional analysis. I can assure you, if I am confirmed and presented with this issue, I would give the matter and the required legal analysis my utmost care and attention, including consultation with the Department of Justice.

**b. Do these rights apply to non-citizen U.S. persons overseas?**

Because I have not had previous experience with that issue, I have not done the necessary legal research and analysis required to answer that question properly. If I am confirmed and presented with this issue, I would again give the question my utmost care and attention and would seek the guidance of the Department of Justice.

***Transparency and Congressional Notification***

**QUESTION 28:**

**What is the role of the Office of the General Counsel in ensuring that the CIA classification decisions are consistent with Executive Order 13526?**

I understand that the Office of the General Counsel provides legal advice to CIA officers on the proper interpretation and application of Executive Order 13526, to ensure that CIA classification decisions are consistent with that Executive Order. The Office is also called upon to explain and defend the Agency's classification decisions in litigation.

**QUESTION 29:**

**50 U.S.C. § 3349 requires notification of Congress in the event of an authorized disclosure to the press or the public of classified information that has not otherwise been declassified. Based on the law, do you see any exceptions to this notification requirement?**

I have not had previous experience with 50 U.S.C. § 3349, and have not studied how it has been interpreted and applied. But subsection (d) appears to list four exceptions to the notification requirement. In addition, other exceptions may arise from other federal statutes or principles of law.

April 21, 2017

The Honorable Ron Wyden  
The Honorable Martin Heinrich  
Select Committee on Intelligence  
United States Senate  
211 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senators Wyden and Heinrich:

Thank you for your letter dated April 7, 2017. Please find enclosed my responses to your questions.

I look forward to appearing before your committee on April 26, 2017.

Sincerely,

Courtney Elwood

Enclosure



**Prehearing Questions for Ms. Courtney Elwood upon her nomination to be  
General Counsel of the Central Intelligence Agency**

**Senators Wyden and Heinrich**

**Detention, Interrogation, Rendition and Human Rights**

1. Were you ever read into CIA's Rendition, Detention and Interrogation (RDI) Program? If yes, please provide the date.

I did not work on, nor have knowledge of, classified aspects of the CIA's RDI program.

2. Please describe any involvement you had with the RDI program as part of the White House Counsel's office, the Office of the Vice President, or at the Department of Justice.

I did not work on, nor have knowledge of, the CIA's highly classified RDI program when I served as an Associate Counsel to the President and as Deputy Counsel to the Vice President. I also did not work on, nor have knowledge of, classified aspects of that program when I served in the Justice Department. Although I was therefore not privy to any connection between the classified program and proposed legislation, I did follow developments on the legislation that became the Detainee Treatment Act of 2005, and the Military Commissions Act of 2006, through periodic updates from the individuals at the Department who were involved day-to-day on that legislation.

3. In response to Committee questions, you stated that, at the Department of Justice, you worked on "cases involving the constitutionality of national security programs and detention of enemy combatants and military commissions." Please detail those cases and any other involvement you may have had with regard to detention matters, as part of the White House Counsel's office, the Office of the Vice President, or at the Department of Justice.

Following September 11, 2001, the Justice Department was often litigating well over a hundred terrorism-related civil cases at any one time. Those court cases were assigned to different components within the Department, depending on the particular claims at issue and the stage of the litigation. Well before I arrived at the Department, the Attorney General had established a task force within the Department composed of representatives from different components to ensure that these cases were properly handled and coordinated. That task force was chaired by a lawyer from the Attorney General's Office and, in late 2005, I assumed that responsibility. Generally, my role was to convene weekly meetings of the task force where participants discussed significant developments in the court cases and to ensure that the Attorney General was kept informed of any matters that required his personal attention. As I recall, some of the cases involved federal court habeas challenges to the detention of enemy combatants held at Guantanamo. With regard to my work, if any, on other detention matters, please see my

response to Question 2, which I incorporate by reference. In addition, I consulted with the Solicitor General and his Deputies on matters that required the Attorney General's involvement or were noteworthy for some other reason, including on significant national security cases that the Department was litigating in the U.S. Supreme Court or in the U.S. Courts of Appeal.

- 4. Do you believe that any of the CIA's former enhanced interrogation techniques are consistent with the Detainee Treatment Act?**

I was not involved in, nor have I reviewed, the Justice Department's legal analysis of that question, and I have not done the legal and factual research that would be required to properly answer it. I would note that the law governing interrogation has changed significantly in the past decade. Among other things, Section 1045 of the National Defense Authorization Act for Fiscal Year 2016 provides that no individual in U.S. custody may be subjected to any interrogation technique or approach that is not authorized by and listed in the Army Field Manual. I fully support Director Pompeo's commitment to ensure that, during his tenure, the CIA fully complies with the law governing interrogation, including the legal bar on the use of any interrogation method not listed in the Army Field Manual.

- 5. Do you believe that any of the CIA's former enhanced interrogation techniques are consistent with U.S. statutory prohibition on torture?**

Please see my response to Question 4.

- 6. Do you believe that any of the CIA's former enhanced interrogation techniques are consistent with the War Crimes Act?**

Please see my response to Question 4.

- 7. Do you believe that any of the CIA's former enhanced interrogation techniques are consistent with U.S. obligations under the Convention Against Torture, Common Article 3 of the Geneva Convention and other U.S. treaty obligations?**

Please see my response to Question 4.

- 8. Have you read the declassified Executive Summary of the Committee's Study of the CIA's Detention and Interrogation Program?**

Yes.

- 9. During his confirmation process, Director Pompeo committed to reviewing parts of the classified Committee Study relevant to the position of the Director of the CIA and the Committee. Will you likewise commit to reviewing parts of the classified Study relevant to the Office of the General Counsel?**

Yes, if confirmed.

10. In response to the Committee Study, then-Director Brennan directed the General Counsel, working with the Executive Director, to “develop a formal mechanism for triggering systematic reviews of OLC opinions regarding ongoing covert action programs with the goal of ensuring that OLC’s legal analysis is confirmed or updated as warranted by material changes in facts and circumstances.” Will you commit to implementing this reform?

I understand that the Office of the General Counsel implemented that reform in 2013. If confirmed, I commit to evaluating for myself that reform and its implementation.

11. In responses to questions asked during her confirmation process, former CIA General Counsel Caroline Krass wrote: “In my view, CIA officers should not continue to participate in the interrogation of detainees in liaison custody when harsh or extreme interrogation techniques are used. For example, CIA officers should not participate in any interrogations when they witness, know or otherwise suspect a detainee has been tortured or mistreated, as their participation could, depending upon the circumstances, result in violations of law or administrative restrictions.” Do you agree?

Yes.

12. The statutory prohibition on interrogations not consistent with the Army Field Manual apply to any individual “in the custody or under the effective control of an officer, employee, or other agent of the United States Government; or detained within a facility owned, operated, or controlled by a department or agency of the United States, in any armed conflict.”

- a. Please describe the factors that would indicate whether a detainee was in the “effective control” of an officer, employee, or other agent of the United States Government.

I have not previously had the opportunity to consider this issue. To determine whether a detainee is in the “effective control” of an officer, employee, or other agent of the United States Government, I would begin by looking to the common meaning of the phrase and to past practice, and I would consult with the experts on the subject. I would also consider other statutes containing, and judicial decisions construing, the same or similar language.

- b. Please describe how you would define whether a detainee is “detained within a facility owned, operated, or controlled by a department or agency of the United States.”

I have not previously had the opportunity to consider this issue. To determine whether a detainee is “detained within a facility owned, operated, or controlled by a department or

agency of the United States," I would begin by looking to the common meaning of the terms and to past practice, and I would consult with the experts on the subject. I would also consider any other statutes containing, and judicial decisions construing, the same or similar language.

- 13. To the extent that the CIA participates in any updates of the Army Field Manual, do you agree to oppose any techniques that involve use or threat of force, as stipulated in the National Defense Authorization Act for Fiscal Year 2016 (P.L. 114-92)?**

Yes.

- 14. The United States recognizes its obligation, under the Convention Against Torture, not to "expel, return ('refouler') or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture."**

- a. To what extent does U.S. compliance with this obligation depend on "diplomatic assurances" provided by countries to which detainees may be extradited or rendered?**

I understand that diplomatic assurances have been a valuable tool for ensuring that detainees are treated humanely. I also understand that the decision to rely on a diplomatic assurance is assessed on a case-by-case basis in light of all the relevant factors, including the practices of the country providing the assurances as well as that country's record of complying with similar assurances provided to the United States and other countries.

- b. Should those assurances be conveyed in writing, so that a record of their provision and receipt is established?**

As noted in response to subpart (a), the decision to rely on an assurance is assessed on a case-by-case basis, and I assume would entail considering the need for the assurance to be conveyed in writing. That consideration might depend on, among other things, the identity of the government providing the assurances and the nature of the situation to which the assurances relate.

- c. Should such assurances be accepted from countries with established records of committing torture?**

Under section 2242(a) of the Foreign Affairs Reform and Restructuring Act of 1998, it is the stated policy of the United States "not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States." 8 U.S.C. § 1231 note. The decision to rely on an assurance would be assessed on a case-by-case basis in light of all the relevant factors.

- d. What is the role of the Office of General Counsel in ensuring that “diplomatic assurances” that detainees will not be subject to torture are credible?

I am not familiar with the specific role that the Office of the General Counsel has played in connection with the decision to rely on diplomatic assurances. If confirmed, I will work to ensure that the Office is providing the advice and support necessary to ensure that CIA officers fully and faithfully comply with applicable law.

15. In an August 6, 2015, letter to Senators Wyden, Heinrich and Hirono, then-Director of the CIA John Brennan said that, “While we neither condone nor participate in activities that violate human rights standards, we do maintain cooperative liaison relationships with a variety of intelligence and security services around the world, some of whose constituent entities have engaged in human rights abuses.”

- a. If a liaison service were to use CIA-provided resources to engage in human rights abuses, would the CIA bear any legal responsibility?

I have not previously had the opportunity to consider that question. I imagine that the CIA’s legal culpability, if any, would turn on the specific facts and applicable law.

- b. Would the CIA have a legal responsibility to end or modify its relationship with a liaison service in such a scenario?

I understand that the CIA has developed policies and procedures, coordinated with the Office of the Director of National Intelligence, on handling relationships with foreign liaison services who are alleged to have participated in human rights violations. Director Brennan generally described that procedure in his letter of August 6, 2015. Director Pompeo has further explained that, under his direction, each decision regarding the costs and benefits of working with a liaison service alleged to have engaged in human rights abuses will continue to be weighed on an individual, case-by-case basis, would consider the unique utility or specific access of the relationship and the risk of future potential human rights abuse.

**Chief of Mission Authority**

16. 22 U.S.C. 3927 requires that chiefs of mission “shall be kept fully and currently informed with respect to all activities and operations of the Government within that country,” including the activities and operations of the CIA. As described in the Executive Summary of the Committee Study of the CIA’s Detention and Interrogation Program, in two countries, U.S. ambassadors were informed of plans to establish CIA detention sites in the countries where they were serving only after the CIA had already entered into agreements with the countries to host the

**detention sites. Did the failure to inform chiefs of mission prior to entering into agreements with the host countries violate 22 U.S.C. 3927?**

It is important for the CIA and the State Department to work together as partners, both in Washington and in the field. Although I do not have all the facts needed to answer the specific question, I agree with Director Coats who stated in response to questions that it is critical for the Chief of Mission to be informed of intelligence operations that may affect diplomatic relationships.

- 17. In two other countries where negotiations on hosting new CIA detention facilities were taking place, the CIA told local government officials not to inform the U.S. ambassadors. Did the CIA's direction to local government officials not to inform the U.S. chiefs of mission violate 22 U.S.C. 3927?**

Please see my response to Question 16.

### **Surveillance**

- 18. What differences, if any, exist with regard to CIA access to, queries of, and use, dissemination and retention of U.S. person communications collected pursuant to Executive Order 12333 as compared to communications collected pursuant to Section 702?**

Information about U.S. persons must always be handled with great care, in full compliance with U.S. law and presidential directives. In both cases – whether the communication was collected pursuant to Executive Order 12333 or pursuant to Section 702 – specific restrictions govern the CIA's retention, use, and dissemination. The requirements implementing E.O. 12333 are contained in the recently revised and publicly available Attorney General-approved guidelines, *CIA Intelligence Activities: Procedures Approved by the Attorney General Pursuant to Executive Order 12333* (Attorney General Guidelines). The Attorney General Guidelines also incorporate Congress's specific instructions in Section 309 of the Intelligence Authorization Act for Fiscal Year 2015, regarding the protection of U.S. person communications. In addition, for U.S. person communications collected under Section 702, further court-approved minimization procedures apply.

- 19. Please describe the rules under which the CIA would approve requests for the unmasking of U.S. person identities in disseminated CIA products.**

The CIA's Attorney General Guidelines place stringent and detailed restrictions on the CIA's retention, use, and dissemination of information concerning a U.S. person. I understand that, when the CIA disseminates information concerning a U.S. person outside the Intelligence Community, the Attorney General Guidelines generally require the CIA, to the extent practicable, to remove any identifying information unless (1) the

information is necessary, or it is reasonably believed that the information may become necessary, to understand, assess, or act on the information being disseminated and (2) the information fits within one of the specific categories listed in sections 7 and 8.2.1 of the Attorney General Guidelines. I understand that the same criteria would govern a follow-up request for additional information regarding the identity of a U.S. person. Additional protections or prohibitions may apply in some circumstances. For example, information collected under the Foreign Intelligence Surveillance Act may be disseminated only pursuant to court-approved minimization procedures. If confirmed, I look forward to learning about the application of these requirements in practice.

#### **Lethal Authorities**

20. On December 2, 2015, now-President Donald Trump stated the following: "The other thing with the terrorists is you have to take out their families, when you get these terrorists, you have to take out their families. They care about their lives, don't kid yourself. When they say they don't care about their lives, you have to take out their families." Do you agree that this would be a violation of U.S. and international law?

The intentional targeting of persons not presenting a threat to the United States or its allies, or persons who are not otherwise lawful targets under existing law, would implicate a variety of laws. If confirmed, I will work to ensure that all activities of the CIA fully and faithfully comply with the Constitution and U.S. law.