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NOMINATIONS OF DAVID F. HEYMAN, MARISA J. DEMEO, AND FLORENCE Y. PAN

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

OF THE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

NOMINATIONS OF DAVID F. HEYMAN TO BE ASSISTANT SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY, MARISA J. DEMEO TO BE ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, AND FLORENCE Y. PAN TO BE ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

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NOMINATIONS OF DAVID F. HEYMAN, MARISA J. DEMEO, AND FLORENCE Y. PAN

WEDNESDAY, MAY 13, 2009

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:37 p.m., in room SD–342, Dirksen Senate Office Building, Hon. Joseph I. Lieberman, Chairman of the Committee, presiding.

Present: Senators Lieberman, Akaka, and Collins.

OPENING STATEMENT OF CHAIRMAN LIEBERMAN

Chairman LIEBERMAN. The hearing will now come to order. Good afternoon.

Today the Committee will consider the nominations of three individuals: David Heyman to be Assistant Secretary of Homeland Security; and then in part two of this hearing, Senator Akaka will Chair to hear the nominations of Marisa Demeo and Florence Pan to be Associate Judges on the D.C. Superior Court.

Let us begin with our first nominee, David Heyman, who has been nominated by President Obama to serve as Assistant Secretary at the Department of Homeland Security (DHS) in charge of the Department's Office of Policy, an important office. Mr. Heyman has a deep and in some ways unique background in the area of homeland security policy. Currently a senior fellow at the Center for Strategic and International Studies (CSIS), he has led the center's homeland security program since 2003. While at CSIS, he has authored studies on a range of topics, including the roles and missions of DHS, biosecurity, general aviation security, and the balance between science and security. Prior to joining CSIS, Mr. Heyman worked in the Clinton Administration as a senior policy adviser at the Department of Energy and at the White House Office of Science and Technology Policy.

What is the Office of Policy? It plays a significant role within the Department, serving as the lead office for the development and coordination of department-wide policy. When this office was established by former Secretary Chertoff in 2005, he proposed that it be headed by an Under Secretary. In the last two Congresses, in fact, Senator Collins and I have sponsored legislation that included this proposal, and I still support the elevation of this position and hope to take up legislation that attempts to do so again this year.

Mr. Heyman, if you are confirmed, you will face several notable challenges in the coming months and years. First, the Department

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is required by law, as you well know, to carry out and publish the Quadrennial Homeland Security Review and report to Congress on the results by the end of this year. The Committee stands ready to work with you and the Administration to implement the results of this review, including through authorizing legislation for the Department.

Second, you are going to be faced with the challenge of policy coordination within the Department. Many of the operating components have their own policy offices, and responsibility for policy in areas such as cyber security and information sharing has been ambiguous at times. So we hope that you will be able to make it less ambiguous.

Third, the Office of Policy has begun to play a greater role in the acquisition review process and is responsible for establishing strategic high-level requirements that can inform acquisition decisions. That is very important.

And fourth, the Office of Policy has played an important role in coordinating our policy related to border security and terrorist travel in recent years and is responsible for ensuring that all DHS efforts in this arena are risk-based and results-driven.

Obviously, the current southwest border threat requires a strategic response that targets all of the Department's formidable law enforcement resources, and the Office of Policy, which you have been nominated to lead, should have a significant role to play outlining policy options for the Secretary in the fight alongside our Mexican allies against the Mexican drug cartels.

So there is a lot awaiting you. You bring extraordinary qualifications to this office. I appreciate that you have been willing to serve the public, and I look forward to the question-and-answer period.

Senator Collins.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you, Mr. Chairman.

Mr. Chairman, often in this room we talk about the partnership between the Department of Homeland Security and our first responders, and in that regard, I am very pleased to note lurking in the back of the room members of the Maine Association of Police, who are here this week as part of the law enforcement groups that have gathered in our city. So having spotted some of my constituents in the back of the room, I want to welcome them to Washington and to this hearing.

I also join the Chairman in welcoming David Heyman as the nominee to be the Assistant Secretary for Policy at the Department of Homeland Security. The Department's Policy Office is tasked with developing a comprehensive approach to policy and planning for the Department and with bringing the various components of DHS, as well as its State, local, and private sector partners, together under a unified vision.

As Assistant Secretary for Policy, Mr. Heyman, if confirmed, would be directly responsible for establishing priorities and for seeing that they are implemented on a wide range of homeland security issues. The Policy Office is now coordinating the Department's Quadrennial Homeland Security Review that we look forward to seeing once it is completed in December.

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In addition, as the Chairman has mentioned, the Policy Office has many other responsibilities, including reviewing the continued participation of countries in the Visa Waiver Program and ensuring the implementation of the enhancements to the security of that program that were included in the 2007 homeland security law which was authored by this Committee.

The Policy Office has already made significant strides in facilitating the conclusion of agreements with nations in the European Union to provide passenger name records on individuals traveling to our country. Having this information will help identify individuals who may pose a threat to the United States before they arrive at our borders. I look forward to hearing how this program would be strengthened by the nominee.

I also look forward to hearing his views on how we should reauthorize two important laws that I co-authored, which will expire this year. One is the SAFE Port Act, and the other is the chemical facility security law. In addition, both the Chairman and I have spent a great deal of time focusing on how the Department should address the growing cyber security threats.

In other words, this position has a wide range of responsibilities, and it is one of the most important in the Department. Mr. Heyman has a wealth of experience on homeland security policy issues from serving in positions both inside and outside of government, most recently as the Director of the Homeland Security Program at the Center for Strategic and International Studies.

I would also note that I see that the nominee is in very good company with Admiral Loy, here to introduce him today, so that certainly speaks well for him.

Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks, Senator Collins.

Admiral Loy, it is an honor to have you with us. You have served our country for a long time with extraordinary honor and effect, previously Deputy Secretary at Homeland Security, I guess the first person to head TSA, right?

Admiral LOY. Yes, sir.

Chairman LIEBERMAN. And before that, great service in the Coast Guard. So it does really speak well of the nominee that you would take time out of your busy schedule. Senator Collins probably knows better than anyone else in the room how difficult it is to work with Bill Cohen. [Laughter.]

Admiral LOY. Or for Bill Cohen.

Chairman LIEBERMAN. Actually, he is a dear friend and a wonderful guy. So please proceed with your introduction.

TESTIMONY OF ADMIRAL JAMES M. LOY, U.S. COAST GUARD (RETIRED)

Admiral LOY. Thank you, Mr. Chairman. Thank you, Senator Collins. It gives me great personal pleasure to introduce David Heyman, the President's nominee for the position of Assistant Secretary for Policy at DHS, and I would be remiss if I failed to express my personal thanks to the Committee for the diligent support offered to me and to Secretary Ridge back in the early days of the new Department. It is very hard to believe we are actually ap-

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proaching the eighth anniversary of that fateful day in September 2001.

Let me offer a thought or two, Mr. Chairman, if I may, as to why I believe David Heyman will serve our Nation well, if confirmed.

First is his extraordinary personal background of service, which you have mentioned already, over 20 years of experience in business and government and non-governmental organizations, all focused on what has become this extraordinary menu at DHS, which Senator Collins mentioned. He has studied deeply, he has written convincingly, and he has spoken decisively and often about topics ranging from aviation security to bioterrorism, from the Department's organization to preparedness as a discipline of consequence for all levels of government in our country and for each of us as citizens as well.

He has lived and worked abroad in places like Russia and the Middle East, and he brings a personal reflection of these other citizens of the world with whom we must collaborate to solve so many of the complex challenges that we have facing us today.

I have spent weekends with Mr. Heyman at conferences and work sessions where very complex topics were studied to try to find better ways to serve our country, especially as we continue to learn about and understand the true scope of challenges of the post-September 11, 2001, security environment. I have read many of his published works, and they reflect the depth of research and the clarity of thought that I believe are very necessary to consider and design policy concepts and then counsel the Secretary and the President.

On a personal level, I admire Mr. Heyman's even-handed perseverance. He is a very good listener and one of those people who waits patiently, forming judgments, and then offers cogent, thoughtful comment. In many sessions with him, I found myself just sort of waiting to see what Mr. Heyman said about whatever the topic was that we were discussing or that was on the table, and then often I was very glad that I had waited.

He loves this country. He has worked selflessly in its employ in the past, and we are quite fortunate to find Americans of his caliber willing to step up again and serve. I am honored to introduce David Heyman for your consideration and recommend strongly you provide the Senate's consent to his nomination and confirm him as the next Assistant Secretary for Policy at DHS.

Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Admiral Loy. That was an excellent statement, which means a lot to the Committee. Let me say to you that we appreciate the time you took to be here. Obviously, if you have the time to stay, you are more than welcome. If not, we will understand completely.

Admiral LOY. I will leave the table to the witness.

Chairman LIEBERMAN. Thank you.

Admiral LOY. Thank you so much.

Chairman LIEBERMAN. David Heyman has filed responses to a biographical and financial questionnaire, answered pre-hearing questions submitted by the Committee, and has had his financial statements reviewed by the Office of Government Ethics. Without objection, this information will be made part of the hearing record with

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the exception of the financial data, which are on file and available for public inspection in the Committee offices.

Our Committee rules require that all witnesses at nomination hearings give their testimony under oath, so Mr. Heyman, I would ask you to please stand and raise your right hand. Do you swear that the testimony that you are about to give to this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. HEYMAN. I do.

Chairman LIEBERMAN. Thank you very much. Please be seated. We would welcome your statement at this time and any introduction of family or other guests that you have with you.

TESTIMONY OF DAVID F. HEYMAN[1] TO BE ASSISTANT SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. HEYMAN. Thank you, Mr. Chairman, Ranking Member Collins, and Members of the Committee who will be joining us perhaps shortly. I am deeply honored by the President's nomination, Secretary Napolitano's support, and the opportunity to appear before you today. I am also deeply honored to be introduced by Admiral Loy, one of America's finest public servants.

There are a number of friends and family here with us today that I would also like to thank and recognize. Some of them are still here. My wife, Victoria, behind me, is an extraordinary professional in her own right, working on international development, taking her to places we care very deeply about—Pakistan, India, and North Africa, to name a few. She is my joy and my love and the mother of our 8-week-old son, Henry, who has taken leave of this Committee.

Chairman LIEBERMAN. Henry has returned.

Mr. HEYMAN. He is in the back. Thank you, Wendy. The world is brighter, though, with both of them here.

My parents are also here. They came to Washington in the 1960s, riding a wave of excitement when President Kennedy was elected. My father joined the Alliance for Progress and the State Department where he worked for 25 years. Both of my parents have devoted their lives to public service, to serving the Nation and their community, to strengthening democracy, improving education, housing, and to the betterment of lives of youth and seniors in our communities. My father used to echo Kennedy's remarks when I was young that public service was an honorable calling. He is right. And my parents inspired me to hear that calling. I am glad they could both be here today.

Chairman LIEBERMAN. Welcome.

Mr. HEYMAN. My brother, my sister-in-law, and my niece Maddy are here. I should note Maddy is running for office. It is her first elected office that she will be running for.

Senator COLLINS. As a Republican, I hope. [Laughter.]

Mr. HEYMAN. I offer advice that you pay attention to the role models up here. They have been elected many times.

Mr. Chairman, Senator Collins, let me also thank you, your fellow Committee Members, and staff for the exceptional leadership

[1] The prepared statement of Mr. Heyman appears in the Appendix on page 26.

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that this Committee has provided this Nation in helping to protect our country. Whether it is the creation of the Department of Homeland Security or in its reform post-Katrina or the many other acts you have worked on, your foresight, vision, and leadership have been constant throughout difficult times.

I came to Washington nearly 15 years ago to work in public policy. Before doing so, I worked in the private sector for nearly a decade as a systems programmer building computer systems, doing supply-chain management, for the government and for industry. When the Berlin Wall fell, I led my company's efforts to set up one of the first offices in Russia, an effort that unwittingly set me on a path to Washington. Whether it was negotiating export controls with the State Department, setting up the first Internet link, or teaching former communist employees the benefits of merit-based pay, I learned of the extraordinary influence of science and technology in national security and international affairs, and I sought out ways in which I, too, could help.

Since then, I have had the privilege and challenge of serving this Nation at the highest levels of government you have mentioned in your opening remarks, and I thank you for that.

Many years ago, this Committee recognized that there was disorganization in the Federal Government and sought to organize it by bringing together 22 agencies into one Department of Homeland Security. In the aftermath of Hurricane Katrina, this Committee recognized that the initial goal of bringing all of those disparate missions together had not been fully realized. As you, Mr. Chairman, said, I believe, the Secretary lacked a central staff and structure to chart department-wide strategy and policy, which could then be carried out in a coordinated way by the many components of the Department. As you know, one of the post-Katrina reforms was the creation of the Office of Policy. I sit here today recognizing that there is still much to do, many of your priorities still to accomplish. In the realm of homeland security, we may face challenges—naturally occurring disasters, deliberate attacks—all of these so large they require the full capabilities of our Nation. We face a continuing terrorist threat that is both nimble and dynamic. It exploits the seams of our society, operating in the gaps between bureaucratic notions of foreign and domestic, State and Federal, civil and military. To counter these threats, I believe we must have in place a truly national homeland security enterprise—one that is as agile and seamless as those who seek to harm us, and as capable and responsive as needed to prevent, protect against, and, if needed, rapidly recover from all hazards. If I am confirmed, I will work every day to meet these challenges and to help develop a national culture of preparedness that focuses on building more self-reliant communities.

We must institute a greater real-time situational awareness capacity, which means better information sharing consistent with privacy and civil liberties. We also need to institute a national risk-based planning capability. And we must extend and bolster our capacity at home by working closely with our international partners abroad.

The place to pursue this work is at the Department of Homeland Security and, within it, the Office of Policy. We must start by forg-

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ing one department, one enterprise, with a shared vision and integrated results-based operations to support that mission. I know the Secretary is deeply committed to this, and if confirmed, I will support her and the Department in every way I can.

The struggle against al-Qaeda and other violent extremist ideologies is a struggle of ideas. We must in the years ahead, through our ideas, our actions, and our example as a Nation, defeat and marginalize those who seek us harm. As such, the Department of Homeland Security must remain fully committed to its mission of keeping America and Americans safe, and we must do so while protecting the laws, values, and principles that define this great country.

In this regard, I believe that protecting privacy and civil liberties is not only a core American value, not only a constitutional requirement, but it is essential if DHS is to fulfill its mission of engaging the public as a partner. I am excited by the prospect of contributing to this endeavor, if confirmed. I believe there is no higher constitutional duty nor greater calling than to protect this country and to ensure that all Americans can live and thrive in a world free from fear and want.

I am humbled by the tasks before us, but emboldened by those I have already met at the Department and throughout the streets of America who keep watch over us. I pledge, if confirmed, to work with this Committee, our government, and the American people in every way I can. And I look forward to your questions. Thank you.

Chairman LIEBERMAN. Well, thank you, Mr. Heyman. That was a very eloquent opening statement. I appreciate it.

I am going to start my questioning with the standard questions that we ask all nominees. There will be three of them.

First, is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. HEYMAN. No.

Chairman LIEBERMAN. Second, do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. HEYMAN. No.

Chairman LIEBERMAN. And, finally, do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Mr. HEYMAN. I do.

Chairman LIEBERMAN. Thank you.

Let me ask you first about the Quadrennial Review. If confirmed, you will have a significant role to play in that review. It can be a very important device for a fresh look at the Department and at the government's responsibilities for homeland security. So I wanted to ask you, if confirmed, what specific steps you will take to ensure that the Quadrennial Homeland Security Review (QHSR) is developed in a way that has meaningful impact and really makes some tough choices between competing priorities as opposed to just being a once over lightly to what exists now.

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Mr. HEYMAN. Well, thank you, Senator, for the question, and I wholeheartedly agree with your assessment. This Quadrennial Homeland Security Review, which Congress, gratefully, created as a requirement for the Department and for the Nation, is an essential part of the Nation's ability to take stock of where we are in our strategy, in our policies, and in our programs that have been created to serve and protect the Nation. My role, if confirmed, at the Office of Policy is to oversee the overall effort of that implementation of the QHSR.

As you know, the Department of Homeland Security has already initiated efforts in this regard. The report is due to you at the end of this year, and the ability of that office to carry on its responsibilities is critically important in this regard.

I know that the Secretary and the Deputy Secretary have both committed to ensuring its success. I believe the Deputy Secretary has testified to you on that account specifically.

I will work with the Secretary, the Deputy Secretary, and the team at the Policy Office and all of the components to ensure that we have the most effective and responsive Quadrennial Homeland Security Review. It happens to be the first as well.

Chairman LIEBERMAN. That is correct. Do you have a clear sense of who will be in charge of the Quadrennial Review?

Mr. HEYMAN. The obligation to implement the Quadrennial Homeland Security Review will fall directly to my office, if confirmed. But it will be most successful if the senior leadership is committed to its completion, and both the Secretary and the Deputy Secretary have made that commitment, and the components as well are a part of that process. But it is the responsibility of the Office of Policy to make sure that it is successful.

Chairman LIEBERMAN. Good. Let me ask you the kind of underlying question that we have been dealing with now since September 11, 2001, and that is inherent in a lot of judgments the Department makes, and I will take the pleasure of doing to you what the media always does to us, which is to hold us accountable for something we once said, in your case in 2004 in a magazine story. You said, and this is nothing to be defensive about, "There is no question that we have failed as a country to describe what risk we are willing to accept. We need to be able to make judgments about what level of risk we are willing to accept, and that is a really tough thing to do because no politician will be willing to say it is OK if"—in the example you use—"only 5 percent of the containers are inspected."

You are absolutely right. So let me ask you how rationally we can make these judgments. As you well know, the 9/11 Commission said that one of the causes of September 11, 2001, was a failure of imagination, which is to say that we failed to imagine that people would do to us what the terrorists did on September 11, 2001. And so there is a way in which all of us have labored under that shadow and that anxiety imagining an endless number of ways in which terrorists without regard to human life could attack us since we are such an open society.

How do we allocate our resources and by what process do we decide what level of risk we are willing to accept?

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Mr. HEYMAN. Thank you, Mr. Chairman. It is delightful to know that people read my quotes. I do not remember the specific one to which you refer, but I can recall the time at which I was probably talking about that. It was a time when I felt that the decision-making processes for homeland security, the way we assessed and made priorities and allocated resources, was perhaps not as effectively done using risk-based principles as I had expected it would be or should be. And I suspect that my comment was perhaps intended to encourage a more risk-based philosophy, as it were, in the way the government makes those types of decisions.

Chairman LIEBERMAN. So give us an overview of how we would do that. Is that to try to estimate what our enemies are most likely to try to do?

Mr. HEYMAN. I look at risk as having three factors associated with it: A threat component, a vulnerability component, and a consequence component. You have to, in my mind, assess all of those factors to conclude what kind of risk we face. Some things are clear threats, but the vulnerabilities are low and the consequences are low, and so the risk is low. Others may be of high consequence but low threat and perhaps no real measurable vulnerability, in which case the risks are also low.

But the ability for the government to make those kinds of calculations when it comes to program management, priority setting, and decisionmaking is one I have felt that we need to be strengthened then and today, probably going forward as well.

Chairman LIEBERMAN. Well, I encourage you forward on that, both within the Department and, to the extent that it works, to even give counsel to Members of Congress because in a necessarily resource-limited environment, we have to make those choices, and those are difficult to do in a way that is rational. Now, thank God, we have gone 8 years, and we have not suffered another attack on our territory, so that hopefully means that we have done some good risk assessment or we have sent messages out that have deterred our enemies. But, obviously, the threat remains, and we have to make sure that our defenses remain as strong as possible.

Thank you. That was an interesting exchange, at least to me.

Mr. HEYMAN. To me as well.

Chairman LIEBERMAN. Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman. It was interesting to me as well.

Most people do not realize that the Department of Homeland Security has a large international role. Currently, DHS has nearly 2,000 personnel based in 79 countries. That is a number of Federal employees that is exceeded only by the State Department and the Department of Defense, but I would wager if you asked most people if DHS had an international presence, they would say no.

In addition to those permanent positions abroad, multiple DHS components have hundreds of staffers who are temporarily assigned overseas or evaluating operations overseas at any one time.

The Office of International Affairs is within the Policy Office, and it is the entity that is responsible for coordinating all of the Department's international activities. However, this office, which I believe is vitally important, has had a great deal of difficulty in carrying out its mission.

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Now, this office is important not only for security operations overseas at our ports, for example, but also because we are able to learn from other countries such as Israel that have great experience in dealing with terrorism. So that is why I am concerned that a June 2008 report by the Inspector General (IG) highlighted problems in the office and listed 18 recommendations to improve the management of DHS's international affairs.

It is my understanding that you have been involved in co-authoring Homeland Security 3.0, which acknowledged the importance of these international activities. Have you taken a look at the recommendations that the IG has made to improve the effectiveness of this office?

Mr. HEYMAN. I have.

Senator COLLINS. And what are your reactions, in general?

Mr. HEYMAN. Well, first, Senator, I would also just like to add something I did not say in my opening remarks, and that is, my parents spent most of the year in Maine, and——

Senator COLLINS. You have my vote. [Laughter.]

Mr. HEYMAN. It is one of my favorite places—my wife and I got married up there.

Senator COLLINS. You show good sense.

Mr. HEYMAN. A second vote, maybe? [Laughter.]

Senator COLLINS. I will now work for your confirmation. [Laughter.]

Mr. HEYMAN. I also share your view that the international dimensions of homeland security are vitally important, and the organization within the policy shop is the place where that needs to take place. It is not only important for us to learn what is going on abroad, but also to learn the ways that we can in our own expertise in this country help improve or share our lessons with those with whom we seek to collaborate. And so the role of the International Affairs Office is vital. I did write in one of the five major recommendations in our 3.0 study that the international dimensions need to have greater attention. If confirmed, I would welcome an opportunity to do that, to work with you and the Committee to improve the ability of the Department to engage internationally, both in terms of finding a clear direction and also in terms of implementing some of the recommendations of that report.

Senator COLLINS. Thank you. Continuing on the international theme, the Policy Office is also responsible for ensuring the full implementation of the security improvements to the Visa Waiver Program, which were included in the 2007 homeland security law. This requires all countries in the Visa Waiver Program to sign information-sharing agreements with the United States. Having information on who is on those countries' terrorist watchlists and on which individuals have committed certain crimes will help our country identify those who may pose a danger to our citizens before they arrive at our borders.

Now, I understand that the eight countries that were recently admitted to the Visa Waiver Program have signed these information-sharing agreements, but the fact remains that the vast majority of the more than two dozen incumbent visa waiver countries have not.

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What will you do to ensure that negotiations with those countries are concluded and the agreements signed, as required by the law?

Mr. HEYMAN. Well, the Visa Waiver Program enhancements done by legislation here, I think, first and foremost were a much improved step in the right direction in the sense that we went from decades of country assessments to going to individuals. For the security of this Nation, that is a much better approach in terms of assessing the security risks in those who come to this country.

In terms of the Department's efforts, I am aware of the negotiations that are ongoing with the visa waiver countries to ensure that those additional agreements for information sharing are implemented. I think they are enormously important. I think that law enforcement officials here, and perhaps even abroad, gain tremendous amounts of ability to do their job with those agreements, and I would work toward making sure that they are implemented.

Senator COLLINS. Thank you. Mr. Chairman, if I could just touch on one quick final issue.

Chairman LIEBERMAN. Go right ahead.

Senator COLLINS. Thank you.

In your pre-hearing questionnaire, you talked about cyber security, an issue of great interest to the Chairman and me, and you said that DHS currently has four cyber security missions: Fighting cyber crime, protecting Federal civilian networks, protecting non-Federal critical information infrastructure, and defending DHS's networks.

As you know, there is a big debate going on right now in the Administration on who should have what authority over cyber security. I, for one, am very concerned if the vast majority of authority is placed in the White House under a new czar because then we will not have the kind of oversight over that function that is desirable. But I am also very concerned that the organizational structure may ignore the fact that 85 percent of critical infrastructure is in private hands and that DHS is the only entity that has that ongoing relationship because of its work in securing critical infrastructure.

How do you believe cyber security efforts in the Federal Government should be organized?

Mr. HEYMAN. That is an outstanding question, and I know that the White House has engaged in their 60-day review to answer that question. I was interested in whether that study would come out before the hearing or not, whether I would be commenting on it. I do not believe the results have come out at this point, but cyber security concerns and the threats that this Committee has spent a lot of time working on are increasing and perhaps warrant much greater attention. And, in fact, I know that this Committee has done a lot of work on that. The need to oversee that kind of effort at the White House is one, I think, that most people agree on.

As to the role and responsibilities of the Department of Homeland Security, there are huge advantages for the Department, particularly in its role protecting the Nation's critical infrastructure and working in the sector coordinating councils as a mechanism for engaging private sector to protect the critical infrastructure. I

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think that the Department's equities would be well served to pursue that role.

I am not privy to the study. I do not know and would not want to prejudge it at this point, but I do share your concerns. And I would, in my capacity as Assistant Secretary for Policy, work with the various elements, the Under Secretary for Preparedness and the folks in his directorate who manage the day-to-day operations on cyber security, to ensure that the Department's role is well served.

Senator COLLINS. Thank you. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks, Senator Collins.

I was really interested in your response to one of the Committee's pre-hearing questions in which you said that you thought the Office of Policy should develop a net assessment capability similar in nature to the legendary Office of Net Assessment run by the iconic Andy Marshall at the Department of Defense. So I wanted to just ask you for a moment what you have in mind and why you think this type of capability would be useful to the Department of Homeland Security.

Mr. HEYMAN. Thank you, Senator. Well, it is something that I had thought about as I consider how the Office of Policy can be helpful to the Secretary and to the Department. It was my view in thinking through this that there are a couple of models out there. There is the Department of Defense model, Under Secretary for Policy, which has a large capacity to do integration across the Department.

There is also the model in the State Department Office of Policy Planning, which is more of a think tank, and as I was thinking through this, I thought some sort of hybrid would probably benefit the Department, but in order to ensure that the long-term view was considered, particularly as it pertains to our adversaries, some sort of net assessment capacity was needed.

The day-to-day operations of folks in the components and perhaps even with folks working on policy issues that are in the inbox requires that somebody be focused on the long term, and so in that capacity, I had considered perhaps a net assessment would be worth looking at.

If the Defense Department is a model, it would give somebody a job for 30 years.

Chairman LIEBERMAN. Right. I think that is a very interesting idea. I would urge you to go forward and pursue it. It is very easy, particularly in a Department of this kind, which is dealing with such an array of immediate challenges, the ongoing daily concerns about preparedness to both deter and respond to a terrorist attack, let alone all the natural disasters, and throw in an epidemic of flu and threat from drug cartels in a neighboring country, you have quite a mix that will draw the Department naturally to the immediate and appropriately to the immediate, so I encourage you to pursue that as you go forward.

Well, thanks. Your answers to the questions both before and at the hearing have been excellent. I certainly intend to support your nomination, even though you have not yet stated any connection to the State of Connecticut. [Laughter.]

Mr. HEYMAN. My cousin went to Yale.

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Chairman LIEBERMAN. Oh, well, OK.

We will keep the record of this hearing open until 12 noon tomorrow for the submission of any post-hearing questions or statements. I am going to recess the hearing in a moment. Senator Akaka will be here soon to preside over the nominations of the two judges to the District Court. When I do so, Mr. Heyman, you are certainly free to leave. It has been a pleasure to hear you, to see you again, and to see the obvious pride of your family behind you.

With that, the hearing will stand in recess.

Mr. HEYMAN. Thank you.

[Recess.]

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA [presiding]. This hearing will be in order. Good afternoon. I want to welcome all of you to this hearing, especially our panelists and Senator Bingaman, to this Committee on Homeland Security and Governmental Affairs to consider the nominations of Marisa Demeo and Florence Pan to be Associate Judges on the District of Columbia Superior Court.

I want to extend a special welcome to the nominees and your families that are here. I am pleased that we are holding a hearing today to consider such well-qualified candidates—and I have read your resumes. I believe it is important to fill D.C. judicial vacancies promptly, and it is my hope that the Congress will act quickly on these nominations.

Before we move on, I would like to yield to allow our distinguished guests to introduce the nominees. Senator Bingaman and Congressman Gonzalez, it is a pleasure to welcome you to this Committee today.

Senator Bingaman, please go ahead with your introduction of Ms. Pan.

TESTIMONY OF HON. JEFF BINGAMAN, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator BINGAMAN. Thank you very much, Mr. Chairman, and thanks for your courtesies and attentiveness to this nomination and the speed of this hearing.

My wife and I have known Florence and her husband, Max, since before they were married, and we have the greatest respect for both of them, and particularly for purposes of today's hearing, we want to strongly recommend Florence Pan for this important position.

She has a compelling personal story, of which I am sure that you are aware, of her parents coming here in, I believe, 1961. She has a distinguished resume. She has been educated at our best schools and has developed a very distinguished career since then, both in the Department of Justice and in the private sector, but more recently in the U.S. Attorney's Office here in the District of Columbia.

She has the capability and the desire to serve the public in a very important position in the Superior Court, and we are very fortunate, I think, as a country to have people of her quality who are willing to serve in public office. And so I think she is an extremely good choice by the President, and this is emblematic of the choices

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he has been making generally in his nominations that we have seen here in the Senate, but I think she stands out even in that crowd.

So I very much commend her to you and to the full Committee and hope that you will act favorably on her nomination and recommend her to the full Senate and that we can confirm her for this position very soon. Thank you.

Senator AKAKA. Thank you very much, Senator Bingaman, for your statement. We will certainly consider what you have said. You know that we respect you a lot here as well. So thank you very much, and I know you are busy, so we will continue with the hearing.

Mr. Gonzalez, will you please introduce Ms. Demeo?

TESTIMONY OF HON. CHARLES A. GONZALEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. GONZALEZ. Thank you very much, Chairman Akaka, for the opportunity of making this introduction. I would also like to thank the rest of the Members of the Senate Committee on Homeland Security and Governmental Affairs.

I am here today as First Vice Chair of the Congressional Hispanic Caucus to introduce the Hon. Marisa J. Demeo, nominee for Associate Judge for the Superior Court of the District of Columbia. The Congressional Hispanic Caucus (CHC) is proud to have endorsed Judge Demeo for this position and is happy to be present here today to show our continued support for her confirmation.

Marisa J. Demeo was installed as magistrate judge on September 7, 2007. Judge Demeo was born in Washington, DC, and raised in Dale City, Virginia. She graduated from Princeton in 1988, where she received her Bachelor of Arts degree in politics, with a concentration in Latin American studies.

Ms. Demeo worked for 2 years as a paralegal for the U.S. Department of Justice Civil Rights Division. She went on to receive her Juris Doctor from New York University (NYU) School of Law in 1993, where she served on the Law Review. At NYU, Ms. Demeo was selected as a Root-Tilden Scholar for her academic achievement and commitment to public interest issues. She also received graduation awards for her clinical work representing juveniles charged with offenses in the New York Family Court and for her service to the law school.

After graduating from law school, Ms. Demeo served with distinction as an honors program trial attorney in the Department of Justice (DOJ) Civil Rights Division, Employment Litigation Section, where she prosecuted public employers for patterns or practice of employment discrimination in the Federal courts around the country and received two awards for her outstanding work. In 1997, she left DOJ to work for the Mexican American Legal Defense and Educational Fund (MALDEF), a national Latino civil rights organization, where she advocated on immigrants' rights issues, and this is where I came to know her with members of the Congressional Hispanic Caucus.

After a short period as a staff attorney at MALDEF, Ms. Demeo was promoted to head the MALDEF D.C. office, where she served as the national advocate on the Hill, in the White House, and with

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the Federal agencies on a wide array of Latino civil rights issues, including employment, voting rights, immigration, education, and criminal justice.

During her time at MALDEF, she received numerous community service and leadership awards including recognition from the Hispanic Bar Association of the District of Columbia, the Congressional Black Caucus, NYU School of Law, the National Puerto Rican Coalition, and the U.S. Census Bureau.

In 2004, Ms. Demeo joined the U.S. Attorney's Office for the District of Columbia as an Assistant U.S. Attorney, where she served in the misdemeanor trial section, the felony trial section, the grand jury section, and the sex offense/domestic violence trial section. During her time at this office, Ms. Demeo handled 45 criminal trials and presented over 30 felony cases to the grand jury, which resulted in indictments. She received two awards for her work in this capacity.

Ms. Demeo has also served as adjunct professor at Howard University School of Law, where she taught criminal procedure and immigration law. In 2005, Ms. Demeo was appointed by the District of Columbia Court of Appeals to the District of Columbia Access to Justice Commission, which is charged with the responsibility of increasing access for low- and moderate-income residents in the District to the civil justice system. She served on the Commission for 2 years.

As you can gather from her extensive and diverse experience, Judge Demeo is highly qualified to serve as Associate Judge for the Superior Court of the District of Columbia. And I do want to end with just one observation, Senator. I have had the great privilege of working with Ms. Demeo, and I was always impressed. It is just not about demeanor. It is about good judgment. Understanding that there are two sides to every argument, and in most cases there are at least eight, even when it is a uncontested matter. But truly appreciating the purpose of the justice system and that all people have access and that justice is not a present but, rather, obviously, following the law and precedent and the facts that are before that particular judge.

There is no doubt in my opinion and that of the Congressional Hispanic Caucus that she truly deserves confirmation, and I again appreciate the opportunity of making this introduction.

Senator AKAKA. Well, I thank you very much for your statement. We will, of course, seriously consider your statement, and your work here in the Congress speaks for you greatly. I thank you so much for being here. I know you are busy, and we will continue with the hearing. But thank you so much for coming.

Both of the nominees before us have strong legal backgrounds, as you have heard in the statements that have been made, and they have devoted much of their careers to work in the public sector. Judge Demeo currently is a magistrate judge on the D.C. Superior Court and worked before that court as an assistant district attorney. And Ms. Pan has worked as an assistant district attorney for the District of Columbia for over a decade, where she has successfully prosecuted many criminal cases.

If confirmed, I am confident Judge Demeo and Ms. Pan have the experience to make valuable contributions to the D.C. Superior

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Court bench, and I want you to know that we will try to move this confirmation as quickly as we can.

Both of the nominees I know have filed responses to a biographical and financial questionnaire submitted by the Committee. Without objection, this information will be made a part of the hearing record, with the exception of the financial data, which will be kept on file and made available for public inspection in the Committee offices.

Our Committee rules require that all witnesses at nomination hearings give their testimony under oath. Therefore, at this time I would ask you to please stand and raise your right hand.

Do you solemnly swear that the testimony you are about to give this Committee is the truth, the whole truth, and nothing but the truth, so help you, God?

Judge DEMEO. I do.

Ms. PAN. I do.

Senator AKAKA. Thank you very much. Let the record note that the witnesses responded in the affirmative.

I understand that you have family members here, and I would like to give each of you an opportunity to introduce your family and any friends or even supporters who are here with you before we proceed to your statements.

Judge Demeo, will you please introduce your family?

Judge DEMEO. Thank you very much. I would like to first introduce my parents, Palmer Demeo and Emilia Mauras Demeo; my sister, Priscilla; my cousin, Melissa Milam, and her husband, Terrell; and my partner, Angela Arboleda, who works for the Senate Majority Leader.

Many other people have come here to support me today, people from the court, from the U.S. Attorney's Office, from the Public Defender Service, and others who serve the community on the national and local level. Although I do not have time to thank them all individually, I do appreciate their support in being here, and it is this broad support that creates in me a sense of responsibility to serve the public and to do so fairly and impartially.

Senator AKAKA. Thank you very much.

Ms. Pan, will you please introduce your family and friends?

Ms. PAN. Thank you, Mr. Chairman. I am joined here today by my husband, Max Stier; our two children, Zachary and Noah, who are 4½ and 3, and they are wearing new suits.

I am also joined by my parents, Wu-Ching and Felicia Pan, and they flew in from China to be here today.

My sister, Gloria Pan, is here, and Andrea and Richard Danzig, who are my husband's aunt and uncle, and Lisa Danzig, who is his cousin.

I would also like to acknowledge and thank for their presence a number of friends who are here to support me today: Anne Bingaman is here, Chief Judge Lee Satterfield of the Superior Court is here. I very much appreciate his presence.

And I am sorry, I forgot to introduce somebody very important, Yvonne Johnson, who is the caretaker for my children, and she is the reason that I can really be here today as a nominee. So I want to thank her as well.

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Senator AKAKA. Thank you very much for introducing your families and friends and supporters. I am sure they are proud of all you have accomplished.

Ms. Pan, I had the opportunity to chat with your husband, Max, about your nomination a few days ago.

You probably will not be surprised to know that he considers you a very highly qualified person as well. [Laughter.]

Ms. PAN. I appreciate his support.

Senator AKAKA. And, Judge Demeo, will you please proceed with your statement?

TESTIMONY OF MARISA J. DEMEO[1] TO BE ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Judge DEMEO. I did want to thank, although he had to leave early, Congressman Gonzalez and the Congressional Hispanic Caucus for their support throughout this process. I would also like to thank you, Mr. Chairman, and the Members of the Committee for scheduling this hearing and taking the time to consider my qualifications for the position of Associate Judge. It is a true honor to have the privilege to appear before you today. I would also like to thank the Committee staff as well for their hard work in collecting and reviewing my qualifications.

I would like to thank Federal District Judge Emmet Sullivan and all the members of the D.C. Judicial Nominations Commission for forwarding my name to the White House. And I really do have to mention Federal District Judge Urbina, who is here today, and I want to thank him for all of his support.

I also want to thank President Barack Obama for nominating me for the position and the staff in the White House who worked diligently and conscientiously throughout this process.

My father's parents were immigrants from Italy who came to this country with little education but with the belief that they wanted to have a better life and a willingness to work hard for that better life for them and their children. That hard work paid off when my father had the opportunity to attend Georgetown University. My mother was born and grew up in Puerto Rico, her own parents having only reached a high school education. Despite socioeconomic barriers, my mother, through faith in God and hard work, excelled in school, went to the University of Puerto Rico, and came to the United States for a better life.

My parents met here in Washington, DC, and as they say, the rest is history. My parents raised my brother, my sister, and me in a strict environment in which we were taught the values of faith, family, integrity, education, and hard work. I also learned growing up the values of being humble and fair. With those values, I have studied hard, worked hard, and dedicated my career to the service of the public.

Over the last 5 years, I have particularly dedicated myself to serving the District of Columbia by my work as a criminal prosecutor, as a magistrate judge, and as an adjunct professor at Howard University School of Law. I hope you will find, after reviewing

[1] The prepared statement of Judge Demeo appears in the Appendix on page 144.

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my record, that I would be a fair and impartial judge who would bring integrity and respect to the bench. Thank you.

Senator AKAKA. Thank you very much for your statement, Judge. And now we will hear from Ms. Pan. Your statement, please.

TESTIMONY OF FLORENCE Y. PAN[1] TO BE ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Ms. PAN. Thank you, Mr. Chairman. I am reminded that there is one person I forgot to acknowledge who is here today, and I would like to thank John Neuffer, who is my brother-in-law, who is also here. I am sorry that I overlooked him the first time.

I also want to thank Senator Bingaman for the kind remarks that he made in the introduction.

I am very grateful for the opportunity to be here before the Committee as a nominee to be an Associate Judge on the D.C. Superior Court. I want to thank President Obama and the D.C. Judicial Nomination Commission for this great honor.

I also want to thank the Committee for considering my nomination so expeditiously. I want to thank the Committee staff for the courtesy that they have shown me and their professionalism.

In 1949, my grandparents fled mainland China when the Communist Party came to power. They settled in Taiwan, bringing with them my parents. My parents came to the United States in 1961 to pursue graduate degrees in New York City. They chose to stay here because of the limitless opportunities that this country offered their children.

I think it is fair to say that my presence before this Committee is a fulfillment of all that they hoped for and dreamed of when they made that decision to put down their roots here in America.

I would also note that my nomination is particularly meaningful to my father because his father was a judge on an administrative court in China before he was forced to flee to Taiwan.

For the past 10 years, I have been privileged to serve the citizens of the District of Columbia as an Assistant U.S. Attorney. I have appeared extensively in Federal, State, and local courts here in this jurisdiction, and I have had the opportunity to come into contact with myriad people from this community.

My respect for the Superior Court and the judges who serve on this court is profound. I have seen the important work that they do firsthand. If confirmed, I will do my utmost to give the citizens of the District of Columbia the very highest quality of justice, and I pledge to approach my role as a judge with humility and diligence and to apply the law with thoughtfulness and impartiality.

Thank you again for the opportunity to be here today, and thank you for your consideration of my nomination.

Senator AKAKA. Thank you very much, Ms. Pan, for your statement. I will begin with the standard questions this Committee asks of all nominees, and I would like each of you to answer the questions.

Is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

[1] The prepared statement of Ms. Pan appears in the Appendix on page 168.

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Judge DEMEO. No, Mr. Chairman.

Ms. PAN. No, Mr. Chairman.

Senator AKAKA. Do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Judge DEMEO. No, Mr. Chairman.

Ms. PAN. No, Mr. Chairman.

Senator AKAKA. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Judge DEMEO. I do, Mr. Chairman.

Ms. PAN. Yes, Mr. Chairman.

Senator AKAKA. Thank you very much for your responses.

Now, this is a question to both of you. You are both without question accomplished attorneys who have handled important cases for the U.S. Attorney's Office and elsewhere. Why did you seek nomination to become a D.C. Superior Court judge? And what contributions do you hope to make, if confirmed?

Judge DEMEO. If you wish, I can go first. I am seeking the position of an Associate Judge in order to continue my service to the public. My entire career has been dedicated to serving the public, and I find this to be a continuation of that service. I have always worked either in the nonprofit sector or for government agencies trying to ensure justice for communities at different levels, whether they be national or local. And in the last few years, being a resident of the District, being very committed to the community and the District, I have really focused my attention on trying to serve the local community. And I have done that recently as a magistrate judge, and I believe that I can develop that further as an Associate Judge.

In terms of the qualities that I could bring, I hope, to the bench, it is to continue to emulate those judges whom I admire, and those are qualities such as developing knowledge of the law, bringing integrity to the bench, bringing fairness to the bench, being sensitive to diverse communities. Those are the qualities I hope to bring.

Senator AKAKA. Thank you very much. Ms. Pan.

Ms. PAN. I, too, have devoted my career to public service, and I see this as an extension of the work that I have been doing at the U.S. Attorney's Office in trying to bring and promote the cause of justice here in the District of Columbia. I cannot think of a more fascinating or rewarding job than to be an Associate Judge on the Superior Court or a better opportunity to serve the community.

I have seen the work of the court firsthand, as I mentioned in my opening statement, and in terms of the volume and the types of cases that are brought in that court, it has such an important impact on the community here in the District of Columbia, and I see this opportunity as a means of continuing to serve the community in this very important capacity.

Senator AKAKA. Thank you.

Ms. Pan, while you have many years of legal experience as an attorney for the Federal Government, you have never been a judge.

Ms. PAN. That is correct.

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Senator AKAKA. What do you anticipate your biggest challenge will be in becoming a judge? And how do you plan to overcome that challenge?

Ms. PAN. Well, I think it will be a challenge to shift gears for myself, having for 10 years represented the United States of America. And I feel, however, as a prosecutor that my goal has been to do justice and not just to win a case. So I think that my role as a judge will be in many ways similar to my role even as an advocate at the U.S. Attorney's Office. I think there will be certainly challenges for me because it will be new to me to be ruling on matters instead of arguing as an advocate, but I think that it is a challenge that I am prepared to take on.

Senator AKAKA. Thank you.

Judge Demeo, I would like to direct that question to you as well. What do you think your biggest challenge will be as you transition from a magistrate to an Associate Judge? And how will you address the challenge?

Judge DEMEO. The biggest challenge is that the amount of responsibility that I will have will substantially increase. As a magistrate judge, I am limited in my jurisdiction to only handle very minor misdemeanor cases. I am in the Criminal Division. And if I am confirmed by the Senate, then I will move into an Associate Judge position, which would allow me the opportunity to handle very serious cases, felony cases eventually, jury matters, and so the responsibility to the community and to the parties before me will substantially increase because the stakes are that much greater.

In terms of how I will address that challenge, I will continue to be a studier of the law because that is very important to me, to continue to learn the law and be an expert in it so that those who appear before me find me to be knowledgeable, so that I can have adequate rulings in line with what the law is; also to remain sensitive to all the parties, no matter how many cases I might hear, to always have an open mind and to ensure that I always treat the parties before me fairly, so that no matter what the result is, no matter if individuals lose or win, are found guilty or not guilty, my goal would be to have the parties leave feeling that they had a fair judge and they were satisfied with the system of justice that appears in the D.C. Superior Court.

Senator AKAKA. Thank you.

Ms. Pan, for the past decade, you have practiced criminal law as an Assistant U.S. Attorney. Having focused so heavily on criminal law in your career, please tell us how you plan to familiarize yourself with civil law and procedure?

Ms. PAN. Mr. Chairman, my understanding is that the court has very good training programs for judges. I think that all of the judges on the Superior Court are required to learn new areas of the law. Because the court does have so many different calendars, specializing in so many different areas, there is no judge that starts on this bench who is an expert in all of them.

I will certainly apply myself to learn the new areas of law, and I am quite excited, actually, to be able to develop expertise and to learn about different areas of law and to apply these different areas of law.

Senator AKAKA. Thank you.

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Judge Demeo, you have spent most of your career as a civil rights attorney. Since then, you have served as a magistrate judge on the D.C. Superior Court. How did you handle the transition from advocacy to take on the magistrate role of a neutral third party?

Judge DEMEO. As Ms. Pan has already said, it is an adjustment to go from being an advocate in the courtroom to being the judge in the courtroom. I think that my diverse experience prepared me well because I have done civil rights advocacy on behalf of plaintiffs, but I have also done criminal prosecution on behalf of victims. And so when you think about the parties that appear in the courtroom, oftentimes it is plaintiffs versus defendants and one party against another. And I have really worked with both sides in my career. So being in the judge position has allowed me to take a step back already in the magistrate position and listen to the parties and be open to both sides because I do respect both sides.

Senator AKAKA. Thank you.

Ms. Pan, a judge often faces pressure to rule on complex issues both quickly and correctly. How has your experience as deputy chief of the appellate division prepared you to do this?

Ms. PAN. Mr. Chairman, I think that my experience as deputy chief in the appellate division of the U.S. Attorney's Office has prepared me very well to rule on matters of law quickly and decisively, and hopefully correctly. As deputy chief, I am required to keep up with all the law—and, admittedly, this is criminal law, but I train Assistant U.S. Attorneys on different areas of the law. I field phone calls from courtrooms for people who need advice about what to do. And I think that the types of advice and the types of judgment calls I have had to make in my capacity as a deputy chief are in some ways very similar to making rulings as a judge. So I think that has prepared me very well.

Senator AKAKA. You just heard the buzzer. We are being called to three votes on the floor, so let me ask my final question to both of you.

During your years practicing law, you have appeared before many judges and no doubt learned a great deal from observing them. Will you describe some qualities you hope to emulate as a judge and those you hope to avoid? Judge Demeo.

Judge DEMEO. I would like to emulate those judges who have demonstrated knowledge of the law. Obviously, you want to be before a judge who, when you are arguing the cases and the statute, knows what you are talking about. So I want to be one of those judges.

I also want to make timely decisions. You do not want to wait around a long time trying to figure out what the judge is going to rule. You want clear rulings and an explanation of those rulings, and I would like to be that kind of judge.

I also want to be a fair judge, a judge that, again, parties feel, regardless of the outcome, listened to them with an open mind and was fair.

I guess the one big trait I hope to avoid is bad temperament on the court. I have seen plenty of judges through my career who have bad temperament, and it just does not set a good tone for the litigation before the court, for the parties, for the witnesses, for the ob-

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servers. And so I will work hard to avoid any issue that would raise those kinds of questions.

Senator AKAKA. Thank you very much. Ms. Pan.

Ms. PAN. Mr. Chairman, I agree very much with the sentiments just expressed by Judge Demeo. I think it is extremely important for judges to be fair and open-minded, willing to listen to the parties. And I think that parties will very much appreciate a judge who they feel has listened to their positions, and I would want to be that kind of a judge.

I also think it is very important to be knowledgeable about the law because that is what allows a judge to make rulings promptly and hopefully correctly, and certainly the temperament issues that Judge Demeo identified, I would agree with that. I think it is very important for judges to always be professional and to treat people with courtesy and respect. And I would note that as an appellate lawyer, I have read many transcripts, and I know that my current colleagues at the U.S. Attorney's Office will be reading my transcripts, and that will certainly give me an incentive to not say anything that I will regret later.

Senator AKAKA. Well, thank you very much. There are no further questions at this time.

There may be additional questions for the record, which will be submitted to you in writing. The hearing record will remain open until the close of business tomorrow for Members of the Committee to submit additional statements or questions.

It is my hope that the Committee and the Senate will be able to act on your nominations in the near future, and as quickly as we can, too, and I want to wish both of you the best in what is ahead of you. I also want to thank you for bringing your families. It is really great to see why you are here. Of course, it is your families that have helped you along the way, and it really makes a huge difference to have their support. It was good to get to know your families today.

So thank you very much for being here. This hearing is adjourned.

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

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APPENDIX

PREPARED OPENING STATEMENT OF SENATOR LIEBERMAN FOR MR. HEYMAN

We will move to our first nominee this afternoon, David Heyman, who has been nominated to serve as Assistant Secretary at the Department of Homeland Security, in charge of the Department's Office of Policy.

Mr. Heyman has a significant background in the area of homeland security policy. He is currently a Senior Fellow at the Center for Strategic and International Studies, and has led the Center's Homeland Security Program since 2003.

While at CSIS he has authored studies on a range of topics including the roles and missions of DHS, biosecurity, general aviation security and the balance between science and security.

Prior to joining CSIS, he worked in the Clinton Administration as a senior policy advisor at the Department of Energy and at the White House Office of Science and Technology Policy.

The Office of Policy plays a significant role within DHS, serving as the lead office for the development and coordination of department-wide policy.

When this office was established by Secretary Chertoff in 2005, he proposed that it be headed by an Under Secretary for Policy.

In the last two Congresses, Senator Collins and I have sponsored legislation that included this proposal. I still support the elevation of this position, and I expect to take up legislation that addresses this again this year.

Mr. Heyman, if you are confirmed, you will face several notable challenges in the coming months and years.

First, the Department is required by law to carry out the Quadrennial Homeland Security Review and report to Congress on the results by the end of this year.

It is critical that the QHSR meet this deadline so it can serve as a timely vehicle we can use to examine the roles, missions, authorities, and funding priorities of DHS and other agencies with homeland security responsibilities.

This Committee stands ready to work with the Administration to implement the results of this review in 2010, including through DHS authorizing legislation.

Second, you will be faced with the challenge of policy coordination within the Department.

Many of the operating components of the Department have their own policy offices, and responsibility for policy in areas such as cybersecurity and information-sharing has been ambiguous at times.

If you are confirmed, it is critical that you take steps to improve policy coordination across the Department, to ensure that policy decisions are consistent and are made efficiently.

Third, the Office of Policy has begun to play a greater role in the acquisition review process at DHS and is responsible for establishing strategic high-level requirements that can inform acquisition decisions.

This new mission of the Office of Policy will help to ensure that the billions of dollars of acquisitions that are made by DHS each year are consistent with the Secretary's priorities, and are developed in a way that avoids waste and unnecessary duplication.

Fourth, the Office of Policy has played a very important role in coordinating policy related to border security and terrorist travel in recent years, and is responsible for ensuring that all DHS efforts in this arena are risk-based and results-driven.

Since its inception, DHS has implemented a series of programs aimed at interdicting terrorist travel, including US-VISIT, ESTA, and WHTI, and it is vitally important that the Office of Policy be involved in the coordinating their current activities and helping to plan for the future.

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Additionally, the current southwest border threat requires a strategic response that targets all of the Department's formidable law enforcement resources, and the Office of Policy should have a significant role to play outlining policy options in the fight against the Mexican drug cartels.

These are just a few of the critical issues that the Assistant Secretary of Policy must help the Secretary and DHS component agencies collectively address.

I am confident that you have the background and competence to carry out the responsibilities of Assistant Secretary for Policy, and I look forward to your testimony.

PREPARED OPENING STATEMENT OF SENATOR COLLINS FOR MR. HEYMAN

I join the Chairman in welcoming David Heyman as the nominee to be the Assistant Secretary for Policy at the Department of Homeland Security.

The Department of Homeland Security's Policy Office is tasked with developing a comprehensive approach to policy and planning for the Department and bringing the various components of DHS, as well as its State, local, and private sector partners, together under a unified vision.

As Assistant Secretary for Policy, Mr. Heyman would be directly responsible for establishing priorities and for seeing that they are implemented on a wide-range of homeland security issues. The Policy Office is now coordinating the Department's Quadrennial Homeland Security Review that is scheduled to be completed by December.

In addition, the Policy Office is responsible for reviewing the continued participation of countries in the Visa Waiver Program, and ensuring the implementation of the enhancements to the security of that program that were included in the 2007 homeland security law, which was authored by this Committee.

The Policy Office has already made significant strides in facilitating the conclusion of agreements with nations in the European Union to provide passenger name records on individuals traveling to the United States. Having this information will help identify individuals who may pose a danger to the United States—before they arrive at our borders. I look forward to hearing how Mr. Heyman would further strengthen the Visa Waiver Program and obtain agreements with all Visa Waiver Program countries to provide relevant law enforcement information on travelers to the Department, as required by the 2007 law.

I also look forward to hearing Mr. Heyman's views on how we should reauthorize chemical facility security legislation and the SAFE Port Act, which I co-authored, and how the Department should address growing cyber security threats.

Mr. Heyman has a wealth of experience on homeland security policy issues from serving in positions both inside and outside of government. Most recently, Mr. Heyman was the Director of the Homeland Security Program at the Center for Strategic and International Studies where he studied a wide range of issues that are vital to the Department's success. He has also served as a senior advisor to the Secretary of Energy and as a senior analyst in the White House Office of Science and Technology Policy.

PREPARED OPENING STATEMENT OF SENATOR VOINOVICH FOR MS. DEMEO AND MS. PAN

Mr. Chairman, thank you for convening today's hearing. I also want to thank the nominees appearing before us today, both for their time and for their willingness to serve.

As the Ranking Member on the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, I would like to make a few brief comments about today's nominees for the Superior Court of the District of Columbia.

I have reviewed both of these nominees' biographical questionnaires to learn about their significant academic and professional achievements. I believe they are both well qualified to be Superior Court Judges.

Ms. Pan is currently an Assistant United States Attorney for the District of Columbia. She previously served as an advisor in the Department of the Treasury, as an attorney in the Criminal Appellate Section of the Department of Justice, as a Bristow Fellow in the Office of the Solicitor General, and as a law clerk to the Second Circuit Court of Appeals and the U.S. District Court for the Southern District of New York.

Ms. Demeo is currently a Magistrate Judge in the Criminal Division of the District of Columbia Superior Court. She previously served as an Assistant United

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States Attorney for the District of Columbia, as an attorney for the Mexican American Legal Defense and Education Fund, and as an attorney in the Civil Rights Division of the Department of Justice.

Clearly, both of these nominees have significant professional backgrounds that would serve them well on the bench.

Mr. Chairman, you know that I believe it takes a unique individual to balance the responsibilities of protecting citizens' rights and liberties with upholding and interpreting the law. I believe that, if confirmed, Ms. Pan and Ms. Demeo will both fulfill those responsibilities with honor, courage, and character befitting the court.

I hope that the Committee and the full Senate will consider both of these nominations in the very near future.

Thank you.

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Statement of David F. Heyman
before the
Senate Homeland Security and Governmental Affairs Committee
on his nomination to serve as
Assistant Secretary of the Department of Homeland Security

May 13, 2009

Good Afternoon Mr. Chairman, Ranking Member Collins, Members of the Committee. I am deeply honored by the President's nomination, Secretary Napolitano's support and the opportunity to appear before you today.

I am also honored to be introduced by Admiral Loy and Chief Lanier.

As a Commandant of the US Coast Guard, and the first Deputy Secretary of the Department of Homeland Security, Admiral Loy is one of our nation's finest public servants. I have learned a great deal from him, perhaps most important - that underlying all good policy, and programs, are good people. Thank you, Jim.

Chief Lanier is an exceptional leader. I have worked with her since before she became Chief on a number of homeland security issues. She is entrepreneurial, hungry for new ideas, determined, and gets the job done. She also keeps all of us who work and live in our nation's capital safe. Thank you for that, Chief.

There are a number of friends and family here with us today that I'd also like to thank. I am blessed by the large number of whom are here today, and I would like to introduce and recognize a few of them. My wife, Victoria, is an extraordinary professional in international development in her own right, taking her to places we care deeply about—Pakistan, India, and North Africa to name a few. She is my joy and my love, and the

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mother of our eight-week old son, Henry, who she is holding. The world is ever brighter because they are here.

My parents are here. They came to Washington in the 1960s, riding a wave of excitement when President Kennedy was elected. My father joined the Alliance for Progress and the State Department where he worked for twenty-five years. Both of my parents have devoted their lives to public service, to serving the nation and their community, to strengthening our democracy, improving education, housing, and to the betterment of the lives of youth and seniors in our communities. My father used to say when I was young that public service was an honorable calling. He is right. And my parents inspired me to hear that calling. I am so glad that they could be with us today.

Mr. Chairman, Senator Collins, let me also thank you, your Committee Members, and staff, for the exceptional leadership of this Committee and in helping to protect our country. Whether it is the creation of DHS or in its reform post-Katrina, your foresight, vision and leadership has been constant throughout difficult times.

I came to Washington nearly fifteen years ago to work in public policy. Before doing so I worked in the private sector for nearly a decade as a systems programmer building computer systems, doing supply-chain management, for the government and industry. When the Berlin Wall fell, I led my company's efforts to set up one of the first offices in Russia, an effort that unwittingly set me on a path to Washington. Whether it was negotiating export controls with the State Department, setting up a first internet link, or teaching former communist employees the benefits of merit-based pay, I learned of the extraordinary influence of science and technology in national security and international affairs and I sought out ways in which I could help.

Since then, I have had the privilege and challenge of serving this nation at the highest levels of government—at the White House, forging policy within the federal interagency policy-making community and at the Department of Energy, doing the same within a large complex organizational bureaucracy.

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As a senior advisor within the Executive Office of the President and for a Cabinet Secretary, I have led efforts to reform government, develop new programs, shape agency budgets, and forge national policy among competing interests and stakeholders. I have been honored to represent our government in international fora, in bilateral negotiations, and have helped to manage the federal government's response to an international crisis.

More recently, I was recruited by former Deputy Secretary of Defense John Hamre to support the efforts of one our nation's leading think tanks in international security, following the attacks on the United States in September 2001. As the founding director and manager of the homeland security program at the Center for Strategic and International Studies, I established a new program to help shape policies on the most important security matters of the times and helping provide the best advice to policymakers on a range of homeland security matters, from prevention and protection to response and recovery.

I hope my work has been helpful to this Committee over the years.

Many years ago, this Committee recognized that there was disorganization in the federal bureaucracy and sought to organize it by bringing together 22 agencies into one Department of Homeland Security. In the aftermath of Katrina, this Committee recognized that the initial goal of bringing all of those disparate missions together had not been fully realized— certainly not realized as you had hoped. The Secretary lacked a central staff and structure to chart Department-wide strategy and policy, which could then be carried out in a coordinated way by the many components of the Department. As you know, one of the post-Katrina reforms was the creation of the Office of Policy.

I sit here today recognizing there is still much to do, and many of your priorities still to accomplish. In the realm of homeland security, we may face challenges— naturally-occurring disasters and deliberate attacks—so large, they require the full force of our nation—of our cities, states, and federal government—to come together to respond. We face a continuing terrorist threat that is both nimble and dynamic. It exploits the seams

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of our society, operating in the gaps between bureaucratic notions of foreign and domestic, state and federal, civil and military. To counter these threats, I believe we must have in place a truly national homeland security enterprise—one that is as agile and seamless as those who seek to harm us, and as capable and responsive as needed to prevent, protect against, and, if needed, rapidly recover from all hazards, natural and deliberate.

If I am confirmed, I will work every day to meet these challenges, and to help develop a national culture of preparedness that focuses on building more self-reliant communities and individuals. We must institute a greater real-time situational awareness capacity, which means better information sharing consistent with privacy and civil liberties. We need also need to institute a national risk-based planning capability. And we must extend and bolster our capacity at home, by working closely with our international partners abroad.

The place to pursue this work is at the Department of Homeland Security We must start by forging one department, one enterprise, with a shared vision and integrated results-based operations to support that mission. I know the Secretary is deeply committed to this, and, if confirmed, I will support her and the Department in every way I can.

The Office of Policy will be central to achieving this goal. I believe the Policy Office is the Secretary's think tank—the ideas that will lead the nation will come from there. It is also the one place where the Department's many components must come together. The Assistant Secretary for Policy, therefore, serves as both the principal staff assistant and advisor to the Secretary and the Deputy Secretary for all matters on the formulation and articulation of homeland security strategy and policy, and the chief policy integrator, as well.

The struggle against al Qa'ida and other violent extremist ideologies is a struggle of ideas. We must in the years ahead through our ideas, our actions, and our example as a nation, defeat and marginalize those who seek us harm. As such, the Department of Homeland Security must remain fully committed to its mission of keeping America and

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Americans safe, and we must do so while protecting the laws, values and principles that define this great country. In this regard, I believe that protecting privacy and civil liberties is not only a core American value, not only a Constitutional requirement, but it is essential if DHS is to fulfill its mission of engaging the public as a partner.

I am excited by the prospect of contributing to this endeavor, if confirmed. I believe there is no higher Constitutional duty, nor greater calling than to protect this country, and to ensure that all Americans can live and thrive in a world free from fear or want. I humbled by the tasks before us, but emboldened by those I have already met at the Department and throughout the streets of America who keep watch over us. I pledge, if confirmed, to work with this Committee, our government, and the American people in every way I can.

And I look forward to your questions. Thank you.

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May 7, 2009

The Honorable Joseph I. Lieberman
Chairman
Senate Committee on Homeland Security and
Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Susan M. Collins
Ranking Member
Senate Committee on Homeland Security and
Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Lieberman and Ranking Member Collins:

As former lead policy officials at the Department of Homeland Security, we fully support the nomination of David Heyman as the Assistant Secretary for Homeland Security for Policy. Mr. Heyman brings the experience, temperament, and creativity to fulfill the mission of the Office of Policy at DHS, and we urge that the Senate confirm him as expeditiously as possible.

When the Department of Homeland Security was created in 2003, one of its principal weaknesses was the absence of a robust policy office to craft and implement long-term policies to protect our country. DHS was rightly criticized from bouncing from crisis to crisis and creating more and more security requirements without considering how they all fit together and without setting priorities. As the Obama Administration inherits DHS, the Department finally has a Policy Directorate that is capable of the strategic thinking necessary to protect our safety, our rights, and our economy.

Starting with team of thirty focused on border and transportation security in 2005, the Office of Policy has grown to over 200 policy experts, the overwhelming percentage of which are career government officials. The office is the main interface for DHS with the Congress, the private sector, academia, and thought leaders, helping to address earlier complaints from those quarters about the disjointed nature of DHS. The team also manages the Department's negotiations with foreign governments, an absolutely critical but sometimes overlooked part of the DHS agenda. The DHS policy toolkit – budget priorities, regulatory, policy, negotiations, and thought leadership – are all now housed in the Office of Policy. This policy capability must continue to grow, especially as DHS undertakes the first DHS Quadrennial Review this year as part of its growing strategic planning capability. The operating agencies of DHS – U.S. Customs and Border Protection, the Transportation Security Administration, FEMA, etc – can handle their in-the-field responsibilities to protect America. They deserve thoughtful, forward-leaning policy development to prioritize their missions and find synergies not possible

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housed in the Office of Policy. This policy capability must continue to grow, especially as DHS undertakes the first DHS Quadrennial Review this year as part of its growing strategic planning capability. The operating agencies of DHS – U.S. Customs and Border Protection, the Transportation Security Administration, FEMA, etc – can handle their in-the-field responsibilities to protect America. They deserve thoughtful, forward-leaning policy development to prioritize their missions and find synergies not possible under separate chains of command. To achieve that goal, the Policy Office needs a strong, accomplished leader.

David Heyman is such a leader. We have worked with Mr. Heyman is his role directing the Homeland Security Program at the well-respected Center for Strategic and International Studies since the creation of DHS in 2003. He has demonstrated a commitment to thoughtful research and analysis on many of the issues facing DHS, including preparedness, bioterrorism, visa policy, engagement with foreign governments, balancing of security and international travel and trade, and how DHS interacts with other federal agencies, foreign governments, state and local governments, the private sector, and other stakeholders. He will be able to hit the ground running upon confirmation.

As the Congress considers this nomination, we urge you to elevate the policy position to an Under Secretary level to enhance its credibility with other agencies and governments and help Congress consolidate its oversight of DHS. The vast responsibilities of the office and high profile require a leader with the appropriate designation of Under Secretary.

We appreciate your consideration of our endorsement of Mr. Heyman, and again urge his prompt confirmation by your Committee and the full Senate.

Stewart A. Baker
Former Assistant Secretary for Homeland Security for Policy, U.S. Department of Homeland Security

C. Stewart Verdery, Jr.
Former Assistant Secretary for Homeland for Border and Transportation Security Policy and Planning, U.S. Department of Homeland Security

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT

May 12, 2009

Senate Committee on Homeland Security & Governmental Affairs
Dirksen Senate Office Building
Washington, DC 20510

Honorable Committee Members:

This is to express my support for the appointment of Mr. David F. Heyman to the position of Assistant Secretary for Policy, United States Department of Homeland Security. It has been my pleasure to have been acquainted with Mr. Heyman since 2006, meeting him for the first time while attending a hearing during which he offered testimony on the matter of disease exposure.

Since first meeting Mr. Heyman, it has been my impression that he is skilled in his field and passionate about his work. Additionally, he is able to provide informative perspectives in a clear and concise fashion.

As the Metropolitan Police Department went through the process of researching and developing appropriate policy and response techniques related to pandemic influenza, we relied heavily upon publications authored by Mr. Heyman. His materials were extremely helpful in the development of response protocols for MPD, as they were written in a fashion so as to be easily understood.

In closing, I wish to emphasize my endorsement of Mr. Heyman. He is a person of wisdom, coupled with the talent to leverage his expertise in a way that benefits the many that look to him for guidance. I am certain that Mr. Heyman's works have greatly assisted many governments in drafting strategies that ultimately resulted in front line workers being safer and better prepared. The importance of Mr. Heyman's work has been greatly underscored by the recent H1N1 influenza outbreak.

Please feel free to contact me further should you wish to discuss this further. I may be reached on 202-727-4218.

Sincerely,

Cathy L. Lanier
Chief of Police

P.O. Box 1606, Washington, D.C. 20013-1606

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BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.)

   David Frederick Heyman

2. **Position to which nominated:**

   Assistant Secretary, U.S. Department of Homeland Security

3. **Date of nomination:**

   April 27, 2009

4. **Address:** (List current place of residence and office addresses.)

   Home: REDACTED
   Office: Center for Strategic and International Studies, 1800 K Street, Washington, DC 20006

5. **Date and place of birth:**

   July 2, 1964 in Washington, DC

6. **Marital status:** (Include maiden name of wife or husband's name.)

   Married to Victoria White

7. **Names and ages of children:**

   REDACTED

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

   Brandeis University (August 1982 – May 1986), B.A. Biology (May 1986)

   Eotvos Lorand University Law Program (Budapest, Hungary) in International Business Transactions and Constitutional Law of Emerging Democracies (Summer 1990), No Degree

   The Johns Hopkins University School of Advanced International Studies (August 1994 – May 1996), M.A. International Affairs (Candidate: June 2009)

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9. **Employment record:** List all jobs held since college, and any relevant or significant jobs held prior to that time, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

2006 – present	**Adjunct Professor** Georgetown University Washington, D.C.
2001 – present	**Director and Senior Fellow, Homeland Security Program** Center for Strategic and International Studies (CSIS) Washington, D.C.
1998 – 2001	**Senior Advisor to the U.S. Secretary of Energy** U.S. Department of Energy Washington, D.C.
1995 – 1998	**Senior Policy Analyst in the Executive Office of the President** White House Office of Science and Technology Policy (OSTP) Division of National Security and International Affairs Washington, D.C.
1995	**Management Consultant** (*unpaid*) Ernst & Young International Privatization and Economics Group London, U.K.
1992 – 1994	**Director of International Operations** RGTI Systems/ Software New York, N.Y.
1989 – 1994	**Project Manager** RGTI Systems/ Software New York, N.Y.
1986 – 1989	**Systems Engineer** RGTI Systems/ Software New York, N.Y.

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.

2009—present	White House National Infrastructure Advisory Council (NIAC), Working Group on Resiliency
2008—present	U.S. Department of Homeland Security Quadrennial Review Advisory Committee (QRAC)

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2007—2008	Principal Investigator, Biodefense for the 21st Century (HSPD-10) and the Homeland Security Act of 2002 mandated quadrennial Net Assessment
2007—2008	White House National Infrastructure Advisory Council (NIAC), Strategic Partnership Assessment Working Group
2006	State of California, Little Hoover Commission, Consultation on Improving State Response to Catastrophic Emergencies, 2006

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

Chair, External Advisory Board, Sandia National Laboratories (2008 – present)

Consultant, Lockheed Martin (2008)

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

Member, World Economic Forum's Global Futures Agenda Council (2008 – present)

National Survey of America's Top Experts on the State of Terrorism and U.S. National Security (est. 2005 – present)

Fellow, George Washington University's Homeland Security Policy Institute (2007 – present)

Member, World Federation of Public Health Associations (WFPHA), 12th World Congress Program Review Committee (2008)

Member, New York Academy of Sciences (1990s)

Member, American Computing Machines (1990s)

Member, American Association for the Advancement of Science (1990s)

13. **Political affiliations and activities:**

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

None

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(b) List all memberships and offices held in and services rendered to any political party or election committee during the last 10 years.

Served on the National Security Team for Obama for President (2008)

Served on the National Security Team for Kerry for President (2004)

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more during the past 5 years.

Mark Pryor for Senate $250 (2002)

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

Superior Performance Award, U.S. Department of Energy (DOE), 2001

Deputy Editor, SAIS Review Journal, 1995

Fellowship/Scholarship, Johns Hopkins University's School of Advanced International Studies (SAIS), 1995-1996

15. **Published writings:** Provide the Committee with two copies of any books, articles, reports, or other published materials which you have written.

Anticipating Terrorist Violence: Understanding Hearts and Minds, Washington, D.C., CSIS. (2009 – in publication)

International Cooperation Against Biological Threats, Washington, D.C., CSIS. (2009)

Homeland Security in an Obama Administration, Washington, D.C. CSIS. (2008)

Restoring American Influence and Security through Service, Education, and Exchange, Washington, D.C., CSIS (2008)

Homeland Security 3.0, Washington, D.C., CSIS and The Heritage Foundation. (2008)

Recovering from a Wide Area Anthrax Attack, Washington, D.C., CSIS. (2008)

"Finding the Enemy Within: Towards a Framework for Domestic Intelligence," in *Threats at Our Threshold: Homeland Defense and Homeland Security at the Turn of the Century*, Army War College. (2007)

America's Domestic Security Five Years After 9/11, Washington, D.C., CSIS. (2006)

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Model Operational Guidelines for Disease Exposure Control, Washington, D.C., CSIS. (2005)

The Still Untrodden Heights: Global Imperatives for Space Exploration in the 21st Century, Washington, D.C., CSIS. (2005) – *Contributor*

General Aviation Security: Threats, Vulnerabilities, and Priorities: A Threat Vulnerability Analysis Study on General Aviation, Washington, D.C., CSIS. (2005)

DHS 2.0: Rethinking the Department of Homeland Security, Washington, D.C., CSIS and The Heritage Foundation. (2004)

America's Patchwork of Preparedness in Bio-Defense Reflects a Failure of Leadership, in Homeland Security Journal, McGraw-Hill, (June 2004)

Untangling the Web: Congressional Oversight and the Department of Homeland Security: A White Paper on the CSIS-BENS Task Force, Washington, D.C., CSIS. (2004) – *Contributor*

"Legal Pressures in National Security Restrictions," in *The Role of Scientific and Technical Data and Information in the Public Domain*, Washington, D.C., The National Research Council, National Academies Press. (2003)

Meeting the Challenges of Establishing a New Department of Homeland Security, Washington, D.C., (2002)—*Contributor*

Lessons from the 2001 Anthrax Attacks in America, Washington, D.C., CSIS. (2002)

Science and Security in the 21st Century: A Report to the Secretary of Energy on the Department of Energy Laboratories, Washington, D.C. CSIS. (2002)—*Contributor*

16. **Speeches:**

(a) Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated. Provide copies of any testimony to Congress, or to any other legislative or administrative body.

- "Ensuring National Security While Promoting Foreign Investment, in an Age of Global Terrorism", Statement Before the Committee on Financial Services, U.S. House of Representatives (2007)
- "Improving State Response to Catastrophic Emergencies", Statement Before the State of California Little Hoover Commission. (2006)
- "Improving the National Response to Catastrophic Health Emergencies: The Role of the New DHS Chief Medical Officer", Statement Before the Committee

of Homeland Security, Subcommittee on Management, Integration, and Oversight, U.S. House of Representatives (2005)

(b) Provide a list of all speeches and testimony you have delivered in the past 10 years, except for those the text of which you are providing to the Committee. Please provide a short description of the speech or testimony, its date of delivery, and the audience to whom you delivered it.

- "The Future of Homeland Security: Implications for Global Sustainability and the Work of the Community College" at Eastern Community College Social Science Association (ECCSSA), 2009 35th Annual Conference, Dinner Keynote Address, Ashburn, Virginia. (March 27, 2009)

- "Homeland Security and Issues Facing DHS" at Brookings Institution Executive Education Program for senior career officials, Washington, DC. (February 24, 2009)

- "Mumbai Lessons: Regional and Global Implications" at the International Center for Terrorism Studies, Potomac Institute for Policy Studies, Washington, DC. (December 5, 2008)

- "Perspectives on How the November Election Results will Impact Homeland Security" before the Board on Chemical Sciences and Technology, The National Academies, Washington, DC. (December 4, 2008)

- Moderator—Homeland Defense and Homeland Security for the Next Administration, panel discussion on "Building a More Secure and Resilient Infrastructure: Public-Private Partnerships", Washington, DC. (November 19, 2008)
  http://www.csis.org/component/option,com_csis_events/task,view/id,1834/

- Moderator—Remarks by U.S. Homeland Security Michael Chertoff at the Center for Strategic and International Studies on Aviation Security Measures, Washington, DC. (November 17, 2008)
  http://www.csis.org/component/option,com_csis_events/task,view/id,1855/

- Moderator—Forum on Anticipating Terrorist Violence: Understanding Hearts and Minds at the Westfields in Chantilly, Virginia. (October 15-17, 2008)

- "Homeland Security 3.0" at the National Press Club, Washington, DC. (September 19, 2008)

- Moderator—Homeland Security Strategy Forum, "Decision 2008: The Candidates Positions with James Lee Witt (for Obama) and Governor Frank Keating (for McCain)" at the Renwick Art Gallery, Washington, DC. (September 9, 2008)

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- "Securing the Homeland: Challenges – Past and Future" at the final meeting of the U.S. Homeland Security Advisory Council (HSAC), Washington, DC. Only outsider to present to the HSAC to provide input to their transition document for the next President. (June 25, 2008)

- Moderator—Lessons From Abroad Symposium: The British Model for Building Resiliency, Washington, DC. June 6, 2008.

- "Building a More Resilient Society: Transforming National Security Through New Approaches in Critical Infrastructure Protection and Supply Chain Security" at NATO Centre of Excellence for Defence Against Terrorism, Ankara, Turkey. (May 28, 2008)

- "Lessons from Anthrax, SARS, and Pandemics: Biological Threats and New Strategies for Biological Risk Reduction" at NATO Centre of Excellence for Defence Against Terrorism, Ankara, Turkey. (May 28, 2008)

- "The Global Forum on Biorisks: A Comprehensive, Interdisciplinary, International Approach" [with Dr. Gerald Epstein] at the Emirates Center for Strategic Studies and Research, Abu Dhabi, United Arab Emirates. (May 4, 2008)

- "How Can We Best Take a Systems Approach to Homeland Security" at Syracuse University's National Security Management Course in the Maxwell School of Citizenship and Public Affairs, Syracuse, NY. (May 1, 2008)

- "The Future of the Department of Homeland Security, Its Successes and Challenges," for Lockheed Martin Washington Operations, Washington, DC. (April 29, 2008)

- Moderator—Lessons From Abroad Symposium, Germany: Domestic Intelligence and Information Sharing, Washington, DC. (April 23, 2008)

- "Building a More Resilient Society: How to Transform 20th Century National Security Architectures into a 21st Century Safer and More Secure World" at Asia-Pacific Programme for Senior National Security Officials (APPSNO), organized by the National Security Coordination Secretariat (NSCS) at the Singapore Prime Minister's Office, and the Centre of Excellence for National Security (CENS) at the S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University, Singapore. (April 15, 2008).

- "The New Politics of the Global Economy: A World Without Rules?" at the Annual Chatham House Conference on Global Risk and Corporate Security, London, U.K. (March 11, 2008)

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- Moderator—Top of the Agenda Symposium with U.S. Department of Defense, Assistant Secretary for Homeland Defense Paul McHale, Washington, DC. (January 14, 2008)

- "Governance for Biological Threat Reduction: A Comprehensive, International, Interdisciplinary Approach" [with Dr. Gerald Epstein], at the Institute for Defense Studies and Analyses, New Delhi, India. (January 8, 2008)

- Moderator—Top of the Agenda Symposium with White House Deputy Assistant to the President for Homeland Security Joel Bagnel, Washington, DC. (November 9, 2007)

- Moderator—Top of the Agenda Symposium with FBI Assistant Director for Counterterrorism Joe Billy, Washington, DC. (October 25, 2007)

- Moderator—Overcoming Extremism: Protecting Citizens from Terrorist Violence, Washington, DC. (October 22, 2007)

- Moderator—Remarks by Homeland Security Secretary Michael Chertoff at a Symposium on Improvised Explosive Devices in the United States, Washington, DC. (October 19, 2007) http://www.csis.org/component/option,com_csis_events/task,view/id,1406/

- Panel Discussion on the New National Homeland Security Strategy, Heritage Foundation, Washington, DC. (October 11, 2007)

- "Healthcare and Homeland Security," at conference on Healthcare and Homeland Security, The Heritage Foundation, Washington, DC. (July 18, 2007)

- Moderator—Top of the Agenda Symposium with U.S. Department of Homeland Security Assistant Secretary of Homeland Security for US Immigration and Customs Enforcement, Julie Myers, Washington, DC. (June 19, 2007)

- Moderator—Top of the Agenda Symposium with U.S. Department of Homeland Security Assistant Secretary for Infrastructure Protection, Bob Stephan, Washington, DC. (Date Uncertain)

- "Disease Exposure Controls: Model Operational Guidelines for Protecting the Public Against Pandemic Flu and Bioterrorism", State of Wisconsin Government Officials via teleconference. (June 12, 2007)

- "Homeland Defense: An Approach to Deterring Adversaries", at a conference hosted by the U.S. Department of Defense, Northern Command, San Antonio, TX. (June 5, 2007)

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- "Risk Management: A Systems Approach to Homeland Security", National Security Management Course, Maxwell School of Citizenship and Public Affairs, Syracuse University, Syracuse, NY. (May 1, 2007)

- Moderator—Panel Discussion and Remarks by Congressman Bennie Thompson (D. MI), U.S. House of Representatives Homeland Security Committee Chair at a Congressional Forum on the Private Sector and 9/11 Legislation, Washington, DC. (April 24, 2007)

- "National Security Deliberations at the Highest Level of Government," at the Sarasota Institute of Lifelong Learning, Sarasota, FL. (March 14, 2007)

- "Are We Safer? From Bin Laden to Bioterror, a Review of anti-Terrorism Efforts Since 9-11" at the U.S. Foreign Service Officers Association, Sarasota, FL. (March 13, 2007)

- "If the Shoe Fits: America's Five-Year Struggle to be Secure at Home and a Prescription for Our Future Safety," at the Sarasota Institute of Lifelong Learning, Sarasota, FL. (March 13, 2007)

- "From SARS to Pandemics, New Tools and Old Medicine: Operational Guidelines for Disease Exposure Controls—A Targeted, Layered Non-pharmaceutical Approach to Protect Ourselves Against Contagious Disease", Key Note Speaker for 2007 Local, State, and Federal Public Health Preparedness Summit, Washington, DC. (February 19, 2007)

- "Governance for Biological Threat Reduction: A Comprehensive, International, Interdisciplinary Approach" [with Dr. Gerald Epstein], at the Carnegie Biodefense Seminar, Woodrow Wilson School of Public and International Affairs, Princeton University, Princeton, NJ. (February 9, 2007)

- "Ensuring National Security While Promoting Foreign Investment in an Age of Global Terrorism," Testimony before the Committee on Financial Services, U.S. House of Representatives, Washington, DC. (February 7, 2007)

- "Trends and Key Assumptions in Terrorism and Homeland Security 2020", presentation to Thales Senior Executive Management Team, Washington, DC. (February 6, 2007)

- "Protectionism and Homeland Security", panel discussion at The Heritage Foundation, Washington, DC. (February 3, 2007)

- "Considerations for the Governance and Organization of Homeland Security", presentation to Danish Ambassador and senior government officials. (February 2, 2007)

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- "From SARS to Pandemics, New Tools and Old Medicine: Operational Guidelines for Disease Exposure Controls—A Targeted, Layered Non-pharmaceutical Approach to Protect Ourselves Against Contagious Disease", at Asia-Pacific Programme for Senior National Security Officials (APPSNO), organized by the National Security Coordination Secretariat (NSCS) at the Singapore Prime Minister's Office, and the Centre of Excellence for National Security (CENS) at the S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University, Singapore. (January 18, 2007)

- Moderator—Top of the Agenda Symposium with Assistant Secretary for Policy, U.S. Department of Homeland Security, Stewart Baker, Washington, DC. (January 10, 2007)

- "Biological Threat Reduction: A Comprehensive, International, Interdisciplinary New Model for Governance", (with Dr. Gerald Epstein) at the Biological Weapons Convention (BWC) Conference of the Parties, 6th Review Conference, Geneva, Switzerland. (November 30, 2006)

- "Key Challenges in Homeland Security and Counterterrorism", presentation to CSC Senior Executive Management Team, Falls Church, VA. (November 19, 2006)

- Moderator— Army War College Conference on Homeland Defense and Security in America: Evolving Policy and Strategy for the 21st Century, panel discussion on Domestic Intelligence for Homeland Defense, Washington, DC. (November 13, 2006)

- "From SARS and Bioterrorism to Pandemic Flu, New Tools and Old Medicine: Non-Pharmaceutical Interventions and Guidelines for Disease Exposure Control Programs"; The 80th Annual Meeting of the American Public Health Association, Boston, MA. (November 8, 2006)

- "Trends and Key Assumptions in International Security 2020", presentation to Boeing Corporation Senior Executive Management Team, Washington, DC. (October 2006)

- "Comparative World Politics and Fighting Terrorism: U.S. Decision-making, Policy Formation and Implementation", Guest Lecture, Catholic University, Washington, DC. (September 28, 2006)

- "Biological Threat Reduction: A Comprehensive, International, Interdisciplinary New Model for Governance", presentations to United Nations Secretary General staff and to UN Chief of WMD Inspections, New York, NY. (September 15, 2006)

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- "Primer on U.S. Counterterrorism and Homeland Security Strategy and Policy", presentation at Taiwan Government Senior Executive Course on International Security, Washington, DC. (September 11, 2006)

- "Prepared for What? Transforming Homeland Security for the Long War", Conference on Five Years After 9/11: An Assessment of America's War on Terror, CSIS International Policy Roundtable with Jamie Gorelick, Former Member 9/11 Commission, Washington, DC. (September 8, 2006)

- "From SARS and Bioterrorism to Pandemic Flu, New Tools and Old Medicine: Non-Pharmaceutical Interventions as a Way to Protect Families, Communities, and Businesses Against Contagious Disease", The 11th World Congress of the World Federation of Public Health Administrations, Rio de Janeiro, Brazil. (August 25, 2006)

- Moderator—Homeland Security Strategy Forum, with Senators Gary Hart and Warren Rudman, at The Renwick Art Gallery, Washington, DC. (July 19, 2006)

- "24" and America's Image in Fighting Terrorism: Fact, Fiction, or Does it Matter?" with Secretary Michael Chertoff, Howard Gordon (Executive Producer and Writer, "24"), Joel Surnow (Executive Producer, Creator and Writer, "24"), Robert Cochran (Executive Producer, Creator and Writer, "24") and Cast Members Gregory Itzin ("President Charles Logan"), Mary Lynn Rajskub ("Chloe O'Brian"), and Carlos Bernard ("Tony Almeida") at the Ronald Reagan Center in Washington, DC. (June 23, 2006) http://multimedia.heritage.org/content/wm/Reagan-062306.wvx

- "Countering the Twin Threats of Pandemic Flu and Biological Terrorism", Center for American Progress, Washington, DC. (June 22, 2006)

- "The US Public Health System: Are We Ready for the Arrival of Avian Flu and Other Threats?" at a Forum on behalf of the National Academy of Public Administration (NAPA) at The National Press Club, Washington, DC. (June 15, 2006)

- "Disease Exposure Control: Model Guidelines for Protecting the Public Against Pandemic Flu and Bioterrorism", Taiwan Government Senior Executive Course on Biodefense and Biosecurity, CSIS, Washington, DC. (June 13, 2006)

- "The Post 9-11 Biothreat Environment", Taiwan Government Senior Executive Course on Biodefense and Biosecurity, CSIS, Washington, DC. (June 6, 2006)

- Moderator—Discussion with EU Minister Frattini, DHS Undersecretary for Policy Stewart Baker, and U.S. Ambassador for Counterterrorism Henry Crumpton at Gallup Headquarters, Washington, DC. (May 30, 2006)

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- "Open Target: Where America is Vulnerable to Attack", panel discussion at the Center for American Progress, Washington, DC. (May 23, 2006)

- "Countering Bioterrorism and Emerging Infectious Disease" at the Singapore Ministry of Health, the Lee Kuan Yew (LKY) School of Public Policy, and the Temasek Junior College (TJC), Singapore. (April 27-28, 2006)

- Moderator—Homeland Security Strategy Forum, with White House Assistant to the President for Homeland Security and Counterterrorism, Frances Fragos Townsend at the Renwick Art Gallery, Washington, DC. (March 2006)

- Moderator—"The Dubai Ports Deal: How Secure is It?" Panel Discussion with former Deputy Secretary of DHS, Admiral James Loy, former Director FBI, William Webster, Assistant Commissioner U.S. Customs and Border Protection, Jayson Ahern, and Director of Inspection and Compliance, U.S. Coast Guard, Rear Admiral Craig Bone at CSIS, Washington, DC. (March 1, 2006) http://www.csis.org/component/option,com_csis_events/task,view/id,906/

- "Disease Exposure Controls: How to Prepare for a Pandemic When You Have No Vaccines", panel discussion on Avian Influenza: Legal and Policy Implications at the Second Annual Georgetown University Center for Infectious Disease (CID) Conference, at the Leavey Center, Georgetown University, Washington, DC. (February 27, 2006)

- "National Security and Bioterrorism: Policy and Legal Considerations," Georgetown University Law School, Washington, DC. (February 2006)

- "Disease Exposure Control: Model Guidelines for Protecting the Public Against Pandemic Flu and Bioterrorism", at a U.S. Department of State Distinguished Speakers Series, U.S. Consulate, Osaka, Japan. (February 2006)

- "Disease Exposure Control: Model Guidelines for Protecting the Public Against Pandemic Flu and Bioterrorism", at a U.S. Department of State Distinguished Speakers Series, U.S. Consulate, Fukuoka, Japan. (February 2006)

- "Disease Exposure Control: Model Guidelines for Protecting the Public Against Pandemic Flu and Bioterrorism", at a U.S. Department of State Distinguished Speakers Series, U.S. Consulate, Tokyo, Japan. (February 2006)

- "Improving State Response to Catastrophic Emergencies," Testimony before the State of California Little Hoover Commission, California State Capitol, Sacramento, CA. (January 26, 2006)

- "Improving the National Response to Catastrophic Health Emergencies: The Role of the New DHS Chief Medical Officer", Statement Before the Committee of Homeland Security, Subcommittee on Management, Integration, and Oversight, U.S. House of Representatives, Washington, DC. (October 27, 2005)

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- "Katrina: Implications to Terror Analysis and Threat Response", at a U.S. Department of State Distinguished Speakers Series, Munich, Germany. (September 2005)

- "Biothreats and Terrorism: Real or Imagined", at a U.S. Department of State Distinguished Speakers Series, at the University of Lyon, Lyon, France. (September 2005)

- "Katrina: Implications to Terror Analysis and Threat Response", at a U.S. Department of State Distinguished Speakers Series, Paris, France. (September 2005)

- "Homeland Security, Biosecurity and Transatlantic Cooperation", at the French Institute of International Relations (IFRI), Paris, France. (September 19, 2005)

- 2005 Community Dialogue with WAMU, American University radio, Washington, D.C. (June 21, 2005)

- "Protecting Critical Infrastructure: Status, Outlook, and the Energy Infrastructure" at the Women in International Security (WIIS). (June 13, 2005)

- "Terrorism, WMD and Biosecurity: A U.S. Perspective" Oslo, Norway, (June 2, 2005)

- "Developing a National Security Strategy: Lessons from the U.S. Experience", Swedish and Finnish Senior Governmental Officials, Stockholm, Sweden. (June 2005)

- Moderator—Remarks by U.S. Department of Homeland Security Secretary Michael Chertoff at Symposium on International Dimensions of Homeland Security, CSIS, Washington, DC. (May 19, 2005)

- Moderator—Meeting the Challenges of Bioterrorism: Assessing the Threat and Designing Biodefense Strategies, at the International Bioterrorism Conference in Fürigen (Nidwalden), Switzerland, Swiss Federal Institute of Technology Zurich (ETH), Switzerland. (April 23, 2005)

- "Causes of Differing Perception of the Biological Threat", at the International Bioterrorism Conference in Fürigen (Nidwalden), Switzerland, Swiss Federal Institute of Technology Zurich (ETH), Switzerland. (April 22, 2005)

- Homeland Security Effects on Science and Technology in the United States, SURA, Washington, DC (April 7, 2005)

- US-Canada Security Cooperation, "Organizing for Homeland Security", The Maxwell School of Syracuse University, Syracuse, NY. (April 8, 2005)

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- "Global Transformations: Biotechnology, Bioterrorism, and Biosecurity" at the 2005 Health in Foreign Policy Forum: Responding to Infectious Diseases: National Security or Human Rights, AcademyHealth, Washington, DC. (February 4, 2005)

- "Nuclear, Chemical and Biological Security" at the Countering Terrorism Symposium, organized by the United States Office of Personnel Management in partnership with the First Marine Expeditionary Force, La Jolla, CA. (September 22, 2004)

- "Impacts of New Security Policies on Science" at the AAAS Annual Policy Meeting, Washington, DC. (April 2004)

- "The Future of US Homeland Security", Ottawa, Canada. (February 27, 2004)

- "Protection and Preparedness – Co-operation Across National, Sectorial and Institutional Borders", Partnership for Peace Seminar on Critical Infrastructure Protection and Civil Emergency Planning at the Grand Hôtel, organized by the Swedish Emergency Management Agency, Stockholm, Sweden. (November 17–18, 2003)

- "Smallpox BioSecurity: Preventing the Unthinkable." Led, organized, moderated and discussed a simulation of a smallpox bioterrorist attack at the Hotel President Wilson, Geneva, Switzerland [with Jean Pascal Zanders and D.A. Henderson]. (October 21, 2003)

- "Exploring the Consequences and Opportunities of Bioterrorism of Global Reach" at The National Academies Forum on Emerging Infectious Diseases, The Impact of Globalization on Infectious Disease Emergence and Control, hosted by the Institute of Medicine (IOM), Washington, DC. (June 9, 2003)

- "Key Economic and Security Issues in the Internationalization of Science and Engineering" at the National Bureau of Economic Research (NBER), New York, NY. (May 15, 2003)

- "Legal Pressures on National Security Restrictions", at a Symposium on The Role of Scientific and Technical Data and Information in the Public Domain, organized by The National Academies Board on International Scientific Organizations, Washington, DC. (September 5, 2002)

- "The Threat from Biological Weapons", at The United States Institute for Peace (USIP), Washington, DC. (April, 2002)

17. **Selection:**

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(a) Do you know why you were chosen for this nomination by the President?

The President has made clear his belief that given the uncertain world in which we live, it is time for a new beginning, "a new dawn of American leadership to overcome the challenges of the 21st century, and to seize the opportunities embedded in those challenges." His view is that to succeed in this world, America needs a new strategy, one that "skillfully uses, balances, and integrates all elements of American power: our military and diplomacy; our intelligence and law enforcement; our economy and the power of our moral example". To accomplish this, he has said, requires a team that shares his vision and his sense of purpose about America's role as a leader in the world. This, along with the President's statement accompanying his intent to nominate me to be his Assistant Secretary of Policy for the Department of Homeland Security, indicate that my shared vision, expertise and experience in helping to keep Americans safe at home and abroad were factors in his decision to offer me the honor to serve in his Administration.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

My career of over twenty years in business, government and non-governmental organizations has provided me with significant breadth and depth in national security policy development, international affairs and complex problem-solving to serve as the Assistant Secretary for Policy at the U.S. Department of Homeland Security.

As an expert on the "global war on terrorism," bioterrorism, critical infrastructure protection, emergency preparedness, and risk-based security, I have an understanding of some of the most challenging issues facing the nation today.

As a public servant working at the highest levels of government, I have had extensive experience analyzing and instituting government strategy and policy, both at the White House on an interagency level, and at the Department of Energy, within a large complex organizational bureaucracy.

As a senior advisor within the Executive Office of the President and for a Cabinet Secretary, I have led efforts to reform government, develop new programs, shape agency budgets, and forge national policy among competing interests and stakeholders. I have represented the U.S. government in international fora, in bilateral negotiations, and have helped manage the U.S. response to an international crisis.

More recently, I was recruited to support the efforts of one our nation's leading think tanks in international security, following the attacks on the United States in September 2001. As the founding director and manager of the homeland security program at the Center for Strategic and International Studies, I have been responsible for establishing a new program to help shape policies on the most important security matters of the times, building it into one of the nation's leading institutions, and helping provide the best advice to the government and United

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States Congress on a range of homeland security matters, from prevention and protection to response and recovery.

Related to my CSIS work, as a professor at Georgetown University's School of Foreign Service, and as a regular commentator in the media, I have had to distill some of the most complex ideas or issues related to national security—ideas that require detailed technical knowledge and/ or policy nuance—and find the best ways to communicate them to a wide public audience.

Finally, as a manager at CSIS and for nearly ten years previously in the private sector, I have successfully assembled high-performance teams and led numerous efforts that have culminated in on-time, on-budget delivery of multi-million dollar projects.

The policy shop is the Secretary's think tank; its director, one of her principal advisors on strategy and policy and representatives to foreign governments and U.S. stakeholders. As the founding director and manager of the nation's leading homeland security program, as a policy expert on a range of national security issues, as a former senior official working at the highest levels of government, as a private sector manager, a teacher, and, equally important, as a citizen, my background and experience is uniquely suited to serve as the Assistant Secretary for Policy at the U.S. Department of Homeland Security. If confirmed, I will draw on all of these experiences to serve our nation and to help secure the long-term interests of the United States – protecting its citizens, promoting prosperity, and preserving civil liberties.

B. EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

   Yes

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

   No

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization, or to start employment with any other entity?

   No

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

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No

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes

6. Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? If so, please explain.

No

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Homeland Security's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

As the Director of the Homeland Security Program at the Center for Strategic and International Studies, my role is to help shape the policies, Federal and otherwise, that keep America safe and secure at home and abroad. One aspect of my job is to provide information and analysis to Members of Congress and their staff.

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes

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D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for 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

2. Have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

   No

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

   No

4. For responses to question 3, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

   None

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

   I believe that my resume and the information in this questionnaire provide the relevant information about my background. I would be happy to work with the Committee if any additional information is desired.

E. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

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AFFIDAVIT

David Frederick Heyman, being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

David Heyman

Subscribed and sworn before me this 28 day of April, 2009

Robin M. Fletcher

Notary Public

Robin M. Fletcher
Notary Public, District of Columbia
My Commission Expires 8-14-2009

U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-hearing Questionnaire
For the Nomination of David F. Heyman to be
Assistant Secretary, Department of Homeland Security

I. Nomination Process and Conflicts of Interest

1. **Why do you believe the President nominated you to serve as Assistant Secretary of Homeland Security for Policy?**

   The President has made clear his belief that given the uncertain world in which we live, it is time for a new beginning, "a new dawn of American leadership to overcome the challenges of the 21st century, and to seize the opportunities embedded in those challenges." His view is that to succeed in this world, America needs a new strategy, one that "skillfully uses, balances, and integrates all elements of American power: our military and diplomacy; our intelligence and law enforcement; our economy and the power of our moral example". To accomplish this, he has said, requires a team that shares his vision and his sense of purpose about America's role as a leader in the world. This, along with the President's statement accompanying his intent to nominate me to be his Assistant Secretary of Policy for the Department of Homeland Security, indicate that my shared vision, expertise and experience in helping to keep Americans safe at home and abroad were factors in his decision to offer me the honor to serve in his Administration.

2. **Were any conditions, expressed or implied, attached to your nomination? If so, please explain.**

   No.

3. **What specific background and experience affirmatively qualifies you to be Assistant Secretary of Homeland Security for Policy?**

   My career of over twenty years in business, government and non-governmental organizations has provided me with significant breadth and depth in national security policy development, international affairs and complex problem-solving to serve as the Assistant Secretary for Policy at the U.S. Department of Homeland Security.

   As an expert on the "global war on terrorism," bioterrorism, critical infrastructure protection, emergency preparedness, and risk-based security, I have an understanding of some of the most challenging issues facing the nation today.

   As a public servant working at the highest levels of government, I have had extensive experience analyzing and instituting government strategy and policy, both at the White House on an interagency level, and at the Department of Energy, within a large complex organizational bureaucracy.

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As a senior advisor within the Executive Office of the President and for a Cabinet Secretary, I have led efforts to reform government, develop new programs, shape agency budgets, and forge national policy among competing interests and stakeholders. I have represented the U.S. government in international fora, in bilateral negotiations, and have helped manage the U.S. response to an international crisis.

More recently, I was recruited to support the efforts of one of our nation's leading think tanks in international security, following the attacks on the United States in September 2001. As the founding director and manager of the homeland security program at the Center for Strategic and International Studies ("CSIS"), I have been responsible for establishing a new program to help shape policies on the most important security matters of the times, building it into one of the nation's leading institutions, and helping provide the best advice to the government and United States Congress on a range of homeland security matters, from prevention and protection to response and recovery. As a part of this effort, I have spent significant time with congressional staff and understand the spectrum of concerns about the challenges faced by the Department of Homeland Security. I also have gained a substantive understanding about the congressional policy-making process, and the need for an open exchange between the legislative and executive branches.

Related to my CSIS work, as a professor at Georgetown University's School of Foreign Service, and as a regular commentator in the media, I have had to distill some of the most complex ideas or issues related to national security—ideas that require detailed technical knowledge and/ or policy nuance—and find the best ways to communicate them to a wide public audience.

Finally, as a manager at CSIS and for nearly ten years previously in the private sector, I have successfully assembled high-performance teams and led numerous efforts that have culminated in on-time, on-budget delivery of multi-million dollar projects.

The policy shop is the Secretary's think tank; its director, one of her principal advisors on strategy and policy and representatives to foreign governments and U.S. stakeholders. As the founding director and manager of one of the nation's leading homeland security program, as a policy expert on a range of national security issues, as a former senior official working at the highest levels of government, as a private sector manager, a teacher, and, equally important, as a citizen, my background and experience is uniquely suited to serve as the Assistant Secretary for Policy at the U.S. Department of Homeland Security. If confirmed, I will draw on all of these experiences to serve our nation and to help secure the long-term interests of the United States – protecting its citizens, promoting prosperity, and preserving civil liberties.

4. **Have you made any commitments with respect to the policies and principles you will attempt to implement as Assistant Secretary of Homeland Security for Policy? If so, what are they and to whom have the commitments been made?**

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5. **If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.**

   In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Homeland Security's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

6. **Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? If so, please explain.**

   No.

II. Role and Responsibilities of the Assistant Secretary of Homeland Security for Policy

7. **What is your view of the role of the Assistant Secretary of Homeland Security for Policy?**

   The Office of Policy is the Secretary's think tank. Even more important at DHS, it is also one place where the Department's many components must come together. The Assistant Secretary for Policy, therefore, serves as both the chief policy integrator, and the principal staff assistant and advisor to the Secretary and the Deputy Secretary for all matters on the formulation and articulation of homeland security strategy and policy and the integration and oversight of DHS policy and plans to achieve national security objectives. In this capacity, and as part of the policy-making process, the Assistant Secretary also serves as one of the Department's most senior representatives within U.S. interagency discussions, to foreign governments and to homeland security stakeholders.

8. **In the report entitled "DHS 2.0, Rethinking the Department of Homeland Security", dated December 13, 2004, co-authored with James Carafano, you supported the establishment of an Under Secretary for Policy at the Department of Homeland Security ("DHS" or "the Department"). Do you still support this recommendation?**

   Yes, I still support this recommendation.

9. **The DHS 2.0 Report also lists five responsibilities that you indicated the Under Secretary for Policy should have, and that these responsibilities should be codified in law. Based on your current understanding of the DHS, what updates or modifications would you make to this list of proposed authorities?**

   There are a number of responsibilities that could or should fall under the responsibility of an Under Secretary for Policy to include the five responsibilities enumerated in DHS 2.0

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– (1) coordinating DHS policy, (2) conducting long-range policy planning, (3) preparing critical strategic documents, (4) conducting program analysis, and (5) preparing net assessments. Currently at DHS, many of those functions are dispersed across the Department. As part of my initial efforts as Assistant Secretary if confirmed, I plan to review the current operating environment as it pertains to policy-making, to include processes, roles, responsibilities, and resources. I am committed to strengthening the Department's policy-making capability to ensure greater unity of effort and overall performance at DHS. If, during this review, I find responsibilities that should reside in the Office of Policy and that may be best suited to be codified in law, I will press for legislative amendments and work with Congress to craft legislative proposals and review draft legislation to accomplish this.

10. In your view, what are the major internal and external policy-related challenges facing DHS? What do you plan to do, specifically, to address these challenges?

The Department of Homeland Security, and the institutions and efforts to protect America at home are very much a work in progress. For the past eight years, the emphasis has been first and foremost on standing up the institutions to protect us—the Homeland Security Council (HSC), the Transportation Security Administration (TSA), the National Counterterrorism Center (NCTC), the Directorate for National Intelligence (DNI), and combining twenty-two government agencies into the Department of Homeland Security (DHS). I believe the greatest challenge and opportunity—both internally and externally at DHS—is to strengthen the effectiveness of these institutions, and most importantly, to strengthen the integrity and effectiveness of our nation's homeland security enterprise as a whole.

I have written, in a report entitled "Homeland Security 3.0" that was released before the results of the 2008 Presidential elections, that the principal focus of the next administration must be to build a truly national homeland security enterprise——an interconnected network of federal, state, local and private homeland security systems that seamlessly support and reinforce each other to protect against and respond to catastrophic events. A system that is as agile and seamless as those who seek to harm us, and as capable and responsive as needed to prevent, protect against, and, if needed, rapidly recover from natural disasters and the greatest deliberate threats we face—nuclear, biological, and cyber attacks.

I believe, to accomplish this, we must develop a national culture of preparedness and concentrate on building more self-reliant communities and individuals. We must institute a greater real-time situational awareness capacity. We also need to institute a risk-based national planning capability that brings together all elements of national power into an integrated national security budget.

In addition, we need to shift to a strategy that is focused on building and sustaining a resilient national infrastructure. Since 9/11, and even prior to 9/11, we have emphasized the need to *protect* all of our nation's critical assets. Going forward, we must embrace

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both *protection* and *resiliency* as complementary elements of an integrated risk management strategy.

Finally, we must strive for greater programmatic effectiveness and institute a better understanding of performance at the Department, across the government, and throughout the homeland security enterprise. To the extent feasible, measures and standards should be developed to help guide investments, and gain better visibility into the success of risk abatement and preparedness activities.

11. The DHS Office of Policy frequently plays an important role in participating in the interagency process on homeland security and counterterrorism issues. What experience do you have in participating in the interagency process, and based on this experience, what do you believe are the most important attributes of an effective interagency process?

The strategic environment facing the United States following the events of 9/11 is decidedly more complex and dangerous then ever before, and profoundly different than during the Cold War when our national security apparatus—to include the interagency process—was established and became mature. The terrorist threat is nimble and dynamic, exploiting the seams of our society, operating in the gaps between bureaucratic notions of foreign and domestic, state and federal, civil and military. Technological advances and global connectedness is shifting the historical state monopoly on power to smaller groups. Natural disasters, financial crises, and pandemics can have global consequences. To confront these 21st century challenges, the United States requires a robust national security decision-making system—an interagency process—that includes, embraces, and considers all elements of national power, foreign and domestic, civil and military, public and private. To succeed, the interagency experience therefore requires individuals with not just knowledge of a range of critical issues, but also experience in the interagency process, familiarity with the people and institutions that support that process, and with a commitment to integrating all elements of national power in helping to secure the nation.

During my tenure in government, I led, launched and/ or supported numerous interagency decision-making efforts. I worked on and participated in national security-related interagency teams at the White House and as a representative of an Executive Agency. As a senior policy analyst serving the President's Science Advisor, for example, I chaired or participated in committees supporting the Vice-President's Commission on US-Russian bilateral relations. I was the White House lead for negotiating one of the first agreements with the European Union, and for forging U.S. policy on a number of matters at the OECD. At the Department of Energy, I helped lead the U.S. initial response to an international crisis. If confirmed, I will bring to the job my knowledge of critical issues, my interagency experience both from the private sector and the public sector, my perspectives and previous relationships from the White House, from an agency, and more recently, from the view of a policy stakeholder, and my commitment in the interagency process to putting the national interest first.

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12. The DHS Office of Policy currently includes seven distinct offices: the Office of Policy Development, Office of Strategic Plans, Office of State and Local Law Enforcement, Office of International Affairs, Office of Immigration Statistics, Private Sector Office, and the Homeland Security Advisory Council. Based on your conversations with senior officials within the Department, is it your expectation that as Assistant Secretary for Policy, you would have responsibility to manage all of these offices?

Yes. If confirmed, I would have responsibility to lead a team of four Assistant Secretaries, six Deputy Assistant Secretaries and two Directors, who have line management authority to run these offices.

13. The majority of the large operating components of the Department have their own policy offices, including Customs and Border Protection (CBP), the Federal Emergency Management Agency (FEMA), Immigration and Customs Enforcement (ICE), the Transportation Security Administration (TSA), and the U.S. Coast Guard.

a. What do you see as the role of the DHS Office of Policy with respect to these component policy offices? What do you see as their responsibilities to the DHS Office of Policy?

The Office of Policy is the principal policy-making office in the Department. It is responsible for formulation and articulation of homeland security strategy and policy and the integration and oversight of DHS policy and plans at DHS. The component policy offices are primarily responsible for developing policies that are the domain of their respective organizations. To accomplish the DHS mission requires that DHS policy and policy-making be unified by and among all the Department components. I see the Office of Policy as leading the Department's efforts as it pertains to developing, articulating, and helping to enforce the overall strategy, mission, and policies of the Department, and I see the components as supporting that effort. In cases where components may have the lead, the Office of Policy's role is to ensure that the Department's broader priorities and interests are sustained.

b. As Assistant Secretary, what steps would you take to improve the level of cooperation and coordination between the DHS Office of Policy and the component policy offices?

If confirmed, I plan to review existing DHS policy-making processes in conjunction with the Department's Efficiency Review initiative to "streamline decision-making processes in headquarters offices to eliminate redundancies." I look forward to working with components and other key offices at the Department to develop (1) formal processes for policy development, (2) guidelines and processes for DHS to integrate Departmental policy into other management systems, such as program and budget reviews, and (3) a mechanism to increase transparency of existing and developing policies across the Department.

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14. Sec. 2401 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Commission Recommendations Act) (P.L. 110-53) requires the Secretary to complete a Quadrennial Homeland Security Review (QHSR) this year and submit a report to Congress on the results of this review by December 31, 2009. To date, the Office of Policy has played the lead role in preparing for the 2009 QHSR.

a. What role do you expect that you would play in the QHSR process?

If confirmed, I would play a leadership role in implementing the nation's first Quadrennial Homeland Security Review (QHSR). I would help guide the development of the report, oversee the QHSR processes, and, as the principal staff assistant and advisor to the Secretary of Homeland Security and the Deputy Secretary on DHS policy matters, I would welcome the opportunity to work with Congress to ensure oversight concerns are addressed.

b. In March 2008, DHS issued a report to Congress that provided a resource plan for the QHSR. (Available at this link: http://www.dhs.gov/xlibrary/assets/qhsr-resource-plan.pdf**). Do you believe that the proposed approach, work structure, and budget defined in this report are adequate and appropriate? If not, how can and should the QHSR process be changed?**

The resources required to support the QHSR will depend largely on the scope of the review. A comprehensive review on the programs, assets, capabilities, budget, policies and authorities of the Department is a narrower scope, for example, than a review that looks at the U.S. homeland security enterprise as a whole. I believe the plan and budget for the QHSR submitted in March 2008 would support a study that would be principally focused on DHS. My personal view is that homeland security is broader than DHS and to be comprehensive, a review that looked outside the Department would be required. Such a study may require additional resources to support it.

c. If confirmed, will you commit to providing Congress with regular updates on the status of the QHSR prior to the completion of the process?

I will.

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III. Policy Questions

General Homeland Security Policy

15. In an October 2007 story on the updated National Homeland Security Strategy, you said that the document was "not so much a strategy as a clear discourse about where the government is going...about what we are doing at the moment."[1] You also noted that the strategy "could free the next Administration's hands by institutionalizing the good things, and tie their hands by institutionalizing the bad things."

a. Do you believe that the 2007 strategy needs to be revised? What do you see as the critical elements of a national strategy for homeland security?

Section 2401 of the *Implementing Recommendations of the 9/11 Commission Act of 2007*, P.L. 110-53 (Act), amended the Homeland Security Act of 2002, and directed the Secretary of Homeland Security, beginning in fiscal year (FY) 2009 and every four years thereafter, to "conduct a review of the homeland security of the Nation." As part of this review, the legislation required that the Secretary comprehensively examine the nation's homeland security strategy, make recommendations regarding critical elements of the long-term homeland security strategy and priorities, to include providing guidance on the programs, assets, capabilities, budget, policies, and authorities of the Department of Homeland Security (DHS). The first review – called the Quadrennial Homeland Security Review (QHSR) – is to be submitted to Congress by December 31, 2009. My expectation is that the results of this first review, with its focus on the nation's homeland security strategy, obviates an immediate need to revise the 2007 strategy and may provide a strong foundation for revising the national strategy thereafter.

b. Please provide several examples of the "good things" and "bad things" to which you were referring in this second quote.

When the 2007 strategy was released, it was approximately a year before the 2008 Presidential elections. There was no way of knowing at that time, which party would come to power, or more, which individual would become the next President of the United States. The quote referred to some hypothetical new future administration, Democrat or Republican, that just one year before their taking office, could have their hands tied, in effect, with the release of a 'new strategy' that further institutionalized programs, policies, and processes that they themselves may or may not support (i.e. good things and bad things).

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[1] Waterman, Shaun. "Analysis: New Homeland Security Strategy." *United Press International*, October 15, 2007.

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16. In addition to the National Strategy for Homeland Security, there are a number of additional national strategies and plans guiding homeland security and national preparedness that were issued in recent years, including the National Infrastructure Protection Plan, the National Strategy for Maritime Security, the National Strategy for Information Sharing, and the National Response Framework. Homeland Security Presidential Directives (HSPD) provided further direction for homeland security during the previous Administration.

a. What specific policy changes, if any, do you believe might be necessary in the parts of older national strategies dealing with homeland security and/or domestic national preparedness that DHS might recommend to the Executive Office of the President? What would be your rationale for such changes?

The spectrum of programs and activities associated with homeland security devolve from numerous prevention, protection, response and recovery strategies. The strategies, and more, the programs and plans to operationalize them, have historically not been well-linked or well-coordinated, and most of them are distributed across the Federal bureaucracy.

Preventing and mitigating the consequences of a nuclear or radiological attack, for example, requires a wide spectrum of federal assets. The Department of Energy and the State Department each have programs—the Global Threat Reduction Initiative and the Global Initiative to Combat Nuclear Terrorism, respectively—to better control the source material from being acquired for nuclear terrorism. DOE retains unique detection capabilities to conduct aerial background radiation surveys, while DHS' Domestic Nuclear Detection Office (DNDO) is responsible for developing, testing, and deploying radiation detection equipment to detect and prevent the smuggling of nuclear and radiological materials at U.S. points of entry. The FBI, the Defense Department and DOE each possess expertise to deactivate and dispose of explosive devices. The Department of Health and Human Services and DOE can rapidly mobilize medical personnel during a disaster. The questions for government, or rather for effective government, are do we have the right balance of investments, the right level of capabilities, and are we achieving the results needed to accomplish U.S. policy? To assess and manage this requires, in my view, greater visibility and leadership in the interagency process and across agency budgets. This is true not just for nuclear, but for biological threats, and a number of other complex national security interests of the day.

Related to this, I am aware of two major and relevant reviews that are ongoing, one at the White House looking at the management and structure of national security council and national security decision-making, and the other at the Department of Homeland Security—the Quadrennial Homeland Security Review. There are also, simultaneously, quadrennial reviews at the Defense Department, the State Department and for the Intelligence Community. If confirmed, I plan to serve in a leadership role in implementing the nation's first Quadrennial

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Homeland Security Review (QHSR), to include representing the Department's recommendations to the broader interagency community.

b. How would you ensure that the Strategies' goals and objectives under the jurisdiction of DHS are understood and implemented in a timely manner?

The Department of Homeland Security utilizes Integrated Planning Guidance (to DHS Components, directorates and offices) as the culmination of the DHS strategic planning process to ensure that key goals and objectives under DHS jurisdiction are incorporated into Departmental priorities in a timely manner. The IPG is intended to translate national homeland security strategy and policy into actionable guidance for programming, budgeting, and execution, including investment and acquisition. The head of the Office of Strategic Plans in the Office of Policy is a direct report to the Assistant Secretary and responsible for developing, improving, and managing the strategic planning process for the Department. If confirmed, I will continue to push for improvements in our planning and budgeting processes. I am committed to working with Departmental leadership and Congress to help put in place a system that ensures that national priorities are appropriately funded, that these activities perform, and that resources and investments are efficiently and effectively employed.

c. Does the existence of so many homeland security strategies create diminishing returns in their impact on day-to-day homeland security operations?

I am not aware of any diminishing returns on operations that have been linked causally to the number of strategies in existence.

d. What long range planning process would you implement to guide DHS strategies beyond the near term and to take actions that address the evolving strategies of our adversaries?

One policy tool that I would consider, if confirmed, is to establish a net assessment capability in the Department.

17. The Government Accountability Office (GAO) first designated DHS's implementation and transformation as high risk in 2003 because of the difficulty of transforming 22 disparate agencies into one department. In addition, many of these individual agencies were facing their own management and mission challenges. But most importantly, the failure to effectively address DHS's management challenges and program risks could have serious consequences for our homeland security as well as our economy. The DHS Transformation remained on the high risk list in 2005, 2007 and 2009. However, in its most recent high risk update GAO found that DHS had developed and started to implement an Integrated Strategy for High Risk Management and corrective action plans for specific management functions like financial, acquisition, information technology, and human capital management.

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a. **Have you had a chance to review the Integrated Strategy and corrective action plans? What is your opinion of them?**

I am aware of the GAO High Risk reports and the designation of DHS's implementation and transformation as a high risk. While I have not had a chance to review the Department's Integrated Strategy for High Risk Management, I understand that it was developed by the Management Directorate with input from the Office of Policy and other DHS stakeholders, and that it provides a substantial foundation upon which to begin addressing the challenges identified by the GAO.

b. **Are you committed to implementing these plans, including dedicating the resources required to fully implement them?**

The Secretary has made integrating the Department one of her top priorities. If confirmed, I am committed to supporting this priority and will work with the Secretary and Deputy Secretary, as well as the Under Secretary for Management, to support the implementation of the Integrated Strategy for High Risk Management and other efforts to address the issues raised by GAO.

c. **How would you define a "transformed" Department of Homeland Security?**

One agency, one enterprise, a coherent vision and integrated results-based operations.

18. **In the DHS 3.0 report that you co-authored with James Carafano, you recommend that the "federal government needs to establish a framework for international homeland security cooperation."[2] What should that framework look like? Are any new laws, treaties, or institutions necessary in order to create such a framework?**

The Department supports a staff abroad based in nearly 80 countries, contributing to nearly all aspects of the homeland security agenda: tracking fraudulent travel documents, tracing counterfeit U.S. currency, investigating international computer-based crimes, disrupting human trafficking, screening maritime containerized cargo, interdicting illegal drugs, reviewing visa applications, inspecting ships, supporting U.S. military missions abroad, and providing training and technical assistance to foreign partners. While important, it appears that these activities have been pursued and added to DHS responsibilities more piecemeal and ad hoc than by design.

The 2002 Homeland Security Act authorized the Office of Policy to manage the Department's international enterprise. It is the responsibility—and should be a priority—of the Policy Office working in consultation with all major DHS components to develop an international strategic plan and establish a process for managing the implementation of this plan. Such a plan implemented in partnership with other elements of the U.S.

[2] David Heyman and James Jay Carafano Ph.D. "Homeland Security 3.0: Building a National Enterprise to Keep America Safe, Free, and Prosperous." Washington, D.C. , 2008, pg. 12.

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government, would support the international priorities of the U.S. homeland security agenda.

If there is a need for additional legislation to accomplish this work, and if confirmed, I am committed to working with the Administration and Congress to help develop the necessary authorities.

19. In an October 2004 story in the Journal of Commerce, you stated, "There is no question that we have failed as a country to describe what risk we're willing to accept...We need to be able to make judgments about what level of risk we're willing to accept, and that's a really tough thing to do, because no politician will be willing to say it's OK if only 5 percent of the containers are inspected."[3]

a. In your opinion, what level of risk should the United States be willing to accept with respect to terrorism, and how do you quantify that risk?

Risk-based security relies on the principle that higher risks require greater protection. The level of protection should be commensurate with the value of assets, level of threat, consequences or cost of loss or compromise, and cost of implementing countermeasures.

The question is what level of risk should we accept. My concern in 2004 was that in both public communications and in its approach to homeland security at the time, the government did not appear to be embracing risk-based security.

We can qualify risk; we can assess risks relative to each other; and we can use this approach to make informed decisions regarding mitigation strategies. There are challenges to do this effectively today—threats are often unknowable and quantification is sometimes subjective. Even so, risk assessments are our best available tool for managing the priorities and resources of the nation.

b. How can DHS communicate more effectively to the general public about risk?

The Department has a vital role to play in not just developing and applying better risk management tools to its core homeland security functions, but also to re-enforce these capabilities through more effective communication strategies. The development of a risk assessment and management effort in homeland security must go hand-in-hand with better ways of communicating risk. As risk management tools are developed and promulgated, so too should communication strategies. If confirmed, I will work with DHS entities, including the Office of Public Affairs and other components to further develop the Department's communications strategies regarding risk, with the goal of having wider and wider audiences retaining a greater and greater understanding of risk.

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[3] Edmonson, R.G. "Beyond the sound bites; How Much Risk is Acceptable? Question is Trickier Since Sept. 11." *Journal of Commerce*, October 2004.

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c. **What role do you see for risk management and risk management frameworks in the Department's strategic planning and budgeting activities?**

Risk management and assessments are fundamental to the homeland security enterprise—they underlie everything: prioritization, planning, resourcing, public communications, operations, procurements, regulation, and governmental authorities. The Secretary, on her first official day as Secretary, made it a priority to enhance risk management as the basis of decision-making at DHS. Such frameworks, therefore, should be tied to and inform the Department's strategic planning and budgeting activities.

20. **In addition to providing federal leadership with respect to homeland security, DHS plays a large role in coordinating the activities of other federal, state, local, private sector, and international stakeholders, but has faced challenges in this regard. GAO and others have reported that the appropriate homeland security roles and responsibilities within and between the levels of government and the private sector are evolving and need to be clarified.**

a. **What are your plans to strengthen DHS's coordination efforts and partnerships?**

The Department of Homeland Security has perhaps the broadest stakeholder base of any Federal department or agency. For the Department to accomplish its mission it must successfully engage partners across the interagency community, throughout state and local governments, with the private sector, and the general public, as well as with the international community. Secretary Napolitano has made it a priority and set an aggressive agenda to review and strengthen DHS's coordination efforts and partnerships across its stakeholder community. If confirmed, I intend to support these efforts and ensure that the Office of Policy works across the Department and with other agencies to engage stakeholder viewpoints throughout the policymaking process.

b. **To what extent does DHS need to form new partnerships or networks to effectively implement homeland security programs and achieve results?**

This is difficult to ascertain without being a part of the Department. Per #20a, if confirmed, I will work with the leadership of the Department, and the various stakeholder communities, to determine the extent, effectiveness and level of engagement DHS has in its various programs, and to strengthening the partnerships and networks that make us safer and more secure at home and abroad.

c. **What would be your plan for reaching out to other agencies or organizations to partner with them on the development and implementation of homeland security programs?**

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The goal of preventing and deterring terrorist attacks may be one of DHS' missions, but the Department's ability to accomplish this mission is also dependent on the success of other Federal agencies in their respective programmatic areas. Consequently, reaching out to and partnering with other agencies is fundamental to DHS work. If confirmed, I plan early on to engage my counterparts in the interagency community, foster those relationships through consultations as part of the Quadrennial Homeland Security Review, and reach out as a matter of practice when developing new programs or policies.

d. What are some specific ways in which DHS could work collaboratively with other federal or nonfederal organizations to improve performance outcomes?

Public confidence in the Department of Homeland Security suffered a significant blow following the U.S. response to Hurricane Katrina. The use of performance-based planning and reporting can improve confidence in the Department's stewardship of the nation's homeland security resources by providing both a means and way to manage and communicate the scope and results of DHS programs. The Secretary has committed to continue to work to improve measurable outcomes at the Department. To improve performance outcomes, however, the Department needs to develop and implement better measures to assess risk reduction and/ or the existence of prevention safeguards in targeted areas identified in DHS goals and objectives. If confirmed, I plan on working with the Department's senior management, as well as with OMB, other federal partners, and with a number of non-federal organizations—e.g., National Academy of Public Administration and the American Society for Public Administration—to move the Department to more measurable and higher quality performance-based results.

21. How important has performance measurement been to the organizations you have worked with? How are you prepared to ensure that the Department's components and offices establish appropriate measures, coordinate their performance measurement activities, and use the results of measurement efforts to make appropriate program or operational adjustments?

I began work at the White House Office of Science and Technology Policy in the shadows of the 1993 Government Performance and Results Act (GPRA), when Federal agencies were working towards full implementation of the Act by the September 1997 deadline. At that time, this was one of the highest priorities for reforming government and making it accountable to taxpayers. While GPRA was not my direct responsibility, I was part of some of the discussions to determine how to best implement the Act. I also subsequently served at the Department of Energy, where I was responsible for reviewing DOE's Strategic plans, to include its performance measures.

My experience working on GPRA informs the work I will undertake at DHS, if confirmed. I look forward to learning more about how the Department of Homeland Security uses performance measures to monitor strategic progress and program success.

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Such processes keep the Department's priorities aligned, linking programs and operations to performance measures, mission goals, resource priorities, and strategic objectives. I am committed, if confirmed, through my role as head of the Office of Policy and my oversight of strategic planning, to making the development and use of appropriate performance measurements a priority at the Department.

Office of Policy Components and Activities

22. DHS is in the process of developing a strategic requirements process in order to "define cross-Departmental resource needs based on strategic level capabilities necessary to achieve the Department's strategic goals and priorities." According to the Department's Interim Acquisition Directive 102-01, the Assistant Secretary for Policy is responsible for "supporting the acquisition management system via the DHS Strategic Requirements Planning Process (SRPP), developing Integrated Planning Guidance each year, and ensuring that acquisitions support the DHS strategic plan."

a. What do you see as the purpose and value of a strategic requirements process to the Department?

The SRPP helps ensure DHS' programs and resources support the Department's strategic goals and objectives, by developing measurable targets (requirements) that can be used to assess whether DHS strategic objectives have been met. The process identifies areas where the Department is not able to meet strategic requirements, and directs DHS resources and programs towards those areas. The strategic requirements in turn drive lower-level program requirements, helping to ensure that DHS programs support strategic objectives.

b. As Assistant Secretary for Policy, what steps would you take to improve the strategic requirements process within DHS?

If confirmed, I look forward to working with the Department's management team to learn more about this process and help to ensure the system becomes part of the routine way of doing business at the Department.

c. Does the Office of Policy have adequate staffing and resources to carry out its responsibilities under Directive 102-01? If not, what additional resources are needed?

I understand that the SRPP is currently operating as a pilot using pre-existing funding and that the Department has requested additional resources as part of its FY2010 budget.

23. On several occasions in the recent past, the Office of Policy has taken on a "program manager" role with respect to priority issues. For example, a Program Executive Office for the Secure Border Initiative (SBI) was established within the Office of Policy during

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the early stages of the Secure Border Initiative. The REAL ID Program Office is currently located within the Office of Policy.

Do you believe it is appropriate for the Office of Policy to assume a Program Manager role to support the implementation of specific projects or programs within DHS? If so, under what general conditions should the Office of Policy have this role, instead of another office within DHS?

The primary role of the Office of Policy is to develop policy and provide advice to the DHS leadership team. There may be instances where the Office of Policy might assume a Program Manager role in support of the implementation of specific projects or programs—for example, for incubating a new program that required coordination across multiple components—but as a general principle, policy should do policy, not programs, nor operations.

24. The responsibilities of the Office of Strategic Plans within the Office of Policy are closely linked to those of the Office of Operations Coordination and Planning.

a. What would you envision your relationship as Assistant Secretary for Policy with the Director of this office to be?

The development of policy (ends), strategy (ways), and plans (means) are all part of a continuum from setting goals to running operations. Strategy is the bridge that links ends to means. As such, there is oftentimes an overlap between policy-setting and operational planning, with the planning process being iterative not linear. While setting policy is clearly the domain of the Office of Policy and operational planning the domain of the Office of Operations, developing the strategy (i.e., determining the ways in which goals are achieved) must be a closely-knit collaboration between the two offices.

b. How would you distinguish the type of planning to be undertaken in your office from what the Operations Coordination Office should be doing? Would there be any overlap?

(See #24a above)

25. What will be your role in determining policies of functional offices, such as the Office of the Chief Financial Officer, Chief Information Officer, and Chief Human Capital Officer? What challenges do you believe could arise in working across these divisional and departmental lines and how will you bridge these gaps?

There are a number of areas where the work of the Chief Financial Officer, the Chief Information Officer, and/ or the Chief Human Capital Officer intersect with work in the Policy Office, to include program evaluation and analysis, information sharing, and professional recruitment and retention at the Department. To best ensure that DHS'

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mission activities, resources, budgets, and plans align with the policies of the Department, I envision a close coordination with each of these offices.

If confirmed, I plan to review the current operating environment as it pertains to policy-making, to include processes, roles, responsibilities, and resources. I am committed to strengthening the Department's policy-making capability to ensure greater unity of effort and overall performance at DHS.

26. The Counterterrorism Policy unit within the Office of Policy Development at DHS is the Departmental lead for interagency counterterrorism efforts, and according to the DHS website, handles issues such as "countering violent extremism, disrupting terrorist travel and finance, and preventing terrorists from acquiring and using weapons of mass destruction."

a. **What is your assessment of federal government efforts since 9/11 to counter violent extremism both within the United States and globally? What can DHS do to improve its efforts in this area?**

Despite two wars and years combating terrorism, the threat of violent extremism persists. Terrorist recruitment continues to expand, even as the number of attacks worldwide has declined. We see a resurgence of al Qaeda along the Afghanistan-Pakistan border. Rather than relenting, the spread of radical extremist ideology has infused the hearts and minds of individuals from all corners of the world.

In the United States, there have been attacks that have been prevented, including a plot to blow up the gas terminal at New York's Kennedy Airport, and more recently at Fort Dix in New Jersey. We have also witnessed the first-ever suicide bombing by a naturalized U.S. citizen–someone living in Minnesota for most of his life, who became radicalized there, and returned to Somalia for 'martyrdom' operations. Abroad the situation is mixed as well. Over the past two years, serious terrorist plots have been uncovered or attempted in Denmark, Germany, and the U.K., and executed in Yemen, Algeria, India, and Pakistan.

There have been accomplishments, too, to include initial success in Afghanistan, the subsequent capture of 9/11 plotters, the marginalization of Jemaah Islamiyah in Indonesia, and the neutralization of Abu Sayyaf in the Phillipines, for example.

DHS has a role to play. And communities are part of the solution - whether it is a state trooper on a highway in Oklahoma stopping Timothy McVeigh, a store clerk in New Jersey recognizing a video as a potential threat to our country and taking action, or a former senior commander with Jemaah Islamiyah abandoning his ways and fighting terrorism by speaking out, disputing ideology, and working to promote tolerance. To the extent that DHS, in partnership with other government agencies and non-governmental organizations, can continue to facilitate programs that support

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national and local initiatives to counter violent extremism, this would improve overall federal and international efforts to counter violent extremism going forward.

b. What is your assessment of federal government efforts to disrupt terrorist finance since 9/11? What can DHS do to improve its efforts in this area?

Federal efforts since 9/11 to disrupt terrorist finance have had a number of important successes, particularly in tracking terrorists' movements of funds internationally and in making it more difficult for terrorists to use the international banking system to move significant amounts of money in support of their activities. However, terrorism is still an asymmetric, low-budget enterprise, and there are some countries that have not cooperated as closely as we would like with the Department of the Treasury, DHS, the FBI, and other law enforcement organizations to track and limit terrorist organizations' ability to raise and spend funds. DHS's authorities in the terrorist finance area include what Immigrations and Customs Enforcement, the U.S. Coast Guard and other parts of DHS are able to do to track terrorist fundraisers, to disrupt the illicit flow of funds out of or into the United States, and to help our allies build their capacity to do the same. It is my impression that DHS has worked closely with the FBI in this area. If confirmed, I will continue to evaluate DHS efforts in this area, to include a closer examination of how DHS authorities and expertise in the movement of funds across borders can be brought to bear to make it even more difficult for terrorist groups to raise funds and to move them across international borders.

c. What is your assessment of federal government efforts to preventing terrorists from acquiring and using weapons of mass destruction since 9/11? What can DHS do to improve its efforts in this area?

With biological threats, the U.S. has invested heavily in detection and responding to a release, because detecting and interdicting illicit activity is so hard. But there are many areas to continue to improve to include: reduce the detect-to-threat timeline, develop better countermeasures or a capacity to rapidly develop them if needed, improve our ability to disseminate countermeasures in a timely manner, improve capacity to surge health care provision, develop standards and capabilities for decontamination, increase international engagement, and reconcile differing views of the threat.

With nuclear threats by contrast, we have invested more heavily in controlling fissile material, and detecting it at points of entry or in our cities, than we have in developing the capacity to respond to improvised nuclear device detonated in one of our cities. As this Committee is aware, large gaps remain in developing the capacity to respond to a nuclear detonation in the U.S., to include needs for: clear coordination of state and local governments and crisis response, effective communications, capacity for large-scale decontamination, adequate medical countermeasures, and public education, among others.

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27. The Regulatory Coordination Policy unit within the Office of Policy Development is responsible for the coordination, identification, evaluation, and development of DHS regulatory initiatives. What is your assessment of the regulatory process within DHS? If confirmed, what steps would you take to improve this process?

It is my impression that the regulatory process at DHS is a process that appears to be getting better as the department matures, but with room for improvement. Better transparency of regulatory initiatives and processes across the Department would likely lead to greater regulatory consistency and expedited development and implementation of regulatory priorities. In addition, earlier engagement with broader groups of government and private sector stakeholders would better inform the Department's policy-making options earlier, thus preventing avoidable stakeholder concerns later in the process. Nonetheless, the process, I am sure, looks different from the outside that I imagine it is working from within DHS. If confirmed, I plan to review the regulatory development process and the role and relationship the Office of Policy can play in developing regulations, and, in particular, to ensuring the earliest possible engagement of important stakeholders.

28. The DHS Office of International Affairs (OIA) is responsible for advising the Secretary and Deputy Secretary on international issues and managing the Department's international and overseas activities. In 2008, the DHS Inspector General issued a report (OIG-08-71) that was critical of the Department's management and coordination of its international personnel and activities, and the report made numerous recommendations to address these issues.

a. What is your personal assessment of the Office of International Affairs (OIA) since its creation?

The international dimensions of homeland security were initially not a priority and were under-resourced, with the OIA serving more as a protocol office for international events, than a policy shop. More recently the office has acquired additional resources and is working to develop a departmental strategy and framework for engaging the international community in homeland security.

b. Do you concur with the recommendations made in the 2008 Inspector General report? (If there are any that you disagree with, please specify them). As Assistant Secretary for Policy, what steps would you take to implement these recommendations?

While I agree with the recommendations in principle, I note the Department in its consolidated responses, had not concurred on all of the recommendations and sought additional information or identified issues related to maintaining operational control of international activities that required reconciliation, for example. I am committed to improving the Department's approach to engaging its foreign partners in matters related to homeland security. If confirmed, I would initiate a review of the

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recommendations to ensure their currency and work with the team to continue to develop the Department's international engagement strategy.

c. **What do you believe the priorities of the Department should be in its engagement with foreign governments and international organizations?**

I believe the priorities of the Department in its engagement with foreign governments and international organizations should be to support the international dimensions and priorities of the U.S. homeland security agenda.

29. **In the DHS 3.0 report that you co-authored with James Carafano, you wrote that the United States' "relations with the European Union on homeland security matters have been contentious."**[4]

a. **Why do you believe this relationship has been contentious?**

The homeland security relationship between Europe and the United States played out against a backdrop of post-9/11 differences on a host of issues and policy differences to include differing perceptions of the threat and differing approaches to countering the threat.

Despite this, the U.S., the EU, and its member states (working bilaterally) successfully concluded a number of important agreements on homeland security and counter-terrorism at the same time.

b. **As Assistant Secretary for Policy, what steps would you take, consistent with U.S. interests, to constructively improve this relationship?**

Improved relations between Europe and the United States will take shape under an umbrella of broader changes and actions in the Transatlantic relationship.

If confirmed, I look forward to working with the State Department and other U.S. entities to build on our shared priorities with a focus on our homeland security and counter-terrorism agenda.

30. **The Department of Homeland Security plays a vital role in the review of foreign investment in the United States, as one of the Members of the Committee on Foreign Investments in the United States (CFIUS). DHS is frequently designated the lead entity, as required by law, for CFIUS reviews. It is therefore important that DHS maintain a strong office for reviewing CFIUS cases to fairly and effectively review the effects foreign investment may have on homeland security.**

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[4] David Heyman and James Jay Carafano Ph.D. "Homeland Security 3.0: Building a National Enterprise to Keep America Safe, Free, and Prosperous." Washington, D.C. , 2008, pg. 12.

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a. **The Assistant Secretary for Policy was DHS' representative on CFIUS under the previous administration. Do you anticipate having the same role, if confirmed?**

I do.

b. **With the addition of the 1993 Byrd amendment to the Defense Production Act of 1950, Congress intended to require CFIUS to initiate a formal investigation, and not just a review, of any and all foreign investment made by government-controlled firms. In the wake of the Dubai Ports controversy, it became apparent that the executive branch interpreted that law differently, and so Congress clarified that requirement with the passage of the Foreign Investment and National Security Act of 2007. However, as you noted in your February 7, 2007 testimony before the House Committee on Financial Services, our adversaries are no longer principally nation-states, but instead are non-state actors with a global reach.**

Do you believe CFIUS has sufficient authority, tools, and resources to investigate and determine whether foreign investment will detrimentally affect domestic security and, in particular, whether the U.S. government has sufficient ability and authority to audit and verify security once a transaction has been completed?

The Foreign Investment and National Security Act of 2007 (FINSA) clarified and strengthened the authority of CFIUS agencies to determine whether a foreign investment may detrimentally affect domestic security and to ensure compliance with risk mitigation measures. Congress' enactment of FINSA has given CFIUS agencies a strengthened mechanism to investigate transactions that could impact domestic security. DHS has made a commitment to the process as evidenced by creating a Foreign Investment and Trade team within Policy. This team has surge capacity to deal with spikes in volume and complicated cases. The team also has developed and implemented a monitoring program to ensure that security commitments made through the CFIUS process are reviewed and upheld by the companies who make them after a case is closed. If confirmed, I will review the resident capability in the Department to audit and verify security once a transaction has been completed, and if shortcomings are found, I will work with Congress to ensure the Department has the requisite authority, tools and resources to successfully fulfill its responsibilities.

c. **Do you believe DHS allocates sufficient resources for its responsibilities as a member of CFIUS?**

I have been briefed on the resources to support DHS responsibilities as a member of CIFIUS. I understand the Office of Policy draws on its own resources as well as those of its components to ensure a comprehensive review of CFIUS transactions. Three years ago, the office consisted of two full-time employees.

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Currently, the office maintains a staff of six full-time professionals, and four full-time employees in support functions. These personnel are in addition to those throughout DHS components who review transactions on a regular basis. DHS Policy has also set up a system whereby it can cover a surge in workload. If confirmed, I will review the resident capability in the Department to support CIFIUS activities relative to the workload, and if shortcomings are found, I will work with Congress to ensure that the Department has sufficient resources to perform its CIFIUS responsibilities.

d. It is important to keep Congressional oversight authorities informed of CFIUS' actions. If confirmed, will you pledge to keep this Committee informed on matters relating to foreign investment and homeland security?

I will.

31. The DHS Private Sector Office is located within the Office of Policy, and is responsible for outreach to and liaison with the private sector on homeland security matters. Its responsibilities are codified in Section 102(f) of the Homeland Security Act of 2002.

a. What do you believe are the most important roles the private sector should play in homeland security?

The private sector is an essential partner in all aspects of homeland security, from prevention and protection, to response and recovery. As owners and operators of over 85% of the nation's critical infrastructure, private sector firms play indispensable roles protecting the vital assets and resources that sustain our lives and help run our society from deliberate attacks or natural disasters. These same firms also help to maintain continuity of operations during the most challenging times of a crisis, when the normal functioning of society is at risk. Further, private industry performs research for, develops, and brings to market innovative technologies necessary to detect, defend against, decontaminate and recover from chemical, biological, radiological, and/ or explosive events. Private firms help provision our first responders and our military, as they prepare for and respond to crises, and help rebuild society following a crisis. And finally, non-governmental organizations, think tanks, universities and the academic community contribute significantly by offering their expertise and ideas to policy discussions and policy development, and, in doing so, help the government think through some of the most challenging public policies issues we face.

b. How can the Department improve its outreach to the private sector? Are there specific types of outreach to or liaison with the private sector that you believe could be strengthened?

The scope of the Department's outreach to the private sector is extensive, from the Office of Infrastructure Protection's work with Critical Infrastructure Key Resources ("CIKR") owners and operators to the information sharing efforts of

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the Office of Intelligence and Analysis, to accomplishing the research agenda of the S&T Directorate, to facilitating rapid crisis response, to the stakeholder engagement work of the Private Sector Office. From my experience in the private sector and as a member of the NIAC study group on Strategic Partnerships, I have observed that the willingness of either partner, government or industry, to share information, commit resources, and take rapid action when needed is based on trusted relations developed between individuals and between organizations over time.

If confirmed, I plan to work with the Assistant Secretary in the Private Sector Office to reach out to existing private sector partners and work with components across the Department to help streamline and better coordinate DHS engagement activities, as well as renew and empower the partnerships that have been created to date.

c. In developing homeland security regulations, how can the Department better collaborate with the private sector and better recognize the costs of regulations?

The keys to better collaboration with the private sector are better identification of key stakeholders and earlier substantive engagement with those stakeholders. Even though the principal purpose of the Private Sector Office is to reach out to private sector stakeholders and coordinate engagement across the Department, my impression as an outsider is that there are a number of loci of engagement with the private sector across the Department, not all of them necessarily working together.

To do a better job in this regard, and in recognizing the costs of regulations, the Department would benefit from a Department-wide effort to identify and track private sector engagement so as to increase transparency and speed engagement when needed and commit to early engagement with the private sector in the regulatory process.

32. The Homeland Security Advisory Council (HSAC) is located within the Office of Policy.

a. What is your personal assessment of the effectiveness and relevance of the HSAC since its establishment, and the quality of its work product?

The Homeland Security Advisory Council and the associated committees that support the Council are a vital resource to the Secretary and the Department. If engaged effectively, they can provide useful independent advice from outside experts on some of the most important and challenging issues that the Department faces. How effective or relevant HSAC is, depends largely on the level of interest of the Secretary, the capabilities of the HSAC staff, the selection and level of participation of Council members, the topics considered, the quality of reports, and the relationship between the HSAC and the Office of the Secretary. As a

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result of one or more shortcomings in these areas, the HSAC has had a mixed record of success since its establishment, leading to most HSAC recommendations still remaining largely unimplemented.

b. What are the top three homeland security-related policy areas that you believe the HSAC should examine in the next several years?

My understanding is that Secretary Napolitano has tasked the HSAC to address two important issues – the Southwest Border issues and her Sustainability Initiative.

Regarding the Southwest Border, the Secretary has asked the HSAC to conduct a strategic study of the Southern Border strategies currently in use and provide recommendations on how DHS should improve the strategy.

Regarding the Sustainability Initiative, President Obama has made it clear that in order to increase national security, the U.S needs to become more energy efficient and independent. In support of the President's initiative, the Secretary has tasked the HSAC to address the strategic level impact of present and future sustainable/renewable resources across the Department as they relate to national security.

A third area that I would consider would be establishing a culture of preparedness in America. Individual and community preparedness is a centerpiece of our national homeland security enterprise. Yet Americans are largely ambivalent to preparedness and the vast majority of households have not yet taken some of the most basic steps to ensure their own safety in a crisis. Public preparedness and participation in crisis response and recovery can be the difference between saving lives or loosing them. What steps can DHS take to help establish a culture of preparedness in America?

33. The Implementing Recommendations of the 9/11 Commission Act of 2007 established an Office for State and Local Law Enforcement in the Office of Policy. State and local law enforcement officials interact with the Department on a wide range of issues, across virtually all the Department's missions. This Office, headed by an Assistant Secretary, was created to provide a central place in the Department to coordinate policies related to state and local law enforcement and to serve as a high-level liaison to the state and local law enforcement community.

a. If confirmed, what will you do to support this office and ensure it is effective in fulfilling its mission as defined in the 9/11 Commission Recommendations Act?

One of the most important priorities of the Secretary is to streamline and better integrate the activities and operations across the Department to facilitate improved

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performance on all the Department's mission work. I have been briefed on the challenges heard from state, local and tribal law enforcement counterparts, that there are too many voices speaking for DHS. Congress established the SLLE office to lead the coordination of law enforcement activities and engagement related to preventing, preparing for, protecting against, and responding to natural disasters, acts of terrorism, and other man-made disasters within the U.S.

If confirmed, I plan to review the role of SLLE in DHS policy-making as part of my initial review of the policy-making process at the Department. Also, working with the Assistant Secretary for SLLE, components and other directorates, I will seek to get better transparency into the various law enforcement liaison activities across the Department with a view towards enhancing the ability of the Office for SLLE to accomplish its mission.

b. **How do you envision leveraging the office so that it is able to contribute most effectively to the mission of the Department?**

(See #33a)

c. **How do you see this office working with the Interagency Threat Assessment Coordination Group, which is also supposed to serve as a liaison with state and local law enforcement?**

The ITAGC is almost exclusively oriented towards ensuring that counterterrorism intelligence products meet the needs of state, local, tribal, and private sector partners.

The Office of State and Local Law Enforcement is DHS's representative to the ITACG. In this role, it represents more than 18,000 law enforcement agencies and their professional associations to the Intelligence Community and serves as a liaison from the IC back to the LE community.

34. The Office of Immigration Statistics, located within the Office of Policy, has complained in the past that they have not been given access to certain databases within the immigration components of DHS and that they have not been consulted as these components consider creating new databases or expanding existing systems.

a. **What do you believe should be the role of the Office of Immigration Statistics within DHS?**

The mission of the Office of Immigration Statistics is to develop, analyze, and disseminate statistical information needed to inform policy and assess the effects of immigration in the United States. I believe that that is the right mission for this Office, but I also believe that there is a broader need and possible role for the use of statistics and statistical analysis in other areas of policy-making at the Department. If confirmed, I plan to review the use and need for statistical

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information in DHS policy-making as part of my initial review of the policy-making process at the Department.

b. Should this office be expanded to review all data within DHS that includes information on alien processing, including US-VISIT?

The Office of Immigration Statistics should have access to all data available within the Department, and within privacy limitations, that can help support its mission to develop, analyze, and disseminate statistical information needed to inform policy and assess the effects of immigration in the United States.

35. Since its inception, DHS and its partners have promoted the belief that the major decisions affecting the homeland security enterprise should be informed by risk. However, numerous reports from the Government Accountability Office (GAO) have determined that the Department still faces significant challenges allocating its resources based on a thorough analysis of risk. It has been 6 years since the Department of Homeland Security was created. What have been the major obstacles impeding the Department's ability to achieve this objective? What can be done to overcome these obstacles?

As a DHS observer, it is unclear what has impeded the Department's interest to ensure that major decisions across the enterprise are informed by risk. From my perspective, however, there are clearly many challenges to instituting risk-based management at the Department. First, there are differing definitions and approaches to risk that must be reconciled. The establishment of Office of Risk Management and Analysis (RMA) was created for this purpose.

Second, assessing threats sometimes requires fixing in time for the purpose of analysis, an understanding of a dynamic, intelligent, thinking, adversary (i.e., something that is generally in perpetual flux). This is a methodological constraint that the Department has overcome in some regard by employing scenario-based risk assessments.

Third, in many ways risk will always be in the eye of the beholder: the interrelatedness between risk and human perception necessitates an active and engaged dialogue amongst stakeholders and the public, who all may have differing interpretations and/ or meanings of risk. The development of risk assessment and management efforts at the Department therefore necessitates parallel efforts to educate and communicate broadly, as well.

And lastly, institutionalizing a consistent risk management approach across the Department faces the same challenges that integrating other efforts at the Department have faced—DHS is a diverse enterprise with competing demands and disparate structures, authorities, and priorities.

The Office of Risk Management and Analysis (RMA) within the National Protection and Programs Directorate (NPPD), is working collaboratively across DHS with the Office of Policy and others, to build an integrated risk management program that ensures that risk

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information and analysis are provided to decision-makers to inform a full range of decisions. These decisions include the allocation of resources, provision of preparedness assistance, prioritization of capability development, operational decisions, regulatory actions undertaken, and research and development investment.

I am committed to risk-based security. If confirmed, it is my intention to support the processes already underway to build an integrated risk-management program at the Department, and to help move expeditiously to overcome the challenges that have impeded past efforts.

36. In a February 2007 report from GAO, it was reported that "(DHS) components apply risk management in ways that are neither consistent nor comparable. The degree to which DHS uses common metrics, criteria, and approaches remains a management challenge." It further reported that "as DHS's individual components begin to mature in their risk management efforts, the need for consistency and coherence becomes even greater. Without it, the prospects increase for efforts to fragment, clash, and work at cross purposes." After that report was published, the Department established the Office of Risk Management and Analysis (RMA) in April 2007 and reported to Congress the next month that RMA was established "to lead the collaborative implementation of an integrated DHS and national approach to risk policy, risk assessment metrics – across components of DHS as well as across external and private sector stakeholders."

a. What progress has this office made in the last two years establishing an integrated approach to risk management?

I understand the RMA Office has made progress in a number of areas over the past two years. Among other accomplishments, the office has:

- stood-up a Department-wide committee, the Risk Steering Committee (RSC), to serve as the Department's risk management governance structure;
- published the DHS Risk Lexicon; and
- completed the first prototype for the Risk Assessment Process for Informed Decision-making (RAPID).

b. Does RMA have the resources and capability to achieve this mission critical objective?

I have not been briefed on the adequacy of resources or capabilities at RMA. I will review this issue further, if confirmed, and will work with the Administration and Congress if additional resources are needed.

c. Further, how should the Department achieve "consistency" across its components? How do you plan to hold the components accountable?

Achieving consistency amongst risk management efforts across the Department and ensuring the components adhere to similar processes, principles, and practices

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of risk management (while recognizing the diversity of specific approaches based on disparate decision requirements) is critically important for enhancing resource management and decision-making at DHS. Based on what I know, I believe the Department's Integrated Risk Management Framework will serve as the foundation for achieving these goals If confirmed, I am committed to building this capacity at the Department. I look forward to working with the Risk Management Office, the Under Secretary for National Protection Programs Directorate, and senior management across the Department to learn more about the Interim Integrated Risk Management Framework process and to understand how to best ensure that the Department's risk management framework is widely embraced and employed.

37. DHS has responsibility for managing a wide array of risks across the entire homeland security mission risk spectrum, to include terrorism, natural disasters, immigration and customs crimes, and violations of the U.S.'s sovereignty. In an increasingly tightening fiscal environment, the Department will be forced to make tradeoffs across its mission space. What criteria should be considered in the decision-making process? Are there decision processes in place for the Department to determine its priorities and where to best allocate resources?

Managing homeland security risk depends on making prioritization tradeoffs across the entire homeland security mission space. These tradeoffs need to be made among disparate programs, which are designed to address a variety of homeland security risks. In this context, the Office of Risk Management and Analysis has developed the following principles to facilitate resource allocation:

- Decisions should be based on explicit criteria of national interest
- A multi-year financial plan should be used to focus decisions on desired end-states and to project the consequences of present decisions into the future
- Needs and costs should be considered simultaneously
- Major decisions should be made by choices among balanced, feasible alternatives
- The Department should have an active analytical staff to provide it with relevant data and unbiased perspectives.
- Open and explicit analysis, available to all parties, should form the basis for major decisions

To further the Department's ability to make risk informed decisions, the Office of Policy, the Office of Risk Management Analysis, and the Program Analysis and Evaluation office (PA&E) within the Management Directorate are building and implementing the Risk Assessment Process for Informed Decision-making (RAPID). RAPID's goal is to provide a common and consistent approach for top-level decision-makers to assess programs across the Components in a single framework. RAPID supports policy and budgetary decision making, by assessing risk, evaluating risk reduction effects of DHS programs, and evaluating alternative resource allocation strategies.

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Management of the Office of Policy

38. What is your general approach to managing personnel at all levels? What past experiences do you believe best demonstrate your approach and style in personnel management?

I believe managers should lead by example, set clear goals, and empower people to get the job done. I believe exceptional performance should be rewarded, creative problem-solving should be valued, and good ideas can come from any one at any level. This applies across the board—from senior managers to their staff, and to volunteer interns as well. As such, in my work in the private sector and in the government, I have tried to create a culture built on a shared vision, candor, trust, and teamwork. Additionally my management style includes personal mentoring to employees, many of whom have gone on to prominent positions in the government and the private sector.

39. The DHS 3.0 Report, which you co-authored with James Carafano, highlighted the issue of homeland security professional development, and the imperative to create a "stable and diverse community of homeland security professionals with relevant skills, attributes, experiences, and a comprehensive knowledge of the homeland security enterprise."[5] As Assistant Secretary for Policy, what steps would you take to build such a cadre of homeland security professionals, not just within the Office of Policy but more broadly within DHS?

Executive Order #13434 was signed on May 17, 2007, making it the policy of the United States to promote the education, training, and experience of current and future professionals in national security positions. A National Security Professional Development Program Implementation Plan was subsequently approved in August 2008, and a National Security Professional Development Integration Office was stood up to operationalize the plan sometime after that. Since then, a program was to be designed and initiated. If confirmed, I would review the status of this program. If it is operational and effective, I would explore ways to promote it within the Office of Policy and more broadly within the Department.

40. In the 2007 DHS Employee Survey, only 26.9% of Office of Policy employees who responded to the survey agreed that "promotions in my work unit are based on merit," in contrast to 33.2% who disagreed with this statement, 25.8% who were neutral, and 14.1% who didn't know. Only 35.8% of Office of Policy employees who responded to the survey agreed with the statement that "employees have a feeling of personal empowerment with respect to work processes," in contrast to 39.9% who disagreed and 24.3% who were neutral.

[5] David Heyman and James Jay Carafano Ph.D. "Homeland Security 3.0: Building a National Enterprise to Keep America Safe, Free, and Prosperous." Washington, D.C., 2008, pg. 17.

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As Assistant Secretary for Policy, what steps would you take to improve these results and create a workplace environment that rewards outstanding, innovative, and diligent work?

If confirmed as Assistant Secretary, I am committed to addressing employee morale in a number of ways. First, I would seek out the views of staff to gain a better perspective of concerns and interests, but also, to hear about opportunities for improvement. Second, employee promotions must be appropriately based on merit, while poor performers must also be appropriately held accountable. Third, I will ensure consistency in the communication flow throughout the Office of Policy and give employees the opportunity to provide innovative ideas on process improvements and efficiencies. Employees should be encouraged and recognized for "thinking outside the box". Fourth, I understand the Office of Policy established an Employee Liaison Committee, as a result of this survey. It is comprised of a revolving group of personnel to provide unvarnished recommendations to the Assistant Secretary on behalf of the staff. If confirmed, I intend to meet with this group in the early days of my tenure to hear firsthand what the specific problems are, and develop near- and long-term solutions to improve employee morale and accomplish the Department's mission.

41. In the 2007 DHS Employee Survey, only 33.0% of Office of Policy employees who responded to the survey indicated that they were satisfied with the training they received for their present job, in contrast with 32.3% who were dissatisfied and 34.7% who were neutral.

As Assistant Secretary for Policy, what would you do to improve training opportunities for employees of the Office of Policy?

I understand that in 2008, the Office of Policy hired a Training and Development Coordinator to find and facilitate development opportunities for the Office of Policy staff. If confirmed, one of my first actions will be to understand what types of training courses are currently available to staff and assess where gaps might exist. I will work closely with the senior staff, training coordinator, and the Department's Chief Learning Officer to ensure employees establish and maintain an "Individual Development Plan", and that such plans include a list of training courses needed and desired for professional growth.

42. In February 2006 you co-signed a letter to Secretary Chertoff (along with a number of other homeland security experts) calling for increased resources to the DHS Office of Policy. Do you believe that funding needs for the Office of Policy were sufficiently met in the Department's FY 2007 – FY 2009 budgets? Do you believe that staffing and resource levels in the Office of Policy need to still be increased, and if so, by how much and to meet which needs or requirements?

If confirmed, I will conduct a thorough staffing assessment of the Office of Policy to more fully understand whether the office has adequate resources to undertake its responsibilities to lead the development, coordination, and articulation of policy at the Department. Funding levels for the Office of Policy did increase slightly from FY2007

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and FY2009, which allowed for the hiring of additional federal employees to meet the Department's mission and to address new congressional requirements.

43. The Office of Policy has regularly contracted with outside parties to conduct studies and analyses on a range of issues. What do you believe are the appropriate conditions under which a given study or analysis should be contracted out, instead of being developed by Office of Policy or other DHS staff?

The Secretary is currently undertaking a full review of all FTE and contractors at DHS.

I believe that the Office of Policy should develop its own studies and analysis to the greatest extent possible. Where the Office of Policy lacks sufficient expertise in the short term, hiring contractors in support of Policy studies and analyses is appropriate. Examples of areas where contract support can be helpful include administrative, logistical and project management support, in cases where specialized subject matter expertise resides outside of the government, or when independent or additional views may be needed.

Transportation Security

44. What should the Department of Homeland Security's priorities be in setting policy for transportation security?

The Department's initial focus on securing commercial aviation was a critical response following the 9/11 attacks. Since then, and more recently, the Department's efforts have shifted more towards small vessel security, general aviation security, mass-transit, rail and surface transportation security. The level of investment and emphasis on these areas and others should be determined as part of a wider Department risk-based approach to setting priorities.

As such, the Department of Homeland Security should continue to pursue a layered, risk-based approach to transportation security. A layered approach, focusing on securing different components of our international and domestic transportation systems, helps ensure that security does not rely on any single point that could be compromised. Such an approach also facilitates a commitment to transportation security without unduly burdening the movement of people and things. A risk-based approach can enable the Department to evaluate risk across the full-spectrum of transportation modalities that comprise our national transportation system and develop priorities based on what elements require the greatest protection. The level of protection should be commensurate with the value of assets, level of threat, consequences or cost of loss or compromise, and cost of implementing countermeasures.

45. Following terrorist attacks on rail and transit systems in Madrid, London, and Mumbai, Congress included a number of provisions in the 9/11 Commission Recommendations Act to address perceived vulnerabilities affecting domestic rail and transit systems. However, some people – including yourself – have expressed concern

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that DHS has not sufficiently emphasized surface transportation security. In a February 17, 2005 Voice of America story, Security Experts Assess the Terrorist Threat to U.S. Rail System, you noted, in response to another expert's assertion that terrorists were unlikely to use their capabilities to attack a rail system, that "logic is the same kind of logic that says we didn't have a history of planes going into buildings...We have to realize there's a terrorist threat with a capability to adapt its tactics and innovate," and that "these types of innovations are the kinds of things which makes us give pause...we are concerned with trains. Since we've seen bombs on trains in Europe, we're concerned about it in America." If confirmed, what steps would you recommend be taken to strengthen surface transportation security?

While I have not had the opportunity, working outside of government, to review intelligence on this matter, I do believe, given the attacks in Madrid, London, and Mumbai, that we cannot ignore surface transportation. The challenge in strengthening surface transportation relative to, for example, air transportation, is the openness of the system and broader access in general, as well as its historical relationship with federal government, which has been *de minimus* relative to aviation as well. Because of this, the responsibility to secure our freight rail, transit, highway, and pipeline systems will also inevitably fall to state and local authorities and the private sector supported by the DHS Transportation Security Infrastructure Grant program. I know the Deputy Secretary has committed to looking closely at this issue to ensure that DHS and TSA are devoting the attention to surface transportation commensurate with their responsibilities. If confirmed, I would support the Deputy Secretary in her efforts, and would continue to promote and help to advance the tools that enable setting priorities and ensuring that the Department's investments are wisely made, to include strengthening the use of risk-based methodologies and enhancing advanced targeting capabilities.

46. The Transportation, Cargo, and Infrastructure unit within the Office of Policy Development at DHS is responsible for developing many of the key strategies for maritime security. The United States has over 95,000 miles of coastline, over 360 ports, and 10,000 miles of navigable waterways. As shown from the attack on the U.S.S. Cole in 2000, the threat of small vessel attacks is real. Furthermore, in the recent terrorist attacks in Mumbai, the attackers used small vessels for transportation of personnel and weaponry. In April 2008, the Department released its Small Vessel Security Strategy (SVSS), and is finalizing an implementation plan.

a. It has been over a year since the Department issued its Small Vessel Security Strategy in April 2008. What, specifically, has been done to implement this plan thus far? When will the Department finalize the implementation plan?

I have been informed that the SVSS Implementation Plan (SVSS IP) is substantively complete, and currently in its final clearance process within the components. It will then be submitted to OBM for interagency review.

It is my understanding that as part of the development of the Implementation Plan, DHS has engaged in a number of outreach efforts with domestic and international

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stakeholders, including hosting five regional small vessel security symposiums across the United States. The symposiums had both an educational outreach component and an information gathering aspect. In December, the International Maritime Organization approved a set of security guidelines for small vessels. It is my understanding that DHS Policy was a key player in the year-long creation of those guidelines. Additionally, research into new technologies is on-going. The Domestic Nuclear Detection Office, working on their West Coast Radiological/Nuclear Detection Project, has engaged with Puget Sound stakeholders to develop detection and response protocols, field detection equipment, and conduct exercises. They are similarly engaged in San Diego. Finally, the U.S. Coast Guard Captains of the Port have also been directed to ensure that small vessel security is accounted for in their Area Maritime Security Plans and in the industry-owned Facility and Vessel Security Plans. These field-level plans are currently in their five-year review cycle, and should be completed this year.

b. Do you believe the SVSS is comprehensive enough to handle the security vulnerabilities posed by recreational and commercial small vessels, of which there are more than 18 million? Do you plan to review the implementation plan before it is released?

The SVSS lays out the Department's overarching goals and objectives for reducing risks posed by small vessels. The SVSS Implementation Plan (SVSS IP) then expands those goals and objectives into areas of focus, specific projects, and regimes over both the short and long term. Taken together SVSS and the IP are intended to be comprehensive enough to effectively reduce risk in the maritime domain stemming from vulnerabilities posed by recreational and commercial small vessels, while also maintaining fundamental freedoms and economic stability. While I have not yet had the opportunity to review the plan, if confirmed, I will do so as part of the Department's final review prior to release.

c. Does the Department have the resources available to fulfill the objectives laid out in the SVSS?

I have been briefed that many of the implementation actions already outlined in the SVSS Implementation Plan are ongoing at this time, funded and resourced. A number of these actions, I am told, will require resourcing in future years. Where such resourcing is required, it will be sought via the standard Federal budget process.

d. Has there been adequate outreach by the Department to the recreational boaters and commercial boat operators about the SVSS and their role in its implementation? What is the status of the public strategic communication plan slated for completion in the spring of 2009?

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I understand that the Department has been heavily engaged with the small vessel stakeholders from the beginning of the SVSS development process to today. Indeed, one of the primary elements of the creation of the SVSS itself was stakeholder input, gathered at the National Small Vessel Security Summit and continued throughout the regional summits just recently concluded. DHS is also engaged with the stakeholders through the America's Waterway Watch program and at the field unit level through the Area Maritime Security Committees. And, the Department has recently begun work with the U.S. Coast Guard Auxiliary, the U.S. Power Squadron, and various industry groups to develop training standards for small vessel security training based on the International Maritime Organization guidelines DHS spearheaded.

I am told that the Department's SVSS strategic communication plan, which is still in development, is based upon the SVSS IP, and will be completed and approved at the same time as the SVSS IP.

47. Secretary Napolitano has recently indicated that she does not believe the Department would be able to meet the 2012 deadline established in the 9/11 Commission Recommendations Act for scanning 100 percent of maritime cargo containers. Most of the United States major trading partners have also expressed serious concerns with this unilateral requirement, which has led to strained relations between the U.S. and its key international partners and as know you, international cooperation is a fundamental component for programs like the Container Security Initiative.

a. How can the Department improve its ability to solicit and incorporate feedback from its international partners, or better communicate the Department's reasons for taking certain measures?

DHS has clearly benefited from partnerships with foreign governments as it has worked to develop and implement a variety of maritime and supply chain security programs. For example, DHS has concluded agreements foreign partners in 58 locations, in 29 countries as part of the Container Security Initiative (CSI). Additionally, DHS solicited foreign partner feedback in the development and implementation of the Secure Freight Initiative (SFI) pilot programs throughout 2007 and 2008—in fact this input from foreign partners, most of whom were not participants in the pilot, constituted a significant portion of the original DHS report to Congress on SFI. Foreign partners participating in the SFI pilots were also willing to expend considerable resources (staffing, construction and other infrastructure upgrades). These partnerships were critical to the success of these SFI pilots. It is critical that Department foster and sustain these important avenues of communication; any expansion of scanning deployments will need to be considered and implemented in close coordination with host governments and industry stakeholders. These efforts contribute to and build upon broader Departmental and U.S. government interests abroad, and as such, play an important role in U.S. strategic engagement with the international community, as well. If confirmed, as part of an overall review of the Department's international

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efforts in general, and stakeholder engagements in particular, I am committed to and will work towards ensuring that we re-enforce the Department's abilities to solicit and incorporate feedback from international partners.

b. Do you think a 100% scanning requirement is consistent with a risk-based approach to maritime container security?

I know that DHS supports the general goal of expanding scanning abroad to locations where a greater security benefit would be realized and has consistently and expressed concern that a 100% approach was antithetical to a risk-based approach. From my perspective, a risk-based strategy must consider a number of factors. It must start with a credible threat. In the case of terrorists seeking to acquire a nuclear weapon, a threat assessment would consider first if there were an interest, second, if capabilities or resources existed to acquire a weapon, and third, if, the first two questions were answered affirmatively, would terrorists succeed in acquiring the weapon without detection? Beyond the question of whether there is an interest and capability to acquire a weapon, there are also questions about the choice of means to smuggle it into the United States. Would shipping containers—which can be lost, crushed or accidentally dumped overboard—be the preferred approach to smuggle a nuclear weapon into the U.S? Are there other preferred means—small vessels, aircraft, surface transport?

Second, from a vulnerability perspective, even assuming shipping containers are preferred, are there any *upstream* points of detection and interdiction (i.e., in advance of the container moving through the port of embarkation) that mitigate the need for 100% scanning? If upstream security is limited, are there some containers regardless that would not require scanning? Of those containers that may require additional assurances (which in fact may end up being 100% of them), is it feasible or reliable to scan all of them, or are there other approaches that either can provide comparable risk abatement, and/ or force terrorists to re-consider the likelihood of their ability to succeed on their chosen path? A 100% scanning solution may, in the end, be consistent with a risk-based approach, *if* it is the conclusion of a deliberate process that considers these and other factors.

c. Department of Homeland Security progress reports of the Secure Freight Initiative (SFI) pilot program have found that some progress has been made, and that 100% scanning may currently work in low volume ports, but they also note that significant challenges remain, primarily with foreign government cooperation, equipment costs and reliability, port infrastructure constraints, and the significant difficulties scanning and x-raying transshipped cargo. How would you address the issues raised in the SFI reports to Congress?

The initial SFI pilot deployments indicated that scanning U.S.-bound maritime containers is possible on a limited scale and that the extra scan data is useful to enhance targeting. The pilots also highlighted the considerable challenges that

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exist, including the costs, diplomatic challenges related to obtaining critical host nations "buy in," equipments costs, port infrastructure space constraints, technology limitations, health and safety concerns, and varying degrees of terminal operator cooperation.

Given these complex challenges, as well as the far-reaching implications of this law to global trade and our diplomatic relations worldwide, DHS must pursue a realistic approach that balances the need to secure goods without impeding the flow of legitimate commerce. The approach should be risk based and informed by resource limitations.

d. **The most recent DHS report on SFI estimated that expansion of the SFI to all foreign ports shipping to the U.S. would cost at least $16.8 billion for the initial equipment purchases. Though this is a cost that could be borne by the U.S. government, foreign governments, the private sector, or some mix, it does not account for personnel costs for reviewing images and resolving false alarms, as well as any costs associated with delays. How would you determine the costs to DHS for reviewing images and resolving alarms?**

My understanding is that the current technology does not allow for the reviewing process to be automated. A possible approach to estimating the cost would likely need to consider a number of variables that are not necessarily uniform from port to port, to include, for example the operational costs of reviewing images, further scanning costs, and cost of physical inspection—a process which may require a possible request to the host government. A full understanding of the operations and all the costs imbedded in the operations at each port where adjudication is needed would be required to do thorough and accurate analysis.

e. **Last year, the Department announced that it planned to continue to expand the Secure Freight Initiative to "strategic trade corridors" overseas. However, such a deployment could have adverse economic consequences for certain ports and may inadvertently shift risk from one port to another. Do you believe SFI should be expanded according to "strategic trade corridors"?**

Yes, SFI is an additional component to CBP's layered security and enforcement strategy for securing U.S.-bound ocean cargo. Secretary Napolitano has endorsed a targeted expansion strategy.

f. **What do you think is the path forward with respect to SFI that will be acceptable to U.S. government officials, the private sector, and foreign governments?**

My understanding is that foreign governments and industry have been receptive to the DHS approach of targeted expansion. If confirmed, I will ensure that DHS continues to work closely with industry and our foreign partners to implement SFI scanning operations in a responsible and practical manner that integrates smoothly

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into the global trade supply chain. The targeted expansion strategy ensures that we will focus our resources on the cargo that warrants additional scrutiny.

48. In 2005, you co-authored a Center for Strategic and International Studies (CSIS) report entitled General Aviation Security: Threat Vulnerabilities, and Priorities. In that report, you wrote, "TSA and DHS have under-resourced the area of general aviation."[6] Do you still believe that general aviation (GA) security is under-resourced and warrants increased attention? If so, what resources would you advocate be dedicated to improving general aviation security?

At the time of the report (2005), two of our principal concerns were the lack of government attention (1) to the prospect of large GA aircraft being acquired and used for 9/11-type kinetic attacks; and (2) to the possible acquisition of a general aviation aircraft from outside of the United States to be used in a domestic attack within the U.S. Both of those concerns are now being considered by TSA, one with a proposed rule-making for the Large Aircraft Security Program (LASP), and another with an initiative abroad to do pre-clearance of private aircraft and its passengers and crew for compliance with customs, immigration, and agricultural laws, as well as the screening of aircraft for radiological nuclear threats. We were aware of the limited resources dedicated to general aviation at the time we wrote the report. I am no longer current on the specific resources available and required for this work today.

49. In the CSIS report on general aviation security, you recommended the development of a registered flight program that would allow a special group of operators who achieve and maintain certain security standards access to currently restricted airspace.[7] Do you still believe such a program could improve general aviation security? Please explain.

The purpose of our proposed "registered flight" program was to develop a special group of operators who achieve certain security standards. This would be a voluntary program. But as an incentive for expending the additional resources to assure their security met certain government-established performance standards, those who participate in the program would be given certain incentives, such as permitted greater access to currently restricted airspace. The idea came out of a 2004 proposal by the business community seeking to lift temporary flight restrictions on DCA National Airport.

Some of the advantages of this proposal that we considered for those participating in such a program included providing additional access to GA and expedited return-to-flight options should a threat situation require limiting airspace or even that the government ground aircraft. Such a program could also be used as a filter, aiding the work of those whose job it is to monitor the security of our skies. And it could potentially provide the government with a roster of operators who could be called upon in times of national crisis, as in the case of 9/11 when additional emergency helicopter support was required.

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[6] David Heyman and Anne Witkowsky. *General Aviation Security: Threats, Vulnerabilities, and Priorities.* Washington, D.C., Center for Strategic and International Studies, March 2005, pg. 69.
[7] *Ibid.* 71.

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Should I be confirmed, I would certainly look into this idea and assess if such a program could still benefit general aviation today.

50. In 2008, DHS proposed a rule (TSA-2008-0021) which would require general aviation aircraft operators to conduct watch list checks of passengers through TSA-approved watch-list matching services providers. In the CSIS report on general aviation security, you supported this principle. Implementation of such a rule could require significant investments from the general aviation community, which includes many small businesses.

a. As the government takes greater control over reviewing passenger records for commercial flights, do you believe it is appropriate for DHS to place this responsibility on private general aviation operators?

I believe the LASP NPRM proposed a third party watch list service provider concept, as well as the use of Secure Flight, as potential solutions. These proposed solutions offer two advantages: they are designed to remove the GA operators responsibility of checking passenger names against the watch list, as well as to reduce the number of entities that have access to the watch lists. Both solutions were proposals, which TSA has received feedback on, and is actively working with industry to develop additional solutions that are reasonable and feasible to implement, while maintaining an appropriate level of security.

b. Do you think DHS should consider helping the general aviation community implement such a rule in some manner? If so, how?

I know that TSA is currently reviewing the input received from industry and will continue to work with industry to design a security regime that appropriately addresses security and limits the burden to industry. In support of this rule-making, TSA plans to conduct a comprehensive rollout of the program, to include education and clarification, as well as to assist GA operators in implementing the finalized security program.

c. One option you recommended in the CSIS report was the creation of a grant or loan program, similar to existing DHS grant programs for port security and intercity bus security, to fund critical gaps in security. Do you still support this idea?

In general, I believe to the extent feasible that funding mechanisms should be considered to support efforts of those who otherwise would not have the necessary resources to enhance security as needed, and would further encourage the implementation of such programs.

51. The President's budget proposes eliminating the Coast Guard's LORAN program. The federal government has already invested $160 million over the last 10 years to modernize LORAN-C in an effort toward deploying eLORAN as a national Position,

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Navigation, and Timing (PNT) back-up to GPS. GPS, because it uses a low-power satellite signal, is vulnerable to atmospheric interference and jamming. A national back-up system is therefore vital for mariners, aviators, and critical infrastructure operators. The decision to eliminate funding for the LORAN program appears to have been made without considering the value that eLORAN would provide as a national PNT back-up.

In 2006, DHS and the Department of Transportation jointly commissioned the Institute for Defense Analyses to conduct an assessment of the continuing need for the current LORAN infrastructure, as well as evaluate eLORAN as a potential next generation PNT back-up to GPS. The Institute created an Independent Assessment Team (IAT) to conduct this analysis, with a diverse group of senior decision-makers and experts from government, industry, and academia. The IAT reviewed about 40 previous reports and interviewed key stakeholders, industry representatives, and other relevant subject matter experts. In January 2009, the IAT released its report which unanimously concluded that eLORAN should serve as the national PNT back-up system for GPS and that U.S. LORAN infrastructure should be maintained until full eLORAN deployment.

a. **DHS has not finished its assessment of whether a single, national system is needed to back-up GPS. If confirmed, will you ensure that LORAN infrastructure is maintained and funded until a final decision is made on whether eLORAN should serve as the national PNT back-up system for GPS?**

   I understand that an initial DHS survey of the Critical Infrastructure and Key Resource sectors indicated that a variety of redundant capabilities, backups and contingency plans are in place to meet growing national, homeland, and economic security requirements, civil requirements and commercial and scientific demands. DHS expects to complete an assessment to determine if a single, national system is needed for GPS backup. If confirmed, I am committed to supporting the Secretary and Deputy Secretary in considering this decision and will provide the necessary policy input, as appropriate.

b. **The National Protection Programs Directorate (NPPD) has requested the 18 national Critical Infrastructure and Key Resources (CIKR) sectors provide PNT requirements, supporting DHS' ongoing effort to determine if a single, national back-up system is needed for GPS. During her confirmation hearing, Assistant Secretary Lute provided that DHS expected NPPD's assessment to be completed by July 30, 2009. If you are confirmed, will you work cooperatively with NPPD to ensure this deadline is met?**

   I will.

c. **There are multiple, limited systems that could back-up GPS, but these would not provide a national system with universal coverage for users. DHS is presently conducting a survey of critical infrastructure operators on their need for GPS**

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back-up systems, but this has not been completed. Do you agree that it would be premature to discontinue the LORAN program before the Department reviews the operators' surveys and considers the comprehensive risk of not having a national system?

The preliminary results of that survey have indicated that the variety of agency-specific redundancies, backups and contingency plans that are in place meet growing national, homeland, and economic security requirements, civil requirements and commercial and scientific demands. I am informed that DHS will continue to work with other federal agencies to look across the critical infrastructure and key resource sectors to determine if a single, domestic system is needed as a GPS backup. The Department will also continue to work with Federal agencies to clarify operational requirements. If a single, domestic national system to back up GPS is identified as being necessary, the Department of Homeland Security will complete an alternatives analysis that will include the potential continuation of the LORAN system.

d. **What is the estimated decommissioning cost of shutting down LORAN-C transmitting stations, and securing LORAN-C infrastructure nationwide?**

LORAN-C currently costs roughly $45 million annually to operate. Of this, $34 million is shown as specific funding in Federal budgets, with the remainder coming from budget line items for such things as personnel costs. Termination of the system is expected to result in an offset of $36 million in 2010 and $190 million over five years. I understand that full costs to decommission specific LORAN sites are not yet available, as each site will require an environmental assessment among other things.

52. **National Security Presidential Directive (NSPD) 66 and HSPD 25 established new guidance for Arctic Region Policy. This directive provides that the U.S. has "broad and fundamental national security interests" in the Arctic region and calls for the U.S. to "assert a more active and influential national presence to protect its Arctic interests and to project sea power throughout the region." Unfortunately, the Coast Guard is in danger of losing its polar icebreaking capability. Both of the Coast Guard's heavy polar ice breakers are nearing the end of their service life. One of the two, POLAR STAR, is in a non-operational "caretaker" status, tied up at its pier in Seattle. Further, no long-term contingency plan exists to provide U.S. polar icebreaking capacity in the future.**

a. **What actions do you support to restore the Coast Guard's capacity to maintain a U.S. presence in the resource-rich, and increasingly strategic, polar regions?**

If confirmed, I will work with the Commandant of the Coast Guard and the leadership at DHS to support the Administration's strategy and policies for maintaining a presence in the polar regions. In terms of specific actions, it is my understanding that as a result of NSPD-66/HSPD-25, a broad interagency needs assessment is currently being conducted to identify the specific resources necessary to support a U.S. presence in the Polar Regions. The assessment will identify a potentially broad range of resource needs, including forward operating facilities, aircraft, ice strengthened

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vessels, and ice breaking vessels. Once we have the assessment, I would be able to evaluate and consider appropriate actions.

b. **The acquisition of two new icebreakers, from design to construction, will cost an estimated $1.6 to $2.0 billion and take 8 to 10 years to complete. Do you support devoting the necessary funds in the near term to initiate the acquisition process for two new polar icebreakers for the Coast Guard?**

Decisions regarding specific operational requirements need to be considered in the context of other Coast Guard requirements, operational needs, Departmental priorities, and budgetary constraints. If confirmed, I would provide advice in this context, if asked.

c. **The Arctic region, which lacks a comprehensive legal regime, is vulnerable to exploitation by individual nations. Would the U.S.'s ability to defend strategic interests in the Arctic be strengthened by ratifying the United National Convention on the Law of the Sea (UNCLOS)?**

U.S. interests in the Arctic provide a powerful supporting rationale for the United States to become party to the 1982 Law of the Sea Convention. All other Arctic nations are already party. The other Arctic coastal nations are using the procedures of the Convention to maximize their sovereign rights over extended continental shelf in the Arctic. U.S. accession to the Convention would give the United States the same advantages with respect to our own continental shelf and would best enable us to protect and promote our maritime interests in that region. If confirmed, I would look forward to reviewing and assessing the importance of ratifying UNCLOS and understanding the issues to consider regarding a decision either way.

d. **Can the U.S. realistically exercise sovereignty in the Arctic without making the investment to recapitalize the Coast Guard's polar icebreaking fleet in the near future?**

The Department of Homeland Security executes its Polar Region missions through a complementary mix of authorities, capabilities (assets), capacities, competencies, and partnerships. Assets include the funds, people, cutters, boats, and aircraft to perform multi-mission operations. Each operating area presents unique conditions, which must be considered in determining the suitability of a particular type or class of asset employed for any specific mission. This is especially true in the Polar Regions, where the operating environment may exceed the operational parameters established for most surface and air assets and support equipment. My understanding is that a specific determination as to the best mix of assets requires a robust needs assessment to be completed.

53. **Because the Coast Guard has been tasked with additional homeland security responsibilities, some worry that there has been a corresponding decrease in the service's focus on its traditional missions.**

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a. **What steps would you take to ensure that the Coast Guard's homeland security missions do not undermine its ability to perform its non-homeland security missions?**

If confirmed, working with the Secretary and Deputy Secretary, I am committed to support efforts to foster a unified mission, culture, and purpose at the Department. At the same time, I also understand the there are components within the Department with dual responsibilities that go beyond but are related to the core homeland security mission work. As a first step, if confirmed, and as part of the Policy Office's oversight of the Strategic Planning process, I would bring together the policy leadership of the Department's components to ensure that the Department effectively considers the multiple missions of components in the Department's budget and planning efforts.

b. **Do you believe the Coast Guard currently has sufficient personnel and resources to complete its various missions, and would you support additional personnel for the Coast Guard?**

I have not been fully briefed on Coast Guard personnel and resource issues. If confirmed, I am committed to working with the Secretary and Deputy Secretary and with all DHS Components to ensure that their staffing is appropriate to their mission and their resources are aligned appropriately.

54. **One of the provisions of the SAFE Port Act of 2006, which this Committee authored, was the requirement to establish Interagency Operations Centers (IOCs) for port security at all high-priority ports not later than three years from the date of enactment. The Act authorized $60 million each year from 2007 - 2012. In 2007, DHS identified the 24 high-priority ports that would require interagency operations centers and estimated that the entire project at the 24 ports would cost $260 million, with an annual operating cost of $3 million per center. Can you comment on the Department's timeline to fund and establish these first 24 IOCs?**

While I cannot comment on the precise timeline to fund and establish the first 24 IOCs, I know that to carry out the Department's core missions, interagency cooperation and coordination is essential.

a. **The Department of Justice (DOJ) has been the Executive Agent for Project SeaHawk since the program was created by the FY03 Omnibus Appropriations Bill. On October 1, 2009, the Coast Guard (for DHS) will assume duties as the Executive Agent for Project SeaHawk. What challenges do you foresee for the Coast Guard as it assumes management of Project SeaHawk, and begins to oversee the establishment of IOCs nationwide?**

I have not yet been fully briefed on Project SeaHawk.

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b. Should DHS predicate siting, construction, and federal funding for IOCs based upon the relevant state and local governments' commitments to fund their agencies' long-term participation in the proposed IOC?

I have not yet been fully briefed on IOC funding.

55. The prospects for ratifying the United Nations Convention on the Law of the Sea (UNCLOS) have increased dramatically in recent months, and it now seems possible that the Senate will vote on ratification sometime this year. How would the Department and component agencies be affected (positively and negatively) by UNCLOS ratification?

I know that U.S. interests in the Arctic provide a powerful supporting rationale for the United States to become party to the 1982 Law of the Sea Convention. All other Arctic nations are already party. The other Arctic coastal nations are using the procedures of the Convention to maximize their sovereign rights over extended continental shelf in the Arctic. U.S. accession to the Convention would give the United States the same advantages with respect to our own continental shelf and would best enable us to protect and promote our maritime interests in that region. If confirmed, I would look forward to reviewing and assessing the importance of ratifying UNCLOS.

56. Deepwater is a collection of more than a dozen Coast Guard acquisition programs for replacing and modernizing the service's aging fleet of deepwater-capable ships and aircraft. It includes plans for, among other things, 91 new cutters, 124 new small boats, and 247 new or modernized airplanes, helicopters, and unmanned aerial vehicles (UAVs). The success of Deepwater is critical to the future of the Coast Guard, and the program must be carefully monitored to ensure that taxpayer dollars are being spent effectively. The Commandant of the Coast Guard has reformed the service's acquisition structure to correct past problems with Deepwater. How will you help ensure Deepwater's success?

I know that Deepwater is a critical program for the Coast Guard, and that the Department is committed to supporting the services experts in implementing it. I also understand the Department's Acquisition Review Board was established to ensure major acquisitions like Deepwater receive appropriate senior-level attention as part of a strong and effective acquisition program. If confirmed, I am committed to supporting the Secretary and Deputy Secretary in considering Deepwater as part of the review process.

Border Security and Immigration

57. Mexico is in the middle of a war with the drug cartels, and DHS has launched the southwest border security initiative in response to this threat.

a. Do you agree that the Department needs to deploy additional resources along the southwest border, particularly to address the smuggling of drugs, weapons, and

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I agree with the Secretary's decision to deploy additional resources along the southwest border. During the past year, there has been a significant increase in the level of violence in Mexico, particularly in Juarez and Tijuana. This violence emanates out of a struggle for control over a nexus of drugs, weapons and money flowing in both directions across our border. These resources will help prevent the violence in Mexico from spilling across the border, help Mexico crack down on the drug cartels at the heart of this violence, and reduce the movement of contraband in both directions.

b. What plans have been developed, will be developed, or should be developed to ensure that the southern border is equipped to address these concerns?

In March this year, Secretary Napolitano announced several southwest border initiatives. The plan calls for additional personnel, increased intelligence capability and better coordination with state, local and Mexican law enforcement authorities, with an emphasis on information sharing and integration with state and local law enforcement agencies, as well as an effort to further engage Mexican authorities.

In addition, DHS will initiate strategic redeployments totaling more than 360 additional officers and agents at the border and in Mexico. Further, the following plans have been and will be developed:

- Doubling Border Enforcement Security Task Forces (BEST) teams that incorporate foreign, federal and state/local law enforcement and intelligence officers
- Tripling DHS Intelligence Analysts working along the Southwest Border
- Increasing ICE attaché staff in Mexico in support of Mexican law enforcement efforts
- Doubling Violent Criminal Alien teams located in Southwest Border Field Offices
- Quadrupling the number of Border Liaison Officers working with Mexican law enforcement entities
- Bolstering Secure Communities Biometric Identification capabilities
- Increasing southbound rail examinations
- Enhancing the use of technology at ports of entry, including backscatter mobile x-ray
- Increasing the number of canine units operating on the SW Border
- Increasing engagement with state and local Southwest border law enforcement
- Making up to $59 million in current Operation Stonegarden funding available to enhance state, local and tribal law enforcement operations and assets along the border
- Increasing the use of mobile license plate readers for Southbound traffic on the SW Border

c. What interagency planning process has been, will be, or should be assembled to

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address these concerns?

I believe that an effective interagency process is important to addressing these concerns. While I am very familiar with the interagency process, I am not yet in a position to comment on what the Department has been, will be or should be doing to address these concerns.

d. **Should the Department put into place some process or mechanism for consulting with the state and local officials most affected by outbreaks of violence along the southern border?**

As a former border state governor, Secretary Napolitano is committed to ensuring federal, state and local coordination. It is my understanding that the southwest border initiative puts in place a number of activities at the operational level that require state, local and tribal partnership. For example, the Assistant Secretary for State and Local Law Enforcement recently completed a tour of the SW border area to hear firsthand from DHS' law enforcement stakeholders on the front lines of combating border violence.

Additionally, Secretary Napolitano directed the Office of Intergovernmental Programs (IGP) to develop a process to revitalize the department's working relationship with state, local, tribal and territorial governments. If confirmed, I look forward to working with IGP to promote an integrated national approach to homeland security by ensuring, coordinating and advancing federal interaction with state, local, tribal, and territorial governments.

e. **Is reinstituting a National Guard presence along the southern border an effective preventative and deterrent measure?**

As part of a comprehensive assessment and planning effort to enhance border security along the southwest border of the United States, it is incumbent upon the Department and its interagency partners to consider all resources that might be able to play a contributing role By helping to operate border detection systems, provide communications, analyze intelligence, build roads, and provide air and ground transport, a Guard presence could help free up law enforcement to perform other duties related to interdicting contraband. Any inclusion of the Guard, however, would also need to be carefully considered, particularly with respect to the perception of militarizing the border.

58. CBP is responsible for the dual missions of safeguarding borders against the illegal entry of goods and people and regulating and facilitating legitimate international trade and foreign travel. These missions frequently conflict. What do you see as the major challenge(s) with CBP's dual role?

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CBP's stewardship of safeguarding borders against the illegal entry of goods and people and regulating and facilitating legitimate international trade and foreign travel is an important means of ensuring two vital national interests, security and commerce, are appropriately considered. The challenge with this dual role, of course, is in finding the right balance between these sometimes competing interests. For example, while much emphasis and the bulk of federal resources are often placed on the scanning and inspection of high-risk goods and people, the development of tools for facilitation of the flow of low-risk goods and people are sometimes less emphasized, but in fact would not only improve the flow of traffic, but could also allow CBP to focus its limited resources on higher-risk items and individuals. Second, a challenge that CBP will likely face as trade and travel increases in the years ahead is the physical limitations of increased traffic through old or failing infrastructure. Many of the federal facilities at our ports of entry were built decades ago and the state, local and international transportation infrastructure in the area may not have the capacity to maximize the efficiency of trusted traveler programs. Funds from the American Recovery and Reinvestment Act to improve ports, among other items, will be a significant help in this area, but the Department will need to find a way to accommodate additional security operations and an expected increase in traffic in the future.

59. Looking forward, what do you believe to be the most effective mix of personnel, infrastructure, technology, and other strategies to secure our land borders?

The proper mix of personnel, infrastructure, technology and innovative strategies to secure our Nation's borders is, and will continue to be, derived from a number of dynamic factors. The most important of these factors is the operating environment relative to the type and amount of cross-border threat in a given area. The population density and urban infrastructure of any border area, as well as its terrain, weather, and accessibility, as well as cost must all be taken into consideration when determining what the most effective mix should be. In urban areas along the Southwest border for instance, the proper mix of resources will rely more heavily on tactical infrastructure and technologies such as fencing, lighting and cameras, supported by the deployment of agents; whereas in more rural and remote areas, different types of tactical infrastructure and technologies such as vehicle barriers, sensors, and aerial surveillance are more effective for deterring and detecting illicit traffic.

a. In recent years, the hiring of Border Patrol agents has increased substantially – whereas the number of CBP officers has increased less rapidly. Do you believe additional hiring of Border Patrol agents and CBP officers is necessary?

I believe a determination of operational needs must be based on assessments threats and vulnerabilities to the Nation's border, concrete measures that indicate the effectiveness of those resources, and a trade-off analysis comparing the benefits of adding additional resources in this operational capacity versus other priority operations.

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b. **Given the serious problems encountered in the Department's development of the SBInet program, do you believe current initiatives to deploy virtual technologies at the border should be re-assessed?**

I am aware of the challenges in the development of the SBInet program. I believe that the Department has subsequently taken corrective steps to improve program management and restructure the program to reduce its overall risks. In general, I believe that there is value in considering and developing innovative technologies to help solve some of the most difficult challenges we face. Innovative technologies can reduce long-term costs, rationalize resource allocation, augment human capabilities, and enhance overall operational performance. To minimize cost, schedule and performance risks, however it is equally important to put in place appropriate project management processes, to include test and evaluation plans, in order to ensure reliability and effectiveness in the field.

c. **In an updated operational requirements document last November for the deployment of the first 50 miles of SBInet, the threshold requirement for both detection and identification of persons and items of interest was lowered to 70%. Do you think failing to detect or identify properly 30% of suspicious border crossers is a good return on the taxpayers' investment?**

I believe the numbers highlighted are for the SBInet Block 1 system, acting alone, which is considered an initial incremental capability. Even so, the SBInet system when fully deployed will only be one among several tools at our disposal, meaning there additional detection options are available. Those include, for example, aircraft, unmanned aerial systems, unattended ground sensors, mobile surveillance systems, tactical infrastructure, and the agents themselves.

d. **Should the system be improved before it is deployed along the border?**

Before committing to full deployment of the Block 1 system, I believe DHS will review the results of the initial deployments and the formal operational testing. Those results should be considered, along with other factors, as part of decisions regarding future investments and deployments.

60. **Secretary Napolitano recently issued a directive focused on reviewing northern border security. Her directive asked about the current vulnerabilities, the overall strategy for reducing those vulnerabilities, the requirements, the programs, the budget, and the timeframe for improving security along this border and level of risk remaining once the programs are completed. The directive requests this information by February 10, 2009, with a final report due February 17, 2009. Congress requested such a report in the 9/11 Commission Recommendations Act regarding ongoing initiatives to improve security along the northern border of the United States. The Committee received the report last year. This report failed to identify actions, resources, and time frames needed to address vulnerabilities, and GAO, which was required to review the report, agreed with our assessment about the lack of information in the report.**

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a. What are the components of an effective strategy, in your opinion?

At the most basic level, an effective strategy articulates ends, ways, and means. It outlines the fundamental goals and objectives sought (ends), the specific actions that should be undertaken to meet those goals and objectives (ways), and the resources required to execute those actions (means).

b. Who or what entity should be the lead in developing a northern border strategy?

Many DHS components including CBP and ICE are stakeholders and have equities in a comprehensive northern border strategy. As such, it is a natural area for the Office of Policy to play a leadership role.

c. How should state, local, and tribal stakeholders be incorporated into the development of such a plan?

As the Secretary has made clear, enhancing the Department's relationship with state, local and tribal stakeholders is one of her priorities. As key partners in our nation's border security efforts, state, local and tribal stakeholders should be included as participants in the development of a comprehensive northern border security

d. What actions would you take to provide technology, infrastructure, and personnel where needed to the northern border in a timely manner?

In my view, DHS should continue to carefully weigh the deployment of resources to the northern border. Given the inherent differences in the southern and northern borders, as well as the air, land and maritime domains, DHS should design and deploy solutions – technical, tactical and personnel – based on specific intelligence, operational requirements and geographic limitations of each region or domain, and should be informed, in part, by the northern border/Great Lakes demonstration project being conducted by CBP's SBInet and US Coast Guard.

e. Because of the lack of technology on the northern border, DHS relies heavily on intelligence and partnerships with state and local agencies within the U.S. and Canada, including the Royal Canadian Mounted Police, provincial and city police, and Canadian border agencies. Integrated Border Enforcement Teams (IBETs), which have participants from both Canada and the U.S., are an integral part of this international partnership. Would you consider calling for enhancing and expanding IBETs if confirmed?

Many view the IBETs as a model of innovative law enforcement, successful both within and outside of the government in terms of enhancing enforcement between ports of entry. If confirmed, I welcome the opportunity to work with the various components of the Office of Policy and senior leadership across the Department to

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help best determine the optimal role, resource requirements and staffing plans for Integrated Border Enforcement Teams.

61. The Western Hemisphere Travel Initiative (WHTI) will be implemented at land and sea ports of entry on June 1, 2009. At that time, only passports or WHTI-compliant documents will be acceptable for entering the United States. This requirement could cause back-ups at the ports of entry, resulting in delays for those crossing the border.

a. How would you make sure that WHTI is implemented in a fair and reasonable manner?

There are currently three primary strategies to ensure the successful implementation of WHTI at the land and sea borders in June: ensuring the availability of documents for travelers, installing the appropriate infrastructure at the ports, and conducting extensive outreach campaigns to prepare travelers for the transition. If confirmed, I will support these efforts.

b. What steps would you take to prevent WHTI implementation from causing delays at the border?

The purpose of the three-part strategy is to ensure compliant documents are available, border infrastructure is in place, and extensive outreach has been undertaken to prepare travelers for transition. If confirmed, I will work with DHS leadership, the DHS stakeholder communities, and the State Department to ensure these efforts continue and are effectively implemented.

c. How would you ensure that there is adequate staffing to handle the enforcement of this requirement at the ports of entry?

I understand that CBP will be issuing guidance to personnel at ports of entry and will set protocols for how to ensure delays resulting from the change are minimized, including establishing guidelines for staffing during the transition period and discretion for how to address individual cases during the implementation period. I know the Secretary, Deputy Secretary and Acting Commissioner of CBP are committed to a smooth transition, to include ensuring adequate staffing to handle enforcement requirements. If confirmed, I will support these efforts and the goal of a smooth transition.

d. To what extent should CBP officers in the field have discretion in admitting border crossers who do not have WHTI documents, but do not present a security threat, in order to avoid delays at the border?

I understand CBP will provide guidelines to the ports with specific instructions on how to address individuals who are not in compliance with the documentary requirements, but do not otherwise present a threat. I believe that CBP officers should have flexible discretion within these guidelines to ensure, for example, that

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U.S. citizens returning to the U.S. will be admitted upon completion of appropriate checks.

e. **What would you do to improve public awareness about WHTI requirements in the U.S., Mexico, and Canada?**

I know that DHS and the State Department are engaged in significant public awareness campaigns to prepare for this transition. I also understand that DHS staff is working closely with Canada, Mexico, and other governments to ensure that the upcoming documentary requirement changes are well understood. I recognize that these changes can cause concern and anxiety and that getting the message out effectively is imperative to DHS's ability to effectively implement the changes. If confirmed, I will support DHS's communications efforts in this regard.

62. **Section 711 of the 9/11 Commission Recommendations Act of 2007 (P.L. 110-53) allowed for an expansion of the Visa Waiver Program (VWP) if a number of security-related mandates were fulfilled. The law includes a provision that the Department of Homeland Security is required to secure agreements from Visa Waiver Program countries to share information on their citizens who may pose a threat to the United States. However, the Department has reached agreements with only a few program countries to share this important information.**

a. **Which VWP countries have entered into these agreements?**

VWP members, including those countries recently added to the program, are among America's closest allies. The information-sharing agreements required by the 9/11 Act do not create a security and law enforcement relationship where none existed before; rather they enhance and institutionalize pre-existing partnerships by creating formal, regular, and verifiable mechanisms of bilateral cooperation. As required by section 711 of the 9/11 Act, the governments of the countries that participate in the VWP are required to enter into more robust data-sharing arrangements with the United States as a condition of membership. DHS, with the support of the interagency, has determined that two agreements will meet this requirement. The first is an agreement to share *watchlists* of known and suspected terrorists with the United States. The second is an agreement to share *criminal history information*, based on automated querying of respective fingerprint databases. I understand that Agreements have been completed and active negotiations are currently underway on both of these agreements, but that DHS does not publicly name the countries or characterize the status of the talks.

b. **Do you believe that valuable information can be obtained as a result of such information-sharing agreements?**

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Yes. The prospective information obtained will provide operators and analysts in the U.S. with new tools to secure America, as well as help prevent terrorist and criminal activities in VWP partner countries.

c. **What kinds of information should we be requiring of countries that are interested in joining the VWP?**

DHS will require the information-sharing agreements noted above (watchlists of known and suspected terrorists and criminal history information) as a condition of VWP membership.

d. **In your view, is there a deadline for compliance with this requirement?**

Under the terms of the 9/11 Act, there is no statutory deadline for current VWP member states to come into compliance with the security enhancements. However, the VWP law requires a review at least every two years to ensure that member countries continue to meet the relevant criteria. Consistent with previous reforms of the VWP, DHS will address compliance with the requirements of the 9/11 Act, as well as all other VWP requirements, as part of the ongoing biennial review process. Pre-2008 VWP countries are being given a reasonable amount time (not to exceed the completion of their next biennial review) to reach full compliance with the additional security requirements of the 9/11 Act.

e. **How can the Department enforce compliance with this requirement?**

The VWP statute provides several means through which a VWP country may be given probationary status, suspended, or terminated from the program. Along with other factors, the biennial reviews will assess each country's progress toward meeting the 9/11 Act requirements and failure to do so may impact a country's continuing designation as a VWP country.

f. **As Assistant Secretary of Policy for Homeland Security, what steps will you take to reach out to Visa Waiver Program nations to ensure that such agreements are reached?**

The Department, in close cooperation with the Department of State, actively engages VWP countries regarding VWP requirements. Ensuring that all VWP countries become compliant with all statutory requirements of the program, including those of the 9/11 Act, such as the information-sharing requirement, is important to the safety and security of the United States and its citizens. If confirmed, I am committed to providing whatever leadership is needed to support ongoing and future negotiations.

63. **The Department has announced that foreign nationals traveling to the U.S. under the Visa Waiver Program (VWP) will be required to provide biographical and other information to CBP through an Electronic System for Travel Authorization (ESTA) as of mid-January, but Department officials have acknowledged that they will not require**

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the airlines by that time to revise their computer systems to confirm that a traveler has obtained an electronic authorization.

a. **What approach would you take to working with airlines to ensure that ESTA fully incorporates their participation?**

Air carriers are both essential partners in a number of new security programs, to include ESTA, as well as beneficiaries of enhanced pre-screening that these programs provide. There are a number of outside influences to include economic factors and IT programming requirements that have extended the amount of time that the carriers have needed to comply with these programs. Despite this, and within the confines of existing challenges working through to comply with the ESTA program as well as Advance Passenger Information System and Secure Flight programs, I would continue to work in a partnership with the carriers to ensure that they have a well-defined and coordinated path forward for compliance with all three programs. If I am confirmed, I look forward to further evaluating the status of ESTA implementation to include the current status of engagement with the air carriers.

b. **Would you propose any changes to the information required to be submitted by travelers to enhance the ability of DHS to identify individuals who may pose a threat to the United States?**

DHS implemented ESTA such that VWP travelers are now required to provide in advance of travel the same information they have been required to provide to CBP officers upon arrival at a U.S. port of entry. This procedural change for the VWP traveler enables DHS to conduct a risk-based security and eligibility determination for VWP travelers on a passenger-by-passenger basis. I am told that the information collected is sufficient to allow for an appropriate security check to identify VWP travelers who may pose a threat to the United States, but is not overly burdensome to VWP travelers. If I am confirmed, I plan on reviewing this issue.

64. **Secretary Chertoff and some terrorism experts, pointing to the plot that originated in the United Kingdom to destroy U.S. airlines over the Atlantic Ocean, have raised concerns about the risks posed by travelers from European counties. Almost all of these travelers would be eligible for the Visa Waiver Program.**

a. **As Assistant Secretary for Policy, how would you address the tension between legitimate travel and security within the VWP?**

The need to address the tension between legitimate travel and security is an ongoing challenge. These dual aspects are addressed in the Visa Waiver Program, which both seeks to reduce the administrative burden on travels to the United States by eliminating visa requirements in certain countries, while also enhancing certain information sharing to better identify and interdict dangerous people before they travel to the U.S.

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b. What specific plans, if any, do you have for improving or modifying the VWP?

It is my understanding that DHS has no specific plans to modify the program. From my perspective, any future changes would require a careful and comprehensive analysis of U.S. national security and law enforcement interests, to include input from across the interagency community, the legislative branch, and other DHS stakeholders.

c. Would the Visa Waiver Program office be able to conduct more rigorous and comprehensive reviews if it received more resources?

The Visa Waiver Program Office (VWPO) currently monitors both open source information and classified intelligence relating to VWP countries on a daily basis. It also conducts thorough in-country evaluations of a participating country's counterterrorism capabilities; immigration, citizenship and naturalization laws; passport production and issuance controls; efforts to combat crime; law enforcement cooperation with the United States; and border control mechanisms. I understand that the VWP office leverages resources from both DHS components and USG agencies. If confirmed, I plan to review resource needs and requirements in the Policy Office, and in particular in the Visa Waiver Program, to ensure that the staffing is appropriate to the requirements and that resources are properly aligned to programmatic and Departmental priorities.

d. Should the Visa Waiver Program office rely less on detailees and instead have more permanent staff?

Currently, I have been told that the VWPO does not have detailees.

65. A biometric entry and exit program is considered by many people, including the 9/11 Commission, to be a vital component of homeland security. DHS has failed to meet a number of statutory deadlines associated with the exit component of the US-VISIT system, and is currently working on a pilot program for the airport exit component that was required by P.L. 110-329. In its announced notice of rule making, DHS proposed that the air carriers be responsible for collecting biometric exit data from eligible travelers and allowing the carriers to decide where in the airport this collection would take place. The airlines have complained that this represents an unfunded mandate and that they are being asked to take on a federal responsibility.

a. Do you believe that a biometric exit system is needed? Please explain your reasoning either for or against a biometric exit system.

A biometric exit system will be difficult to implement but may serve a useful law enforcement function. A well developed system could support homeland security needs to authenticate travel documents; verify identity; as well as to identify criminals, immigration violators, and other individuals who may threaten the Nation's security. Moreover, there are considerable law enforcement and

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intelligence benefits from being able to accurately document the entry and exit of foreign nationals and to conduct trend analyses on arrivals and departures. The key issue is ensuring that all appropriate stakeholders including law enforcement are involved in the development of such a system.

b. What should be the goal of an exit system?

(See #65a)

c. If confirmed, what steps would you recommend DHS take to ensure that an exit component is deployed to the airports as soon as possible?

I understand that DHS and US-VISIT are already taking steps to deploy Air/Sea Biometric Exit as expeditiously as possible. Steps taken or to be taken include publishing a notice of proposed rulemaking, conducting upcoming pilots in two locations, and evaluating the pilots to determine the path forward for Air/Sea Exit. If confirmed, I would support US-VISIT in its continued efforts.

d. Do you believe that the airlines should be responsible for collecting biometric exit data for the US-VISIT program? If not, who do you think should be responsible for this data collection?

I know that there are ongoing pilots to assess this. I look forward to reading these assessments to determine the most effective collection point.

66. Some have argued that the only logical place for the collection of exit biometric data is at the gate as people are entering the jetway, to ensure that individuals cannot enroll their biometrics in the system and then leave the airport – something that would be possible if the data were collected at any other location in the airport.

a. What is your assessment of this argument?

While this argument seems logical, I believe that the information from the pilot project is important to review prior to making a judgment.

b. Where do you believe that the exit data collection should take place?

I know that there are ongoing pilots to help determine the best location for data collection, absent the results of these studies however, I believe that the optimal location to collect biometric exit data for US-VISIT is at a point of no return immediately prior to departure. Currently, a similar such process is performed by airlines who collect boarding passes of passengers as they embark the plane. Should a process be developed that was feasible, practicable, and affordable that seamlessly piggy-backs this existing process, it would be worth considering.

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I am also aware that, per the direction of Congress, DHS will not decide responsibility or location for implementing Air/Sea Biometric Exit until further information is available from the planned air exit pilots. The pilots will test both a gate collection and security checkpoint solution. These decisions will then be articulated in the final rule for Air/Sea Biometric Exit.

c. **What is the law-enforcement benefit to ensuring that individuals cannot exit once their biometric information has been collected by US-VISIT?**

I believe that the logic behind the capture of biometric exit data is that law enforcement will have a better sense of who has left and who has not, and will be able to apprehend those who overstay.

67. **Collection of biometric exit data at the land border is highly problematic due to the current lack of outbound infrastructure at the Ports of Entry (POEs) and the fact that the U.S. does not currently require exit inspections of all travelers.**

a. **Do you believe that the collection of biometric exit data should also take place at the land POEs?**

Implementing biometric confirmation of the departure of travelers via land ports of entry is significantly more complicated and costly than for air or sea environments. Enabling biometric, much less biographic, collection of data upon exit would likely require a massive expansion of exit capacity, including physical infrastructure, land acquisition, and staffing, or would require technological innovation to support existing operations. I believe that all options—expanding existing capacity, investing in breakthrough technologies, considering alternative risk mitigation measures, among others—should be considered to support the national interest of identifying criminals and other individuals who may threaten the Nation's security.

b. **What steps would you take to ensure that DHS continues to examine the issue of exit data collection at the land border?**

If confirmed, I will work with Department leadership to support the development of the Department's Land Exit policy.

c. **Do you believe that the current focus on southbound smuggling of guns and cash into Mexico by the cartels, which has led DHS to increase its southbound inspections, may provide an opportunity to reassess the feasibility of enhancing southbound infrastructure and implementing southbound inspections on a more systemic basis?**

It may. If confirmed, this is an area that I look forward to further consideration.

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d. **A recent rulemaking on the H-2A temporary foreign worker program stated that DHS intended to confirm the departure of foreign workers from the country following the completion of their work period. Do you think this is a sensible proposal to address potential overstays?**

There are clearly opportunities here that may support the Department's interest in better identifying and tracking overstays. If confirmed, I look forward to reviewing this proposal to better assess its potential in this regard.

e. **The President's budget overview includes $45 million for an exit pilot at key land ports of entry. What is your understanding of the details of this exit pilot?**

I believe the budget funds $45 million for the expansion of an exit pilot at key land ports of entry and other border security priorities. A portion of this $45 million will be used to establish a land border exit registration procedure to record the departures of temporary workers from the United States at the completion of their authorized work periods. The San Luis and Douglas, Arizona ports of entry were selected to be the sites for this land border exit pilot.

68. **DHS recently announced the appointment of Alan Bersin as DHS Assistant Secretary for International Affairs and Special Representative for Border Affairs. Bersin will be charged with, among other things, improving our relationship with our foreign partners and coordinating border enforcement programs. If confirmed, what will be the relationship between your role with respect to border security policy and Mr. Bersin's new position?**

The overall efforts by Alan Bersin in his role as Special Representative for Border Affairs are tasked by the Secretary. As Alan Bersin is also the Assistant Secretary for International Affairs, he reports to and works with the Assistant Secretary of Policy. If confirmed, I envision a close coordination on border issues.

69. **In June 2007, a U.S. citizen known to be infected with an extremely drug resistant form of tuberculosis crossed into the United States from Canada after flying from Europe to Canada, despite efforts to interdict him. In remarks to the media following this event, you noted that the incident exposed a "loophole that needs to be fixed"[8] and pointed to failures that led to this incident. The failures you identified included a lack of procedures at ports of entry that could have prevented a single CBP officer from waving someone through, and insufficient information accompanying alerts.**

a. **What actions has DHS taken to fix this "loophole"?**

In this case, the 'loophole' was in fact the human in the loop. My understanding is that the information to identify, track, and interdict the infected individual had

[8] Bob Dart and Julia Malone. "TB Traveler Reveals Security Problems, Critics Charge." *Cox News Service*. June 1, 2007.

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been collated and shared effectively, and was 'flashing red' on the screen at the border when the individual attempted to cross over the border into the United States in June 2007. The CBP officer at the port of entry who scanned the citizen's travel documents into the Treasury Enforcement Communications System (TECS)—CBP's computerized border screening and inspection system—simply ignored the electronic alert and instructions to refer him to secondary inspection. It is my understanding that this case has resulted in additional and enhanced training for all CBP officers.

b. **Are DHS efforts to improve the Traveler Enforcement Communications Systems (TECS) in order to stop that traveler and a Mexican national with multiple-drug-resistant Tuberculosis who entered the United States 21 times after being identified by the CDC adequate?**

I am aware of the Senate Homeland Security's investigation into these cases, and the recent GAO report, "Public Health and Border Security" documenting the new procedures and tools put being implemented to rectify deficiencies identified in these cases. It is my understanding that DHS is continuing to modernize the Treasury Enforcement Communications System (TECS) for both CBP and ICE. If confirmed, I will work with the Secretary and Deputy Secretary to strengthen DHS ability to assess the performance and ensure oversight of its risk abatement programs.

c. **What additional measures should DHS take to strengthen its ability to detect individuals attempting to deceptively enter the U.S. through border crossings and ports of entry?**

I know that the Secretary and Deputy Secretary are committed to ensuring the Department strengthen and improve the performance of its operations across the Department. This will include reviewing the circumstances described in the GAO report, "Public Health and Border Security", and take whatever corrective actions are necessary and appropriate to ensure that employees of Federal agencies are better able to communicate with each other to accomplish their mission, and to interdict such individuals, consistent with DHS's statutory and regulatory authorities.

70. **Functions that were previously consolidated in the Immigration and Naturalization Service are now divided among three DHS bureaus – Immigration and Customs Enforcement, Citizenship and Immigration Services, and Customs and Border Protection. Each of these agencies is responsible for applying the provisions of the Immigration and Nationality Act.**

    a. **How will you ensure that there is uniform interpretation and application of the complex body of immigration law implemented by DHS?**

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DHS's three components with immigration related responsibilities – CBP, ICE, and USCIS – each have unique expertise, responsibilities, and operational concerns. If confirmed, one of my primary goals will be to increase and improve the Office of Policy's engagement in interagency coordination among these components, with respect to both immigration policy development and working with key stakeholders to ensure such policy's effective implementation.

b. What do you see as the Office of Policy's role in the interagency coordination within DHS?

The Office of Policy, in consultation and coordination with other key DHS headquarters components, bears responsibility of ensuring the development of a consistent set of policy priorities and its uniform implementation.

c. What do you see as your role, if confirmed, in coordinating and setting immigration policies for the three DHS agencies that implement immigration law?

I fully support the Secretary's commitment to increase coordination among ICE, USCIS, and CBP, as part of her larger effort to bring a consolidated culture and unity of effort to the Department. If confirmed, I will support the Secretary's efforts to assess additional ways to improve policy coordination among these components and the rest of DHS.

71. In the DHS 2.0 Report, which you co-authored with James Carafano in December 2004, you recommended merging CBP and ICE into a single border and immigration enforcement agency.

a. Do you still support a merger of CBP and ICE?

The premise behind the recommendation was a recognition that security at the border and enforcement inside the border were in some sense two-sides of the same coin. In the abstract, if you could have perfect border security, it would greatly diminish the need for enforcement; and conversely, if you had perfect interior enforcement, border security was less necessary. In practice, neither of these solutions is practicable, or feasible. Rather, investments must be made that balance the needs for both border security and interior enforcement, in the context of limited resources. There are many approaches to ensuring those trade-offs are adequately considered, and if confirmed, I am committed to supporting the Secretary's vision of ensuring a DHS with a more cohesive culture, greater unity of effort, and improved policy development and coordination.

b. What could be done at DHS today to more closely integrate the operations of CBP and ICE?

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The integration of component operations is a priority of the Secretary in her vision of one DHS. I am committed to the Secretary's vision of ensuring a DHS with a more cohesive culture, greater unity of effort, and improved policy development and coordination.

72. You also recommended consolidating the US-VISIT program into this merged agency. Do you still support the consolidation of US-VISIT into another component of the Department, such as Customs and Border Protection? What is your opinion of the placement of US-VISIT within the National Protection Programs Directorate?

I believe that decisions regarding the placement of programs or offices in the Department should be made in the context of the ongoing Quadrennial Homeland Security Review, which will provide the Secretary and Congress with broad recommendations following a comprehensive review on the programs, assets, capabilities, budget, policies and authorities of the Department.

73. Changes in visa issuance policy after 9/11 generated tremendous backlogs, disrupting the plans of many legitimate foreign visitors. Although subsequent adjustments have ameliorated these problems, further work must be done to ensure that U.S. visa policies facilitate, rather than undermine, long-term U.S. interests. How would you work with the State Department to improve the efficacy and efficiency of U.S. visa issuance policies and procedures?

I believe it is essential to work with the State Department to ensure that legitimate travel is facilitated within a secure environment. Significant improvements continue to be made in the visa process to facilitate visa issuance. For example, for foreign students and exchange visitors, the State Department has created an online visa interview appointment system, provided priority to students and exchange visitor applicants during peak "student" seasons, and extended for certain countries the validity length of student or exchange visitor visas.

74. The Obama Administration recently announced that it will be pushing for comprehensive immigration reform in this Congress.

a. What are your views on comprehensive immigration reform?

As the President has said, ultimately, the solution to our nation's immigration challenges is to address all aspects of the problem in a comprehensive manner. If I am confirmed, I will work closely with the Secretary, others in this Department, and in the Congress to come up with an appropriate solution to these challenges.

b. What role do you foresee playing, if confirmed, with respect to immigration reform?

One of the principal missions of the Office of Policy is to align Department policy with the Secretary's strategic objectives and ensure a unified Department position

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on important policy matters. As the head of the Policy Office, if confirmed, I will likely play a leading role overseeing the development and coordination of the Department's position on comprehensive immigration reform.

75. Do you foresee legislative or regulatory immigration initiatives in areas that likely will not be addressed by comprehensive immigration reform legislation? If so, what are those areas and what role do you anticipate the Office of Policy playing?

On January 30, 2009 Secretary Napolitano issued a wide-ranging action directive initiating review of the Department's immigration and border security policies, including policies relating to criminal and fugitive operations, 287(g) program, detention, electronic employment verification, and legal immigration benefit backlogs. I understand the Office of Policy has been playing a role in this review. I also understand that some of the changes contemplated as a result of these directives can probably be implemented through administrative and regulatory changes, but some others may require legislation.

76. Secretary Napolitano has directed a review of the Department's immigration enforcement and detention policies.

a. Do you anticipate participating in that review? If so, in what capacity?

The Office of Policy is already participating in the review of the Department's immigration enforcement and detention policies. Policy staff is working closely with Dora Schriro, the Secretary's Special Advisor on ICE and Detention & Removal and with others at ICE and CBP on the enforcement issues. If confirmed, I anticipate that my staff and I will continue to be involved in these issues.

b. What changes do you believe are necessary in these areas?

I support the Secretary's review of conditions of detention and medical care for immigration detainees. We must make sure that detainees in ICE custody are treated humanely and receive appropriate care.

I also support the Secretary's recent protocols that reflect a renewed Department-wide focus on two different emphases for our immigration enforcement efforts: first, targeting criminal aliens, and second targeting employers who cultivate illegal workplaces by breaking the country's laws and knowingly hiring illegal workers. Focusing ICE worksite enforcement resources on the criminal prosecution of employers who knowingly hire illegal workers is the most effective way to target the root cause of illegal immigration. We should also prioritize for removal those individuals who pose the most obvious threats to public safety – those aliens with criminal records and those who present a danger to our communities.

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If confirmed, I look forward to working with the Secretary and others at the DHS on these important tissues.

77. There have been ongoing debates as to whether state and local law enforcement officials should take a more active role in enforcing civil immigration law.

a. What are your views concerning allowing local law enforcement officers to enforce criminal and civil immigration law?

Under the right circumstances, coordination and cooperation between DHS and local law enforcement can play an important role in the enforcement of our immigration laws. However, since immigration enforcement is principally a federal responsibility, I do think that state and local law enforcement involvement in immigration enforcement should be pursued in close partnership with DHS and in support of existing federal priorities.

b. One major component of the debate is whether enforcing civil law would be detrimental to community-based policing by creating an environment where immigrants and especially undocumented aliens might be reluctant to report crimes or come forward with important information in jurisdictions where police are enforcing immigration law. Please describe your own views of these concerns.

Community-based policing has been very successful in combating crime. It's especially important in immigrant communities where so many immigrants have come from countries where they are fearful of police. The 287(g) program, with well-defined goals, uniform management, and strong oversight, can result in effective partnerships between local law enforcement offices and federal agents. To that end, if confirmed, I will provide policy oversight to ensure that sufficient supervisory controls and reporting requirements are in place to not undermine community policing efforts.

c. Do you think those concerns outweigh any advantages to expanding the role of local law enforcement in policing immigration violations? Please explain your answer.

No. I believe continued cooperation between DHS and state and local authorities is essential. As stated, I also believe it requires strong oversight and management and well-defined goals. If confirmed, I will work with the Office of Policy's State and Local Law Enforcement Office and others across the Department to ensure that all stakeholders' concerns are addressed.

d. The Obama Administration has announced that it is reviewing the 287(g) program, which grants state and local law enforcement the authority of allowing a certain number of its officers to perform specified immigration enforcement functions under section 287(g) of the Immigration and

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Nationality Act through Memoranda of Agreement with ICE. What is your view of the 287(g) program?

I believe the 287(g) program can be a valuable platform for cooperation between DHS and state and local authorities, but it requires well-defined goals, uniform management, and strong oversight. I understand that the 287(g) program has grown very rapidly. Of the participating jurisdictions, 90 percent entered into the 287(g) program in 2007-2008. If confirmed, I will support a review of the program to ensure it is being used effectively and has sufficient supervisory controls and reporting requirements.

e. **What role will the Office of Policy play in setting policy with respect to the role of state and local law enforcement in policing immigration violations?**

One of the principal missions of the Office of Policy is to align Department policy with the Secretary's strategic objectives and ensure a unified Department position on important policy matters. The Office of Policy, including the State and Local Law Enforcement Office, will work closely with ICE to ensure that policies relating to the role of state and local law enforcement in immigration enforcement are aligned with the Department's more general immigration policies and coordinated with other DHS components, and other Federal agencies.

78. **Mexican drug cartels and human smuggling networks represent a grave threat to the United States. They are heavily armed, operate sophisticated transportation and communications networks, and distribute narcotics to over 230 cities across the nation. They have killed more than 7,200 people in Mexico since the beginning of 2008, including hundreds of government officials. The White House recently announced a new initiative to take on the cartels that involves the redeployment of ICE and CBP assets to the border and the designation of a Special Representative for Border Affairs to coordinate DHS border policy, Alan Bersin.**

a. **If confirmed, what do you believe your role would be in the ongoing DHS efforts to create policies related to the current situation in Mexico?**

The Office of Policy is very engaged in the many dimensions of the current situation in Mexico. For example, the Office of Policy is working to facilitate funding for capacity building by the Mexican government, to slow the flow of cash and weapons to Mexico, to reduce US demand for narcotics, and to continue the interdiction of narcotics. The Secretary's Special Representative and Office of Policy's Assistant Secretary for International Affairs, Alan Bersin, is providing the overall leadership on these issues. If confirmed, I expect to be actively engaged in all elements of these issues as well.

b. **How will you coordinate the Office of Policy's reviews of border policy with those of the Special Representative?**

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The overall efforts by Alan Bersin in his role as Special Representative for Border Affairs are tasked by the Secretary. As Alan Bersin is also the Assistant Secretary for International Affairs, he reports to and works with the Assistant Secretary of Policy. If confirmed, I envision a close coordination on border issues.

79. ICE has repeatedly complained that it is hindered in its investigations of smuggling organizations because it lacks certain legal authorities. Specifically, ICE lacks Title 21 authority to pursue drug-related investigations. ICE is operating under a Memorandum of Understanding (MOU) with the DEA that was written prior to 9/11 and the creation of DHS and only grants this authority to 1,500 agents – or about a quarter of their workforce. Given the enormous challenge posed by the Mexican cartels, the federal government needs to enhance the number of resources working to interdict them – not place arbitrary limits on the number of investigators who can work drug cases. The cartels are also fueled by the money they launder, yet stored value cards are increasingly being used by smugglers to circumvent reporting requirements at the border because they are not legally considered financial instruments.

a. From a policy standpoint, what legal authorities do you believe ICE needs to be given in order to better target smuggling organizations operating in the United States? Do you believe that ICE should be granted Title 21 authority by legislation?

Legislation granting Title 21 authority could assist in closing the gap in DHS' agility to comprehensively secure the borders against increasingly multi-dimensional criminal organizations. Of particular note, is that many smuggling organizations do not solely specialize in narcotics smuggling, but also in smuggling aliens, weapons, and bulk currency. I believe that concurrent Title 21 authority should be one of the options under consideration to allow ICE to more effectively aid in the U.S. Government's counternarcotics efforts without having to borrow limited authorities from another agency.

b. How big a threat are these stored value cards, and do you believe Congress should act to make them subject to the same reporting requirements as checks and cash?

Stored Value Devices (SVDs) pose a threat of exploitation by terrorist and other criminals for a variety of reasons, including that SVDs can be used as a replacement vehicle in bulk currency smuggling and money laundering. According to the 2005 U.S. Money Laundering Threat Assessment, "[S]tored value cards (sometimes referred to as prepaid cards) are an emerging cash alternative for both legitimate consumers and money launderers alike."

In the case of stored value cards, it is my view that besides embracing the clear benefits to consumers, society has not caught up with considering the potential harms as well. Accordingly, I believe this issue would benefit from additional Congressional review, to include consideration of making SVDs subject to the same reporting requirements as checks and cash.

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80. A number of agencies within DHS are operating under MOUs with other agencies that were created prior to the formation of DHS. For example, ICE's has two MOUs with ATF (one for immigration and one for customs) that date to the 1980s and 1970s. Even within DHS, the current MOUs are outdated. CBP officers at the ports of entry call ICE to investigate the drug loads they discover, while Border Patrol agents call DEA when they find drug loads. In each of these cases, ICE has been trying to renegotiate these MOUs since the creation of DHS in 2003 and yet, a full six years later, it continues to operate under pre-DHS arrangements.

a. What kinds of challenges do these outdated MOUs pose to the efficient operation of DHS component agencies?

See #79a

b. What will you do if confirmed to address this issue in order to ensure that outdated MOUs are not dictating policy within DHS?

If confirmed, I would support the Department's efforts to update the MOUs.

Preparedness and Response

81. In the wake of the failed response to Hurricane Katrina, the Committee conducted a far-reaching investigation and issued a resulting report entitled, "Hurricane Katrina: A Nation Still Unprepared." In its investigation, the Committee found that the FEMA was unprepared – and never had been prepared – for a catastrophic event. In addition to a lack of basic capabilities and resources at FEMA, the Committee found other key failures by the DHS as a whole and its leadership, such as a failure to timely employ the substantial resources of the components of DHS, the lack of effective communication between the then-Secretary of Homeland Security and the then-Director of FEMA, and the lack of situational awareness both at FEMA and DHS. The Committee recommended replacing FEMA with a new, stronger, more robust federal preparedness and response agency. In September 2006, Congress passed the Post-Katrina Act to do just that.

The Post-Katrina Act, which implemented many of the recommendations from the Committee's investigation, created a new FEMA – with responsibilities, missions, capabilities, and resources far exceeding those of FEMA at the time of Hurricane Katrina. The Post-Katrina Act also requires the President to appoint a qualified individual as FEMA Administrator, clarifies that the FEMA Administrator shall serve as the President's and Homeland Security Secretary's principal advisor on emergency management issues, elevates the FEMA Administrator to the level of Deputy Secretary of the Department, permits the President to elevate the FEMA Administrator to cabinet level status during disasters, and preserves FEMA as a distinct entity within the Department.

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In testimony before the Committee in April 2008, DHS Inspector General (IG) Skinner concluded that FEMA was better prepared for a catastrophe now than it was in 2005 and found that in the nine areas reviewed by the IG's Office, FEMA had made moderate progress in five areas, modest progress in three areas, and limited progress in only one area. In other recent testimony before Congress, IG Skinner credited the Post-Katrina Act, in part, for his conclusion that FEMA was stronger now than it has ever been. In a report released on December 8, 2008, GAO similarly found that DHS and FEMA had taken action to implement many of the Post-Katrina Act's requirements.

If confirmed, what will you do to ensure the new, enhanced FEMA, as envisioned by the Post-Katrina Act, continues to be strengthened?

The Office of Policy, working with FEMA, and other components and directorates across the Department, and in consultation with federal partners, is currently supporting work on a number of initiatives as required by the Post-Katrina Act to include developing a national preparedness system, ensuring a clear Emergency Management Chain of Command, and building local law enforcement surge capacity. If confirmed, I am committed to continuing to support these efforts and to ensure that the Office of Policy's work with the Administrator, the Secretary, and the Administration to further explore ways in which the agency's abilities to perform its mission may be enhanced.

82. **"DHS 2.0, Rethinking the Department of Homeland Security" recommended consolidating all of DHS's preparedness functions into one office operated by an Undersecretary for Protection and Preparedness. DHS essentially implemented this recommendation in its 2005 Second Stage Review reorganization, creating a new Preparedness Directorate and effectively stripping preparedness functions out of FEMA (and its alter ego, the then-extant Emergency Preparedness and Response Directorate) as well as out of other parts of the Department. The Committee's report on the failed response to Hurricane Katrina found that separating preparedness from response was a mistake, and one of the most significant aspects of the Post-Katrina Act involved reuniting preparedness with response within FEMA.**

    a. **Please explain the basis for your belief in 2004 that preparedness and response should effectively be separate. Have your views on this matter changed in any way since 2004? If so, please explain. Do you believe that the 2005 Second Stage Review was true to your recommendation, or did it differ? Do you still support DHS 2.0's report recommendation which effectively split preparedness from response?**

    The premise behind the recommendation from the 2004 DHS 2.0 Task Force Report was that operations should be separate from resourcing (i.e., response should be separate from preparedness). I believe that the model that the Task Force borrowed from was the military. In the military, commanders in the field develop contingency plans and requirements that the Department of the Army resources. The basis for this is that if you are an operator, you are likely so busy with operations that thinking about long-term preparedness issues falls off the radar. Our belief at the time of the

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report was that these two related functions had to be and could be closely coordinated at the Department, that they were more-or-less two-sides to the same coin.

In considering the relationship between these two functions today and as implemented in the Second Stage Review, I believe they must be closely coordinated regardless of how they might be organized bureaucratically.

b. What will you do to ensure that the preparedness functions are properly integrated into FEMA as required by the Post-Katrina Act?

If confirmed, I will work with the Administrator, the Secretary, and other Department leaders to complete the full integration of preparedness functions into FEMA. I have been told that this effort is already well underway.

83. In passing the Post-Katrina Act, Congress decided to strengthen FEMA within DHS rather than remove it from the Department. The Post-Katrina Act recognizes that the kinds of catastrophic disasters for which the nation must prepare require resources far beyond what FEMA can effectively marshal standing alone, and the federal preparations for and response to Hurricanes Ike and Gustav earlier this year suggests that the Post-Katrina Act's goal of giving FEMA the tools to be able to effectively coordinate DHS's substantial assets has been met: in Hurricanes Ike and Gustav, the new FEMA successfully drew on resources from other components of the Department, such as the U.S. Coast Guard, ICE, TSA, and CBP, to support its response. The coordination in Hurricanes Ike and Gustav stands in sharp contrast to the response to Hurricane Katrina in which the Department's considerable law enforcement and communications assets went largely unused in the days leading up to and immediately following landfall.

In addition to the expanded resources that DHS contributes to FEMA's response capabilities, FEMA is an essential part of DHS. Through its new grants authority and preparedness activities as well as through its newly strengthened regional offices, FEMA serves as one of the principal conduits through which the Department interacts with state and local officials. Most significantly, of course, FEMA houses most of the Department's response capabilities, which are integral to the mission of the Department.

The DHS IG recently testified that FEMA is stronger now than it ever had been in its history as a result of its placement inside DHS, the implementation of the Post-Katrina Act, and other improvements made as a result of the lessons learned from Hurricane Katrina. The DHS IG's office also released a February 2009 report concluding that the removal of FEMA from DHS would be a mistake. Do you believe it would be counterproductive to pull FEMA out of DHS?

I know there has been much debate on this issue with strong arguments on both sides. The ongoing Congressionally mandated Quadrennial Homeland Security Review will

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include guidance on FEMA. A key mission of the Department is to ensure that FEMA works in its current construct as this discussion continues.

84. The Committee's report into the failed response to Hurricane Katrina found that FEMA lacked the resources needed to accomplish its mission and that resource shortages contributed to FEMA's failures in responding to Katrina. The investigation found that FEMA was especially short of the resources necessary to be prepared for a catastrophe and that there has not been sufficient investment in capabilities to be able to respond to a disaster. For the past two fiscal years, the Bush Administration asked for increases in FEMA's budget, but some believe FEMA's budget is still not adequate to accomplish its mission. For example, FEMA's Strategic Human Capital Plan 2008-2012 states that FEMA's current permanent full-time workforce is "less than adequate to address [FEMA's] growing mission requirements." Do you believe there is a need for additional increases to FEMA's budget? If so, please identify where such increases should be made?

I know that the President's nominee to head FEMA, Craig Fugate, has committed to a comprehensive review of the planned FEMA budget proposals as well as to weigh possible changes in Agency priorities before considering additional resources. If confirmed, I would support the Administrator in any such review to identify if there is a need for additional resources and where they should be made, if at all.

85. In the DHS 3.0 Report that you co-authored with James Carafano, one of your key recommendations is "empowering a national culture of preparedness." What specific policy initiatives should the Department take to encourage and support individual and community preparedness?

The Secretary has stated that preparedness is a shared responsibility and that every individual has a role to play. There are many ways of bolstering citizen preparedness that could be considered, to include:

- Establishing an official preparedness day;
- Developing and disseminating to every person in the United States a wallet-sized pamphlet on how to prepare for and respond to all hazards;
- Increasing opportunities for citizens to participate in Emergency Preparedness exercises;
- Reinvigorating the citizen preparedness efforts at DHS; and
- Developing market-based opportunities to link preparedness to preparedness-related merchandise and services.

86. After years of debate, Congress, as part of the 9/11 Commission Recommendations Act, enacted amendments to the Homeland Security Act governing the distribution of grants under two of the major homeland security grant programs, the State Homeland Security Grant Program (SHSGP) and the Urban Area Security Initiative (UASI). The grant provisions guarantee each state a minimum allocation under SHSGP, but otherwise largely leave to the Secretary's discretion the allocation of grant funds to

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states and high-risk urban areas based on a jurisdiction's relative threat, vulnerability and consequences faced from acts of terrorism and on the anticipated effectiveness of the proposed use of the grant, provided that certain basic risk factors are taken into account.

To help it allocate grants and for other purposes, DHS has developed (or contracted with others to develop) a terrorism risk model. Reflecting the difficulties in determining the true risk of terrorism, however, the model in past years has been incomplete, depended on subjective weighting and has been difficult if not impossible to externally validate.

You have been an advocate for greater risk-based allocation of homeland security grants. Given the uncertainties inherent in measuring the risk of terrorism, how, if confirmed, would you approach the issue of risk analysis and what criteria would you use to evaluate whether a proposed method for allocating grants is appropriate and adequately reflects the likely risk of terrorism? Please be specific.

There has been much progress made developing adopting, employing and refining risk analysis tools for allocating homeland security grants. Even so, risk analysis is still very much a work in progress. Last year, for example, the GAO determined that the DHS model for measuring risk treated all cities and states equally in regards to vulnerability, an assumption that reduces the DHS model to one solely based on threat and consequence assessments. Going forward our tools for assessing risk must support and be tied to our goals of increasing preparedness. The vulnerability factor in the risk equation is our preparedness function. Funding may be based on risk, which in turn must translate into grants that help buy down risk. Fundamentally, we must be better at measuring risk abatement, which means we must be better able to measure preparedness. It is this type of approach and emphasis that I would support, if confirmed.

Homeland Defense

87. Many homeland security missions rely on the combined efforts of multiple entities at all levels of government. In particular, the response to catastrophic incidents will require the close coordination of numerous federal departments and agencies. Of these, the Department of Defense (DoD), unmatched in its capabilities and the ability to deliver them, will likely a critical role. The magnitude of the DoD response to Hurricane Katrina demonstrated the necessary role of its personnel and resources, but problems of coordination raised concerns about the ability to respond to a larger incident. DHS and DoD have made considerable progress since Hurricane Katrina, but the Committee remains concerned that the response to an incident such as a terrorist nuclear attack will be impaired by problems of interagency coordination.

a. What is your assessment of the current relationship between DHS and DoD in preparing to respond to catastrophic incidents?

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In terms of the relationship, DHS and DoD have made substantial progress towards ensuring the best possible coordinated response to catastrophic incidents. DoD has assigned liaisons to FEMA Headquarters to ensure effective coordination of activities. DoD representatives are also assigned to FEMA's Regions to ensure effective military/disaster response coordination at the regional level. FEMA has a full-time representative at NORTHCOM to help coordinate disaster planning and response activities. FEMA and DOD have put into place Pre-Scripted Mission Assignments to facilitate a rapid response. Currently, FEMA has 236 Pre-Scripted Mission Assignments in coordination with 33 Federal departments and agencies, including DoD.

b. **This past year, the Commission on the National Guard and Reserves criticized DoD for not having fully adopted civil support as a primary mission, stating that as a result the nation is insufficiently prepared for catastrophic incidents. However, the Commission attributed some of the fault to DHS for failing to inform the DoD of which capabilities it will be expected to provide in response to a catastrophe, in the form of requirements which would then drive the programming and budgeting process. In your judgment, what would be the most effective process for DHS and DoD to jointly determine requirements, and develop the capabilities to fulfill those requirements?**

I believe this question should and will be considered as part of the Quadrennial Homeland Security Review (QHSR), through its Homeland Security Planning and Capabilities study, which will examine the linkage between planning, requirements determination, and capabilities development.

c. **Numerous concerns have been raised about the authorities providing for DoD's support to a civilian-led response. In particular, a recent CSIS report entitled "Managing the Next Domestic Catastrophe: Ready (or Not)?" stated that the language of HSPD-5 creates an ambiguous tension between the DHS Secretary's authority as the Principal Federal Official for coordinating federal disaster response operations, and the Secretary of Defense's mandate to maintain military readiness, stating that that the directive "gives no guidance for determining under what circumstances military readiness would trump managing the consequences of an incident in the homeland." Will you propose any clarification to authorities to improve the Department's ability to marshal all necessary federal capabilities in response to a catastrophic incident?**

I do not believe that there is a conflict between the Secretary of Homeland Security's role as Principal Federal Official and the Secretary of Defense's responsibility to maintain military readiness. I do believe that DHS will and should lead during domestic incidents and DoD will and should be expected to play a significant supporting role in catastrophes, working within the HSPD-5 framework. If that concept requires further codification to improve our nation's

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ability to marshal all necessary federal capabilities in response to a catastrophic incident, than, if confirmed, I would, working with colleagues at the Defense Department and the interagency seek to clarify these authorities in my capacity as head of policy.

d. How will you ensure the continued improvement of the relationship between the two departments?

DHS's and DOD's respective quadrennial reviews, both being conducted during 2009, present a good opportunity to continue and build on the strategic collaboration between the two Departments. In addition, DHS and DOD continue to enhance coordination and cooperation at the operational level through planning, training, exercises, and responses to actual incidents. If confirmed, I will work closely with the Under Secretary of Defense for Policy to develop enduring processes under which the two departments can coordinate on homeland security strategy and policy issues, and I will ensure that the Office of Policy continues to support efforts to increase coordination and cooperation between DHS and DOD at the operational level.

Intelligence and Information Sharing

88. What do you see as the role of the Office of Policy within DHS with respect to intelligence policy and information-sharing policy issues? How does that role differ from the role of that the Office of Intelligence and Analysis current plays with respect to intelligence policy and information-sharing policy issues?

The Office of Policy helps ensure that the needs of the DHS components and state, local, tribal, international and private sector partners who are not engaged in traditional intelligence missions are appropriately considered as DHS builds its broader information sharing environment.

89. In the DHS 3.0 Report that you co-authored with James Carafano, you write that the "lack of progress with ISE [Information Sharing Environment] is frustrating," and recommend that the President "issue an executive order establishing a specific timetable for government-wide compliance with the policies, procedures, standards, architecture, systems, and technologies laid out in the ISE Implementation Plan.

a. Why do you believe that there has been a "lack of progress" with efforts to implement the ISE?

My understanding at the time was that there were both bureaucratic and technical reasons that impeded the progress.

b. The success of the ISE Implementation Plan is dependent upon support from relevant Departments and agencies, including DHS. As Assistant Secretary for Policy, will you commit to fully cooperating with the Program Manager

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for the Information Sharing Environment (PM-ISE), and encouraging other officials within DHS to do the same?

If confirmed, I will commit to working with the Program Manager for the ISE.

90. In your book chapter entitled "Finding the Enemy Within: Towards a Framework for Domestic Intelligence," you write that "the increase in domestic intelligence collection has moved forward with little public discussion, no apparent framework, and little oversight. This raises the prospect of an emerging domestic intelligence 'system' where all of the pieces don't fit together, pieces are missing or redundant, and there is no framework for protecting individual liberties."[9]

a. What do you believe the framework for domestic intelligence within the United States should look like?

A framework for domestic intelligence would help clarify roles, responsibilities, and processes. Specifically, I believe such a framework would answer the following questions: What domestic intelligence can the government collect, by whom, how can it be collected, who can have access to that intelligence, under what circumstances can the intelligence be shared, and what oversight is needed to maximize performance while also minimizing abuse, misuse, and mistrust to ensure the protection of privacy and civil liberties?

b. What do you believe are the appropriate roles of (i) DHS, (ii) the DNI, (iii) the FBI, and (iv) state, local and tribal law enforcement (including fusion centers) within this framework?

The purpose of the chapter you refer to was to raise the concern that these roles had not been defined, but if confirmed, I look forward to participating in the definition of DHS's role and the stakeholders that the Department represents.

Cyber Security

91. For years there have been significant vulnerabilities in government and private cyber networks. Vulnerabilities have led to massive identity theft, monetary loss, and leaks of classified information, and have had an effect on all levels of government and throughout industry. Additionally, cyber threats to Supervisory Control and Data Acquisition (SCADA) systems – which control industrial processes – have the potential to cause devastating impacts on critical infrastructure, including the electric grid and the water supply.

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[9] David Heyman, "Finding the Enemy Within: Towards a Framework for Domestic Intelligence," in Bert B. Tussing, ed., *Threats at Our Threshold: Homeland Security in the New Century*, Washington D.C., Center for Strategic and International Studies, 2000, pg. 152. As of April 23, 2009: http://www.csis.org/images/stories/HomelandSecurity/071022_Chap4-FindingTheEnemyWithin.pdf

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a. Please discuss your familiarity and experience with cyber security issues.

My familiarity and experience with cyber security issues derive from my technical background in the private sector working as a computer programmer and systems engineer; my government experience in the White House Office of Science and Technology Policy working on domestic and international issues ranging from Y2K to misuse of the internet, and at the U.S. Department of Energy working on issues from export control and cryptography to critical infrastructure protection and grid reliability; as well as my public policy/ homeland security work at the Center for Strategic and International Studies.

b. Given the respective roles of the Office of Management and Budget (OMB), the Department of Defense, the National Security Agency, and other agencies, what do you believe the role of DHS is with regard to cyber security?

DHS currently has four cybersecurity missions: fighting cyber crime, protecting federal civilian networks, protecting non-federal critical information infrastructure, and defending DHS's networks. Title II of the Homeland Security Act, the 2003 White House National Strategy to Secure Cyberspace, and Homeland Security Presidential Directive 7 published later that year made the Department of Homeland Security a focal point within the federal government to manage cybersecurity. National Security Presidential Directive 54 / Homeland Security Presidential Directive 23 gave DHS specific responsibilities related to cybersecurity as part of the Comprehensive National Cyber Initiative. A recent White House cybersecurity review, however, that is due out at the time these questions are being answered, is likely to redefine federal roles with regard to cyber security.

c. Do you believe additional federal regulation or enhanced private sector cooperation is needed to ensure that private sector companies act to protect critical cyber infrastructure?

The CSIS Commission on Cybersecurity for the 44th President, which studied this question, recommended focusing on revitalizing the public-private partnership with more clearly defined roles, an emphasis on building trust among the partners and a focus on operational activities, as a key step to making progress on cybersecurity. Even so, the Commission further advised that voluntary action would not be enough, and that the government must set minimum standards for securing cyberspace to ensure continuity of critical services following an attack. I believe a combination of policy tools will be necessary to protect cybersecurity, each context specific, including the options developed and described by the CSIS Commission.

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92. In the previous Administration, many distinct components of DHS played a role in the Department's cyber security mission including but not limited to the Office of Cyber Security and Communications, the National Cyber Security Center, and the Office of Policy. These overlapping roles often caused confusion both within and outside of the Department.

a. What do you believe are the appropriate roles and responsibilities of the Assistant Secretary for Policy with regard to cyber security?

There are a number of places within the Department where cyber security issues are considered. As such, the Office of Policy can play a leadership role in developing and coordinating policy-making at DHS, within the interagency policy coordination processes led by the White House, and on multi-lateral cyber security efforts with the private sector and other Federal departments and agencies. The Office of Policy's role should be focused on policy and informed by operations.

b. Who do you believe is lead official responsible for cyber security within the Department?

There may be different leads for different missions. The lead official for cyber security is the Assistant Secretary for Cyber Security and Communications in the National Protection and Programs Directorate.

c. Do you believe that the Department has sufficient authorities to carry out its cybersecurity mission?

Determining if the Department has sufficient authorities will depend on the final disposition of DHS' roles and responsibilities, which will be made clear when the results of the White House cyber security study are released.

Chemical Security

93. Congress authorized the Department's chemical site security program, now known as the Chemical Facility Anti-Terrorism Standards (CFATS), as part of the Department of Homeland Security Appropriations Act, 2007 (P.L. 109-295). While the original authorization for the program expires this year, it appears that both Congress and Secretary Napolitano are committed to keeping the program going.

a. What is your assessment of the CFATS program to date?

Based on my current knowledge of the CFATS program, I believe that it has the potential to be an effective program for addressing the security risks associated with the Nation's high-risk chemical facilities. I understand that CFATS has already begun to improve security at high-risk facilities, and has the potential to continue to enhance security and protect communities as the program matures.

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b. **Do you believe the CFATS program needs any significant modifications and what impact do you believe any such programmatic changes would have on the existing program?**

Currently, CFATS is slated to expire in October 2009 if not reauthorized by Congress. If confirmed, I plan on receiving additional briefings on the program's effectiveness and functionality. I am committed to working with Congress if I am confirmed to determine whether modifications are required to help improve the program.

c. **Do you believe the CFATS program should be expanded to include drinking water and wastewater facilities?**

If water and wastewater treatment facilities are determined to be high-risk due to the presence of chemicals of concern, they should be considered to be included in the CFATS program. This would ensure they are secured in a manner that is consistent with the CFATS risk and performance-based framework.

d. **Do you believe the CFATS program should be harmonized with the MTSA chemical facility security authorities? If so, how?**

Because CFATS and MTSA both address facility and chemical security, there should be harmonization, where applicable and appropriate, between these programs. I am aware that there are internal discussions taking place on this topic and if confirmed, will ensure my office supports this effort as appropriate.

e. **What role do you expect your office to play regarding a reauthorization effort and what, if any, challenges do you foresee in this effort?**

The Policy Office would continue to work with the Office of Infrastructure Protection, the office in DHS with responsibility for implementing CFATS.

94. **The authorizing language and subsequent regulations for the CFATS program generally shields data about the program, including site vulnerability assessments and security plans, from public disclosure, although it does allow for some information sharing with certain state and local government officials possessing the necessary security clearances. This information is given a new designation – Chemical Vulnerability Information or CVI – and is subject to strict controls.**

a. **Do you think the CVI provisions strike the correct balance between protecting sensitive information and allowing for adequate accountability for the CFATS program and information for local officials and first responders?**

My understanding is that CVI was specifically designed to address information sharing and protection concerns surrounding high-risk chemical facilities.

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Individuals in possession of CVI must verify that the individual with whom the CVI will be shared is both: (1) a CVI Authorized User (i.e. successfully completed CVI training and been issued a CVI Authorized User number by DHS) and, (2) has a "need to know" that specific CVI. If confirmed, I would want to further explore the CVI provisions with an eye towards better understanding perspectives of both stakeholders in industry, and local officials.

b. How should the CVI program relate to the broader effort to create a more unified framework for all controlled unclassified information to allow for more effective information sharing?

I support the government-wide effort to create a more unified framework for all controlled unclassified information. CVI is another iteration of controlled unclassified information and as such is well-suited to be aligned with the broader effort.

Science and Technology

95. In November 2002, the National Strategy for Homeland Security declared, "The federal government is launching a systematic national effort to harness science and technology in support of homeland security. We will build a national research and development enterprise for homeland security sufficient to mitigate the risk posed by modern terrorism. The federal government will consolidate most federally funded homeland security research and development under the Department of Homeland Security to ensure strategic direction and avoid duplicative efforts. We will create and implement a long-term research and development plan that includes investment in revolutionary capabilities with high payoff potential."

That same month, Congress passed the Homeland Security Act, which established a Directorate of Science and Technology (S&T) to produce a national strategic plan and policy for homeland security research and development; the plan was intended to identify "priorities, goals, objectives and policies for, and coordinating the Federal Government's civilian efforts to identify and develop countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats." Subsequently, the DHS Directorate of Science and Technology undertook extensive efforts to develop a government-wide plan and policy. The Committee has been informed that the S&T Directorate produced two completed versions – one in 2005 and a second in 2007. On both occasions, however, DHS was unable to obtain concurrence from the other relevant departments, and neither draft was issued.

Since then, the government-wide coordination process has, essentially returned to the pre-9/11 status quo. The departments with the largest R&D budgets – DHS, the Department of Defense, and the Department of Health and Human Services – develop and carry out their strategic research and development (R&D) plans and otherwise coordinate their efforts through interagency groups at the White House. To its credit,

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the S&T Directorate has produced a "Five Year Research and Development Plan" to coordinate R&D investments by DHS agencies.

a. **Should the Department make a new effort to develop, with other departments, a National Strategic Policy and Plan for Homeland Security Research and Development?**

In general, R&D spending alignment will increase cost efficiency, provide consistent strategic direction, and improve integration in homeland security planning. As such, and given the forthcoming completion of both the White House-led national security review and DHS-led Quadrennial Homeland Security Review, I would support consideration of a new effort to develop a National R&D Strategy for Homeland Security, if confirmed.

b. **What near-term options exist for finalizing a government-wide plan to guide homeland security R&D spending in 2009, and how can DHS contribute to improving the outcome of R&D spending by other departments on homeland security missions?**

I am unaware of efforts regarding government-wide plans to guide homeland security R&D spending in 2009.

96. **Section 1104 of the 9/11 Commission Recommendations Act made the DHS Secretary responsible "for ensuring that domestic chemical, biological, radiological, and nuclear detection equipment and technologies are integrated, as appropriate, with other border security systems and detection technologies." In 2007, S&T produced a Strategic Plan and Five Year R&D Plan to guide R&D spending by DHS agencies, but those plans lacked specifics and concrete performance metrics and did not fully comply with OMB and GAO guidelines.**

a. **What is your initial assessment of the steps the S&T Directorate should take in the near-term to produce a complete strategic plan and five-year plan for R&D investments that state specific goals, link projects to strategic objectives, are based on operational requirements, and include concrete performance metrics?**

It is my understanding that the S&T Directorate issues a 5-year plan each year, identifying funding, deliverables and performance targets for S&T programs and projects – this plan provides metrics against which the progress of R&D programs is measured. The Office of Policy is implementing the Strategic Requirements Planning Process (SRPP), which develops measurable strategic objectives, and identifies gaps in our ability to meet those objectives (including associated R&D gaps). S&T also has a process for generating R&D-related requirements, which is known as the Capstone IPT process. Policy is working with the S&T Directorate to coordinate the SRPP with S&T's Capstone IPT process; formally linking these two processes will enable S&T to better link its R&D requirements and

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performance targets to strategic objectives identified in the SRPP. In addition, the Acquisition Program Management Division within the Office of the Under Secretary for Management is working with DHS components to establish and improve operational requirements for DHS programs as part of the Acquisition Management process. Having a good operational requirements baseline will enable S&T to develop specific R&D goals which address DHS operational requirements.

b. **What is your initial assessment of steps the Department could take to develop interim metrics to measure the progress or outcome of R&D and to expedite the development of operational capability requirements that can be used to help set R&D investment priorities across the Department?**

I believe the steps being taken in #96a can and are intended to help link operational capability requirements to R&D investment priorities.

97. **The Domestic Nuclear Detection Office (DNDO) and S&T operate nearly identical organizations for managing R&D investments at the National Laboratories and academic institutions. DNDO manages R&D to counter nuclear and radiological threats; the S&T Directorate manages R&D investments focused on all other Weapons of Mass Destruction (WMD) threats and for other homeland security missions. DNDO and S&T coordinate their planning; however, as evidenced by S&T's work on an integrated chemical, biological, radiological, and nuclear detection sensor, operating separate R&D organizations creates the risk of duplication and may undermine coordination with the National Laboratories.**

a. **What is your initial assessment of near-term steps that DHS could take to improve the Department's capacity to ensure that "domestic chemical, biological, radiological, and nuclear detection equipment and technologies are integrated, as appropriate, with other border security systems and detection technologies?**

DHS is in the process of developing a new strategic requirements process. Its purpose is to define cross-Departmental resource needs based on strategic level capabilities necessary to achieve the Department's strategic goals and priorities. The Department utilizes Integrated Planning Guidance (to DHS Components, directorates and offices) as the culmination of the DHS strategic planning process to ensure that key goals and objectives under DHS jurisdiction are incorporated into Departmental priorities in a timely manner. Based on what I know, DHS may be able to improve the Department's capacity to ensure that domestic chemical, biological, radiological, and nuclear detection equipment and technologies are integrated, as appropriate, with other border security systems and detection technologies, through this new process.

b. **What is your initial assessment of the strengths and weaknesses of the Department's decentralized approach to managing R&D investments in**

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WMD countermeasures and detection technologies and the value added by separate, and at times competing, R&D organizations?

Based on my view outside of government, it is not clear that S&T and DNDO are necessarily competing, or that there are inherent inefficiencies; there does not appear to be any great advantage or disadvantage to decentralized R&D, other than separate or combined budgeting and reporting systems. Under S&T, R/N R&D would simply be another portfolio. What is important is that there exists a capacity within the Department to ensure that all R&D programs, regardless where situated, are effectively integrated, as appropriate, into operations.

c. **In your view, does the present approach enhance or complicate the Department's working relationship with the National Laboratories and universities that conduct DHS-sponsored R&D on WMD detection technologies and countermeasures, and what options do you see for minimizing duplication and improving the outcome of those investments?**

If confirmed, I would support efforts to review the Department's approach to R&D, to include an assessment of relationships with key performers.

98. **TSA has been working with S&T on a program to determine how much threat material, stored in various places within a commercial aircraft, could take down an airplane. The Department could then use this information to develop an updated standard for explosives detection equipment used at airports. It is currently using a standard based on (and modified as additional data has become available) data from Lockerbie bombing more than 20 years ago. To date, the Department has accumulated data from testing on one, older airframe. S&T has strongly suggested DHS acquire data from tests and modeling on additional airframes, in order to accumulate more comprehensive data.**

a. **Do you agree that DHS should pursue a more comprehensive study?**

Yes. Two factors in particular contribute to the need to pursue a more comprehensive study. First, the terrorist threat to commercial aviation has expanded to include improvised homemade explosives (HME) and with this, so to has the need to understand the damage that small quantities of these non-conventional explosives could do to commercial aircraft. And second, as the design and development of commercial aircraft has evolved to include more diverse air frames built from newer and more sophisticated composite materials, the need for a more comprehensive study has also increased.

b. **DHS received $1 billion for new explosive detection equipment for airports as part of the stimulus bill passed earlier this year. The equipment purchased with the stimulus funding will have improved capabilities over existing equipment, but it will still be measured against the explosives detection standard developed almost two decades ago. Do you believe the development**

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of a modern standard should be a priority for the Department? If so, how quickly do you think this can be done, and would you recommend DHS commit the necessary resources to developing the new standard within a specific time frame?

It is unclear to me, based on what I know, if a new standard is needed. If confirmed, I would support efforts at the Department to review the current state-of-affairs regarding explosives detection standards so as to better understand the need for updating them in the context of future investments.

99. Do you have a view as to the direction that R&D in mass transit security technology should be heading? Are you satisfied with the Department's current policy regarding the use of canine units to detect explosive materials? Should the government be developing new technologies to detect explosives? Are there additional technologies that the Department should be developing and/or deploying to help secure our mass transit systems?

In general, I believe an opportunity exists for the nation to gain significant homeland security benefit from the planned investment in national infrastructure. R&D should focus on enhancing the design of mass-transit systems based on intrinsic security and improved operational resiliency. Particular emphasis should be placed on priority high-risk concerns, such as underwater and underground assets and systems.

In addition, it is my view that highly trained and certified canine teams continue to be one of the more effective and highly mobile explosives detection methods in the transit environment. Previously, it was my understanding that the demand for canine units had surpassed the availability of certified teams. If confirmed, my view on the Department's current canine policy would be informed by a careful consideration of a number of factors, to include existing capability, need, cost, deployment plans, risk factors, and available alternatives.

100. While at CSIS, you were involved with the Commission on Scientific Communication and National Security, which produced a white paper on access to foreign scientists and engineers to the United States. The paper argues that security controls that are applied in an indiscriminate manner will be ineffective at best, if not counterproductive, particularly with regard to international exchange on science and technology.[10]

a. Recognizing the important contributions of foreign students and scholars to the United States, how would you approach improving the screening of foreign nationals proposing to study or do research in the United States?

[10] Commission on Communication and National Security, "Security Controls on the Access of Foreign Scientists and Engineers to the United States," Washington D.C., Center for Strategic and International Studies, October 2005.

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Streamlined screening to facilitating visits of foreign scientists and technologists is critical. If confirmed, I would work closely with my colleagues at the State Department and in the law enforcement and intelligence communities, particularly because the screening process is very much an interagency process. It is my view that the Visa Mantis program, which is the primary program for screening scientists and technologists, needs to have sufficient resources. The Technology Alert List, which is a key part of the Mantis program, should also be reviewed periodically to ensure that it is as broad as it needs to be to cover our security interests but not so broad that it covers mundane technology and needlessly slows down our screening process. Lastly, as the process of coming to America improves, communications to convey these improvements must also be a priority, particularly to address the challenges of perception, which any many ways are more difficult to improve than our practices.

b. As Assistant Secretary for Policy, what will you do to ensure that tools such as the Technology Alert List and the Visa Mantis program are promoting the nation's homeland security interests?

(See #100a)

Biosecurity

101. Over the past decade, Congress has appropriated significant funding to DHS and the Center for Disease Control (CDC) to address a potential pandemic, but no border screening technologies, such as thermal imaging scanners, or point-of-care diagnostic tools are being utilized for this outbreak. Enhanced technologies could help contain an outbreak if they can quickly identify those with the virus. Do you believe that not employing these technologies is a gap in our preparedness and response?

Secretary Napolitano has made clear that DHS policy in this area will be guided by what the best science available tells us – which is the approach the Department has taken in the current H1N1 flu outbreak. Research shows that technologies like thermal imaging incur a large rate of false positives in the context of screening at the border—people who are sick, but not with the disease of interest; or people who are well, but nervous, stressed, running because they are late, or perhaps just over-dressed. Detaining such individuals in turn leads to operational challenges to include: occupying limited resources, slowing traffic at the border, questions regarding detainment policy, questions regarding procedures for clearing someone to be healthy—and are further complicated by the possibility of stigmatizing detained individuals based on human perceptions, fear, and uncertainty. In general, it is my understanding that these type of technologies offer little practical benefit of containing the spread of viruses, particularly as many viruses are contagious in their sub-clinical form. As was the case with the H1N1 outbreak, often by the time that outbreaks have typically been identified, in countries as large and porous as the United States, border controls buy little time for slowing the spread of the virus.

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102. In an opinion piece published in 2004, you stated that "the largest shortcoming in our bio-defense strategy [is] the lack of a single authoritative federal entity to ensure national leadership and coordination for bio-security."[11]

a. Did you still agree this statement? If so, which Department or agency should serve as that single authoritative federal entity?

In the 2004 opinion piece, the single authoritative federal entity I was referring to at the time, was leadership at the White House. Since then the Senior Director for Bioterrorism on the Homeland Security Council, a position which has been filled by a number of individuals since then, has provided significant leadership in terms of developing and implementing the nation's first pandemic flu plan, advancing the nation's first net assessment for biological preparedness, and advancing the nation's R&D agenda and associated issues.

b. Since that time, what progress, if any, do you believe the federal government has made in coordinating the efforts of multiple agencies and stakeholders in ensuring protection of the nation against a biological attack?

As noted in #102a, the development and implementation of the nation's first pandemic flu plan—a plan that included federal roles and responsibilities tied to implementation deadlines—marks significant progress in coordinating the efforts of multiple agencies and stakeholders in ensuring protection of the nation against a biological attack.

c. What do you see as DHS' role in implementing policy that promotes coordination amongst the federal government on the topics of biosecurity and biodefense?

First, DHS's primary role in implementing policy is in leading the Federal response to an incident such as H1N1 Influenza, in coordination with the Centers for Disease Control and other Departments and Agencies. Second, on a more systematic basis, DHS provides an ongoing foundational understanding of the biological threats (and vulnerabilities) that are a priority for action. In this context, DHS contributes significantly to national policy development.

103. In your October 27, 2005 Congressional testimony before the House Homeland Security Committee, Subcommittee on Management, Integration, and Oversight, you stated it was the responsibility of the Secretary of Homeland Security to coordinate "domestic Federal operations to prepare for, respond to, and recover from a biological weapons attacks" but that "the ability of the DHS Secretary to lead in this regard was hampered not only by the absence of clear leadership in biodefense, but also by the fragmentation of key responsibilities both within and outside DHS.

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[11] David Heyman, "America's Patchwork of Preparedness in Bio-Defense Reflects a Failure of Leadership," *McGraw-Hill Homeland Security*, June 2004, pg. 46.

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a. **What would you do, as Assistant Secretary, to address these issues within DHS?**

Given that nearly four years have passed since that testimony and much has changed since then, if confirmed, and in the context of after-action reviews regarding the recent H1N1 crisis, I would seek to include in any such review the Secretary's current statutory obligations and ability to meet them.

b. **Is legislation needed to address the "fragmentation of key responsibilities both within and outside DHS"?**

If in reviewing the Secretary's statutory obligations and ability to meet them, it became clear that additional authorities were needed, I would work with Congress to support the development of any legislation.

c. **How do you plan to leverage the Biological Threats & Biodefense Policy Unit within the Office of Policy Development in formation of that policy?**

The Department of Homeland Security maintains a number of competencies to address biological threats. Those competencies reside across the Department principally in the Office of Health Affairs, FEMA, Science and Technology, Infrastructure Protection, and Intelligence. The Biological Threats & Biodefense Policy Unit will serve as the principal policy development office and chief integrator in the Department on matters related to bioterrorism and biological preparedness.

d. **How will the strategic policy planning your office undertakes on the topics of biodefense and emergency preparedness and response differ and complement those of other DHS offices, such as the Office of Health Affairs?**

The DHS Strategic Planning Office oversees the strategic planning process at the Department, which helps to ensure that key goals and objectives under DHS jurisdiction are incorporated into Departmental priorities in a timely manner. The strategic planning process enables Departmental leadership to prioritize amongst competing needs. The Office of Health Affairs, FEMA, Science and Technology, Infrastructure Protection, are some of the many components that will provide input to this process.

104. The Report of the Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism highlights the importance of international capacity building and cooperation when it comes to biosecurity and biodefense. You were active in this field at CSIS where you co-lead the Biological Threat Reduction Consortium that sponsored international Biosecurity workshops.

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How should DHS engage the international community to enhance our nation's biological defense, to prevent natural emerging disease threats or the intentional release of a potential pandemic biological agent?

I know that DHS has led the nation's efforts to perform a net assessment on biological preparedness and that a number of promising ideas on international engagement are being considered as part of this process. From my perspective, some of the most important opportunities lie in engaging non-traditional stakeholders such as the law enforcement, medical, veterinary, public health, scientific research, industry, and disaster management communities on an international level. Each of these communities play an essential role, each with has its own priorities, issues, and sets of international relationships.

International engagement to reduce biological threats must deal with nongovernmental communities such as these as well as with national governments. Such engagement can help bridge differing perceptions of the threat, expand capabilities through exchange of best practices, and facilitate greater connectivity of key relationships during crises. DHS could support such engagement through international S&T collaborations and, in particular, through collaborative work on developing biodefense countermeasures.

REAL ID

105. The REAL ID secure driver's licenses program mandated by the REAL ID Act of 2005 is currently run out of the Office of Policy. Implementation of the program has raised a number of concerns, including the high costs incurred by states and the potential privacy and civil liberties implications.

a. Do you believe that the Office of Policy has effectively implemented the REAL ID program?

Secretary Napolitano has previously expressed her concerns that the REAL ID program as currently structured imposes significant costs on the States and was developed without sufficient consultation with the States. She has also expressed her belief that it is important to increase the security of State driver's licenses, and that it is possible to do so in a manner that mitigates risks to privacy.

The Office of Policy has worked to set up the existing regulatory framework and to provide guidance to the States for how to implement the REAL ID Act. At the Secretary's direction, this team is also now working closely with congressional staff and other interested entities, such as the National Governor's Association, to provide technical assistance and engage in productive discussions on how best to address the concerns with the current legislation while preserving the intent of the 9/11 Commission recommendations and increasing the security of our driver's licenses.

b. Do you believe the Office of Policy is the appropriate place from which to manage this program within the Department?

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The primary role of the Office of Policy is to develop policy and provide advice to the DHS leadership team. There may be rare instances where the Office of Policy might assume a Program Manager role in support of the implementation of specific projects or programs—for example, for incubating a new program that required coordination across multiple components—but as a general principle, I believe policy should do policy, not programs or operations. In the case of REAL ID, State Departments of Motor Vehicles are in fact the operational entities of the Program. DHS is not accepting applications or producing identification cards. The Department's role is to consider and resolve a number of very significant policy interests and issues at play. The Office of Policy is well-positioned to identify those issues, obtain direction from the Secretary where warranted, and rapidly resolve them as needed.

c. **Do you believe that the current program takes adequate steps to protect the privacy of individuals whose personal information may be collected and stored?**

I recognize that the REAL ID program has been the subject of significant controversy and concern for the States and the privacy community. I believe that it is important to address the 9/11 Commission recommendations, and that it is possible to do so in a manner that mitigates risks to privacy. If confirmed as Assistant Secretary, I will actively support these efforts to determine how best to fulfill the need for secure identification in the United States while effectively protecting privacy interests.

d. **What, if any, changes would you make to the implementing regulations for the REAL ID Act?**

Secretary Napolitano has previously expressed her concerns that the REAL ID program as currently structured imposes significant costs on the States and was developed without sufficient consultation with the States. She has also expressed her belief that it is important to increase the security of State driver's licenses, and that it is possible to do so in a manner that mitigates risks to privacy. If confirmed, I will support the Secretary in developing appropriate changes, as needed.

e. **What, if any, changes do you believe Congress should consider making to the REAL ID Act?**

As discussed, Secretary Napolitano has expressed belief that the REALID program can be restructured so that states can issue secure licenses but in a manner that all states can support and maintain. I will, if confirmed, work closely with the Department's senior leaders, state, local and tribal officials, and all interested parties to determine what changes to existing legislation or regulation may be appropriate and provide any technical guidance to Congressional staff as appropriate.

f. **How will you respond if on January 1, 2010, the date on which the current waivers expire, states refuse to comply with the requirements of the REAL ID Act?**

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The Secretary has committed to consulting with Governors (as well as associations such as the National Governors Association and the American Association of Motor Vehicle Administrators) to assess all aspects and develop recommendations for the issuance of secure identification. If confirmed, I will support her in this effort.

Privacy, Civil Rights, and Civil Liberties

106. Many aspects of the Department's work implicate critical privacy and civil liberties concerns. Recognizing the importance of considering these issues and giving them ample weight, Congress included in the Department a Privacy Officer and an Officer for Civil Rights and Civil Liberties to provide input as policies and programs are developed.

a. If confirmed, how would you evaluate and to what extent would you weigh civil liberties, civil rights and privacy concerns when developing Department policies and reviewing their implementation?

Part of the DHS statutory mission is to ensure that civil rights and civil liberties are not diminished by programs and policies intended to protect the Nation. In evaluating Department policies and their implementation, if confirmed, I will ensure that this principle is followed and that policies comply with all Constitutional, statutory, and other provisions for the protection of civil rights and civil liberties, the Privacy Act, and E-government privacy requirements.

b. If confirmed, how do you envision your relationship with the Chief Privacy Officer? With the Officer for Civil Rights and Civil Liberties?

If confirmed, I will work closely with the DHS Privacy Officer to ensure all Office of Policy initiatives comply with privacy laws and policies, and implement the DHS Fair Information Practice Principles. I will also work closely with the Officer for Civil Rights and Civil Liberties to ensure that all policies and their implementation comply with Constitutional, statutory, and regulatory protections of civil rights and civil liberties, and prohibitions against improper profiling on the basis of race, religion or ethnicity.

c. Will you ensure that both offices are involved early in the development of programs so that potential privacy and civil liberties issues can be identified and addressed early?

Yes.

107. The Intelligence Reform and Terrorism Prevention Act of 2004 created a government-wide Privacy and Civil Liberties Oversight Board to ensure that liberty concerns are appropriately considered in the implementation of laws and policies to protect the Nation against terrorism. The Board is empowered to advise government

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officials at the front end, and to review implementation of policies once they are adopted. The Board was reauthorized in somewhat different form in the 9/11 Commission Recommendations Act, although the new Board is not yet operational.

a. If confirmed, how would you view the role of the Board in the development of DHS policies once the Board is operational?

I believe the Privacy and Civil Liberties Oversight Board is currently still inactive. I believe the Board's advisory capacity will allow the Department to leverage the existing expertise of the DHS Privacy Office and Office for Civil Rights and Civil Liberties and develop proposed legislation, regulations, and policies related to efforts to protect the Nation from terrorism in a manner which protects privacy and civil liberties.

b. Are you committed to working with the Privacy and Civil Liberties Oversight Board as the Department develops and implements its policies?

Yes.

IV. Relations with Congress

108. Do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

Yes.

109. Do you agree, without reservation, to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?

Yes.

110. The 9/11 Commission Report recommended that Congress create "a single, principal point of oversight and review for homeland security." What challenges do you foresee for a Deputy Secretary taking over a department that had direct engagement with, by some estimates, as many as 108 committees and subcommittees in the 110th Congress? How will you deal with this issue?

(I think you meant the Secretary in your question.)

The challenge for the Secretary is building 'One DHS' with a shared vision and integrated, results-based operations. The challenge for Congress is supporting this.

If confirmed, I will support the Secretary and the Deputy Secretary in this endeavor by being responsive to Congress and working closely with the Committee.

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V. Assistance

111. Are these answers your own? Have you consulted with DHS or any interested parties? If so, please indicate which entities.

In an effort to be as forthright and responsive as possible to the Committee in the time available, I have participated in normal pre-confirmation consultations with DHS staff. These consultations were used to inform my knowledge regarding the background, current operations and potential policies for the Department. However, and in all cases, these answers are my own, and are based on my understanding and consideration of the information provided to me.

AFFIDAVIT

I, DAVID FREDERICK HEYMAN, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

David Heyman

Subscribed and sworn before me this 11 day of May, 2009.

Robin M. Fletcher

Notary Public

Robin M. Fletcher
Notary Public, District of Columbia
My Commission Expires 8-14-2009

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

May 4, 2009

The Honorable Joseph I. Lieberman
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510-6250

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by David F. Heyman, who has been nominated by President Obama for the position of Assistant Secretary for Policy at the Department of Homeland Security.

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

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

Sincerely,

Robert I. Cusick
Director

Enclosures

REDACTED

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Senator Daniel K. Akaka
Additional Questions for the Record
Nomination Hearing of David F. Heyman
May 13, 2009

1. **In 2008 and 2009, the Government Accountability Office (GAO) reported that the Domestic Nuclear Detection Office (DNDO) is operating without a strategic plan for its overarching nuclear detection efforts (GAO-08-999T and GAO-09-257). GAO recommended that the Department of Homeland Security (DHS), in coordination with the Department of Defense, Department of Energy, and Department of State, "develop a strategic plan to guide the development of a more comprehensive global detection architecture."**

   As one of the interagency leaders for DHS, how do you intend to work with DNDO and others to ensure that they have a suitable, governmentwide strategy for nuclear detection?

   The Domestic Nuclear Detection Office (DNDO) was established in 2005 to improve the Nation's capability to detect and report unauthorized attempts to import, possess, store, develop, or transport nuclear or radiological material for use against the Nation, and to further enhance this capability over time. There are over 70 programs across multiple federal departments—Department of Defense, Department of Energy, Department of Homeland Security, Department of State, Department of Justice and the Nuclear Regulatory Commission—that comprise the Global Nuclear Detection Architecture (GNDA)—the multi-layered "system of systems" deployed at home and abroad to keep illicit nuclear and radiological materials out of the United States. I understand that in order to improve coordination and integration of government-wide efforts, DNDO is initiating an overarching strategic planning effort for the GNDA in FY 2009.

   As head of the Office of Policy, if confirmed, I would support the DNDO's efforts to develop a suitable government-wide strategy for nuclear detection, as appropriate, and as part of a number of efforts that are ongoing within the Office of Policy. I believe the Office of Policy is engaged in two key efforts that could help DNDO in this regard. First, the Office of Strategic Plans within the Office of Policy retains expertise in strategic planning and is responsible for development of the DHS Strategic Plan and the Strategic Requirements Planning Process, which focus on setting overall goals, objectives, and capability requirements for key Departmental activities. Second, the Office of Policy leads the Department's Congressionally required Quadrennial Homeland Security Review (QHSR), which I believe will take a broader view, by comprehensively examining the nation's homeland security strategy and making recommendations regarding critical elements of the long-term homeland security strategy and priorities, to

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include providing guidance on the programs, assets, capabilities, budget, policies, and authorities of the Department of Homeland Security.

2. **As you know, the National Applications Office (NAO) was created in DHS to handle requests for classified satellite information for civil, homeland security, and law enforcement purposes.**

   What role do you foresee the Office of Policy playing in ensuring that strong privacy and civil rights protections are incorporated into the NAO's and stakeholders' use of this satellite information?

   As I understand it, all anticipated NAO activities are consistent with existing legal authorities, including the Homeland Security Act which states that part of the DHS statutory mission is to ensure that civil rights and civil liberties are not diminished by programs and policies intended to protect the Nation. As such, the Office of Policy, in evaluating Department policies and their implementation, is not only obligated but also committed to ensuring that this principle is followed. I anticipate that this obligation would be supported by the other elements of the Department with oversight and advisory functions, such as the DHS Inspector General, the Chief Privacy Officer, and the Officer for Civil Rights and Civil Liberties.

3. **As you know, a culture of planning at DHS could further the Department's ability to prevent and respond to crises. At a minimum, this culture requires that strategic and operational plans are linked across DHS. Additionally, the Department's personnel should receive the appropriate training and actively participate in planning efforts.**

   How will your Office of Strategic Plans, working with the Director of Operations Coordination and Planning, help foster this culture across DHS and within the components?

   It is important to instill a culture of planning at DHS and across the homeland security enterprise. The Office of Strategic Plans and the Office of Operations Coordination and Planning both have important roles to play in developing and sustaining this culture. The Office of Strategic Plans engages the Department in strategic planning activities such as development of the DHS Strategic Plan and the Strategic Requirements Planning Process (SRPP), which focus on setting overall goals, objectives, and capability requirements for key Departmental activities. Both the Strategic Plan and the Integrated Planning Guidance that results from the SRPP drive increased awareness and improvements in long-term planning across the Department. The Office of Operations Coordination and Planning conducts planning for specific scenarios, both on an interagency basis through the Incident Management Planning Team and for non-routine, multi-component activities within the Department. As I understand it, these planning

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processes are complementary and mutually supportive. As such, development of these DHS-wide planning processes has encouraged DHS components to enhance their own planning processes. For example, a number of DHS components are working with the Office of Strategic Plans to link their requirements and budget planning activities to the outputs of the SRPP. The Office of Strategic Plans also administers the Quadrennial Homeland Security Review (QHSR) with participation from across DHS, including the Office of Operations Coordination and Planning. As I understand it, the recently launched 2009 QHSR includes studies on how DHS can mature planning within the Department and across the homeland security enterprise, and on DHS Strategic Management. These studies will examine the linkages between strategic and operational planning, and are intended to help chart a course for linking planning with programming, budgeting, investment and acquisition within DHS. If confirmed, it will be a priority of mine to oversee the Department's Quadrennial Homeland Security Review, including efforts to assess and help further establish a culture of planning at DHS and across the homeland security enterprise.

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Prepared Statement of Marisa J. Demeo
May 13, 2009

I would like to introduce my parents, Palmer DeMeo and Emilia Mauras Demeo, my sister Priscilla, my cousin Melissa Milam and her husband Terrell, and my partner Angela Arboleda, who works for the Senate Majority Leader. Many other people have come here today to show their support for my nomination from the court, the U.S. Attorney's Office, the Public Defender Service, and others who serve the community at the national and local level. Although time does not permit me to mention each of them individually, it is this broad support that creates in me the sense of a responsibility to serve the public and to do so fairly and impartially.

I would like to thank you, Mr. Chairman, and members of the Committee for scheduling this hearing and taking the time to consider my qualifications for the position of Associate Judge. It is a true honor to have the privilege to appear before this Committee today. I would like to thank the Committee's staff as well for their hard work in collecting and reviewing my qualifications.

I would like to thank Federal District Judge Emmet Sullivan and all the members of the D.C. Judicial Nominations Commission for forwarding my name to the White House.

I want to thank President Barack Obama for nominating me for the position, and the staff in the White House who worked diligently and conscientiously throughout this process.

My father's parents were immigrants from Italy who came to this country with little education but with the belief that they wanted to have a better life and the willingness to work hard for that better life for them and their children. That hard work paid off when my father had the opportunity to attend Georgetown University. My mother was born and grew up in Puerto Rico, her own parents having only reached a high school education. Despite socio-economic barriers, my mother through faith in God and hard work excelled in school, went to the University of Puerto Rico, and came to the United States for a better life. My parents met here in D.C. and as they say, the rest is history.

My parents raised my brother, sister and me in a strict environment in which we were taught the values of faith, family, integrity, education and hard work. I also learned growing up the values of being humble and fair.

With those values, I have studied hard, worked hard, and dedicated my career to serve the public. Over the last 5 years, I have particularly dedicated myself to serving the District of Columbia by my work as a criminal prosecutor, as a magistrate judge and an adjunct professor at Howard University School of Law.

I hope you will find after reviewing my record that I would be a fair and impartial judge who would bring integrity and respect to the bench. Thank you.

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QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, UNITED STATES SENATE

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

1. Full name (include any former names used).
   Marisa Judith Demeo

2. Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).
   United States citizen

3. Current office address and telephone number.
   District of Columbia Superior Court
   Chambers 4450
   500 Indiana Avenue, N.W.
   Washington, D.C. 20001
   202-879-4795

4. Date and place of birth.
   August 23, 1966
   Washington, D.C.

5. Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).
   Single

6. Names and ages of children. List occupation and employer's name if appropriate.
   N/A

7. Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.

New York University School of Law
1990-1993
J.D. May 14, 1993

Princeton University
1984-1988
B.A. Politics June 7, 1988

St. Mary's Academy
Alexandria, VA
1980-1984

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High school diploma May 27, 1984

8. Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.

AIDS Service Center of Lower Manhattan
80 5th Avenue, Suite 1505
New York, NY 10011
Legal Intern
October 1992-December 1992

Texas Rural Legal Aid
P.O. Box 1658
114 E. 7th Street
Plainview, TX 79072
Law Clerk
June 1992-August 1992

Lambda Legal Defense & Education Fund
666 Broadway
New York, NY 10012
Legal Intern
January 1992-April 1992

Legal Aid Society of San Francisco
1663 Mission Street, Rm. 400
San Francisco, CA 94103
Law Clerk
June 1991-August 1991

Department of Justice
Civil Rights Division
P.O. Box 66128
Washington, D.C. 20035-6128
Paralegal Specialist
August 1988-August 1990

Hutch Temporaries, Inc.
4911 Niagara Road
College Park, MD 20740
Demonstrator
June 1988-August 1988

9. Honors and awards. List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other

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special recognition for outstanding service or achievement.

Professional Awards/Recognition

- Received Achievement Recognition Award from D.C. Courts' Hispanic Heritage Celebration Committee (2008).
- Received Special Achievement Award at United States Attorney's Office for the District of Columbia (2006).
- Recognized as a Rising Legal Star by the Hispanic Bar Association of the District of Columbia (2006).
- Received Certificate of Appreciation from United States Attorney's Office for the District of Columbia in Recognition for Performance (2005).
- Appointed by the District of Columbia Court of Appeals as a Commissioner to the District of Columbia Access to Justice Commission (2005-2007).
- Received the Congressional Black Caucus Chair's Award in recognition of dedication, leadership, and commitment to advancing the cause of civil and human rights for all Americans (2003).
- Received the University of Pennsylvania Law School Latin American Students Association Orgullo Award for dedicated service to the Chicano/Latino community and the public interest (2003).
- Recognized by the U.S. Department of Commerce U.S. Census Bureau for outstanding leadership as Acting Chair of the Decennial Census Advisory Committee (2001-2002).
- Received Award from the National Puerto Rican Coalition for commitment and contributions to the well being of the Puerto Rican community (2002).
- Selected from a national pool of applicants to participate in the National Hispana Leadership Institute Fellowship Program (2001-2002).
- Received the Hispanic Bar Association of the District of Columbia's Hugh A. Johnson Memorial Award for Outstanding Service and Commitment to the Latino Community (2000).
- Selected as a Member of the D.C. Bar Civility Implementation Committee (1999-2000).
- Selected as a Member of the D.C. Bar Board of Governors Nominations Committee (1999-2000).
- Selected as a Term Member to the Council on Foreign Relations (1999-2004).
- Received New York University School of Law Recent Graduate Award (1998).
- Received two Special Achievement Awards for Meritorious Acts at the United States Department of Justice (1995 & 1996).
- Selected into Honors Program of the United States Department of Justice (1993-1996).
- Received Special Achievement Award for Sustained Superior Performance of Duty at the United States Department of Justice (1989).

Academic Awards/Recognition

- Received Graduation Award (Ann Petluck Poses Memorial Prize) for outstanding clinical work representing juveniles charged with criminal offenses in New York Family Courts (1993).
- Received Graduation Award (Vanderbilt Medal) for service to the law school (1993).
- NYU Graduate and Professional Opportunity Fellow (1992-1993).
- Public Interest Committee Internship Program Grant (1992).
- Selected and served on New York University Law Review (1991-1993).
- Puerto Rican Legal Defense & Education Fund Scholarship (1991-1992, 1992-1993).
- Mexican American Legal Defense and Educational Fund Scholarship (1990-1991).
- National Hispanic Scholarship Fund Scholar (1990, 1991, 1992).
- Selected as Root-Tilden Scholar for academic achievement and public interest work (1990-1993).
- Received Certificate for completing Latin American Studies Program at Princeton University (1988).

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~~10.~~ Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.

N/A

11. Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.

Advisory Committee for the Selection of Duty Attorneys for D.C. and Traffic Cases (9/24/08-present)
Performance Standards Criminal Division Stakeholders Group (1/15/08 – present)
District of Columbia Access to Justice Commission (2005-2007 Commissioner)
D.C. Bar Board of Governors Nominations Committee (1999-2000)
D.C. Bar Civility Implementation Committee (1999-2000)
American Bar Association
Hispanic National Bar Association
Hispanic Bar Association of D.C.
GAYLAW (1997 Board member, 1998-1999 Co-President)
American Constitution Society

12. Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.

NYU Law Alumni Association
The Kennedy Center
Smithsonian Institution
Washington National Opera
Human Rights Campaign
Council on Foreign Relations
Alliance for Justice (2002 Board Member representing MALDEF)
Gente Latina de Ambiente (1998-1999 Board Member)
Federal GLOBE (1996 Board member)
DOJ Pride (1994-1996 Co-President)
Department of Justice Association of Hispanic Employees for Advancement and Development (1989-1990 Secretary & Board Member)

I am not aware of any of the foregoing institutions or organizations discriminating currently or in the past on the basis of race, sex, or religion.

13. Court admissions. List all courts in which you have been admitted to practice, with dates

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of admission and lapses in admission if any such memberships have lapsed. Please explain the reason for any lapse in membership. Please provide the same information for any administrative bodies which require special admission to practice.

New York State Supreme Court, Appellate Division, Third Judicial Department
January 25, 1994 (swearing-in date after passing July 1993 bar)

District of Columbia Court of Appeals
June 3, 1996

14. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.

DIMINISHED VOTING POWER IN THE LATINO COMMUNITY: THE IMPACT OF FELONY DISENFRANCHISEMENT LAWS IN TEN TARGETED STATES (MALDEF, Dec. 2003).

Women Immigrants and Housing, in WOMEN IMMIGRANTS IN THE UNITED STATES (Woodrow Wilson International Center for Scholars, 2003). Article documenting my oral presentation on the topic.

The Current Civil Rights Challenge for the Growing Latino Community: Inclusion and Participation in Political Life, in RIGHTS AT RISK: EQUALITY IN AN AGE OF TERRORISM (Citizens' Commission on Civil Rights ed., Feb. 2002).

Crime and Punishment: Nuestra Gente and the Criminal Justice System, 7 TEX. HISPANIC J.L. & POL'Y 19 (Fall 2001). Article documenting a panel on criminal justice issues affecting the Latino community, includes my oral presentation on racial profiling.

15. Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.

March 5, 2009 - Keynote Speech, Twelfth Annual Hispanic Law Conference hosted by American University Washington College of Law (copy enclosed).

16. Legal career.
    A. Describe chronologically your law practice and experience after graduation from law school, including:
        (1) Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;
        N/A

        (2) Whether you practiced alone, and if so, the addresses and dates;
        N/A

        (3) The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.

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July 2007-present
Superior Court of the District of Columbia
Chambers 4450
500 Indiana Avenue, N.W.
Washington, D.C. 20001
Magistrate Judge – Criminal trial judge on traffic and other misdemeanor cases.

Spring Semesters of 2003, 2005 and 2008
Howard University School of Law
2900 Van Ness Street, NW
Washington, D.C. 20008
Adjunct Professor – Taught criminal procedure and immigration law.

July 2004-July 2007
United States Attorney's Office for the District of Columbia
555 Fourth Street, N.W.
Washington, D.C. 20530
Assistant United States Attorney – Criminal prosecutor.

January 1997 – July 2004
Mexican American Legal Defense and Educational Fund (MALDEF)
Washington Regional Office
1016 16th Street, N.W., Suite 100
Washington, DC 20036
Regional Counsel of Washington, D.C. office (May 1998-July 2004) – Advocate in Congress and federal government on policy issues affecting Latino community on national level.
Legislative Staff Attorney (January 1997-April 1998) – Advocate on immigrants' rights issues.

October 1993 – December 1996
Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001
Honors Program Trial Attorney – Litigated federal civil rights cases.

B. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.

My entire career has been dedicated to serving the public interest. Between 1988 and 2004, I was dedicated to the practice of civil rights law. From 2004 to the present, I have focused my career on developing trial advocacy skills and judicial skills in the criminal context. I have also entered the legal academic field by serving as an adjunct law professor for three semesters.

C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.

Civil Rights Law
From 1988 through 1990, I served as a paralegal in the Department of Justice's Civil Rights Division

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assisting trial attorneys on federal cases around the country litigated under the Voting Rights Act. I worked on cases involving the voting rights of African Americans in Mississippi, Georgia and Maryland; the voting rights of Latinos in California; and the voting rights of Native Americans in Arizona and New Mexico.

While in law school between 1990 and 1993, I served as a law clerk for several public interest organizations. At The Legal Aid Society Employment Law Center in San Francisco, California, I focused my legal research on sex discrimination and occupational safety and health hazards for pregnant women. I also counseled indigent clients in Spanish and English on employment issues. At Texas Rural Legal Aid in Plainview, Texas, I provided legal services to Mexican American migrant farm workers in various towns throughout western Texas. At Lambda Legal Defense and Education Fund in New York City, I researched and wrote legal memoranda on topics which affected gay men and lesbians. At the AIDS Service Center of Lower Manhattan, I researched and wrote on issues impacting women who are HIV positive. I represented clients who were denied unemployment insurance before administrative law judges in the academic year of 1990-1991 through the Unemployment Action Center. I also represented juveniles charged with criminal offenses in New York Family Courts through the Juvenile Rights Clinic in the academic year of 1992-1993.

From 1993 through 1996, I served as an Honors Program Trial Attorney in the Employment Litigation Section of the Civil Rights Division of the Department of Justice. During this period, I litigated Title VII race, national origin, sex, and religious employment discrimination cases against state and local governments in federal district courts around the country. I handled primarily large, discriminatory pattern and practice cases. I interacted extensively with both government officials as well as victims of discrimination. I investigated cases in the field; took depositions; researched, wrote and argued motions; conducted large-scale discovery; handled court hearings; and participated in settlement negotiations.

From 1997 through 2004, I worked at the Mexican American Legal Defense and Educational Fund (MALDEF), a national legal organization dedicated to the protection and promotion of the civil rights of the Latino community in the United States. In my first year, I served as a Legislative Staff Attorney. In my second year, I was promoted to head MALDEF's national legal policy office in Washington, D.C. As the Regional Counsel for MALDEF in Washington, D.C., I developed and advocated policy positions on Latino legal civil rights issues, including employment, voting, education, access to public programs, criminal justice, and immigrants' rights. While at MALDEF, I worked regularly with congressional members and staff as well as White House and federal agency staff.

Criminal Law

From June of 2004 through July of 2007, I served as an Assistant United States Attorney for the United States Attorney's Office for the District of Columbia. I worked as a criminal prosecutor in the Superior Court of the District of Columbia. I rotated through the Misdemeanor Trial Section, the Felony Trial Section, the Grand Jury Section, and the Sex Offense Domestic Violence Trial Section handling a felony case load.

During my tenure, I handled presentment hearings, detention hearings, status hearings, plea negotiations, motions hearings, trials, sentencing hearings, and probation revocation hearings. I handled 32 bench trials and 13 jury trials, including violent crimes. I also indicted approximately 30 felony criminal cases before the grand jury, most of which were violent crimes. I researched and wrote affirmative legal motions and responses to a variety of defense motions. In my violent crime cases, I worked primarily with Latino and African American victims and witnesses who reside in the District of Columbia.

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From July 2007 through the present, I have served the District of Columbia as a Magistrate Judge. I am assigned to the Criminal Division of the Court. I preside over all stages of criminal traffic and other misdemeanor cases. I have presided over 85 bench trials. I handle pre-trial discovery motions, suppression hearings, sentencing matters, and probation revocation hearings. Since January 2008, I have been assigned to handle primarily driving under the influence of drugs and/or alcohol cases. I also handle both misdemeanor and felony arraignments and initial detention decisions in the adult arraignment court on a rotating basis.

Academia/Immigration Law & Criminal Procedure

I have served three times as an Adjunct Professor at Howard University School of Law during the spring semesters of 2003, 2005 and 2008. In 2003 and 2005, I taught J.D. and L.L.M. students a survey course on immigration law. The course involved teaching judicial and administrative court decisions, as well as statutory and regulatory laws. Among the topics included in the course were the bases on which immigrants can enter the country legally and the bases on which immigrants can become deportable, including crime-related deportability grounds. In 2008, I taught second and third year law students a criminal procedure class that covered Fourth, Fifth and Sixth Amendment issues.

D. Describe the general nature of your litigation experience, including:

(1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.

August 2007 – present – Magistrate Judge
I preside over a trial court every day.

July 2004 – July 2007 - AUSA
I appeared every day in court when assigned to the Misdemeanor Section and Felony Trial Section. I appeared several times a week when assigned to the Grand Jury Section and Sex Offense and Domestic Violence Trial Section.

January 1997 – July 2004 - I did not have court appearances during this period.

October 1993 – December 1996 – DOJ
I appeared occasionally in federal district courts when I was a trial attorney for the Department of Justice Civil Rights Division.

September 1992 – May 1993 – Student Attorney through Juvenile Rights Clinic
I appeared occasionally in New York Family Court as a Student Attorney representing juveniles charged with criminal offenses.

September 1990 – May 1991 – Volunteer Advocate through Unemployment Action Center
I appeared occasionally in administrative courts handling appeals of denials of unemployment insurance.

(2) What percentage of these appearances was in:

(a) Federal courts (including Federal courts in D.C.);

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2%

(b) State courts of record (excluding D.C. courts);

2%

(c) D.C. courts (Superior Court and D.C. Court of Appeals only);

95%

(d) other courts and administrative bodies.

1%

(3) What percentage of your litigation has been:

(a) civil; 25%

(b) criminal. 75%

(3) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases

As a Magistrate Judge, I have presided over 85 criminal bench trials to date.

As an AUSA, I tried 45 trials. Of the 45 trials: 42 I tried as sole counsel; 1 trial I tried as lead counsel; and 2 trials I tried with co-counsel.

As a Student Attorney, I tried 1 case (with a professor supervising).

(4) What percentage of these trials was to

(a)a jury;

As a Magistrate Judge, 0% of my trials have been jury trials since I am not authorized by law to handle jury trials.

As an AUSA, 30% of my trials were jury trials.

(b)the court (include cases decided on motion but tabulate them separately).

As a Magistrate Judge, 100% of my trials are non-jury trials, since that is all that I am authorized by law to handle.

As an AUSA, 70% of my trials were non-jury trials.

My one Student Attorney trial was non-jury.

17. Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case, (a) the date of representation; (b)

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the court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.

(1) United States v. Ronald Whiting, 2006 CF3 23678

a) Period of Work on Case: October 2006 through Trial (February 20 – February 26, 2007) and Sentencing (June 2007)
b) Superior Court of the District of Columbia, Judge John Ramsey Johnson
c) Martin Rosendorf – Counsel for Defendant
14105 Burning Bush Lane
Silver Spring, MD 20906
301 460-4582

This case involved an ex-boyfriend who was upset with his ex-girlfriend, went to her apartment with a group of friends, confronted her, and after leaving her apartment pulled out a gun and shot several times at the ex-girlfriend's cousin. This happened in the middle of the day in an apartment complex area where other people were walking around. I represented the government in this case. I handled the case from the time the defendant was arrested through the trial. A jury found the defendant guilty of Assault with a Deadly Weapon, Possession of a Firearm During a Crime of Violence, Carrying a Pistol without a License, Possession of an Unregistered Firearm, and Unlawful Possession of Ammunition.

What was significant about this case was the amount of work required during the grand jury indictment phase and the continuing challenges of working with the victim and witnesses throughout the trial. During the investigation, I discovered a total of thirteen potential civilian witnesses, four of whom were potential defense witnesses. Through working closely with the lead detective, I was able to find twelve of the witnesses, including three out of four of the defense witnesses, and present them to the grand jury. Since the gun was never recovered and the only identification witness was the victim, it was important to follow-up on every lead that might corroborate the victim's account as well as explore all potential defense fact witnesses' accounts before trial.

As the trial approached, the victim informed me that she was no longer interested in cooperating with the prosecution. Furthermore, several of the other government witnesses became difficult and expressed their lack of desire to participate in the trial. By continuing to work closely with each of the witnesses I intended to use at the trial, I was able to secure their cooperation and had all witnesses come and participate fully in the trial. I particularly enjoyed working with victims and witnesses of crimes in the District as I felt I was able to develop a level of trust with them despite whatever differences there may have been between us. The case was significant to me, because this was the type of criminal activity that could have led to a person being killed or seriously injured.

(2) United States v. Joaquin Coreas, 2006 CF2 25328

a) Period of Work on Case: November 2006 through Trial (February 28 – March 14, 2007) and Sentencing (July 2007)
b) Superior Court of the District of Columbia, Judge John M. Mott
c) Khadijah R. Ali – Counsel for Defendant
216 G Street, N.E.
Washington, D.C. 20002
202 548-0016

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This case was about two housemates who went out drinking together with a group of friends. On their way home, the housemates argued in the car. After the driver pulled the car over, the defendant stabbed the victim causing his intestines to spill out. I represented the government in this case. I handled the case from the time the defendant was arrested through the trial. A jury found the defendant guilty of Carrying a Dangerous Weapon, and not guilty of the remaining assault charges.

What was significant about this case was the number of legal motions and issues that were raised pre-trial and during the trial. The defense filed a Fifth and Sixth Amendment motion to suppress statements. The defense also filed motions to suppress the defendant's statements under the Interpreter Act, claiming a qualified interviewer was not used to conduct the interview, and the Vienna Convention on Consular Relations, claiming the statement should be suppressed since the defendant's consular office was not informed of his arrest prior to his interrogation by police. Mid-trial, the Court requested both sides to file motions regarding the introduction of prior bad acts by a victim in which the defense was self-defense. Also mid-trial, the defense challenged the introduction of the defendant's videotaped statement as another violation of the Interpreter Act, since the government planned to introduce the statement without using a court certified interpreter to translate the Spanish parts of the video. I enjoyed dealing with so many different legal issues, as I found it both challenging and educational to respond to the issues on a short time frame or on the spot as the issues arose.

The case was also significant to me, because the defendant, victim and witnesses were all immigrants from El Salvador who spoke primarily Spanish. The victim was here in an undocumented status. Because of my previous exposure to the issues facing Latino immigrants and my ability to speak with the witnesses in Spanish, I felt I was able to work well with the victim and witnesses in the case. I also felt that as the prosecutor in the case I could work to ensure that there would not be a cultural bias against any of the participants in the proceedings.

(3) United States v. James Fowler, 2005 FEL 000279

a) Trial: November 8 – November 9, 2005
b) Superior Court of the District of Columbia, Judge Erik P. Christian
c) Dorsey G. Jones – Counsel for Defendant
6924 8th Street, N.W.
Washington, D.C. 20012
202 291-1771

This case was about a victim, who happened to be an employee of the D.C. Protective Services Division, on his way home from work. After leaving his place of employment, he stopped off at a CVS drug store, bought a few items, and then took the metro to Deanwood Metro Station. The defendant and his friends tried to rob the victim of the bag he was carrying as he exited the station. Specifically, the defendant pulled a rifle from his coat and pointed it at the victim while demanding the bag. The victim was armed, pulled out his weapon, and told the perpetrators he was a police officer. The defendant and his friends ran, but the victim eventually caught the defendant on the platform of the metro station and held him until the police came and arrested him. I represented the government in this case. I handled the trial and sentencing. A jury found the defendant guilty of the Assault with Intent to Commit Robbery charge, but not any of the gun-related charges.

This case was significant to me, because it was my first felony violent crime trial involving a victim. Up until this point, my felony trials had all been drug cases. The drug cases I tried had been challenging, particularly since they primarily were Possession with Intent to Distribute drug cases

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without an accompanying Distribution charge; however, I felt a new type of challenge in prosecuting a crime in which there was a victim who had suffered a direct, emotional harm as a result of the defendant's criminal behavior. It was further challenging, since I had not indicted this violent crime case and did not know it as in depth as I would have had I been the attorney who investigated the case. Furthermore, the police never recovered a weapon creating another obstacle to try to overcome at trial.

(4) District of Columbia v. Ronzell Baker, 2008 CTF 2610

a) Trial: September 16, 17, 29, 2008
b) District of Columbia Superior Court, Magistrate Judge Demeo
c) Prosecutor: Poppi Hagan
Assistant Attorney General
Suite 450 N
441 4th Street, N.W.
Washington, D.C. 20001
202 727-3224

Defense Attorney: Joel Duboff
Duboff and Associates, Chartered
8401 Colesville Road, Suite 501
Silver Spring, MD 20910
301 495-3131

This case involved a current Metropolitan Police Department officer who was off-duty driving an unmarked police cruiser in the Adams Morgan area. At around 3:30 in the morning, police officers received a radio run to report to the scene of an accident. When the police arrived, they found a woman on the scene who said that she had stopped to drop off her passenger when the defendant's car tried to drive around her. The defendant's car hit her driver's mirror and knocked it off. The defendant did not stop right away. The woman drove around the defendant's car and parked in front of him and confronted him about what he had done. When the police were called, the defendant tried to drive away, but the woman had a cab block the defendant's car preventing him from leaving the scene. The defendant performed poorly on field sobriety tests and later provided breath samples that showed his blood alcohol level was at least .21, well over two times the legal limit.

I was the trial judge in this case. I ultimately found the defendant guilty of Driving While Intoxicated. This case was significant to me for a number of reasons. One reason was because the defense attorney raised numerous legal issues throughout the trial, which I had to rule on. Of particular note, the defendant's motion to suppress included an assertion that the police request of the defendant to perform field sobriety tests triggered Fourth Amendment rights and, therefore, required a showing of reasonable suspicion that the defendant was in fact driving under the influence of alcohol. Although I had presided over numerous trials in this area, this was the first time a defense attorney raised this issue. After doing research mid-trial, I discovered that the D.C. Court of Appeals has not ruled on the Fourth Amendments implications of requesting a defendant to perform field sobriety tests. After researching court decisions from around the country, I concluded that these tests do in fact implicate the Fourth Amendment. Balancing the state's interest in preventing drunk driving against the level of intrusion on the individual, I concluded that the proper standard was reasonable suspicion.

Another reason the case was significant to me is that it involved an active duty police officer who had received commendations on the job for decades. Despite all he had done for the community of D.C.,

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I had to evaluate the facts in light of the law and I did find him guilty. I also found that his blood alcohol content was above .20, which meant he had to serve a mandatory minimum sentence of five days in jail. This case is symbolic of the types of cases I handle in the driving under the influence court. They often involve an array of legal issues, and the defendants are extremely diverse coming from every background and every socioeconomic level.

(5) District of Columbia v. Christopher Green, 2007 CTF 28339

a) Trial: April 14, May 12, June 3-6, & June 9 2008
b) Superior Court of the District of Columbia, Magistrate Judge Demeo
c) Prosecutor: Molly Hutchinson
Assistant Attorney General
Suite 450 N
441 4th Street, N.W.
Washington, D.C. 20001
202 727-3224

Defense Attorney: Chidi Ogolo
805 15th Street NW
Unit 100
Washington DC 20005
202 628-0668

This case involved an eighteen-year-old defendant, who was driving a car that did not belong to him. He was driving without a valid permit, struck a dumpster causing damage to the car, and tried to flee on foot from police. When the defendant was driving the car, he had two other young friends who were riding as passengers in the car. When he struck the dumpster, his friends also jumped out and fled from the police. The defendant and one of the passengers were caught inside an apartment building close by. The officer was able to recognize the defendant as the driver of the car.

I was the trial judge in the case. This case was significant to me due to the number of legal issues that were raised. I had to rule on an issue regarding the conflict of the defendant's right to obtain reports written by the arresting officer against the right of a juvenile passenger who was charged with a separate offense to not have his information revealed. I had to review the issue of the defendant's right to compel witnesses to testify at his case versus another individual's right to not incriminate himself. I also had to review and make decisions regarding issuing a bench warrant for a witness who failed to return to court after being subpoenaed by the defense.

In the end, I did find the defendant guilty of the charges.

18. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).

United States v. Terrance James, 2006 CF3 28102

a) Period of work on case: December 2006 – June 2007 (guilty plea)

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b) Superior Court of the District of Columbia, Judge Herbert B. Dixon, Jr.
c) Initially - Heather Pinckney – Counsel for Defendant
Later - Lloyd Nolan – Counsel for Defendant
Public Defender Service
633 Indiana Avenue, N.W.
Washington D.C. 20004
202 628-1200

This case involved an ex-boyfriend and girlfriend who still spent a lot of time together, because they were the parents of a six-year-old boy and they shared a drug habit. The defendant was very jealous of the possibility that the victim might be spending time with other men. On the night in question, the defendant began calling the victim at about 12:45 a.m. The victim was not home. After repeated calls to her, the defendant went to her home to find her, but she was not there. He left her home, but continued to call her throughout the night getting more and more jealous that she might be with another man. Later that morning, he got off work and confronted her. She gave him attitude back, and he threw gasoline on her and set her on fire. She was burned on over 40% of her body. She spent months in the hospital, undergoing one surgery after another. She is disfigured for life and will suffer pain and undergo surgeries for the rest of her life.

I represented the government in the case from the beginning until the defendant pleaded guilty. I spent months building this case, visiting the victim in the hospital, meeting with the victim's neighbors and family, and meeting with the defendant's supervisor as well as the building managers. I worked with the Fire Department and the Metropolitan Police Department. I placed multiple witnesses in the grand jury and succeeded in obtaining an indictment for Assault with Intent to Kill while Armed, Aggravated Assault while Armed, Mayhem while Armed, Malicious Disfigurement while Armed, Carrying a Dangerous Weapon, Arson, and two counts of Destruction of Property (felonies). Eventually, I was able to work out a plea deal in which the defendant pleaded guilty to Aggravated Assault while Armed and Malicious Disfigurement while Armed.

Although I tried 45 trials and have presided over more than 85 bench trials, this case is a significant case to me because I believe I helped achieve justice for a victim who not only suffered but will suffer for the rest of her life. As much as I would have liked to take the case to trial, it would have been extremely difficult for the victim to participate in the trial. I believe justice was served by this outcome.

19. Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.

I was appointed to serve as a Magistrate Judge in the Superior Court of the District of Columbia by the Chief Judge. I took the oath of office on July 22, 2007. I am assigned to the Criminal Division. With the consent of the parties, I handle any non-jury criminal traffic matter as well as other non-jury criminal matters where the possible penalty does not exceed 180 days. I also can handle pre-trial matters, such as arraignments and detention decisions.

I have not issued any written opinions at the conclusion of a trial as all of those have been orally delivered. The following is a list of written orders that I have issued related to pre-trial or post-trial issues (copies are included):

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District of Columbia v. Theodore Hayes, Jr.
2007 CDC 15462
Order dated: 11/16/07

District of Columbia v. Ronald Vegas
2007 CTF 7640
Order dated: 2/26/08

District of Columbia v. Daniel Callejas
2007 CTF 26559
Order dated: 3/1708

District of Columbia v. Anthony Greene
2007 CTF 25924
Order dated: 3/18/08

District of Columbia v. Elia Charles
2007CTF15008
Order dated: 4/14/08

District of Columbia v. Shane Emerson
2007 CTF 24064
Order dated: 5/27/08

District of Columbia v. Alex Woodard
2007 CTF 26346
Order dated: 6/11/08

District of Columbia v. Judyth Weathers
2007 CTF 27849
Order dated: 6/12/08

District of Columbia v. Sean Silcox
2004 CTF 4981
Order dated: 6/26/08

District of Columbia v. Russelle Lucas
2007 CTF 15777
Order dated: 7/14/08

District of Columbia v. Erik Brayton (aka Braxton)
2007 CTF 2457
Order dated: 7/21/08

District of Columbia v. Julius Dupree
2008 CTF 2226
Order dated: 8/2/08

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District of Columbia v. Laqueda Ransome
2008 CTF 3937
Order dated: 9/5/08

District of Columbia v. Christopher Heck
2008 CTF 3933
Order dated: 9/5/08

District of Columbia v. Ervin Harris
2006 CTF 6168
Order dated: 10/27/08

District of Columbia v. Luis Reyes
2008 CTF 9840
Order dated: 10/27/08

District of Columbia v. Corradino Thompson
2008 CTF 6045
Order dated: 10/27/08

District of Columbia v. Terry Woodard
2007 CTF 27769
Order dated: 12/24/08

District of Columbia v. Ronzell Baker
2008 CTF 2610
Order dated: 12/24/08

District of Columbia v. John Edge Park
2008 CTF 8091
Order dated: 12/24/08

District of Columbia v. Patrick McKoy
2008 CTF 1866
Order dated: 12/24/08

District of Columbia v. Robert Hayes
2008 CTF 21180
Order dated: 1/26/09

District of Columbia v. Andre Jackson
2008 CTF 861
Order dated: 2/20/09

District of Columbia v. Christine Holloway
2008 CTF 11180
Order dated: 2/20/09

District of Columbia v. Melvin Wintson
2008 CTF 20288

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Order dated: 2/20/09

District of Columbia v. Jimmy Ramirez
2007 CTF 28713
Order dated: 2/20/09

District of Columbia v. Thomas Yendall
2007 CTF 20299
Order dated: 2/20/09

A. List all court decisions you have made which were reversed or otherwise criticized on appeal.

To date, I have not been reversed on appeal.

20. Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).

No.

21. Political activities and affiliations.

- List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.

Magistrate Judge (2007 – present) - Appointed
District of Columbia Access to Justice Commission (2005-2007 Commissioner) - Appointed
U.S. Department of Commerce Decennial Census Advisory Committee (1999-2002 Vice Chair and Acting Chair) – Appointed

- List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.

Registered Democrat.

- Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of $50 or more.

9/30/04	Democratic National Committee	$125.00
11/2/04	Democratic National Committee	$100.00

22. To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.

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No.

23. Have you or any business of which you are or were a officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.

At an administrative hearing before the Washington, D.C., Department of Public Works, Bureau of Adjudication, on 11/24/95, I disputed a $50 penalty added to a car inspection violation ticket. As a result of the hearing, the hearing examiner removed the penalty.

24. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.

No.

II. POTENTIAL CONFLICTS OF INTEREST

1. Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?

   N/A. I currently work as a Magistrate Judge.

2. Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.

   I am currently participating in the Thrift Savings Plan at work. I opened a 403(b) Plan when I was working with the Mexican American Legal Defense and Educational Fund (MALDEF). Because of the small amount in that plan, I have been notified by Principal Financial Group that as of April 24, 2009, that retirement savings will be rolled into an IRA with Principal Bank, a member of the Principal Financial Group. I have no other financial arrangements/agreements with my current or former employers.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.

   None that I am aware of.

4. Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent,

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that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.

None that I am aware of.

5. Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.

Within the last 10 years, between April 1999 through June 2004, while serving as the Regional Counsel for MALDEF in Washington, D.C., I advocated policy positions on Latino legal civil rights issues, including employment, voting, education, access to public programs, criminal justice, and immigrants' rights. I worked regularly with congressional members and staff as well as White House and federal agency staff.

6. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.

I have no current commitments or agreements regarding outside employment. The only outside employment I may consider is teaching at Howard University School of Law, where I have taught in the past as an Adjunct Professor if asked to teach by the School.

7. Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.

I am not aware of any potential conflicts of interest. Should any potential conflicts arise, I will resolve them in accordance with the Judicial Code of Conduct for the District of Columbia.

8. If confirmed, do you expect to serve out your full term?

Yes.

III. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

REDACTED

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IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section I I - 150 1 (b), as amended.

1. Are you a citizen of the United States?

Yes.

2. Are you a member of the bar of the District of Columbia?

Yes.

3. Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.

Yes. June 3, 1996.

4. If the answer to Question 3 is "no" --

   A. Are you a professor of law in a law school in the District of Columbia?

   B. Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?

   C. Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?

   D. Upon what grounds is that eligibility based?

5. Are you a bona fide resident of the District of Columbia?

Yes.

6. Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.

November 2004 – present
1406 Franklin Street, N.E.
Washington, D.C. 20018

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April 2004-November 2004
1326 8th Street, N.W., Apt. A
Washington, D.C. 20001

7. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?

No.

8. Have you been a member of either of these Commissions within the last 12 months?

No.

9. Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.

AFFIDAVIT

MARISA J. DEMEO being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Marisa J. Demeo

SUBSCRIBED and SWORN TO before me this 13th day of April 2009.

Notary Public
My Commission Ex: Feb 28, 2011

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Marisa J. Demeo
Responses to Questions for the Record from Senator Tom Coburn
Nomination Hearing: May 13, 2009
Date of Response: May 18, 2009

1. In question 14 of the Committee questionnaire you listed four different published writings. The last one does not appear to be publicly available online. Please provide copies of the article "Nuestra Gente and the Criminal Justice System."

   Please see the attached excerpt from "Crime and Punishment: Nuestra Gente and the Criminal Justice System." This excerpt includes my oral presentation on racial profiling.

2. In addition to the speech you provided the Committee in response to question 15, please provide any speeches, testimony, statements, or presentations, written or oral, that you gave during your professional career prior to joining the U.S. Attorney's Office.

   I conducted a diligent search of materials in my possession related to my professional career prior to joining the U.S. Attorney's Office. As a result of that search, I found seventeen documents that contain speeches, testimony, statements, or presentations, written or oral, that I gave either solely or jointly. Much of the written testimony listed below was submitted for the record but never presented orally. I did give additional speeches, testimony, statements, or presentations, written or oral, however, I either never wrote out my comments or, if I did, I no longer have them.

Please see the attached 13 documents in which I was the sole author:

(1) 3/21/03 Testimony before the U.S. Commission on Civil Rights
(2) 6/19/02 Testimony before the House Subcommittee on Immigration
(3) 2/02 Written statement regarding World Conference Against Racism in Poverty and Race Research Action Council Newsletter
(4) 1/24/02 Testimony at Minority Hearing
(5) 7/31/01 Testimony submitted to House International Relations Committee
(6) 12/5/01 Testimony submitted to House Judiciary Committee
(7) 6/27/01 Testimony submitted to Senate Rules Committee
(8) 1/8/01 Testimony submitted to U.S. Commission on Civil Rights
(9) 8/28/00 Presentation at Hispanic National Bar Association event
(10) 3/8/99 Testimony submitted to U.S. Census Monitoring Board
(11) 3/5/98 Testimony submitted to House Subcommittee on Immigration
(12) 10/8/97 Testimony submitted to House Subcommittee on Immigration

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(13) 8/6/97 Presentation at Voting Rights Forum

Please see the attached 4 documents in which I contributed either as an editor and/or partial author:

(1) 3/19/02 Comments submitted to U.S. Sentencing Commission
(2) 4/30/98 Testimony submitted to House Subcommittee on Early Childhood
(3) 7/8/97 Testimony submitted to House Subcommittee on Immigration
(4) 5/16/97 Testimony submitted to House Subcommittee on Immigration

Documents are retained in the files of the Committee.

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Opening Statement of Florence Pan
Nominee, Associate Judge, D.C. Superior Court

I am grateful for the opportunity to appear before the Committee today, as a nominee to be an Associate Judge of the District of Columbia Superior Court. I want to thank President Obama, and the D.C. Judicial Nomination Commission, for this great honor. I also want to thank the Committee for considering my nomination so expeditiously, at a time when there are many pressing matters that demand your attention.

In 1949, my grandparents fled mainland China, after the Communist Party came to power. They settled in Taiwan, where both my parents were raised. My parents came to the United States in 1961, to pursue graduate degrees in New York City. They chose to stay here, because of the limitless opportunities that this country offered their children. I think it is fair to say that my presence before this Committee is a fulfillment of all that they hoped for and dreamed of, when they made that fateful decision to plant their roots in America. I would note that my nomination is particularly meaningful to my father, because his father was a judge on an administrative court in China, before being forced to flee to Taiwan.

I attended public schools in New Jersey, and then studied finance at the University of Pennsylvania. I worked for two years as an investment banker, but went to law school because I decided that I wanted to pursue a different kind of career. After graduating from Stanford Law School, I was fortunate to clerk for two great jurists – Judge Michael B. Mukasey on the United States District Court for the Southern District of New York, and Judge Ralph K. Winter on the United States Court of Appeals for the Second Circuit. I then worked at the Justice Department: first as a Bristow Fellow in the Solicitor General's Office, and then as an attorney in the Criminal Appellate Section. I left the Justice Department to spend one year working at the Treasury Department. I joined the U.S. Attorney's Office in 1999.

For the past ten years, I have been privileged to serve the citizens of the District of Columbia as an Assistant United States Attorney. I have appeared extensively in the federal and local courts in this jurisdiction, both at the trial level and at the appellate level. I have had the opportunity to prosecute many different kinds of cases, and to come into contact with myriad people from this community. My respect for the Superior Court and the judges who serve on this Court is profound. I have seen the important work that they do first hand. If confirmed, I will do my utmost to give the citizens of the District of Columbia the very highest quality of justice. I pledge to approach my role as a judge with humility and diligence, and to apply the law with thoughtfulness and impartiality.

Thank you again for the opportunity to be here today, and for your consideration of my nomination.

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QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, UNITED STATES SENATE

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

1. Full name (include any former names used).

   Florence Yu/Yvonne Pan

2. Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).

   United States

3. Current office address and telephone number.

   United States Attorney's Office for the District of Columbia
   555 Fourth Street, N.W.
   Washington, DC 20530

   (202) 514-7118

4. Date and place of birth.

   November 16, 1966, in New York, NY.

5. Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

   I am married to Max Stier, President and CEO of the Partnership for Public Service.

   1100 New York Avenue, N.W.
   Suite 1090 East
   Washington, DC 20005

6. Names and ages of children. List occupation and employer's name if appropriate.

   REDACTED

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7. Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.

Stanford Law School, 1990-1993. J.D. awarded in May, 1993.

University of Pennsylvania, 1984-1988. B.A. from the College of Arts and Sciences, and B.S. in Economics from the Wharton School, awarded in May or June, 1988.

Tenafly High School, Tenafly, NJ, 1980-1984. High school diploma awarded in June, 1984.

8. Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.

1998-1999	Senior Adviser to the Undersecretary for Domestic Finance United States Department of the Treasury 1500 Pennsylvania Avenue, N.W. Washington, DC 20220
1992	Summer Intern United States Attorney's Office, Southern District of New York 1 St. Andrew's Plaza New York, NY 10007
1992	Summer Associate McKinsey & Company 55 East 52nd Street New York, NY 10022
1991	Summer Associate Wachtell, Lipton, Rosen & Katz 51 West 52nd Street New York, NY 10019
1988-1990	Financial Analyst Goldman, Sachs & Co. 85 Broad Street New York, NY 10004

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9. Honors and awards. List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

- U.S. Attorney's Office Special Achievement Awards (received in 2000, 2002, 2003, 2007)
- U.S. Attorney's Office Team Award (2004)
- Recognition in a Pulitzer-Prize-winning Washington Post column by Colbert King, dated September 21, 2002
- Stanford Law School, Matteson Award (moot court finalist)
- Stanford Law School, Oelmann Award (for legal research and writing)
- Graduated from law school "with distinction"
- Graduated from college *summa cum laude*
- Elected to Phi Beta Kappa as a junior

~~10.~~ Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.

None.

11. Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.

Asian Pacific American Bar Association of Washington, D.C.
D.C. Bar Criminal Law and Individual Rights Section

12. Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.

Edward Coke Appellate Inn of Court – does not discriminate

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13. Court admissions. List all courts in which you have been admitted to practice, with dates of admission and lapses in admission if any such memberships have lapsed. Please explain the reason for any lapse in membership. Please provide the same information for any administrative bodies which require special admission to practice.

New York Court of Appeals, 3/14/94
District of Columbia Court of Appeals, 2/5/96
United States Court of Appeals for the District of Columbia Circuit, 3/14/96
United States Court of Appeals for the Ninth Circuit, 8/27/96
United States Court of Appeals for the Fifth Circuit, 10/1/96
United States Supreme Court, 11/6/01

14. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.

None.

15. Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.

None.

16. Legal career.
    A. Describe chronologically your law practice and experience after graduation from law school, including:
        (1) Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;

            Please see below.

        (2) Whether you practiced alone, and if so, the addresses and dates;

            I have never practiced alone.

        (3) The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.

            Please see below.

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1993	Summer Associate Sullivan & Cromwell 125 Broad Street New York, NY 10004
1993-1994	Law clerk to the Honorable Michael B. Mukasey U.S. District Court for the Southern District of New York 500 Pearl Street New York, NY 10007-1312
1994-1995	Law clerk to the Honorable Ralph K. Winter U.S. Court of Appeals for the Second Circuit 55 Whitney Avenue Sixth Floor New Haven, CT 06510
1995-1996	Bristow Fellow, Office of the Solicitor General U.S. Department of Justice 950 Pennsylvania Avenue, N.W. Washington, DC 20530
1996-1998	Attorney, Criminal Appellate Section U.S. Department of Justice 950 Pennsylvania Avenue, N.W. Washington, DC 20530
1997	6-month detail as Special Assistant United States Attorney Misdemeanor Section U.S. Attorney's Office for the District of Columbia 555 Fourth Street, N.W. Washington, DC 20530
1999- Present	Assistant United States Attorney U.S. Attorney's Office for the District of Columbia 555 Fourth Street, N.W. Washington, DC 20530
2007-Present	Adjunct Professor of Law Washington College of Law, American University 4801 Massachusetts Avenue, N.W. Washington, DC 20016

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B. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.

As an Assistant United States Attorney, I prosecute criminal cases in the District of Columbia. I have practiced extensively in the D.C. Superior Court, the D.C. Court of Appeals, the U.S. District Court for the District of Columbia, and the D.C. Circuit. My progression through the U.S. Attorney's Office has been as follows:

1997	Special Assistant U.S. Attorney, Misdemeanor Trial Section (about six months).
1999-2000	Rotational AUSA, Appellate Division (about nine months).
2000-2003	AUSA, Superior Court Division. - General Felony Drug Detail (about nine months) - Grand Jury/Intake Section (about nine months) - Violent Crime Caseload, General Felony Section (about six months) - Homicide/Major Crimes Section (one year)
2003-2005	AUSA, Criminal Division, Organized Crime and Narcotics-Trafficking Section.
2005-2007	Senior AUSA, Appellate Division.
2007-Present	Deputy Chief, Appellate Division.

Before joining the U.S. Attorney's Office, I worked at the Department of Justice from 1995 to 1998. From 1995 to 1996, I was a Bristow Fellow in the Office of the Solicitor General, where I drafted briefs in opposition to certiorari petitions, made recommendations regarding government appeals, and assisted in the preparation of Supreme Court briefs. The practice was general, and exposed me to many different areas of law. From 1996 to 1998, I was an attorney in the Criminal Appellate Section, where I wrote briefs and argued appeals in federal courts of appeal; drafted briefs in opposition to certiorari petitions; and prepared recommendations regarding authorization of government appeals.

From 1993 to 1995, I was a law clerk. I first clerked for Judge Michael B. Mukasey on the U.S. District Court for the Southern District of New York. The cases were both civil and criminal, but my day-to-day work mainly involved assisting in the resolution of civil motions. I then clerked for Judge Ralph K. Winter, on the U.S. Court of Appeals for the Second Circuit. I worked on a wide variety of cases, including cases involving civil, criminal, immigration, and antitrust law.

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C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.

My client is the United States of America. For about 12 years (10 years at the U.S. Attorney's Office, and 2 years at the Justice Department), I have specialized in the litigation of criminal cases, at the trial and appellate level.

D. Describe the general nature of your litigation experience, including:

(1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.

(2) What percentage of these appearances was in:

(a) Federal courts (including Federal courts in D.C.);
(b) State courts of record (excluding D.C. courts);
(c) D.C. courts (Superior Court and D.C. Court of Appeals only);
(d) other courts and administrative bodies.

2007-Present As Deputy Chief of the Appellate Division, I appear regularly in appellate courts, but mainly as a supervisor. I have had only four appellate oral arguments in the past year. I also argued one motion on a Second Amendment issue in the Superior Court. I estimate that about 75% of the cases are in the D.C. Court of Appeals, and 25% in the D.C. Circuit. All of the cases are criminal (with the exception of collateral attacks on convictions, which are technically civil).

2005-2007 As a line AUSA in the Appellate Division, I appeared regularly in appellate courts, typically having about one oral argument per month (excluding summer months when the courts did not sit). About 2/3 of my cases were in the D.C. Court of Appeals, and about 1/3 in the D.C. Circuit. All of the cases were criminal.

2003-2005 As an AUSA in the Organized Crime and Narcotics-Trafficking Section, I appeared in the U.S. District Court regularly (almost daily). I had five trials, including one that lasted about six months. All of the cases were criminal, jury trials.

2002-2003 As an AUSA in the Homicide/Major Crimes section, I appeared in D.C. Superior Court regularly – at least several times each week. I tried seven violent-crime cases in one year. All were criminal, jury trials.

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2002	As an AUSA in the General Felony Section with a violent-crime caseload, I appeared in D.C. Superior Court regularly – at least several times each week. I tried three violent-crime cases during my six-month tenure there. All were criminal, jury trials.
2001-2002	As an AUSA in the Grand Jury/Intake Section, I appeared regularly in D.C. Superior Court, in arraignment court and on the preliminary-hearing calendar. I was in that section for about nine months, and all of the cases were criminal.
2000-2001	As an AUSA in the General Felony Section, on the drug detail, I appeared in Superior Court daily. I tried about eight cases during my nine-month tenure. All were criminal, jury trials.
1999-2000	As a rotational AUSA in the Appellate Division, I presented about twelve oral arguments, about nine in the D.C. Court of Appeals, and about three in the D.C. Circuit. All were criminal, appellate arguments.
1997	As a Special AUSA in the Misdemeanor Trial Section, I appeared daily in Superior Court. I tried about 20 bench trials and four jury trials during my six-month tenure. All were criminal.
1996-1998	As an attorney in the Criminal Appellate Section of the Justice Department, I presented four oral arguments in federal courts of appeal.
1995-1996	As a Bristow Fellow in the Office of the Solicitor General, I argued one criminal appeal in the D.C. Circuit.

(3) What percentage of your litigation has been:
(a) civil;
(b) criminal.

At the U.S. Attorney's Office and in the Criminal Appellate Section of the Justice Department, my practice has been 100% criminal. When I was a Bristow Fellow, about 50% of my practice was civil.

(3) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.

I have tried about 47 cases to verdict. I estimate that I was sole counsel in about half of those cases, and co-counsel in the other half.

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(4) What percentage of these trials was to

(a) a jury;
(b) the court (include cases decided on motion but tabulate them separately).

27 of the cases were tried to juries; 20 were bench trials.

17. Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case, (a) the date of representation; (b) the court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.

1. United States v. Kenneth Simmons, Ronald Alfred, James Alfred, Deon Oliver, Franklin Seegers, and Keith McGill, No. 00-157. I was a member of a three-attorney team that tried this case in the U.S. District Court for the District of Columbia. (A fourth attorney also participated in the first month of the trial.) This was a six-month trial in 2003-2004, in which the defendants were charged with narcotics conspiracy, Racketeering Influenced Corrupt Organization (RICO) conspiracy, continuing criminal enterprise, and numerous crimes involving drugs and violence -- including eight murders and the shooting of a cooperating witness that left the victim a paraplegic. I examined about a third of the government's witnesses, including cooperators, law-enforcement officers, civilians, and expert witnesses; I cross-examined defendant Keith McGill, as well as many other defense witnesses; and I delivered the government's closing argument. All six defendants were convicted of the vast majority of charges against them. This was the "Group II" trial of defendants who were indicted with lead defendant Kevin Gray in a 158-count indictment, in a case that the press dubbed "Murder, Inc."

Presiding judge: Judge Royce C. Lamberth

Co-Counsel
AUSA Glenn Kirschner, now Chief of the Homicide Section
AUSA Arvind Lal, Organized Crime and Narcotics-Trafficking Section
U.S. Attorney's Office
555 Fourth Street, N.W.
Washington, D.C. 20530
(202) 514-7425 (Kirschner)
(202) 353-8833 (Lal)

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Counsel for Defendant Kenneth Simmons:
Joseph E. Beshouri, Esq.
419 Seventh Street, N.W., Suite 201
Washington, DC 20004
(202) 842-0420

Lexi Negin Christ
Address and phone unknown – Ms. Christ moved to California

Counsel for Defendant Ronald Alfred:
Idus J. Daniel, Jr., Esq.
Daniel & Jamison, LLP
639 I Street, N.E.
Washington, DC 20002
(202) 546-1286

Matthew Wartel, Esq.
216 South Patrick Street
Alexandria, VA 22314
(703) 880-6100

Counsel for Defendant James Alfred:
David Carey Woll, Esq.
Woll and Woll, P.A.
11501 Georgia Avenue, Suite 201
Wheaton, MD 20902
(301) 933-6962

Mary Elizabeth Davis, Esq.
601 Indiana Avenue, N.W., Suite 910
Washington, DC 20004
(202) 234-7300

Counsel for Defendant Deon Oliver:
Kenneth D. Auerbach, Esq.
Metropolitan Building, Suite 704
8720 Georgia Avenue
Silver Spring, MD 20910
(301) 585-5566

Joseph J. Bernard, Esq.
5425 Connecticut Avenue, N.W., #308
Washington, DC 20015
(202) 966-7666

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Counsel for Defendant Franklin Seegers:
Manuel J. Retureta, Esq.
601 Pennsylvania Ave., N.W., Suite 900
South Building, PMB-256
Washington, DC 20004
(202) 783-9119

Jon W. Norris, Esq.
641 Indiana Avenue, N.W., Second Floor
Washington, DC 20004
(202) 842-2695

Counsel for Defendant Keith McGill:
Frances D'Antuono, Esq.
218 Seventh Street, S.E.
Washington, DC 20003
(202) 544-6332

2. United States v. Paul Askew, 529 F.3d 1119 (D.C. Cir. 2008) (en banc). I briefed and argued this case before a panel of the D.C. Circuit, and then briefed and argued it again before the en banc Court in 2007. The issue was whether it was permissible under the Fourth Amendment for the police to partially unzip a suspect's jacket to see if his clothing matched that of an armed robber, during the course of a Terry stop. The appellant argued that this was a full-blown search that required probable cause and an exception to the warrant requirement; our position was that it was a reasonable investigative measure that did not exceed the scope of the Terry stop. Although we lost the case, we lost on extremely narrow grounds – the Court held that the facts of this particular case did not support a reasonable belief that unzipping the jacket would further the investigation.

Argued before: Then-Chief Judge Ginsburg; Associate Judges Sentelle, Henderson, Rogers, Tatel, Garland, Brown, Griffith, and Kavanaugh; and Senior Judge Edwards.

Counsel for Appellant Paul Askew:
Sandra Roland, Assistant Federal Public Defender
625 Indiana Avenue, N.W.
Suite 550
Washington, DC 20004
(202) 208-7500

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3. Norma McNeil v. United States, 933 A.3d 354 (D.C. 2007). I briefed and argued this case before the D.C. Court of Appeals in 2007. It is significant because it established the legal standards for mounting a "settled insanity" defense at trial. Appellant, while high on PCP, slit the throat of her 15-month-old daughter, nearly decapitating the child. Appellant's defense was that she was insane, or, in the alternative, that she suffered from a "settled" insanity due to her habitual use of PCP. The Court adopted the legal standards for establishing settled insanity that were advocated by the government. (The case was reversed on a different ground: the government had elicited evidence of the defendant's invocation of her Miranda rights as proof that she was sane, in violation of Supreme Court precedent, and the Court held that this error was not harmless.)

   Argued before: Associate Judges Reid and Glickman, and Senior Judge Pryor

   Counsel for Appellant Norma McNeil:
   Corinne Beckwith, Public Defender Service
   633 Indiana Avenue, N.W.
   Washington, DC 20004
   (202) 628-1200

4. United States v. Glenn Adams, No. F-717-02. Along with co-counsel Ronald Sharpe, I prosecuted this first-degree murder case in D.C. Superior Court in 2002. The defendant was convicted and sentenced to 30 years' imprisonment. I conducted the grand-jury investigation, examined half of the witnesses at trial, and delivered the government's closing argument and rebuttal argument.

   Presiding Judge: Judge Robert I. Richter.

   Co-Counsel
   AUSA Ronald Sharpe
   U.S. Attorney's Office, Virgin Islands
   5500 Veteran's Drive, Suite 260
   St. Thomas, Virgin Islands 00802-6424
   (340) 774-5757

   Defense Counsel:
   Joel Davidson, Esq.
   5505 Connecticut Avenue, N.W.
   #247
   Washington, DC 20015
   (202) 543-2665

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5. United States v. Raymond Quigley, No. F-7850-01. Along with co-counsel Glenn Kirschner, I prosecuted this first-degree murder case in D.C. Superior Court in 2002. The defendant was convicted and sentenced to 70 years' imprisonment. I conducted the grand-jury investigation, handled the suppression hearing, examined half of the witnesses at trial, and delivered the government's closing argument.

Presiding Judge: Judge Judith Retchin

Co-Counsel
AUSA Glenn Kirschner, now Chief of the Homicide Section
U.S. Attorney's Office
555 Fourth Street, N.W.
Washington, DC 20530
(202) 514-7425

Defense Counsel:
James Williams, Esq.
210 I Street, N.E.
Washington, DC 20002
(703) 757-8375

18. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).

As an Adjunct Professor of Law at the Washington College of Law, American University, I teach Criminal Procedure I to a class of about 50 second-year and part-time law students.

As Deputy Chief of the Appellate Division at the U.S. Attorney's Office, I review briefs that are filed in the D.C. Court of Appeals and in the U.S. Court of Appeals for the D.C. Circuit. I also prepare line attorneys for oral argument and supervise those arguments. In addition, I provide legal advice to line attorneys, often "on-the-spot" while the attorney is in court or making charging decisions in our intake office. Finally, I train lawyers and law-enforcement officers on a wide array of topics (including Fourth and Fifth Amendment principles, sentencing issues, motions practice, and ethical/disclosure obligations).

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19. Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.

No.

A. List all court decisions you have made which were reversed or otherwise criticized on appeal.

N/A

20. Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).

No.

21. Political activities and affiliations.

- List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.

None.

- List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.

Registered Democrat.

- Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of $50 or more.

$150 to Obama for America, 2008
$500 to Kerry for President, 2004

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22. To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.

No.

23. Have you or any business of which you are or were a officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.

No.

24. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.

No.

II. POTENTIAL CONFLICTS OF INTEREST

1. Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?

I would sever all connections to the U.S. Attorney's Office, but would like to continue teaching criminal procedure, as an Adjunct Professor of Law at American University's Washington College of Law.

2. Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.

None, other than TSP.

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3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.

None.

4. Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.

None.

5. Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.

None.

6. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.

I would like to continue teaching criminal procedure, as an Adjunct Professor of Law at American University's Washington College of Law.

7. Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.

I am not aware of any potential conflicts of interest. Should any potential conflicts arise, however, I will resolve them in accordance with the Judicial Code of Conduct for the District of Columbia.

8. If confirmed, do you expect to serve out your full term?

Yes.

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III. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

REDACTED

IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section I I - 150 1 (b), as amended.

1. Are you a citizen of the United States?

   Yes.

2. Are you a member of the bar of the District of Columbia?

   Yes.

3. Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.

   Yes. I was admitted to practice in the District of Columbia on February 5, 1996.

4. If the answer to Question 3 is "no" --

   A. Are you a professor of law in a law school in the District of Columbia?

   B. Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?

   C. Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?

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D. Upon what grounds is that eligibility based?

5. Are you a bona fide resident of the District of Columbia?

Yes.

6. Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.

May 2005 to present: 3545 Springland Lane, N.W.
Washington, DC 20008

2003-2005: 3727 Veazey Street, N.W.
Washington, DC 20016

7. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?

No.

8. Have you been a member of either of these Commissions within the last 12 months?

No.

9. Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.

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AFFIDAVIT

Florence Pan being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Florence Pan

SUBSCRIBED and SWORN TO before me this 13th day of April 2009.

Notary Public

David A. Foster
Notary of Public
District of Columbia
Commission Expires: May 14, 2011