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NOMINATION OF JOHN A. RIZZO TO BE GENERAL COUNSEL OF THE CENTRAL INTELLIGENCE AGENCY

HEARINGS

BEFORE THE

SELECT COMMITTEE ON INTELLIGENCE UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

JUNE 19, 2007

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NOMINATION OF JOHN A. RIZZO TO BE GENERAL COUNSEL OF THE CENTRAL INTELLIGENCE AGENCY

TUESDAY, JUNE 19, 2007

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

The Committee met, pursuant to notice, at 2:35 p.m., in room SD–106, Dirksen Senate Office Building, the Honorable Jay Rockefeller (Chairman of the Committee) presiding.

Present: Senators Rockefeller, Feinstein, Wyden, Bayh, Feingold, Whitehouse, Levin, Bond, Warner, and Snowe.

OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV, CHAIRMAN, A U.S. SENATOR FROM WEST VIRGINIA

Chairman ROCKEFELLER. The hearing will come to order on the nomination of John A. Rizzo to be General Counsel of the Central Intelligence Agency.

Today the Committee meets to consider the nomination of said Mr. John Rizzo to be General Counsel. Mr. Rizzo, we welcome you today. Before we proceed to the opening statements and questions, I want to recognize Mr. Rizzo's wife, Sharon, who is accompanying him.

Mr. Rizzo, would you like to introduce any other members of your family?

Mr. RIZZO. Yes, thank you, Mr. Chairman.

Next to my wife, Sharon, is my son, James. Next to James is my sister, Nancy, who has traveled a considerable distance to be here. Next to Nancy is my step-daughter Stephanie Breed.

Chairman ROCKEFELLER. Well, we welcome you. The Vice Chairman and I both welcome you.

I also want to welcome our valued colleague, the distinguished senior Senator from the State of Virginia, who will be introducing Mr. Rizzo in just a moment.

Mr. Rizzo has worked in government service his entire career, and has spent the last 31 years at the Central Intelligence Agency. Starting as an attorney at the CIA's Operations and Management Law Division in 1976, Mr. Rizzo moved through a variety of offices within the Office of General Counsel. He also spent 1½ years in the CIA's Office of Inspector General, and more than 2 years in the CIA's Office of Congressional Affairs, where he was responsible for coordinating, in that position, CIA communications with the congressional committees investigating the Iran-Contra affair. In

March 1995, he was named Senior Deputy General Counsel. John Rizzo has twice served as acting General Counsel when the General Counsel position became vacant—once from November of 2001 to October of 2002, and again from August of 2004 to this day.

Mr. Rizzo, we would like to thank you for your long government service. We do appreciate it. We often fail to say that.

To understand why we are here today, it's important that we look at both the responsibilities of the CIA and the historical role of the CIA's General Counsel. The CIA's intelligence capabilities help us protect what we hold as fundamental to the American way of life. Yet even with today's great and immediate intelligence challenges, the CIA must constantly reaffirm the American principles of commitment to law, integrity and accountability. The CIA's General Counsel is at the heart of this balancing act.

Although the person selected to fill this position has only required the advice and consent of the Senate since 1996, key committees have long recognized the importance of having an independent general counsel who has the backing of a Presidential appointment and Senate confirmation. In 1976, the Church Committee recognized the "extraordinary responsibilities of the CIA's General Counsel to ensure that CIA activities are consistent with the Constitution and law of the United States." The Church Committee, therefore, recommended that the CIA General Counsel be nominated by the President and confirmed by the Senate to protect the General Counsel's "independence of judgment."

In 1987, the Iran-Contra Committees concluded that the abuses of Iran-Contra stemmed in part from the misguided perception of certain government officials that worthy ends could justify violations of the law. The Iran-Contra Committees rejected this notion and instead recommended strengthening the role of the CIA General Counsel by requiring Senate confirmation.

Congress ultimately acknowledged the importance of having a Senate-confirmed General Counsel in 1996, as I indicated. In amending the Central Intelligence Agency Act of 1949, Congress accepted the Senate Intelligence Committee's report that the confirmation process enhances accountability and strengthens the oversight process.

Over a decade later, today's hearing is timely in addressing the difficult issues of accountability and oversight. As a country, we are struggling to find the equilibrium between fighting terrorism and protecting the liberties and the rule of law that define us as a nation. On the one hand, we do not want to deny CIA officers the tools they need to do their job. On the other, we must recognize that democracy and American values are at risk if we fail to live up to our ideals.

The weight of this balance, interestingly, falls heavily on the shoulders of the General Counsel alone. As the CIA's activities are largely carried out in secret, the General Counsel often makes legal decisions without the benefit of public debate or the constraints of public scrutiny. By necessity, the public must therefore trust that the person in that position will ensure that the CIA's activities are consistent with both the spirit and the letter of the Constitution and the laws of the United States.

Our country must have faith that the intelligence professionals working to defend us have a General Counsel who defends them by ensuring that they receive lawful guidance. However difficult it may be to draw legal lines, it cannot be those on the front lines who suffer from legal uncertainty. Equally so, it is those officers who suffer when the institutional integrity of the agency is weakened by questionable legal decisions. Public trust and professional respect are earned by navigating these very difficult paths.

Ensuring that the CIA follows the law is important to protect not just the CIA and its intelligence officers, but also to protect the image of the United States. Our international security depends on upholding our ideals upon a world stage.

Although the Attorney General, through the Department of Justice and the Office of Legal Counsel, is ultimately responsible for the legal decisions of the executive branch, the CIA's General Counsel has a responsibility to the CIA as an institution that the Attorney General does not share.

The CIA General Counsel simply cannot rely on others to make those legal decisions. The General Counsel must make independent, sound legal assessments to determine what will best serve the CIA over the years to come. The Committee has a duty to make sure that the nominee sitting at that desk has the qualities necessary to fill that important role.

Mr. Rizzo, we look forward to hearing your views about both past challenges and the CIA's future conduct. Your stewardship during recent years as acting General Counsel provides you with a unique insight into that position.

Following the open session, we will further explore the Office of General Counsel's role in important matters in recent years in the closed portion of our hearing. The Committee has received letters of support for Mr. Rizzo's nomination from a number of his colleagues over the years, including CIA General Counsels Anthony Lapham, who was one of my closest friends throughout life, and Jeffrey Smith.

Mr. Lapham, who sadly passed away last year, served as CIA General Counsel in the midseventies and saw the CIA through the Church Committee's investigations of its activities. Mr. Smith served as CIA General Counsel from 1995 to 1996 and has since been actively involved in the public debate on intelligence issues.

We also received letters expressing concern about Mr. Rizzo's nomination from Human Rights Watch, Human Rights First, and the Open Society Policy Center. I ask unanimous consent that these letters be placed into the record. Without objection, it is so ordered.

[The letters regarding Mr. Rizzo's nomination follow:]

Jul-10-06 03:17pm From-GOODWIN PROCTER LLP 202-346-4444 SSCI # 2007 1954
T-099 P.002/003 F-154

Anthony A. Lapham
2919 Woodland Drive, NW
Washington, DC 20008

July 10, 2006

BY FACSIMILE

The Honorable Jay Rockefeller
Vice Chairman, Senate Select Committee on Intelligence
531 Hart Senate Office Building
Washington, D.C. 20510

Re; John Rizzo

Dear Senator:

I am writing this letter in order to say a few good words about my friend and former professional colleague John Rizzo, who has been nominated to become the next General Counsel of the CIA. As I understand it, John's nomination to this position has been forwarded to the SSCI and is awaiting the Committee's action.

John arrived in my office, as a young lawyer, one month after I began my own tenure as the CIA General Counsel way back in May of 1976. Even then he was one of those in the office on whom I relied most heavily. Since my tenure ended in 1979 John has worked under each one of my many successors and under heaven only knows how many different DCIs who have served in both Democratic and Republican administrations. For much of this time he has been either Deputy General Counsel or, as he is today and has been many times before, Acting General Counsel. I think I am right in saying that, if his various stints added up, he has spent more time as Acting General Counsel than anybody for whom he worked has served as General Counsel.

In terms of knowledge of the CIA, its internal workings, its external affairs, its history both good and bad, and the laws applicable to its operations, John is so highly qualified for the General Counsel's job that no other attorney anywhere would run even a close second.

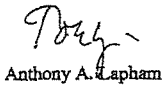
I have kept in pretty close touch with John over the years, and for a few of those years I related to him in an oversight role when I was a member of the President's Intelligence Oversight Board during the late 1980s and early 1990s. I have known him long enough and well enough to know that, apart from his experience, he has another virtue with which any good General Counsel at CIA should be equipped. He will give his best legal advice even when that may not be the advice that is wanted.

Jul-10-06 03:18pm From-GOODWIN PROCTER LLP 202-346-4444 T-099 P.003/003 F-154

I can't pretend to know, although I certainly can imagine, what kind of controversies may be swirling around John's nomination. But I thought I would go ahead and put my two cents in anyway and say that I hope he gets a hearing and gets confirmed.

Very best regards as always. I have in mind our recent conversation about our respective back problems but I have yet to deal very smartly with mine.

Thanks for your time and consideration,



Anthony A. Lapham

ARNOLD & PORTER LLP

Jeffrey H. Smith
Jeffrey_Smith@aporter.com

202.942.5115
202.942.5999 Fax
202.468.4495 Cell

555 Twelfth Street, NW
Washington, DC 20004-1206

April 27, 2007

The Honorable John D. Rockefeller, IV
Chairman
Senate Select Committee on Intelligence
211 Hart Building
Washington, DC 20515

Dear Mr. Chairman:

I am writing to express my strong support for the nomination of John Rizzo to be General Counsel of the CIA. He is not only a superb lawyer but also an individual of unerring judgment and unshakeable integrity. If confirmed, he will be a great General Counsel of the CIA.

I have known, and worked closely with John, since the late 1970s when he first joined CIA. At the time I was a lawyer in the Department of State working on the Church and Pike Committee investigations of the Intelligence Community and the subsequent legislation, executive orders and the creation of the two Congressional oversight Committees. John had similar responsibilities at the CIA.

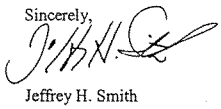
During my subsequent service as General Counsel of the Senate Armed Services Committee and as Senator Sam Nunn's designee to the SSCI and the Iran-Contra Committee, I continued to work with John. And, of course, I was privileged to have John as my Deputy when I was General Counsel of CIA.

As the Committee knows, John is an institution at the CIA and has earned the confidence of every Director under whom he has served. Perhaps of even greater importance, he has earned the confidence of his colleagues in the Agency, particularly in the Directorate of Operations, and throughout the national security community. John has handled with great skill and discretion some of the most difficult and demanding legal and policy issues the CIA has faced over the past 25 years.

It is difficult to overstate the regard that his colleagues have for him - which John has rightly earned by providing first rate legal advice, insisting on adherence to the law, and maintaining the highest standards of integrity and ethics while helping the Agency achieve its mission.

In brief, I can think of no person better prepared, equipped or able to be the General Counsel of the CIA and I urge the Committee promptly to confirm him.

Sincerely,



Jeffrey H. Smith

cc: The Honorable Christopher S. Bond
The Honorable Carl Levin

SSCI # 2007 1954

May 8, 2007

The Honorable John D. Rockefeller IV
U.S. Senate Select Committee on Intelligence, Chairman
5 31 Hart Senate Office Building
Washington, DC 20510

The Honorable Christopher S. Bond
U.S. Senate Select Committee on Intelligence, Vice Chairman
274 Russell Senate Office Building
Washington, DC 20510

Dear Senator Rockefeller and Senator Bond,

We write to express serious concern about the nomination of John Rizzo to be General Counsel of the Central Intelligence Agency. As acting General Counsel and Deputy General Counsel of the CIA, Mr. Rizzo was directly involved at the most senior level in overseeing policies involving the treatment of detainees – policies that violated U.S. and international law, endangered U.S. service personnel and citizens abroad, complicated the prosecution of senior al Qaeda suspects, damaged relations with U.S. allies, and undermined the moral authority America needs to wage an effective fight against terror.

The most important duty of a lawyer in government is to say "no" to public officials, no matter how senior those officials may be, when they propose actions that would violate the law. We believe that Mr. Rizzo was morally and legally required to object to these policies, and we urge you to explore in detail his views on the following topics.

Interrogation Policy

In 2002, the Justice Department drafted a memo, at the request of the CIA, which narrowed the definition of torture to include only conduct that causes suffering "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death." The memo advised that even under this limited definition, the outright torture of "enemy combatants" in U.S. custody "may be justified," and laws against torture "may be unconstitutional if applied to interrogations" conducted under the president's commander-in-chief authority. This memo has since been discredited and withdrawn, but at the time it provided the legal justification for the CIA's program of "enhanced interrogation techniques."

Many legal experts in the administration objected to the reasoning of the "torture memo"—including the General Counsel of the Navy, senior members of the military's Judge Advocate General Corps, and legal advisers at the State Department and National Security Council. We do not know what views, if any, Mr. Rizzo expressed. It is our understanding, however, that he played a key role in applying the memo's guidance and approving specific interrogation techniques.

It has been widely reported that those techniques included "waterboarding" (a form of simulated drowning), extended sleep deprivation, "long-time standing" (in which prisoners are forced to stand shackled for more than 40 straight hours), and exposure to extreme cold. Each of these techniques has been, and continues to be, condemned as torture by the United States when it is employed by other countries. Each has been recognized as torture by U.S. courts and military commissions.

As early as 1901, a U.S. Army Major, Edwin Glenn, was sentenced to 10 years hard labor for "waterboarding" a captured insurgent in the Philippines. U.S. military commissions after World War II prosecuted Japanese troops for engaging in "waterboarding" and other techniques since allegedly employed by the CIA. A Japanese soldier named Tetsuo Ando was sentenced to five years hard labor for, among other offenses, forcing American prisoners to "stand at attention for seven hours" (United States of America vs. Tetsuo Ando, Yokahama, May 8, 1947). Another was sentenced to 10 years for, among other things, forcing a prisoner to "bend his knees to a half bend, raise his arms straight above his head, and stay in this position anywhere from five to fifteen minutes at a time" (United States of America vs. Chikayoshi Sugota, Yokahama, April 4 1949). Sleep deprivation has been recognized as torture since the Middle Ages, when it was called the "tormentum insomniae," and in modern times was employed by the Soviet secret police to force confessions from dissidents. Six decades ago, the U.S. Supreme Court cited with approval an American Bar Association report that observed: "It has been known since 1500 at least that deprivation of sleep is the most effective torture and certain to produce the confession desired." (Ashcraft v. Tennessee, 322 US 143, 149 (1944)).

Since these cases were tried, domestic and international prohibitions against torture have become even stronger. The use of the techniques allegedly employed by the CIA would clearly violate prohibitions against torture and other mistreatment contained in the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment and the Geneva Conventions. The most recent Supreme Court case interpreting the prohibition on "cruel and unusual" punishments in the U.S. Constitution found that the cruelty inherent in the use of prolonged stress positions was obvious (Hope v. Pelzer, 536 US 730 (2002)). Such treatment could also constitute a felony offense under the U.S. War Crimes Act and Anti-Torture Statute.

According to press reports, CIA Inspector General John Helgerson concluded in the spring of 2004 that these techniques "appeared to constitute cruel, inhuman, and degrading treatment" prohibited under international law. Reports also indicated that several CIA officers were so troubled by these techniques that they refused to be trained to use them. The U.S. government would surely be outraged were such techniques employed by another government on captured U.S. personnel.

As a lawyer charged with reviewing interrogation methods, Mr. Rizzo should have known how these methods have been treated by courts in the past and warned policy makers that they risked running afoul of the law. He should have recognized the danger U.S. personnel would face if the U.S. government legitimized the use of such techniques in wartime. He should also have considered how much harder it would be to prosecute al

Qaeda suspects if the evidence against them was tainted by techniques no court would consider reliable. Indeed, the use of these methods may have placed the United States in the untenable position of having to choose between releasing potentially dangerous detainees or holding them forever without charge in violation of international law.

The administration is now reportedly considering an executive order that will define what interrogation techniques may be employed by the CIA under Common Article 3 of the Geneva Conventions. If it adopts a legal interpretation that a particular technique complies with Common Article 3, it will establish a precedent that the use of that technique on U.S. personnel also does not violate Common Article 3 – anything the CIA can lawfully do under this order, in other words, an enemy may claim the right to do as well. The CIA General Counsel will presumably play a key role in developing this precedent. Thus, having someone in that role who understands and will uphold laws against torture and cruel treatment remains critical.

With these concerns in mind, we would urge the Committee to ask Mr. Rizzo the following questions:

- Did you raise any concerns about the Justice Department's August 1, 2002 memo on torture after the CIA received it? If not, why not? Did you concur with the legal analysis in the memo? Did you tell other CIA employees to rely on the memo's analysis and conclusions?
- What role did you play in reviewing and approving legal memoranda authorizing specific interrogation techniques, including waterboarding, extended sleep deprivation, "long-time standing," and exposure to extreme temperatures? Did you raise concerns that the use of any of these techniques would place CIA officers in legal jeopardy?
- Were you aware of the many cases in which U.S. courts and military commissions have prosecuted individuals for engaging in the techniques allegedly employed by the CIA? Were you aware that the United States has long condemned as torture the use of such methods by other governments? If not, why did you not make an effort to discover these precedents? If so, why were the methods approved?
- Did you make any effort to consult with military lawyers and experts to determine whether approval of such methods might endanger U.S. service personnel, and whether their use by the CIA in Afghanistan and Iraq might make it harder for the military to prevent its own personnel from engaging in abusive practices?
- Did you consider the impact that using such methods might have on the government's ability to prosecute high value detainees? How much of the evidence against the 15 high value CIA detainees now in Guantanamo consists of information gained through interrogation under these methods? Are you confident that the government will be able to prosecute each of these 15 men without relying on the fruits of their interrogation?
- With regard to "waterboarding" specifically: Even the 2002 Justice Department "torture memo" concluded that certain acts are of "such a barbaric nature, that it is likely a court would find that allegations of such treatment would constitute torture." Among those "barbaric" acts were "threats of imminent death, such as

mock executions...." Isn't the whole point of "waterboarding" to create an overwhelming fear of imminent death by drowning? Are you aware that persons who are subjected to threats of drowning, partial drowning, and simulated drowning, such as "waterboarding," often suffer severe psychological trauma lasting years? Do you agree that "waterboarding" can cause "serious" mental suffering of a prolonged nature? Do you at least agree that it is degrading to be strapped helplessly to a board and suffocated to the point of terror?

- Another technique allegedly approved was to strike prisoners with an open hand. Do you believe that it is permissible under Common Article 3 of the Geneva Conventions to physically strike a prisoner? Do you believe that blows delivered to the head of a bound prisoner are illegal if a fist is used but legal if delivered with an open hand? Do you believe that it is legal under Common Article 3 for a U.S. prisoner to be assaulted, including being slapped, during interrogation?
- How did you respond to the CIA inspector general's report that warned that some of the interrogation procedures approved by the CIA violated the Convention against Torture? Did you do anything to promote adoption of the 10 recommendations on CIA detainee treatment made in the inspector general's report? Have all of these recommendations been adopted by the CIA?
- When the Justice Department rescinded the 2002 torture memo, did you make any effort to change CIA interrogation policy in response? Did you or others reporting to you issue new guidance on what constituted lawful interrogation?
- Do you believe CIA officials alleged to have been involved in the deaths of detainees in Iraq and Afghanistan should be held accountable? Have you done anything to promote that accountability?
- Do you now believe that the so-called "enhanced" techniques – including waterboarding, extended sleep deprivation, long-time standing, and exposure to cold, are consistent with U.S. legal obligations under the Convention against Torture? Are they permitted by the McCain Amendment? Do they comply with Common Article 3? Do they comply with the War Crimes Act (as amended in the Military Commissions Act), which criminalizes treatment that causes "serious" mental or physical pain or suffering that "need not be prolonged?"
- Would you be comfortable if another government used any of these specific methods against a captured American?

Extraordinary Rendition

Past administrations have employed rendition primarily to take terrorism suspects away from jurisdictions where the rule of law was weak to jurisdictions where they could be prosecuted for their crimes. The Bush administration has used so-called "extraordinary rendition" for a very different purpose – to send suspects to weak rule of law states where they can be held in secret incommunicado detention without charge and interrogated. It has rendered suspects away from justice, rather than to justice. Mr. Rizzo was likely involved in deliberations about the legality of these renditions.

The first widely known post-9/11 rendition involved an al-Qaeda suspect named Ibn al Shaykh al Libbi, who was sent by the CIA to Egypt in 2002. According to press reports,

al Libbi "revealed" under torture, either by the CIA or by the Egyptians, that Saddam Hussein had trained al Qaeda members in the use of chemical weapons, a false claim that Secretary of State Powell repeated in his February 2003 presentation on Iraq to the U.N. Security Council. Another well known rendition involved an Egyptian cleric named Abu Omar, who was allegedly kidnapped in Milan, Italy in 2003 by CIA agents and sent to Egypt, where he claims he was tortured. Italy has issued arrest warrants for 13 U.S. intelligence agents involved in this case.

The Convention against Torture prohibits sending a prisoner to a country where there are "substantial grounds for believing that he would be in danger of being subjected to torture." The administration argues that it satisfied this requirement by obtaining "diplomatic assurances" of humane treatment from the receiving government, even from countries like Egypt, Syria, and Libya that are known to practice torture systematically. Some officials involved in the program have acknowledged that these assurances are not credible. One official who visited foreign prisons where detainees rendered by the CIA were being held told the *Washington Post*: "It's widely understood that interrogation practices that would be illegal in the U.S. are being used. . . . They say they are not abusing them, and that satisfies the legal requirement, but we all know they do." A diplomat from an Arab country said: "It would be stupid to keep track of the [rendered prisoners] because then you would know what's going on." ("CIA's Assurances On Transferred Suspects Doubted," *Washington Post*, March 17, 2005)

Suggested questions:

- Were you involved in deliberations about the legality of extraordinary renditions, including those of al Libbi and Abu Omar?
- Do you believe it is lawful for U.S. intelligence agents to kidnap a suspect from a democratic country with strong legal institutions, like Italy, especially if that person is not then brought to justice before a court? If so, on what legal basis?
- Did you consider the possibility that CIA personnel might face legal jeopardy for committing what is ordinarily a serious crime – kidnapping – in a country that is a strong U.S. ally?
- Would it be lawful for Italian – or Russian, or Chinese – intelligence agents to seize a U.S. citizen or permanent resident off the streets of New York and to send that person for detention and interrogation in a third country (even with the concurrence of a U.S. executive branch official)?
- For what purpose were detainees like al Libbi and Abu Omar sent to Egypt? Was it for interrogation? If so, what did the CIA think the Egyptians could do that the U.S. government couldn't do itself?
- Did you express any concern that suspects sent to countries such as Libya, Syria, or Egypt might be tortured, and that their rendition would thus violate the Convention against Torture? What was your response to reports that individuals were being abused after they were rendered by the CIA to third countries?
- Did you personally believe the assurances countries like Egypt or Syria made that they wouldn't abuse captives?

- Under what circumstances, if any, would you believe that assurances would not be sufficient to fulfill U.S. obligations under the Convention against Torture?
- When did the CIA inform the State Department of the extraordinary renditions? Were assurances obtained by the CIA or the State Department?
- Did you recommend that the CIA or any other executive department or agency take any steps to investigate the treatment of rendered suspects after their transfer to other countries?

Secret Prisons

Since 9/11, the CIA has held several dozen suspected al-Qaeda members in secret facilities around the world. Some were held incommunicado for as long as four years, with no legal process and no access by the International Committee for the Red Cross (ICRC). At least one, Khaled el Masri, a German national of Lebanese descent who was kidnapped in Macedonia and held at a secret facility in Afghanistan, was released after the CIA determined he was innocent.

Last September, President Bush announced that 14 of these prisoners were being transferred to military custody at Guantanamo Bay and that at that point the CIA was no longer holding detainees in secret. The remainder were presumably rendered to third countries. But the President has asserted that he maintains the right to use this program, and just last week, another CIA prisoner who apparently had been detained since late 2006 was transferred to Guantanamo.

In addition, U.S. Army investigators told the Senate Armed Services Committee in September 2004 that up to 100 detainees at Baghdad's Abu Ghraib prison were hidden from the (ICRC) at the request of the CIA. Generals Paul Kern and George Fay, who headed the investigation, said that the CIA refused to provide them with information about these "ghost prisoners." Previously, Secretary of Defense Donald Rumsfeld had acknowledged that, acting at the request of then-CIA Director George Tenet, he ordered that a senior Iraqi detainee be held off the books at Iraq's Camp Cropper detention center. Keeping detained belligerents from the ICRC in Iraq violated the Geneva Conventions and subjected them to potential abuse.

The United States has long condemned other governments for engaging in enforced disappearances – a practice defined in international law as "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State . . . followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law." (U.N. Declaration on Enforced Disappearances, 1992) The CIA detainees were clearly "disappeared."

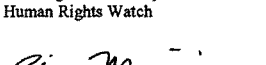
Suggested questions:

- Did you participate in deliberations concerning the legality of the CIA's secret detention program?

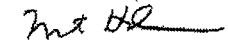
- What is the purpose of denying the International Committee of the Red Cross access to prisoners? What would ICRC access prevent the CIA from doing?
- If the CIA is bound by the Supreme Court's Hamdan decision to abide by Common Article 3 of the Geneva Conventions in its treatment of prisoners, is there any remaining reason to hide prisoners from the ICRC? Wouldn't it be in our interest to have the Red Cross confirm we are treating prisoners humanely?
- The definition of enforced disappearance in international law is: "The arrest, detention, abduction or any other form of deprivation of liberty by agents of the State . . . followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law." Isn't this what the CIA did with the ghost detainees and those held in the secret detention program?
- How would you distinguish – as a matter of law – CIA practices in this area from a case in which the government of Iran or North Korea detained an American, accused him of engaging in hostile acts, and detained him in secret, denying consular visits and ICRC access, and even refusing to acknowledge his detention? What standing would we have now to object if that happened?
- Why did the CIA ask the military to keep "ghost prisoners" in Iraq? Did you at any point express concern that this practice violated the Geneva Conventions? Why did the CIA not cooperate with the Pentagon's investigation of this issue?
- What happened to the several dozen detainees who were in CIA custody at one point or another in the last four years, but who were not among the 15 transferred to Guantanamo?
- Is it your view today that the secret detention program is legal? If so, on what legal basis do you think the secret detention program can operate?

Sincerely yours,

Tom Malinowski
Washington Advocacy Director
Human Rights Watch



Elisa C. Massimino
Washington Director
Human Rights First



Morton H. Halperin
Executive Director

Chairman ROCKEFELLER. I now recognize our distinguished Vice Chairman Bond.

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

Vice Chairman BOND. Thank you very much, Mr. Chairman, and I join with all my colleagues in wishing you happy birthday. But due to popular demand, I will not lead singing. Mr. Chairman, I'm not going to give away how old you are. But if I remember Missouri law correctly, if you were a Missourian, you would qualify under the State Historic Preservation Act as an historic artifact. And I want to congratulate you on achieving that distinguished goal.

[Laughter.]

Vice Chairman BOND. A very special welcome to John Rizzo and his family, and we're delighted to have all of them with you today.

Friends, the events of September 11 clearly were a turning point for our intelligence community. Faced with an enemy determined to do harm to our country and our citizens, our intelligence agencies had to adapt to new operational and legal challenges, as well as more public scrutiny. The Central Intelligence Agency has been no exception. Its task of finding innovative ways to provide accurate and real-time intelligence, and to identify and neutralize those with militant ideologies threatening us, cannot be understated. It's within that context that the Committee begins this hearing today.

As the CIA adapts its methods and priorities to fight the war on terror, its intelligence collectors and analysts must be fully instructed on and follow the Constitution and the laws of our land. In other words, they need good, strong legal guidance. Therefore, it's essential that we have a visible, accountable, and permanent leader within the legal ranks of the CIA.

And Mr. Chairman, I'm very pleased that we're having this hearing, because it's been well over 2 years since the previous General Counsel left the CIA. Mr. Rizzo has occupied that post as acting General Counsel during that period. It's time that we have a permanent General Counsel confirmed by the Senate.

Now Mr. Rizzo comes before us having spent most of his professional career as an agency attorney handling a variety of assignments. And I'm sure that he will explain what unique perspectives and experiences he can bring to the General Counsel position. I expect there will be many questions about decisions that have been made either by Mr. Rizzo or by other attorneys under his leadership.

I also expect that there may be concerns among some Members, because we don't have certain documents. We can discuss that further in a closed setting. I believe we have received an unprecedented amount of documents, and we have had access that we have never had before, and I'm grateful for your help in that. As far as the closed hearing, I encourage our Members to refrain from raising classified matters, even indirectly, until we move to the closed session.

And I would urge Mr. Rizzo, if he feels that the answer must be given in closed session, to do so.

The purpose of the hearing today is not for us to make political statements, but for us to engage with the nominee on his thoughts,

experiences and background, and qualifications for the post to which he's nominated.

Mr. Chairman, I believe it's important that the Committee act on this nomination, that we give Mr. Rizzo a full and fair hearing, and move his nomination to the floor.

Mr. Rizzo, again, we thank you for your service. We congratulate you on your nomination and look forward to your testimony.

Thank you, Mr. Chairman.

Chairman ROCKEFELLER. I now recognize the Honorable Senator Warner, who will introduce the nominee.

STATEMENT OF HON. JOHN WARNER, A U.S. SENATOR FROM VIRGINIA

Senator WARNER. Thank you, Mr. Chairman, Senator Bond, and colleagues on the Committee.

I deem it a privilege to introduce this fine public servant. The Chairman and Ranking Member have given detailed biographical summaries of this nominee's distinguished career, and therefore I will not further go into the facts, and ask that my statement be put into the record.

Chairman ROCKEFELLER. It will be done.

Senator WARNER. But we have before us one of the most seasoned, tested public servants still on active duty, so to speak, and I think it's marvelous that he and his family are willing to step up and take on this position. He's been in an acting position for some time.

But, I'd say to my colleagues, you've covered all the facts, but I want to mention one other thing, and that is he has been the recipient of a number of awards during his career, perhaps most notably the Thomas C. Clark Award from the Federal Bar Association in 1996. Those of us who are members of the Bar would take due note of this. This is a highly competitive award that recognizes the single—I repeat, the single—most outstanding lawyer in the U.S. Government each year. He won that in 1996. He is the only attorney from the intelligence community to ever receive this award. Quite an achievement. He also received the CIA Director's Award in 2002, 2004 and 2006 for his service as acting General Counsel.

So I think, quite wisely, we should begin this open session, to the extent that colleagues wish to ask questions that can be answered here and then, as the Ranking Member said, begin the closed session because I and others are anxious to consider the Military Commissions Act, which was passed last October. I had a hand in that bill. And it requires this country to take due note of international treaties and so forth, and that work is now under way in our Administration and perhaps we can learn further from this nominee in the course of the closed hearing.

So I thank the Chair and the Members of the Committee. You're on your own, my good friend.

Mr. RIZZO. Thank you, sir.

[The prepared statement of Senator Warner follows:]

PREPARED STATEMENT OF HON. JOHN WARNER

Chairman Rockefeller, Vice Chairman Bond, distinguished colleagues; it is my pleasure to introduce to you today a great public servant and intelligence professional—Mr. John A. Rizzo—who has been nominated to serve as General Counsel

for the Central Intelligence Agency. Mr. Rizzo has a long record of service to the nation, particularly in the great Commonwealth of Virginia, and I welcome him here today.

FAMILY

I would like to recognize Mr. Rizzo's family who is here to support him today as they have supported him during his long and distinguished career in service to our nation. Mr. Rizzo is joined today by his wife Sharon, his son James, and his sister Nancy. I am pleased to welcome them as well.

CAREER HIGHLIGHTS

Mr. Rizzo has been a career public servant. Before joining the Central Intelligence Agency, he practiced law for 2 years for the U.S. Department of Treasury's Office of General Counsel, specializing in enforcement, customs, and narcotics issues.

Mr. Rizzo joined the CIA in 1976 and began a long and distinguished career, where he has spent over 32 years practicing law in the Agency's Office of General Counsel. In 1995, Mr. Rizzo was named Senior Deputy General Counsel, which is the second highest legal position in the Agency. He also has served as Acting General Counsel on several occasions—most recently from July 2004 to the present. In that role he has been responsible for all legal issues regarding the initiation and implementation of intelligence collection and cover action operations. For the past 10 years he has served as the Senior Designated Agency Ethics Official.

Mr. Rizzo has considerable experience working with the Congress. He served as Deputy Director of the Office of Congressional Affairs from 1986 to 1989, and was the Agency's lead counsel in dealing with the House and Senate Committee's investigating Iran-Contra. For this work, he received CIA's Distinguished Officer in the Senior Intelligence Service Award in 1987.

AWARDS AND RECOGNITION

Mr. Rizzo has been the recipient of a number of other awards during his career, perhaps most notably, the Thomas C. Clark award from the Federal Bar Association in 1996. This highly competitive award recognizes the single most outstanding lawyer in government each year. He is the only attorney from the Intelligence Community to ever receive this award—quite an achievement. Mr. Rizzo also received the CIA Director's Award in 2002, 2004, and 2006 for his service as Acting General Counsel.

ACADEMIC CREDENTIALS

Mr. Rizzo earned his undergraduate degree in Political Science from Brown University in 1969 and graduated cum laude from George Washington University Law School in 1972.

SUMMARY

In short, Mr. Rizzo has a long and distinguished record of service to the intelligence mission of this country, and I am very pleased to introduce him to the Committee today.

Chairman ROCKEFELLER. Thank you, Senator Warner.

Mr. Rizzo, you may now proceed with your statement, sir.

STATEMENT OF JOHN A. RIZZO, CENTRAL INTELLIGENCE AGENCY GENERAL COUNSEL-DESIGNATE

Mr. RIZZO. Mr. Chairman and Mr. Vice Chairman, at the outset, let me express my appreciation to you and to the Committee for giving me the opportunity to appear before you today. I am aware of the Committee's heavy workload this session, covering an array of significant policy issues, and I am grateful that you have found the time to consider my nomination.

I also want to give special thanks to Senator Warner for his presence and his generous introduction, especially given the fact that I am not a Virginia resident. But having served many years in Langley, I feel a quasi-citizenship to that State.

With the Committee's permission, I will now read a brief opening statement and will submit a more detailed statement for the record. I come here today halfway through my 32nd year of service as a lawyer for the Central Intelligence Agency. Put it another way, I have spent more than half of my life as a CIA attorney. Accordingly, while I was honored and gratified when the President first nominated me a little over a year ago, I do not consider myself to be a political appointee in the usual sense of that term, and indeed I do not consider myself a political person. I am first and foremost a career public servant and CIA officer.

My situation as I appear before you today is unique. Over the past 35 years, every previous General Counsel, whether Senate-confirmed or otherwise, was new to the Agency. If confirmed, I would be the first CIA General Counsel ever to come up through the ranks. I do not take this distinction lightly.

To put the span of my CIA career in brief chronological perspective, in January 1976, armed with a grand total of 3 years' legal experience, I joined the Office of General Counsel. It was a critical juncture for CIA as an institution. The Church Committee, the Rockefeller Commission, and other investigative bodies had just finished exposing controversial and often troubling CIA activities in years gone by and were recommending massive legal and policy reforms at CIA. The congressional intelligence committees were about to be born, subjecting the Agency to real legislative oversight for the first time in its history.

George H.W. Bush was the CIA Director when I came on board, the first of 10 CIA Directors under whom I have served. There were 18 other lawyers at the Agency in 1976; today, we are well over a hundred lawyers, and we expect our staff to grow even larger for the foreseeable future.

Upon my arrival, and frankly, despite still having no idea what I was really getting myself into, I was immediately immersed in the incredibly diverse nature of CIA's legal practice. While it is fair to say I have spent the bulk of my career providing guidance on CIA's conduct of covert operations, I have also had to address issues in areas ranging from administrative and contract law to environmental and tax law, not to mention being in the middle of an always active and burgeoning litigation caseload.

The CIA has had its equities and information at stake in virtually every major terrorist prosecution in the last two decades, along with a large number of other high-profile criminal cases.

Overall, I can't think of a more stimulating, challenging, important and rewarding place to work as a lawyer, and I have loved going to work every day of my 30-plus years at CIA. So, by any measure, I am not new to the world of national security law. I come with a track record of more than three decades of experience with national security legal issues. I consider that to be a significant and unprecedented plus for a nominee to this job, and I hope that by the end of this process, the Committee concludes that as well.

Mr. Chairman, I will be responsive and forthcoming in answering your questions in this open session. I suspect the Committee will have questions, especially with respect to legal issues I have been involved in in this post-9/11 era, which I can only address in closed

session. Again, however, I pledge to be informative and candid in responding to those questions.

Let me briefly address one substantive issue in my remarks, and that is the crucial issue of congressional oversight of intelligence activities. Until now, the seminal event in my CIA legal career took place two decades ago when I was the Agency's focal point in dealing with the joint congressional committee investigating the Iran-Contra Affair. As the year-long probe played out, I saw firsthand the tremendous damage my Agency sustained, and all of it stemmed from the fact that as an institution, the CIA had kept the Intelligence Committees in the dark about a significant high-risk covert action program. Worse yet, a few senior CIA officers, people I had worked with and admired for years, wound up being prosecuted for misleading Congress about their roles in the program. Their careers were ruined. The Agency's reputation was sullied. Overall, morale at CIA plunged and it took years for the Agency to rebuild its relationship with this Committee and its House counterpart.

The lesson I learned from seeing up close all the damage from Iran-Contra has been lasting and indelible to me. It is this. CIA courts disaster whenever it loses sight of the absolute necessity to inform the intelligence committees on a timely basis what they need to know in order to perform effective, constructive oversight.

I say that not just because that is what the law requires, and not just because it is wise policy, and not just because it's something I think the Committee wants to hear. There is yet another compelling, if coldly pragmatic reason that Iran-Contra brought that lesson home to me, and it is this. The more the committees know about what CIA is doing, the more you are invested in the process, and the more frankly you will be willing and able to protect and defend CIA from the uninformed and often false charges of wrongdoing that seem to inevitably come our way from those on the outside. It is in that spirit of openness and candor that I will endeavor to address the Committee's questions, not just today, but down the road as well, if the Senate ultimately sees fit to confirm me as CIA General Counsel.

Mr. Chairman, I recognize that a major focus of the Committee's attention in considering my nomination will be my role in the Agency's actions undertaken in the counterterrorist arena in the years following the 9/11 attacks. This is as it should be. After all, I have served as the CIA's acting General Counsel approximately 4 out of those 5½ eventful years. As I noted at the outset, much of this discussion necessarily must be reserved for a closed session. For now, I can say that this period has been the most rewarding in terms of service to this country, but by far the most challenging of my three-plus decades of practicing law at the CIA. While being a CIA lawyer has never been dull, the legal issues the Agency has had to contend with over the last 5 years would have been unprecedented and largely unimaginable to me on September 10, 2001. A couple of brief examples.

In the operational arena, CIA, in my experience, had never before been authorized to detain and interrogate an individual believed to be holding vital national security information. In the foreign intelligence collection arena, CIA had never before been au-

thorized to collect more volumes of information from exponentially more sources, and to analyze and share that information faster with our counterparts in the law enforcement community, State and local governments, as well as our foreign partners.

While only a very small portion of that information dealt with individual Americans, we had to be then, and must continue to be constantly mindful of the privacy rights of our fellow citizens. These were uncharted territories for me, for the Office of General Counsel, and indeed, for the U.S. Government as a whole, and we have had to navigate on one of the most difficult legal and policy terrains imaginable, in close consultation with legal experts throughout the Government.

Throughout it all, my mission has been to decide every issue coming my way in accordance with one basic overriding principle that I have followed my entire CIA career. It is this—to facilitate CIA's discharge of its vital mission to protect the national security and the American people in a manner that at all times is faithful and in full compliance with the Constitution, U.S. law, and U.S. obligations under international treaties.

Finally, Mr. Chairman, let me briefly address a question several long-time colleagues posed to me shortly after my nomination was announced, which was, why, as a career CIA lawyer for three decades, would you want to give up that status after all those years to become a political appointee subjected to the rigors and uncertainty of that entire process?

Well, for me, it came down to two basic reasons. First, it is simply a great job. The work is as important as it gets. The palpable sense of contributing something to protect the Nation's security is there every day. And, as hard as it sometimes gets, I have always considered it to be the best job I could ever have.

Second, I would respectfully suggest that the unprecedented fact of a career CIA lawyer coming up the ranks and becoming General Counsel sends a significant symbolic message to our constantly growing, ever-younger office. Namely, it says to a new lawyer coming on board that if he or she makes a commitment to a CIA career, works conscientiously and hard, even as administrations come and go, and maybe catches a few breaks along the way, then he or she could realistically aspire to be the General Counsel of what I consider to be the most vital agency in the U.S. Government in protecting the citizens of the United States. For me, establishing that precedent would be an immensely gratifying legacy.

Mr. Chairman, that concludes my statement, and I welcome the Committee's questions.

[The prepared statement of Mr. Rizzo follows with attachment.]

PREPARED STATEMENT OF JOHN S. RIZZO

Mr. Chairman and Mr. Vice Chairman:

At the outset, let me express my appreciation to you and to the Committee for giving me the opportunity to appear before you today. I am aware of the Committee's heavy workload this session, covering an array of significant policy issues, and I am grateful that you have found the time to consider my nomination.

I come here today halfway through my 32nd year of service as a lawyer for the Central Intelligence Agency. Put another way, I have spent more than half of my life being a CIA attorney. Accordingly, while I was honored and gratified when the President first nominated me a little over a year ago, I do not consider myself to be a political appointee in the usual sense of that term, and indeed I do not consider

myself a political person. I am first and foremost a career public servant and CIA officer.

My situation, as I appear before you here today, is unique. Over the past 35 years, every previous General Counsel—whether Senate-confirmed or otherwise—was new to the Agency. If confirmed, I would be the first CIA General Counsel ever to come up through the ranks. I do not take this distinction lightly.

To put the span of my CIA career in brief chronological perspective, in January 1976, armed with a grand total of 3 years legal experience, I joined the Office of General Counsel. It was a critical juncture for CIA as an institution. The Church Committee and other investigative bodies had just finished exposing controversial and often troubling CIA activities in years gone by and were recommending massive legal and policy reforms at CIA. The Congressional intelligence committees were about to be born, subjecting the Agency to real legislative oversight for the first time in its history. George H. W. Bush was the CIA Director when I came on board, the first of 10 CIA Directors under whom I have served. There were 18 other lawyers at the Agency in 1976—today we have well over 100 lawyers, and we expect our staff to grow even larger for the foreseeable future.

Upon my arrival, and frankly, despite still having no idea what I was getting myself into, I was immediately immersed in the incredibly diverse nature of CIA's legal practice. While it is fair to say that I have spent the bulk of my career providing guidance on how CIA conducts covert operations, I have also had to address issues in areas ranging from administrative and contract law to environmental and tax law—not to mention being in the middle of an always active and burgeoning litigation case load. CIA has had its equities and information at stake in virtually every major terrorist prosecution in the last two decades, along with a surprisingly large number of other high profile criminal cases. For the Committee's reference, attached at Tab A is a detailed summary of the scope of legal work performed by the Office of General Counsel. Overall, I cannot think of a more stimulating, challenging, important, and rewarding place to work as a lawyer, and I have loved going to work every day of my 30 plus years at CIA.

So, by any measure, I am not new to the world of national security law. I come with a track record of more than three decades of experience. I consider my long experience with national security legal issues to be a significant and unprecedented plus for a nominee to this job, and I hope that by the end of this process the Committee concludes that as well.

I will be responsive and forthcoming in answering your questions in this open session. I suspect that the Committee will have questions—especially with respect to legal issues I have been involved with in this post-9/11 era—which I can only address in closed session. Again, however, I pledge to be informative and candid in responding to those questions.

Let me briefly address one substantive issue in my remarks, and that is the crucial issue of Congressional oversight of intelligence activities. Until now, the seminal event in my CIA legal career took place two decades ago, when I was the Agency's focal point in dealing with the joint Committee investigating the Iran/Contra Affair. As the year-long Congressional probe played out, I saw first-hand the tremendous damage my Agency sustained, and all of it stemmed from the fact that, as an institution, CIA had kept the Intelligence Committees in the dark about a significant, high-risk covert action program. Worse yet, a few senior CIA officers—people I had worked with and admired for years—wound up being prosecuted for misleading Congress about their roles in the program. Their careers were ruined, the Agency's reputation was sullied, overall morale at CIA plunged, and it took years for the Agency to rebuild its relationship with this Committee and its House counterpart.

The lesson I learned from seeing up close all the damage from Iran/Contra has been lasting and indelible to me: It is this: that CIA courts disaster whenever it loses sight of the absolute necessity to inform the intelligence committees on a timely basis what they need to know in order to perform effective, constructive oversight. I say that not just because that is what the law requires; not just because it is wise public policy; and not just because I think it is something the Committee wants to hear. There is yet another compelling, if coldly pragmatic reason that Iran/Contra brought that lesson home to me. The more the Committees know what CIA is doing, the more you are invested in the process, and the more, frankly, the Committees will be willing and able to protect and defend CIA from the uninformed and often false charges of wrongdoing that seem to inevitably come our way from those on the outside. It is in that spirit of openness and candor that I will endeavor to address the Committee's questions—not just today, but down the road as well, if the Senate ultimately sees fit to confirm me as CIA General Counsel.

I recognize that a major focus of the Committee's attention in considering my nomination will be my role in those Agency actions undertaken in the

counterterrorist arena in the years following the 9/11 attacks. This is as it should be—after all, I have served as CIA's Acting General Counsel approximately four out of those five and one-half eventful years. As I noted at the outset, much of this discussion necessarily must be reserved for a closed session. For now, I can say that this period has been the most rewarding (in terms of service to this country), but by far the most challenging of my three plus decades of practicing law at the CIA. While being a CIA lawyer has never been dull, the legal issues the Agency has had to contend with over the past 5 years would have been unprecedented and largely unimaginable to me on September 10, 2001.

For example, in the operational arena, CIA in my experience had never before been authorized to detain and interrogate an individual believed to be holding vital national security information. Additionally, in the foreign intelligence collection arena, CIA had never before been authorized to collect more volumes of information from exponentially more sources and to analyze and share that information faster with our counterparts in the law enforcement community, state and local governments, and our foreign partners. While only a very small portion of that information dealt with individual Americans, we had to be and must continue to be constantly mindful of the privacy rights of our fellow citizens.

These were unchartered territories for me, the Office of General Counsel, and indeed, for the US government as a whole. We have had to navigate on one of the most difficult legal and policy terrains imaginable in close consultation with legal experts throughout the US government. Throughout it all, my mission has been to decide every issue coming my way in accordance with one basic overriding principle that I have followed my entire CIA career: To facilitate CIA's discharge of its vital mission to protect the national security and the American people in a manner that at all times is faithful and in full compliance with the Constitution, U.S. law, and U.S. obligations under international treaties.

Of course, the Committee deserves to know not just what I have done over the years as a CIA lawyer, but also, more importantly, what my vision would be for the Office of General Counsel if confirmed in this position. In the interest of time, I will briefly touch on two objectives I consider crucial to ensure my office remains effective in the future.

First, I intend to continue to press forward my on-going efforts to increase the Office of General Counsel's presence and profile in all parts of CIA. As I indicated earlier, we have about six times as many lawyers here now than on the day I joined. That growth is due largely to our success in placing our lawyers "on the scene" in every component at CIA Headquarters to provide close support and counsel for CIA officers, as well as to serve as the General Counsel's "eyes and ears". The lawyers' presence is not only tolerated by our clients—but they want them there and they want more of them. To me, fostering this attitude and trend is extremely important for any number of reasons, so I am determined to continue in that direction.

Second, as our office gets ever larger, I want our legal work force to be ever more diverse. I am proud that historically we have never followed a "cookie cutter" approach to hiring—we bring newly minted lawyers on from law schools all over the country, as well as experienced practioners from private law firms, military JAGS, and from other government agencies. In addition, more than half our attorneys are women, and roughly 15 percent are minorities. I am encouraged that these numbers represent a steady improvement for OGC in this area in recent years. Even so, we need to do a better job of attracting minorities, and I hope to devote my personal attention and focus in this direction if I am confirmed.

Finally, let me briefly address a question several longtime colleagues posed to me shortly after my nomination was announced, which is, "Why, as a career CIA lawyer for three decades, would you want to give up that status after all those years to become a "political" appointee subjected to the rigors and uncertainties of that entire process?" For me, it came down to two basic reasons;

First, it is simply a great job. The work is as important as it gets, the palpable sense of contributing something to protect the nation's security is there everyday and as hard as it sometimes gets, I have always considered it to be the best job I could ever have. Second, I would respectfully suggest that the unprecedented fact of a career CIA lawyer coming up the ranks and becoming General Counsel sends a significant symbolic message to our constantly growing, ever younger office. Namely, it says to a new lawyer coming on board that, if he or she makes a commitment to a CIA career, works conscientiously and hard even as Administrations come and go, and maybe catches a few breaks along the way, then he or she can realistically aspire to be the General Counsel of what I consider to be the most vital Agency in the US government in protecting the citizens of the United States. For me, establishing that precedent would be an immensely gratifying legacy. And, I would hum-

bly submit, it would be a healthy thing for the Office of General Counsel, the Agency, and ultimately, the country.

SCOPE OF THE OFFICE OF GENERAL COUNSEL

ADMINISTRATIVE LAW DIVISION

The General Counsel is responsible for the Agency's ethics program. The attorneys in the Administrative Law Division (ALD) provide guidance to present and former Agency personnel regarding the requirements of Government-wide and Agency-specific ethics statutes and regulations. Like other government organizations, we also have an Ethics Compliance program to ensure financial disclosure forms are timely completed and reviewed, and that we meet Office of Government Ethics (OGE) annual training requirements. In fact, OGE recognized our ethics program in March 2007 with a Program Award.

In addition to advising on ethics issues, ALD attorneys also provide advice on the full range of administrative law questions, such as the proper expenditure of appropriated funds, the payment of travel expenses, the provision of training at Government expense, and the lawful use of deadly force by Agency personnel. ALD also represents the Agency in administrative equal employment opportunity (EEO) cases as well as provides EEO awareness training to Agency employees. Finally, ALD attorneys provide legal advice to Agency managers on Human Resources matters ranging from recruitment to retirement to diversity hiring, and in tragic cases, advise the Agency's casualty officer about the benefits available to the survivors of Agency personnel who die in the line of duty.

CONTRACT LAW DIVISION

The Contract Law Division advises the Agency's Office of the Procurement Executive and the Office of Acquisitions in all aspects of the Agency mission on government contract matters. The lawyers in this division provide legal advice during the solicitation, evaluation, and negotiation of contracts, including review of source selection documentation and sole source justifications, and the final contract documents. Contract Law Division is responsible for representing the Agency in contract award protests (generally adjudicated by the Government Accountability Office) and contract performance disputes (generally adjudicated by a Board of Contract Appeals). In addition to advising on all aspects of contract formation, the Division attorneys advise on the administration of the contracts and all contract-related issues, including contract-related fiscal law, intellectual property, and organizational conflict of interest issues. The division attorneys also advise on all Agency real estate-related transactions, including construction and the leasing of real property.

Contract Law Division also provides legal advice on environmental, safety, and health compliance issues for the Office of Medical Services' Environmental Safety Group (ESG), and advice on matters related to hazardous materials shipments. There is interaction with Department of Transportation to obtain regulatory permits (waivers) for activities, as needed. Contract Law Division also advises the Agency on copyright law and other intellectual property areas, and the settlement of Federal Tort Claims Act (automobile) and Military Personnel and Civilian Employees' Claims Act (personal property) claims.

INTELLIGENCE SUPPORT DIVISION

The Intelligence Support Division (ISD) provides legal analysis on general legal issues relating to CIA operational activities. It supports and complements the Operations Division of OGC, which provides specific legal oversight of specific operational activities. ISD focuses on issues arising under the Fourth Amendment to the U.S. Constitution, various statutes protecting the privacy interests of U.S. persons, Executive Order 12333 and various CIA regulations intended to ensure that Agency operational activities remain in accordance with U.S. law and the Executive Order. ISD focuses primarily on issues "of first impression," and one of ISD's primary responsibilities is to review new types of intelligence collection activities—particularly technical collection activities—to ensure that such activities comply with applicable law and regulations.

ISD also provides legal expertise in specialized areas of the law—including guidance on tax, import and export issues and certain issues of foreign or international law.

LITIGATION DIVISION

Litigation Division handles all of the litigation involving the Central Intelligence Agency or any of its employees where those employees' involvement is due to actions taken in their official capacity. Litigation Division's work encompasses both civil and criminal litigation. On the civil side, Litigation Division handles cases in which the CIA or its employees (in their official capacity) have been sued. These cases consist primarily of Freedom of Information Act and Privacy Act cases, Federal Tort Claims Act cases, employment related cases (such as Equal Employment Opportunity Act, Administrative Procedure Act, Bivens, and prepublication review cases), and cases regarding contracts.

On the criminal side, the Division is involved in unauthorized disclosure cases in which the classified information that was compromised belongs to the CIA. The Division also represents the CIA's interests in criminal cases where the Agency has information that is discoverable to a defendant. Terrorism cases and narcotics cases comprise most of this category. In these cases, CIA uses the Classified Information Procedure Act to protect the classified information at issue.

Lastly, the Division handles criminal cases in which a defendant is making a claim that his criminal conduct was authorized by the United States government generally and CIA in particular, i.e. the public authority defense.

OPERATIONS DIVISION

Operations Division is the focal point for questions involving the legality and propriety of activities carried out by the National Clandestine Service (NCS). The Division is charged with providing legal counsel and guidance to the NCS on matters involving clandestine intelligence collection and covert action, including matters arising under the Congressional notification provisions of the National Security Act. To serve the NCS more effectively, the attorneys in this Division are co-located with the various divisions and centers within the NCS.

The Division's establishment of rotational positions began in the 1980's with the placement of attorneys in newly created CIA centers for counterterrorism and counternarcotics. Over time, OGC attorneys filled positions in other CIA centers as well as all NCS geographical divisions. Attorneys in these components serve as clearinghouses for a broad spectrum of legal inquiries, including matters involving covert action, EO 12333, asset recruitment and termination, export control, support to law enforcement, litigation, Congressional notification, contracts, and administrative and personnel issues. OD also assists NCS components responsible for maintaining the proprietary and cover arrangements required to support Agency operations.

OFFICE OF THE CHIEF FINANCIAL OFFICER

The CFO Legal unit provides legal advice and counsel to the Office of the Chief Financial Officer (including the Office of the Procurement Executive) and to other Agency components, on a wide range of appropriations and fiscal law topics. These include, but are not limited to: Federal and Agency budget formulation and execution; Anti-Deficiency Act; use of expired (prior year) funds; covert action resource issues; certain lease and construction issues; Economy Act; reprogramming of funds; Federal Managers' Financial Integrity Act; Agency's audited financial statements process; and, Congressional notification or reporting requirements and directions concerning certain of the preceding matters. The CFO Legal team also provides guidance (in coordination with Administrative Law Division) to the Office of the CFO on Federal employee ethics.

CFO Legal reviews and authorizes proposed Agency regulations on financial administration and acquisition, and reviews and coordinates on all other proposed regulations and notices before they are published. On behalf of the CFO, CFO Legal reviews and comments on a broad spectrum of draft Intelligence Community policy documents, and on legislation or similar legislative materials as requested by the Agency's Office of Congressional Affairs. CFO Legal also provide modules of legal instruction as part of various budget and resource management courses offered to CIA employees.

OFFICE OF THE CHIEF INFORMATION OFFICER

The attorneys that provide legal support to the Agency's Chief Information Officer (CIO) do so for the diverse components within the Office of the CIO, the CIA Privacy and Civil Liberties Program, the global communications activities .of the Directorate of Support, the Center for the Study of Intelligence, and the DNI's Open Source Center. CIO Legal provides guidance on legal issues relating to information technology, global communications, privacy and civil liberties, the classification and de-

classification of national security information, prepublication review, information sharing, records management, and information review and release programs mandated by law.

OFFICE OF CONGRESSIONAL AFFAIRS/LEGISLATION GROUP

Legislation Group is part of the Office of Congressional Affairs (OCA). The group provides legislative drafting, monitoring and advice to the Director of the Central Intelligence Agency (D/CIA) and to the Central Intelligence Agency (CIA). The group's primary functions include: Preparing and coordinating the CIA's annual draft of the Intelligence Authorization Act; monitoring draft, introduced, and pending legislation, and related reports, letters, or testimony to determine the potential impact upon the CIA and its activities, and coordinating Agency positions on legislation that would affect Agency equities; overseeing and having primary responsibility for the provision of timely coordinated D/CIA responses to Legislative Referral Memorandums from the Office of Management and Budget that seek CIA concurrence and/or comments on various legislative proposals, draft testimony, or Administration signing statements; monitoring the Congressional Record and other sources daily for actions and items of interest to the CIA, and keeping CIA leadership and other elements informed, as appropriate, of major legislative developments; providing, supervising or coordinating the legal advice provided to OCA; and, briefing CIA training classes about Congress and Congressional oversight.

Chairman ROCKEFELLER. Thank you very much, Mr. Rizzo. And I have four routine questions, which are always asked.

Mr. Rizzo, do you agree to appear before the Committee here or in other venues when invited?

Mr. RIZZO. Yes, sir.

Chairman ROCKEFELLER. Do you agree to send the Office of General Counsel personnel here before the Committee and designated staff when invited?

Mr. RIZZO. Yes. Yes, sir.

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

Mr. RIZZO. Yes, sir.

Chairman ROCKEFELLER. Will you work to ensure that all CIA elements provide such material to the Committee when requested?

Mr. RIZZO. Yes, sir.

Chairman ROCKEFELLER. Let me just start. You made an interesting distinction as you spoke about 2000 and forwards and 2000 and backwards. I'm not quite prepared to make that distinction, if we do it in the proper way, which does not in any way involve national security secrets or anything of that sort. But there are some general questions I think that one can ask that are of interest to this Committee, and so I will.

Without getting into any classified details of the CIA's interrogation program, did you, as acting CIA General Counsel, issue legal guidance, prior to the program's start, that the program's interrogation techniques did not violate the Fifth, Eighth or Fourteenth Amendments of the U.S. Constitution?

Mr. RIZZO. Yes, sir.

Chairman ROCKEFELLER. Now, the "yes, sir" means that you did, yes.

Did the Department of Justice issue a legal opinion prior to the program's start that the interrogation techniques would not constitute conduct of the type that would be prohibited by the U.S. Constitution, and did you concur with this opinion?

Mr. RIZZO. The Department of Justice, before the program began, did issue guidance relative to the issue of the program by laying

the terms of the torture statute. That at that time was the extent of the legal guidance we received from the Department of Justice prior to the program's initiation.

Chairman ROCKEFELLER. OK.

As acting CIA General Counsel in 2002, did you issue legal guidance that the interrogation techniques to be used by the CIA were lawful under the Convention Against Torture and the Geneva Convention?

Mr. RIZZO. In 2002, yes, sir.

Chairman ROCKEFELLER. Both.

Mr. RIZZO. Yes, sir.

Chairman ROCKEFELLER. Mr. Rizzo, during the operation of the CIA detention and interrogation program, were you made aware of any concerns expressed by CIA officers that they could be exposed to criminal prosecution for their involvement in the program?

Mr. RIZZO. I'm sorry—at the outset of the program or in the course of the entire program?

Chairman ROCKEFELLER. In the course of.

Mr. RIZZO. There have been some concerns so expressed, yes, sir.

Chairman ROCKEFELLER. We could discuss that in closed session.

Mr. RIZZO. Yes, sir.

Chairman ROCKEFELLER. You can refuse to answer if you choose. What was the nature of these concerns, and what action did you take to address them?

Mr. RIZZO. Well, it would be difficult to get into the nature of the concerns. I think I'd just—if you don't mind, I think I'd best address that in closed session.

Chairman ROCKEFELLER. That is your right.

Final question from me, Mr. Rizzo. The Department of Justice's Office of Legal Counsel drafted an unclassified memo dated August 1, 2002 about standards of conduct under the Convention Against Torture and the criminal prohibitions on torture. That opinion concluded that physical pain amounting to torture must be "equivalent in intensity to the pain accompanying serious physical injury such as organ failure, impairment of bodily function, or even death," and that prosecution under the criminal torture statue might be barred "because enforcement of the statute would represent an unconstitutional infringement of the President's authority to conduct war." The opinion was later repudiated by the Office of Legal Counsel.

Did you concur with the legal analysis in this memo?

If not, what portions did you disagree with?

Mr. RIZZO. I obviously was aware of that legal memo when it was issued on August 1, 2002. I did not, certainly, object to the memo. As with most legal memos, my reaction was it was an aggressive, expansive reading, but I can't say that I had any specific objections to any specific parts of it. I do agree with the Department of Justice later analysis that the language that you cited did appear overbroad for the issue that it was intended to cover.

Chairman ROCKEFELLER. Thank you, sir.

The Vice Chairman.

Vice Chairman BOND. Thank you very much, Mr. Chairman.

Mr. Rizzo, Senator Wyden and I have been seeking for some time in this session, as Chairman Roberts and Vice Chairman Rockefeller did in the past session, an unclassified, redacted version of

the executive summary of the June 2005 CIA's Inspector General's report on accountability in terrorist attacks. This was a defining moment for the Nation, for the agency, and the American public has had a tremendous amount of information about all the things leading up to that and where our governmental agencies were, and they've had access to most of the Department of Justice's Inspector General report on the FBI and 9/11.

Is there any legal reason why an unclassified, redacted version of the executive summary has not been provided to us and the public?

Mr. RIZZO. No legal reason, no, sir.

Vice Chairman BOND. Would you advise the Director of that, with our warm request?

Mr. RIZZO. I will. I will.

Vice Chairman BOND. Thank you.

Mr. Rizzo, 9/11 clearly marked a milestone in the development and interpretation of counterterrorism laws. We've seen the Administration's proposal to update FISA, but there are other areas in which changes to current law are needed in order fully to address threats. There has been some discussion that Executive Order 12333 needs to be updated, particularly with regard to presumptions regarding U.S. persons.

Are there that or any other general areas that you think we need to be looking at?

Mr. RIZZO. Well, you know, with respect to the Executive Order 12333, which has been on the books for 25 years, and actually existed in slightly different iterations several years before that, it does need updating. I happen to believe, however, that the intelligence community has lived with its terms for a good period of time now, so I can't say that any of the substantive provisions in that order have hamstrung or damaged the community.

Vice Chairman BOND. The WMD Commission recommended a working group to review U.S. persons rules governing collection, retention and dissemination of information across the IC. Were you involved in the review? If so, what's the status? Are there any changes we expect to see and how changes impact the operations of the agency?

Mr. RIZZO. That review, Senator, has been ongoing under the aegis of the Director of National Intelligence's Office of General Counsel. We in CIA General Counsel's Office have played a role in that. I believe the process is well along, and I believe the group will be ready with some recommendations in the near future.

Vice Chairman BOND. In your responses to prehearing questions, you noted the decision whether to allow CIA to conduct electronic surveillance within the United States is a question for the policymakers, and said its prohibition is not required under the Constitution.

While the decision may be one for policymakers, are there legal and practical implications to allowing CIA to conduct electronic surveillance, and/or do you believe the prohibition should be lifted or modified, or should domestic surveillance activities be limited to the FBI?

Mr. RIZZO. I happen to believe, Senator, that the CIA can continue to be effective in its assigned mission, in its expanded mis-

sion without any domestic surveillance authority capability, so I do believe, on a number of grounds, that that area is best left to the FBI and other domestic law enforcement agencies.

Vice Chairman BOND. Thank you very much, Mr. Rizzo.

Thank you, Mr. Chairman.

Chairman ROCKEFELLER. Senator, thank you.

Senator Warner.

Senator WARNER. Thank you, Mr. Chairman. I'll be quite brief here so we can get to the closed hearing hopefully.

I wish to compliment you on your opening statement. I listened to it very carefully. Clearly, it is a thoughtful document that you worked on for some time and expresses your innermost feelings about the challenges that lay ahead and how you're going to discharge those responsibilities. So I'd say well done, sir.

The Supreme Court's 2006 decision in Hamdan versus Rumsfeld has been interpreted to provide protections under Common Article III of the Geneva Convention to unlawful combatants and particularly al-Qa'ida. Prior to that decision, is there some unclassified references that you would have to such legal advice as you gave the department interpreting the requirements of the Geneva Convention toward unlawful combatants?

Mr. RIZZO. I will check if there is some unclassified advice. This whole area—over the years, we have tended to be encased in a highly classified program, but I will check on that.

Senator WARNER. All right.

Mr. RIZZO. And the implication of Hamdan, obviously, was for the Supreme Court holding that Common Article III of the Geneva Convention did apply to the conflict with al-Qa'ida.

Senator WARNER. And you'll provide the Committee with such unclassified material as may have existed prior to that decision?

Mr. RIZZO. Yes, sir.

Senator WARNER. And I thank you.

I have no further questions.

Chairman ROCKEFELLER. Thank you, Senator Warner.

Senator Whitehouse.

Senator WHITEHOUSE. Thank you.

I'd like to ask a little bit about your notions of oversight in the context of a government of separated powers. And let me start by asking the broadest question, which is that although the Constitution tends to divide decisionmaking in certain areas between judicial, executive and legislative branches, there does not appear evident to me anywhere an area where congressional oversight, as opposed to decisionmaking, is forbidden.

And in the scope of the activities that you are familiar with in the intelligence community, and without getting into any classified details, do you believe that there is any area of intelligence activity that is properly beyond congressional oversight?

Mr. RIZZO. No, sir.

Senator WHITEHOUSE. There are various documents from the Office of Legal Counsel at the Department of Justice and from other Department of Justice elements regarding the counterterrorism program, in many respects essential documents, providing legal justification for various elements of the program, that we have not been provided. And I'm interested in your explanation of the jus-

tification for this Committee not being provided those documents, in light of what you have just said.

Mr. RIZZO. Well, if I could characterize the Justice Department position in this regard, this is—these documents are part of the deliberative process of advice offered by the Department of Justice to other agencies in the executive branch, and the need for confidentiality in those communications.

Senator WHITEHOUSE. So it's a deliberative process privilege claim?

Mr. RIZZO. Correct.

Senator WHITEHOUSE. Is there any other legitimate claim that protects them.

Mr. RIZZO. Well, all I can tell you from the CIA's standpoint, there certainly would be no sources and methods or operational reason why we would independently withhold them from the Committee.

Senator WHITEHOUSE. Are you aware of whether there are other opinions of the Office of Legal Counsel in other areas that are equally kept from public or congressional review under this basis? I mean, it seems to me, there are an awful lot of OLC opinions that are published and catalogued, and you can go look them up.

Mr. RIZZO. Yeah, no, there are. As we speak here today, certainly there are no other opinions to CIA that fall into that category. And I would add, Senator, you know, in the course of my long career at CIA, past Office of Legal Counsels, and I can't cite you chapter and verse of what those opinions were, have held guidance back that they've provided to CIA on similar grounds. So this is not an entirely new phenomenon here.

Senator WHITEHOUSE. Let me ask you one other question on another topic. Recently General Petraeus sent a letter to all of our forces in Iraq, and he wrote the following:

"Some may argue that we would be more effective if we sanctioned torture or other expedient methods to obtain information from the enemy. They would be wrong. Beyond the basic fact that such actions are illegal, history shows that they also are frequently neither useful or necessary.

"Certainly extreme physical action can make someone 'talk.' However, what the individual says may be of questionable value. In fact," he went on to say, "our experience in applying the interrogation standards laid out in the Army Field Manual on Human Intelligence Collector Operations that was published last year shows that the techniques in the manual work effectively and humanely in eliciting information from detainees."

Do you believe that statement by General Petraeus to be correct?

Mr. RIZZO. Yes, I don't have an objection to that statement.

Senator WHITEHOUSE. Do you believe that the use of enhanced interrogation techniques, to use a phrase that—my light is on.

I won't proceed to the second question.

Mr. Chairman.

Chairman ROCKEFELLER. Senator Levin.

Senator LEVIN. Thank you, Mr. Chairman.

And welcome to you, Mr. Rizzo. When we met last week, you and I discussed some specific documents that I've requested to be provided to the Committee. I understand the CIA is reviewing those

documents so that they can be turned over. Have you made any progress on those reviews?

Mr. RIZZO. We're working on them now, Senator. We didn't actually receive the documents until the day after our meeting. So we're working very hard on them.

Senator LEVIN. The Chairman made reference to the first Bybee memo, which said that for an act to constitute torture, it must inflict pain that's difficult to endure. Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.

The Chairman asked you the question, and I didn't think you directly answered it, so let me ask it again. Did you agree with that conclusion at the time?

Mr. RIZZO. I thought that particular piece was—was overbroad.

Senator LEVIN. Did you not tell me that you thought it was a reasonable statement?

Mr. RIZZO. Well, I thought—I believe I told you I thought that the opinion on the whole was a reasonable one, persuasive document.

Senator LEVIN. But that particular statement, did you not tell me that you thought that was a reasonable conclusion?

Mr. RIZZO. If I did, Senator, I meant to put it in a different context. I mean, I wanted to make the point to the Chairman that I did not object to that statement at the time; I did not.

Senator LEVIN. Now, on Bybee number two, did you request that the Office of Legal Council produce that memo?

Mr. RIZZO. Yes, sir.

Senator LEVIN. And who gave the Department of Justice the interrogation practices which they analyzed?

Mr. RIZZO. Well, the——

Senator LEVIN. Did you do that?

Mr. RIZZO. My office was the vehicle for getting that to the Department of Justice, yes, sir.

Senator LEVIN. And you were in charge of the office?

Mr. RIZZO. Yes, sir.

Senator LEVIN. Was the definition of torture in the first Bybee memo the basis for determining whether the interrogation techniques evaluated in the second Bybee memo were legal under the anti-torture statute?

Mr. RIZZO. Well, they were—as you know, they were issued on the same day, and in many respects, they play off each other. I, frankly, was more concerned and relied more heavily on the classified guidance of the second Bybee memo that was addressed specifically to us.

Senator LEVIN. But do you know the answer to my question?

Mr. RIZZO. I'm sorry.

Senator LEVIN. Let me go on to another one, then.

At the time that it was approved in 2002, did you think that the CIA's interrogation program was humane—at that time?

Mr. RIZZO. The—I'm trying to be responsive in a way that—without getting into a detailed explanation.

We believed then and we have believed throughout this process that the CIA program, as it was conceived—the procedures, the cri-

teria, when taken in total leads to the conclusion—justifies the conclusion that the program was from the outset and remains conducted in a humane fashion.

Senator LEVIN. Why is it so complicated to answer a very direct question that you think the CIA's interrogation program was humane at the time that it was approved?

Mr. RIZZO. OK, well, I'm sorry. I was trying to answer. I found it complicated because to get the——

Senator LEVIN. Well, let me ask it again, then.

Mr. RIZZO. OK.

Senator LEVIN. At the time it was approved in 2002, did you think the CIA's interrogation program was humane?

Mr. RIZZO. Yes, sir.

Senator LEVIN. Is that what you told me in the office?

Mr. RIZZO. I hope that's what I told you in the office because that's what I believe.

Senator LEVIN. All right. Have we ever rendered or has CIA ever rendered to countries detainees that—excuse me. Have detainees been rendered by us, including the CIA, to countries that use torture?

Mr. RIZZO. That's an important question, and the only way I could give you the proper answer would be in a classified session.

Senator LEVIN. You can't even answer in an unclassified—I'm not asking you which countries. I'm just asking you whether we've ever rendered detainees to countries which use torture.

Mr. RIZZO. Well, again, if you don't mind, Senator, it's difficult to give a yes or no answer to that in an open session. I would just greatly prefer to give it the attention it deserves in our closed session.

Senator LEVIN. Thank you. Thank you, Mr. Chairman.

Chairman ROCKEFELLER. Is that it, Senator Levin?

Senator Feinstein. We have a vote which started at 3:20.

Oh, I'm sorry. I'm sorry, Senator Feinstein. Senator Wyden.

That's my mistake, and I apologize to you. Senator Wyden is here.

Senator WYDEN. Thank you very much, Mr. Chairman.

Mr. Rizzo, thank you very much for your response to Senator Bond's question with respect to the CIA Inspector General report. That's very important and very much in the public interest.

Just so we're clear on this Bybee amendment, because I know a number of colleagues have asked about it, the key part of that memo is the question of inflicting physical pain and it not being torture unless the pain is equivalent to organ failure and the related circumstances.

Do you think you should have objected at the time?

Mr. RIZZO. I honestly—I can't say I should have objected at the time. I read the opinion at the time. As I say, I want to emphasize that there was a companion opinion issued to us that did not contain that sort of language and that really we relied on.

But no, I can't honestly sit here today and say I should have objected to that.

Senator WYDEN. I think that's unfortunate, because it seems to me that language, on a very straightforward reading, is over the

line. And that's what I think all of us wanted to hear, is that you wish you had objected.

Mr. Rizzo, is the CIA bound by the Geneva Convention, particularly Article III? And I would like to know if you think we're bound by Article III in its entirety.

Mr. RIZZO. Well, we're certainly bound by Article III of the Geneva Convention as interpreted and made in statutory form by the Congress, yes, sir.

Senator WYDEN. So—in its entirety?

Mr. RIZZO. In its entirety as interpreted and enacted by statute, yes, sir.

Senator WYDEN. I believe that "as interpreted" means that you comply with it in its entirety? I'll just ask it once more.

Mr. RIZZO. Yes, sir.

Senator WYDEN. Thank you.

Now, as the occupying power in Iraq, the United States has certain legal privileges and responsibilities. If we start to draw down the number of U.S. troops in Iraq, at what point would our occupation end?

Mr. RIZZO. Oh, boy, Senator. That is outside my lane. I don't profess to be an authority on occupying power and drawing down of forces. I'm sorry.

Senator WYDEN. Well, I'm asking from a legal standpoint. I'm asking about the legal terminology. Do you believe our occupation is over?

Mr. RIZZO. As a legal matter, Senator, I'll be happy to research that. I just have never had occasion to research that particular issue. It doesn't impact directly on CIA or CIA personnel there.

Senator WYDEN. You emphasized the importance of keeping the Congress and the Committee fully and currently informed about intelligence activities, which is required by law.

Do you believe that the Committee was kept fully and currently informed, as the statute also requires, about the CIA's detention program?

Mr. RIZZO. Well, as you know, for a considerable period of time the interrogation techniques aspect of the program was kept to the leadership of the Committees. It has now been briefed to the full Committee.

As you also know, there are provisions in the National Security Act allowing limited notifications in certain extraordinary circumstances. So I believe the way the matter was briefed originally was legally appropriate. I do believe that I certainly am more comfortable and feel better now that the whole Committee has been briefed into the program, yes, sir.

Senator WYDEN. So you would say, though, that keeping only two Members of the Committee informed—because that is what we faced under this program—is still keeping the Committee fully and currently informed?

Mr. RIZZO. Well, as I say, the law does allow—first of all, let me——

Senator WYDEN. I want to hear your opinion. I want to hear your opinion as to whether having two Members of this Committee constitutes keeping the Committee fully and currently informed. Does it?

Mr. RIZZO. I do believe the law does allow in certain extraordinary instances for that system of reporting.

Senator WYDEN. I'd just like to ask it once again. Do you in your opinion think having two Members of the Committee know about something like this, of this importance, constitutes keeping the Committee currently and fully informed?

Mr. RIZZO. I think it's a legally appropriate step.

Senator WYDEN. Thank you.

Thank you, Mr. Chairman.

Chairman ROCKEFELLER. I'm going to make a Chairman's decision here. We only have about 5 minutes left in a vote, and Vice Chairman Bond has gone off to vote. What I would suggest is we adjourn and come right back. We will vote—there's only one vote, Mr. Rizzo—then we'll be right back. That way, we all get to vote.

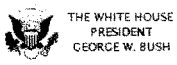
Senator LEVIN. Mr. Chairman, could I make a unanimous consent request?

Chairman ROCKEFELLER. Of course.

Senator LEVIN. I'd ask unanimous consent that a statement of the President in December of 2005 that we do not render to countries that torture—a statement made in public—be inserted in the record at this point, in contrast to Mr. Rizzo's statement that he could not answer that question in public.

Chairman ROCKEFELLER. It will be done.

[The information referred to follows:]



For Immediate Release
Office of the Press Secretary
December 6, 2005

President Meets with World Health Organization Director-General

The Oval Office

In Focus: Healthcare

VIDEO Multimedia

President's Remarks

view

11:11 A.M. EST

THE PRESIDENT: It's been my honor to welcome the Director of the World Health Organization, Dr. Lee, to the Oval Office, where we have just had an extensive conversation with high-ranking officials in my administration about the international strategy to deal with a possible pandemic of avian flu.

And I want to thank you, Dr. Lee, for staying on top of this issue; for raising the consciousness of the world; for helping to develop an international response; and for working so closely with Mike Leavitt and Julie Gerberding and Bob Zoellick of the State Department. This is a remarkable collaborative effort to do our duty to help people.

The other thing that's really interesting, I found out, is Dr. Lee told me we're very close to eradicating polio. And I want to congratulate you -- from the world, by the way -- and I want to congratulate you for your good work on that issue.

DIRECTOR LEE: Thank you.

THE PRESIDENT: You're a good public servant. I'm just proud to welcome you here, to the Oval Office.

DIRECTOR LEE: Well, thank you very much. Clearly, we've been working on avian flu and pandemic flu for many years. But it really didn't take off until the President launched this initiative in September, in New York. And then after that, he mentioned -- he raised this issue with many heads of state. That really made a difference. I'm very honored to be here.

And about polio eradication, it was a teamwork. I appreciated the effort of the United States, especially the AID and CDC. And in the presence of the Secretary and also the Director, Julie Gerberding, that it is wonderful to be able to say that we are about to eradicate polio.

THE PRESIDENT: Thank you, Dr. Lee. Answer a couple of questions. Nedra.

Q Thank you, Mr. President. Insurgents in Iraq claim that they have taken a U.S. citizen hostage. We also have a U.S. peace activist who is being held. Is there anything you can do to get them back?

THE PRESIDENT: We, of course, don't pay ransom for any hostages. What we will do, of course, is use our intelligence gathering to see if we can't help locate them. The best way to make sure that Iraq is a peaceful society is to continue to spread democracy. And, clearly, there are some there who want to stop the spread of democracy. There are terrorists there who will kill innocent people and behead people and kill children; terrorists who have got desires to hurt the American people.

And it should be -- the more violent they get, the clearer the cause ought to be, that we're going to achieve victory in Iraq, and that we'll bring these people to justice. We will hunt them down, along with our Iraqi friends, and at the

same time, spread democracy.

Steve, yes.

Q Howard Dean says the idea that the U.S. will win in Iraq is just plain wrong, and he's comparing the war to Vietnam. Is that a fair comparison, and what do you think about his comments?

THE PRESIDENT: I know we're going to win, and our troops need to hear, not only are they supportive, but that we have got a strategy that will win. Oh, there's pessimists, you know, and politicians who try to score points. But our strategy is one that is -- will lead us to victory. The only thing that the enemy has got going for them is the capacity to take innocent life and to get on our TV screens with this devastation that they cause. These people cannot stand free societies. They have no regard for the human condition. They'll kill women and children at the drop of a hat, all aimed at frightening the American people and trying to get us to withdraw. And if we were to withdraw, the likes of Zarqawi, who is a sworn ally of bin Laden, would have a safe haven from which to plot and plan.

The lessons of September the 11th are lessons this country must never forget. We've got to take each threat seriously; we've got to stay on the offense. In the long run, a democracy will help eradicate the conditions that allow these people to find any kind of support.

And so our strategy is two-fold. On the one-hand, we'll stay on the offense, we'll train Iraqi soldiers so they can take the fight to the enemy. And on the other hand, we'll continue to work with the Iraqi people to spread democracy.

And the American people must take notice of the fact that the people of Iraq are showing incredible courage in the face of this violence. After all, there was an election last January to put a transitional national government in place, then they voted on a constitution. And in a short period of time, they're going to be voting for a new government. They vote by the millions, which stands in stark contrast to the society in which they lived under the tyrant, Saddam Hussein, who, by the way, is now on trial, as he should be on trial.

I think his trial is indicative of the change that has taken place in the Iraqi society. In the old days, if Saddam and his cronies didn't like you, you didn't get a trail. You were just put to death or tortured. Today, there is a system, a judicial system in place that will give Saddam Hussein a chance to make his case in court, as well as giving those who have been tortured by Saddam Hussein a chance to step forth and provide witness to the brutality of this man.

I -- our troops need to know that the American people stand with them, and we have a strategy for victory. And of course there will be debate, and of course there will be some pessimists and some people playing politics with the issue. But by far, the vast majority of people in this country stand squarely with the men and women who wear the nation's uniform.

Carl.

Q Thank you, Mr. President. Does your administration have any plans to change the policy of renditioning and/or the detention centers alleged to be taking place in Europe?

PRESIDENT BUSH: Carl, first of all, I don't talk about secret programs, covert programs, covert activities. Part of a successful war on terror is for the United States of America to be able to conduct operations, all aimed to protect the American people, covertly.

However, I can tell you two things: one, that we abide by the law of the United States; we do not torture. And two, we will try to do everything we can to protect us within the law. We're facing an enemy that would like to hit America again, and the American people expect us to, within our laws, do everything we can to protect them. And that's exactly what the United States is doing. We do not render to countries that torture. That has been our policy, and that policy will remain the same.

Thank you all.

Chairman ROCKEFELLER. The Committee stands in recess.

[Recess.]

Vice Chairman BOND [presiding]. This hearing will reconvene, and again, with apologies for the Senate schedule. But I know Mr. Rizzo is familiar with how that always messes things up.

And I believe Senator Feingold is up to ask questions.

Senator FEINGOLD. I thank the Vice Chairman for starting up the hearing.

Welcome, Mr. Rizzo.

Let me ask you, are the statutes governing the authorities of the CIA binding or are they subject to Presidential assertions of Article II authority to violate the law?

Mr. RIZZO. No, Senator, all statutes affecting CIA are clearly binding on CIA.

Senator FEINGOLD. Regardless of Article II authority?

Mr. RIZZO. Well, I mean, sure. I mean——

Senator FEINGOLD. OK.

The National Security Act provides that the CIA shall have no police, subpoena or law enforcement powers or internal security functions. Is this law binding or is it subject to Presidential assertions of Article II authority to violate the law?

Mr. RIZZO. Well no, I mean, I've always considered that—that is one of the earliest statutes on CIA, and yes, I consider it binding.

Senator FEINGOLD. So the President cannot override it simply based on Article II authority; correct?

Mr. RIZZO. That's my—that would be my opinion, yes, sir.

Senator FEINGOLD. In 2002, the Department of Justice concluded even if an interrogation method might violate the statutory prohibition against torture, the statute would be "unconstitutional if it impermissibly encroached on the President's constitutional power to conduct a military campaign."

Do you believe that the statutory prohibition against torture encroaches on the President's constitutional power?

Mr. RIZZO. No. The statutory prohibition on torture is absolute. There are no countervailing considerations. So no, that's an absolute ban.

Senator FEINGOLD. The 2002 Department of Justice memo also concluded that an official could not be punished under the statutory prohibition on torture for "aiding the President in exercising his exclusive constitutional authorities."

Do you believe that an individual who violates the law can use a Presidential authorization as a defense?

Mr. RIZZO. No. A violation of law is a violation of law.

Senator FEINGOLD. Thank you.

Do you agree that any intelligence activity that has foreign policy implications should be notified to the full Senate Intelligence Committee?

Mr. RIZZO. I wouldn't go that far, Senator. I believe the—you know, all covert actions or all intelligence activities—the Intelligence Committee should be kept fully and currently informed as the law provides.

Senator FEINGOLD. Well, I'm a little concerned, as a Member of the Foreign Relations Committee. You indicated that you would not necessarily agree with that, correct?

Mr. RIZZO. Correct.

Senator FEINGOLD. I'm also a Member of the Foreign Relations Committee as well as the Intelligence Committee, so I'm a little puzzled by that. When this Committee was established 30 years ago, the Senate specifically intended that members of the Foreign Relations Committee be represented so that intelligence activities could be considered in their full policy context. Refusing to disclose this information to those Members seriously undermines congressional oversight of both intelligence and foreign policy, so I hope you will consider your opinion on that. And would you like to respond again?

Mr. RIZZO. Well, no, only to say I read your letter you sent Director Hayden a few weeks ago on this subject. I found it thoughtful and thought-provoking and certainly I take your points.

Senator FEINGOLD. Do you agree that an intelligence activity should not be kept from the full Senate Intelligence Committee, merely because it's based on a novel or controversial legal theory?

Mr. RIZZO. No. No, I believe the law requires the committees to be fully and currently informed of all intelligence activities.

Senator FEINGOLD. I thank you, sir, for your answers.

Thank you, Mr. Chairman.

Vice Chairman BOND. Thank you, Senator Feingold.

I'm was a little bit puzzled about some of your answers, Mr. Rizzo. When you're dealing with the President's authority as Commander in Chief under Article II and also, in some instances, under the foreign intelligence surveillance provision, does his power not supersede statutory limitations which may infringe on that or give power which is not otherwise specifically authorized by Congress?

Mr. RIZZO. Well, sir, first of all, I can't sit here and tell you I'm a constitutional law expert in this regard.

Vice Chairman BOND. I used to try it, but I thought a constitutional provision generally superseded a statutory provision. Is that not the kind of basic Law 101?

Mr. RIZZO. I believe that's correct. I was trying to answer the question—the Senator's question in the context of intelligence activities. As you know, CIA intelligence activities certainly have been governed and been governed, as long as I've been involved, based on statutory dictates and statutory requirements. That was the point I was trying to make.

Vice Chairman BOND. Right. And we understand that. But if the present President issued an order—or, for example, if the President determines in the national security to keep something classified or limited access, that is within his power—that's beyond the CIA. In other words, the CIA does not make the decisions when they come to the Presidential level under Article II.

Mr. RIZZO. Sir—I mean, clearly in the area of activities that I'm most familiar with, in terms of, let us say, limited notification of covert action activities, the President makes that determination on limited notice, yes, sir.

Vice Chairman BOND. I had a couple other questions I wanted to ask. As a lawyer dealing with it directly, I'd like to know your assessment of the efficacy of the Intelligence Reform and Terrorism Prevention Act, whether the creation of a Director of National In-

telligence has been beneficial and whether you think that Director has the statutory authority needed to make the new plan work.

Mr. RIZZO. First of all, I believe the current statutory authority granted the DNI, at least to my lights, are adequate for him to carry out the responsibilities he's been given. My reaction thus far to the effects of the Intelligence Reform Act—still a work in progress. I have a very close relationship with my counterpart in the Director of National Intelligence General Counsel. We have a very strong relationship. We complement each other. So in terms of my sphere, I believe the Act and the office has worked out well.

Vice Chairman BOND. I've been very much concerned about the impact of leaks, notable and unfortunate, of vital intelligence programs. Can you describe in general, without getting into specifics, what impact these may have had on the ability of the intelligence community to carry out its responsibilities? And do you have suggestions on what can be done to protect national security from these unauthorized disclosures?

Mr. RIZZO. Yes, sir. Of course, being in CIA as long as I have, I've had to—I have been an observer and also a participant in the leak referral process. I will say a couple of things. The unauthorized disclosures of classified information, at least to my lights, have proliferated in the last several years, have gotten far more damaging than I can recall them ever being. In recent times, you know, different kinds of leaks have different kinds of impact, but I can't remember a time like the recent history where leaks have caused such significant and real damage to intelligence equities, so I believe it's an extraordinarily serious and, for that reason, growing problem.

Vice Chairman BOND. What needs to be done?

Mr. RIZZO. Well, I mean, I think, we have to be—and when I say we, I believe the executive branch, of which I am part—for our part we have to be much more disciplined in the way we protect classified information. I believe the oversight committees, the oversight system—you know, that is not the problem. I believe that we just have to—you know, all I know about is the executive branch. My own view——

Vice Chairman BOND. How about prosecuting some of them?

Mr. RIZZO. Well, if we can find them, Senator, we try to prosecute them. I just think we have to be more disciplined. I think far too many people know far too much, and we have to, I think, be more disciplined in keeping truly secret information in tightly held compartments.

Vice Chairman BOND. Thank you very much, Mr. Rizzo.

Mr. RIZZO. Thank you.

Vice Chairman BOND. Mr. Chairman.

Chairman ROCKEFELLER [presiding]. Thank you very much, Mr. Vice Chairman.

Senator Feinstein, I don't mean to catch you unawares here, but nobody catches you unawares.

Senator FEINSTEIN. Well, that's not quite true, but I very much appreciate the sentiment.

Chairman ROCKEFELLER. But you are up.

Senator FEINSTEIN. Thank you very much.

Mr. Rizzo, I'm sorry. I've been in and out, and I know I've missed some. But I'd kind of like to go back to the questioning of Senator Wyden and Senator Levin.

I happen to have a very strong belief that the legal foundation on which torture was based was deeply flawed. And I mean, if you were part of that legal foundation, it's very difficult for me to vote for you. Because I believe that one of the reasons we are so hated abroad is because we appear to be hypocrites. We say one thing and we practice another. So I'm just going to try in a simple way to get some yes or no answers, and I know that may be difficult for you.

Do you interpret Common Article III to prohibit all humiliating and degrading treatment, or only humiliating and degrading treatment that meets the threshold of being an outrage? And Common Article III prohibits outrages upon human dignity, in particular humiliating and degrading treatment.

Mr. RIZZO. Yes, I would not object to your characterization of Common Article III. If I could, Senator, with your indulgence——

Senator FEINSTEIN. But you are saying—you are interpreting that you have to meet the threshold of a so-called outrage. Is that correct?

Mr. RIZZO. Outrage is—yes. Outrage on personal dignity, in particular humiliating and degrading treatment, yes.

Senator FEINSTEIN. Well, how would you evaluate that?

Mr. RIZZO. In terms—again, I think this is an area where I could be most helpful and informative in a classified session. I take it the premise of your question is: How do I evaluate that in the context of the interrogation program over the years? Well, I'm delighted to do that. I just feel constrained in this atmosphere, Senator.

Senator FEINSTEIN. OK. All right. Well, let me try this one.

Was Common Article III applied to people like the 14 high-value detainees that are now in Guantanamo while they were in CIA custody?

Mr. RIZZO. Common Article 13, as you know, the Supreme——

Senator FEINSTEIN. Common Article III.

Mr. RIZZO. I'm sorry. Common Article III of the Geneva Convention were applied to certainly the 14. However, it was not until June 1996 that the Supreme Court held that Common Article III applied to the al-Qa'ida conflict. Prior to that time, based on existing authorities and existing precedents, enemy combatants, as you know, were not considered to come within the rubric of Common Article III—Common Article III, yes.

Senator FEINSTEIN. So you said the date was September 12?

Mr. RIZZO. No, no. The date was the date of the Hamdan case.

Senator FEINSTEIN. Hamdan——

Mr. RIZZO. June 2006. So my point is, Senator, they were held—obviously, they were captured and held before that time. I can't tell you that before the time of the Hamdan decision that Common Article III—that we applied—that those standards were applied to enemy combatants like they were.

Senator FEINSTEIN. Well, now, Senator Levin asked you the same question I'm asking, but in a somewhat different way. Is the CIA bound by Common Article III? And your answer was, "and as inter-

preted." I'd like to ask one more time—and I don't mean to push you, but can you answer that question yes or no?

Mr. RIZZO. Well, yes. I wasn't trying to be disingenuous or avoid the question. It's just, as you know, the Congress, in the wake of the Hamdan decision, passed the Military Commissions Act some months later, which took the Hamdan decision, applied Common Article III, established specific war crimes. That was my only point, that Common Article—that Congress in its statutory role interpreted and applied Common Article III as to make it legally binding on the U.S. Government.

Senator FEINSTEIN. Let me ask you how you look at this job. In considering legal opinions in the area of detention, interrogation and rendition, would the Office of General Counsel look at or advise the Director only on legality, or would you make recommendations based on matters such as the impact on the Nation's international standing, or whether United States actions in these areas will affect the ways United States military or other personnel be treated if they are detained?

Mr. RIZZO. Yes, that would certainly be within the role of the General Counsel. It's frankly one of the things I've always found most rewarding about being a lawyer at CIA, is that one's opinion is solicited and listened to, not just on strictly legal issues, but also policy, operational, matters of congressional relations across the board. So sure. My advice would not be limited—never has been limited to straight legal conclusions.

Senator FEINSTEIN. OK. My time is up. Thank you, Mr. Chairman.

Chairman ROCKEFELLER. Thank you, Senator Feinstein.

I just have two questions, and then, unless others have questions, then we will go to the second phase of this.

The Detainee Treatment Act prohibits "cruel, inhuman or degrading treatment or punishment." What do you understand this prohibition to mean, and how is it different from the Common Article III prohibition that you and Senator Feinstein were discussing?

Mr. RIZZO. Well, the prohibitions are actually somewhat similar. The Detainee Treatment Act, as you know, Senator, was enacted at the end of 2005. The Military Commissions Act, in the wake of the Hamdan decision, was enacted in late 2006. So we view them as complementary statutes.

The Article III, the cruel, inhuman and degrading treatment or punishment standard—just to cut to the chase—as a legal matter; involves a test of what is called shocking—"shocks the conscience." Certain government—the Due Process Clause bars interrogation techniques that "shock the conscience." So that would be the applicable legal standard I would say in both statutes.

Chairman ROCKEFELLER. Shock the conscience.

OK. This is my final question for here. The Military Commissions Act of 2006 gives the President the authority to interpret the meaning and application of non-grave breaches of the Geneva Convention, and to promulgate administrative regulations for non-grave breaches of the Geneva Convention.

Have such administrative regulations been promulgated by the CIA?

Mr. RIZZO. Not to date. As you know, we are awaiting the President's Executive order, which would be the next step in the process.

Chairman ROCKEFELLER. If you could make that more clear for me. "Not to date." In other words, no?

Mr. RIZZO. No, the CIA has not issued administrative regulations in this arena, as of today.

Chairman ROCKEFELLER. The reason I just wanted to parse words a little bit is because I got a legal lesson from Senator Levin when I asked you in my opening question, did you object to—no—or you answered, "I don't object to." And what he pursued with was, "Did you approve?" And of course I'm not a lawyer, he is. And I learned that little lesson. That's accusing you of nothing, it's just me saying that I learned from that experience.

Mr. RIZZO. No, that's very good. I mean——

Chairman ROCKEFELLER. You think I did well?

[Laughter.]

Chairman ROCKEFELLER. Thank you.

Has the President established the administrative rules and procedures for compliance with the Detainee Treatment Act provision on "cruel, inhuman or degrading treatment or punishment," as referenced in the Military Commissions Act?

Mr. RIZZO. Not to date, no, sir.

Chairman ROCKEFELLER. It has not?

Are there limits on how the President can interpret non-grave breaches of Common Article III of the Geneva Convention? Does the President have the authority under the Military Commissions Act to interpret this prohibition on "humiliating and degrading treatment" to mean nothing more than the prohibition in the Detainee Treatment Act—sorry for the complexity of this—that is, a prohibition on the "cruel, inhuman or degrading treatment or in punishment prohibited by the Fifth, Eighth and Fourteenth Amendment of the Constitution."

Now, if you can remember all of that and answer it, I would be grateful.

Mr. RIZZO. OK. Let me give it a shot.

The Military Commissions Act—it features three of the—it made three aspects—provides specific offenses that would constitute Federal crimes if committed by or against U.S. persons. Those involve torture, cruel and inhuman treatment, and intentionally causing bodily injury. Those are the so-called grave offenses to Common Article III.

There is a second category of authorities granted by the Military Commissions Act that place authority for interpreting the Geneva Convention outside of these so-called grave breaches specified in the War Crimes Act, with the President. So it's a two-tier process. The grave, inhuman breaches would be—are made criminal by the Act. So a lesser set of categories, if you will, the Act gives to the President to interpret.

Chairman ROCKEFELLER. All right.

Mr. RIZZO. But I guess the answer to your question is yes.

Chairman ROCKEFELLER. Yes, I hope so.

Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman.

There was two other areas I wanted to get in real briefly. Mr. Rizzo, does the President have the authority to direct the CIA to capture and detain an American overseas?

Mr. RIZZO. I'm sorry, Senator. I'm trying to hesitate because I want to answer that question in a way that's accurate and unclassified.

Well, I really should—this is too serious a question for me to handle in a shorthand fashion. Let me—let it just suffice to say it would be extraordinarily problematic in terms of the rights of an American citizen for certainly the CIA to capture him overseas.

Senator WYDEN. But you're saying it could be done. You've said it would be extraordinary circumstances.

I'm going to go into this at length in closed session. But you've said it could be done, and that certainly raises troubling issues for me.

Mr. RIZZO. Well, I'm not—again, I don't want to say it could be done. What I am—what I——

Senator WYDEN. You just said in extraordinary circumstances.

Mr. RIZZO. I said it would be extraordinarily difficult—if I didn't say that, I meant that—given the rights that attach to a U.S. citizen in terms of due process, for the President to direct the CIA to capture a U.S. citizen overseas.

Senator WYDEN. Let me ask you about the matter I discussed earlier, the question of the United States being an occupying power in Iraq. And you sort of intimated you thought it was just a policy question and not a legal question—a judgment I don't share.

But how do you know what aspects of the Geneva Convention apply if you don't know whether the United States is still occupying Iraq as a legal matter?

Mr. RIZZO. All I can tell you, Senator, is our attention, our focus on the Geneva Convention, the impact it has on CIA and currently authorized CIA activities have to do with terrorist activities, not with respect to the military conflict in Iraq.

So that's why I frankly am not—I don't feel terribly comfortable opining on the scope of Geneva as it pertains to the current conflict in Iraq.

Senator WYDEN. I can see why you wouldn't feel particularly comfortable, but I'm still unclear as to how, given your answer, how you would instruct agency personnel with respect to their obligations. I'm going to ask some more about this when we're in closed session.

Thank you, Mr. Chairman.

Chairman ROCKEFELLER. What we will do now, Mr. Rizzo, is, one, thank you for your public testimony and your family members and all those who chose to attend, and our Senators who are basically at four different very important mark-up-type sessions this afternoon and thus are in and out, for which I apologize.

We will now end this hearing and resume it shortly.

Mr. RIZZO. All right. Thank you, Mr. Chairman.

Let me just say while we're still in open session, I do appreciate, I honestly do, the fairness and consideration with respect—with the way the Committee has treated me and my nomination, and I'm grateful to you, Senator Bond and your staff.

Thank you.

Chairman ROCKEFELLER. I'm glad.

This particular hearing is adjourned.

[Whereupon, at 4:21 p.m., the Committee adjourned.]

SUPPLEMENTARY MATERIAL

Central Intelligence Agency

Washington, D.C. 20505

9 June 2006

The Honorable Pat Roberts
Chairman
Select Committee on Intelligence
United States Senate
Washington, DC 20510-6475

Dear Mr. Chairman:

(U) Enclosed please find the completed questionnaire for Presidential nominees and responses to pre-hearing questions for John A. Rizzo, the nominee to be General Counsel of the Central Intelligence Agency. As many of the pre-hearing questions and responses are classified, we are providing those in a separate, classified annex. We hope that you will find this information helpful in the consideration of Mr. Rizzo's nomination. Please do not hesitate to contact the Agency if we can be of further assistance in connection with this matter.

Sincerely,

Christopher Walker
Director, Office of Congressional Affairs

Enclosures

cc: The Honorable John D. Rockefeller IV, Vice Chairman

SELECT COMMITTEE ON INTELLIGENCE

UNITED STATES SENATE

QUESTIONNAIRE FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART A - BIOGRAPHICAL INFORMATION

1. NAME: **John Anthony Rizzo**

2. DATE AND PLACE OF BIRTH: **6 Oct 1947 – Worcester, Massachusetts**

3. MARITAL STATUS: **Married**

4. SPOUSE'S NAME: **Sharon Rizzo**

5. SPOUSE'S MAIDEN NAME, IF APPLICABLE: **Knight**

6. NAMES AND AGES OF CHILDREN:

7. EDUCATION SINCE HIGH SCHOOL:

INSTITUTION	DATES ATTENDED	DEGREE RECEIVED	DATE OF DEGREE
Brown University	**1965 – 1969**	**Bach of Arts**	**1969**
George Washington University	**1969 – 1972**	**Juris Doctorate**	**1972**

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

EMPLOYER	POSITION/TITLE	LOCATION	DATES
CIA	**Acting General Counsel**	**WDC**	**08/04 – Pres**
	Sr Deputy General Counsel	**WDC**	**11/02 – 08/04**
	Acting General Counsel	**WDC**	**11/01 – 11/02**
	Sr Deputy General Counsel	**WDC**	**10/95 – 11/01**
	Deputy General Counsel for Operations	**WDC**	**07/88 – 10/95**
	Deputy Director- Office of Congressional Affairs	**WDC**	**02/86 – 07/88**
	Inspector/Office of Inspector General	**WDC**	**09/84 – 02/86**
	Associate General Counsel	**WDC**	**04/81 – 09/84**
	Assistant General Counsel/Intel Law Div	**WDC**	**08/80 – 04/81**
	Assistant General Counsel C/Ops & Mgmt Law Div	**WDC**	**03/76 – 08/80**
U.S. Treasury Dept	**Attorney**	**WDC**	**08/72 – 12/75**

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

None

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

I have spent the last 30 years doing solely intelligence and national security related legal work at the CIA. As a result, I have provided legal advice consistent with the National Security Act of 1947, as amended, the Intelligence Reform and Terrorism Prevention Act, Executive Order 12333, and other related Executive Orders and Presidential Findings related to intelligence matters. In addition, if confirmed, I would be the first career CIA attorney in more than three decades to head the Office of General Counsel. Accordingly, I would have an historical perspective that no other individual serving as General Counsel has had in recent memory.

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

- **In July 2004, I received the Director's Medal from outgoing DCI Tenet for my service during his seven-year tenure.**
- **In November 2001, I received the Director's Medal for my service as Acting General Counsel over the previous year.**
- **Also, in November 2001, I received the Stewart Award, which is awarded annually to a member of the Office of General Counsel who has demonstrated the highest standards of integrity, sustained quality of work and contribution to the office.**
- **In May 1996, I was named the 36th annual winner of the Tom C. Clark Award, which is annually bestowed by the Federal Bar Association on the individual it judges to be the outstanding lawyer in the Federal service. I was the first, and thus far the only, lawyer from the Intelligence Community to receive this award.**
- **In October 1987, I received from then DCI William Webster the Agency's Distinguished Service Award, which was then the highest CIA honor for a Senior Intelligence Service officer. The award was in recognition for service as CIA's focal point for all dealings with the Joint Congressional Committees investigating the Iran Contra matter.**

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

ORGANIZATION	OFFICE HELD	DATES
District of Columbia Bar Association	**None**	**1973 – Present**

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

None

PART B – QUALIFICATIONS

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

See response to Question #10.

PART C – POLITICAL AND FOREIGN AFFILIATION

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

None

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

I have never been a candidate for public office.

17. FOREIGN AFFILIATIONS

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

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

No

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

No

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

No

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

No

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

None

PART D – FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST

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

None

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

Not Applicable

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

    Not Applicable

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

    No

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

    At this point, I plan to retire after completing government service.

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

    No

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

    Yes, my wife is employed by CIA and works in the Office of Congressional Affairs as a Liaison Officer. She has worked at the Agency for 7 years.

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

NAMES OF ENTITY	POSITION	DATES HELD	SELF OR SPOUSE

Neither my spouse nor I have any such fiduciary obligations.

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

None

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

DESCRIPTION OF PROPERTY	VALUE	METHOD OF VALUATION
See Schedule A of SF278 at Attachment 1		
Home in Washington, DC	**$1.6 Million**	**Estimate based on comparable sales**

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

NATURE OF OBLIGATION	NAME OF OBLIGEE	AMOUNT
See Schedule C of SF278		

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

No

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

	2001	2002	2003	2004	2005
SALARIES	**See Attachment 2**				
FEES					
ROYALTIES					
DIVIDENDS					
INTEREST					
GIFTS					
RENTS					
OTHER					
TOTAL					

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

The returns are provided in response to Question #31.

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

Washington, D.C. and United States

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

    No

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

    I am licensed to practice in Washington, D.C. I practice law as a government attorney only; therefore, I have not billed any clients or customers during the last five years.

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

    No

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

    See Attachment 1

PART E – ETHICAL MATTERS

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

    No

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

    No

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

No

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

No

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

No

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

No

PART F – SECURITY INFORMATION

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

No

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

Yes, as an Agency employee I periodically am required to take a polygraph examination as a condition of continued employment.

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

No

PART G – ADDITIONAL INFORMATION

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

(U) Congressional oversight of US intelligence activities is intended to ensure that those activities, given their vital importance to our national security and their often secret and sometimes intrusive nature, are conducted effectively and efficiently but also in compliance with the Constitution and laws of the United States and in a manner that respects and protects the civil liberties and privacy interests of the American people. Congressional oversight of US intelligence activities constitutes a special and critically important application of the oversight powers and functions of the Congress, in that many US intelligence activities must be carried out in secret and cannot be fully discussed or debated with the general public. The conduct of secret activities on behalf of--and by the Government of--an open and democratic society puts a particular premium on vigorous and thorough Congressional oversight of US intelligence.

(U) Consistent with and in furtherance of these principles, as reflected and implemented both in statute and Executive Order, the Director of National Intelligence (DNI), the Principal Deputy DNI (in support of and assistance to the DNI), and the Director of the Central Intelligence Agency (D/CIA) owe a basic obligation to: (a) keep the Intelligence Committees fully and currently informed of US intelligence activities, including significant anticipated intelligence activities, significant intelligence failures, and covert actions; and (b) furnish those Committees information or material concerning intelligence activities that is within DNI or D/CIA custody or control and that is requested by either of the Committees in order to carry out its authorized responsibilities. The General Counsel of the CIA is responsible for providing timely and correct guidance to the D/CIA and Agency officers on their legal duties with respect to keeping the Intelligence Committees informed and responding to the Committees' requests for information, and for assisting the Director and helping to lead the Agency in fulfilling those duties.

(U) The DNI, the D/CIA, and the General Counsel of the CIA owe a duty to cooperate in good faith and comity with the Congress in general and the Intelligence Committees in particular, as the Congress and the Committees carry out their constitutionally assigned legislative and oversight functions. This duty of cooperation and comity with the Intelligence Committees is especially important, because to a great degree they must and do serve as the 'proxies' not only for the public but also for the rest of the Congress in reviewing and, where deemed necessary or appropriate, acting to revise or reshape US intelligence activities. In light of that role, and the critical importance to US national security of often secret and sometimes intrusive intelligence activities, it is crucial that the Intelligence Committees have the information necessary and appropriate to provide active and meaningful oversight.

(U) Finally, I have worked frequently in the course of my 30 year CIA career with specific issues relating to the Agency's reporting relationship with the Congress. That extensive experience has convinced me that - any legal obligations aside – it is not only prudent and wise but also serves CIA's interests to be as forthcoming and transparent as possible with the Intelligence Committees concerning its planned and ongoing intelligence activities. For example, I spent an entire year (November 1986 through October 1987) serving as CIA's primary focal point with the joint Congressional investigation

into the Iran/Contra affair. The investigation grew out of the Reagan Administration's decision to withhold Congressional notice of a Presidential covert action finding for close to a year, only doing so after the media exposed the covert action. That initial, fateful decision ultimately led to a long and debilitating investigation that sapped CIA focus and that included criminal prosecution of senior Agency officials. Had that Presidential Finding not been withheld from timely notice to the Intelligence Committees, I remain convinced that the Agency would have avoided that entire traumatic experience. In short, the more information CIA reports to its Committees, the more the Committees "share" responsibility for that information, then the more CIA is protected from subsequent suspicion and attack.

AFFIRMATION

I, JOHN A. RIZZO, DO SWEAR THAT THE ANSWERS I HAVE PROVIDED TO THIS QUESTIONNAIRE AND THE QUESTIONNAIRES CONTAINING ADDITIONAL AND CLASSIFIED QUESTIONS ARE ACCURATE AND COMPLETE.

6/6/06 _____
(Date) (Name)

_____ commission expires: 31 July 2006
(Notary)

TO THE CHAIRMAN, SELECT COMMITTEE ON INTELLIGENCE:

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

Signature

Date: 6/6/06

Responses to the Unclassified Pre-Hearing Questions for John A. Rizzo Upon His Nomination to be General Counsel of the Central Intelligence Agency

(U) Roles and Responsibilities of the General Counsel of the Central Intelligence Agency

1. **(U) The statute creating the office for which you have been nominated provides that the General Counsel of the Central Intelligence Agency (CIA) is the chief legal officer of the CIA and will perform such functions as the Director of the Central Intelligence Agency (Director/CIA) may prescribe.**

A. (U) Has the Director/CIA indicated the functions he expects you to perform as the General Counsel of the CIA? Provide details.

Answer: (U) Yes, consistent with the General Counsel's role as chief legal officer of the Central Intelligence Agency (CIA or Agency), the Director (D/CIA) has indicated that he expects me to provide legal advice and guidance to him, in his role as head of the CIA, and to the Agency generally through the Office of General Counsel (OGC).

(U) Specifically, the General Counsel has authority and responsibility for providing legal advice to the D/CIA, and all D/CIA committees, boards, panels, and advisory groups; the conduct of all of the Agency's legal affairs; the authoritative and final legal interpretation within the CIA of any statute, regulation, Executive Order, or other law relating to Agency activities and authorities; the release, consistent with D/CIA authority, of Agency information to the courts, the Department of Justice, or otherwise in the conduct of the General Counsel's statutory responsibilities, when the disclosure of that information is not precluded by law; the exercise of authorities in Executive Order 12333 (conduct of intelligence activities) and Executive Order 12863 (reports to the Intelligence Oversight Board); and the performance of such other functions as the D/CIA may prescribe. The General Counsel is also ultimately responsible for the management and evaluation of all attorneys practicing law on behalf of the Agency and the D/CIA (which includes the recruitment and hiring of all OGC attorneys), with the exception of legal counsel supporting the Office of Inspector General.

B. (U) What is your understanding of your responsibilities should the Director/CIA not follow the legal advice you provide?

Answer: (U) The General Counsel has specific obligations pursuant to Executive Order 12333 and Executive Order 12863 to report possible violations of law or intelligence activities which the General Counsel has reason to believe may be unlawful or contrary to Executive Order or Presidential Directive. To the extent the D/CIA does not follow my legal advice and I conclude his failure to do so is a possible violation of law, Executive Order or Presidential Directive, it is my responsibility to report such failure to the Attorney General and/or the Intelligence Oversight Board. I also would report the matter to the Director of National Intelligence (DNI) as appropriate.

2. **(U) The Intelligence Authorization Act for Fiscal Year 1997 established the position of General Counsel of the CIA as a Presidential appointment subject to the advice and consent of the Senate. Following enactment of the Intelligence Reform and Terrorism Prevention Act of 2004, including the creation of the position of General Counsel of the Office of the Director of National Intelligence (also a Presidential appointment subject to the advice and consent of the Senate), the President requested that the position of CIA General Counsel be modified to permit direct appointment of an individual to that position by the Director/CIA. This request is consistent with a recommendation of the National Commission on Terrorist Attacks upon the United States ("9/11 Commission") designed to improve the transitions between Administrations - ensuring that important national security positions do not go unfilled due to delays in the Executive or Legislative branches.**

A. (U) Do you believe that the effectiveness and independence of a government position is enhanced by a requirement that the position be filled by a nominee appointed by the President by and with the advice and consent of the Senate?

Answer: (U) As former Director Goss stated in his answers to questions from this Committee during his confirmation process, "[n]omination by the President and confirmation by the Senate is among the highest honors this government can bestow upon a government employee." As a career government employee, I am keenly aware of the honor of being nominated to serve as General Counsel; however, speaking from experience, I do not believe that the effectiveness and independence of the office is enhanced by filling the position with a presidential nominee who is confirmed by the Senate.

(U) Since 1995, I have been the Senior Deputy General Counsel under presidentially appointed nominees as well as then-DCI appointed nominees. I also have had the privilege of serving as Acting General Counsel on several occasions during the last 10 years. At no time did I believe that my effectiveness and independence suffered because I was not appointed by the President and confirmed by the Senate into those positions. Likewise, I did not see any evidence that DCI appointed nominees were any less respected or effective than their presidentially appointed successors. Directors of the CIA look to the General Counsel to provide timely, objective and independent legal advice to accomplish the Agency's mission. As it relates to the mission of the Agency, it is the soundness of the legal advice given by the General Counsel not the status of the position that is important.

B. (U) Would you support legislation that replaces the current appointment process for the CIA General Counsel with a requirement that the position be filled by a Director/CIA appointment?

Answer: (U) Yes, I would support such legislation because the position of General Counsel of the CIA is an important national security position, and it should not remain unfilled for lengthy periods of time due to delay in the nomination process. As an example, to date, since the former presidentially appointed General Counsel left the CIA, the position has remained vacant for almost two years.

C. (U) If appointed to the position of CIA General Counsel in a position not subject to the advice and consent of the Senate, would that affect your commitment to respond to requests to appear or testify before, or otherwise assist or respond to oversight requests from, the Senate Select Committee on Intelligence, the House Permanent Select Committee on Intelligence, or, as appropriate, other congressional committees?

Answer: (U) No. Regardless of whether the position of CIA General Counsel is or is not subject to the advice and consent of the Senate, the CIA has an obligation to keep the intelligence committees fully and currently informed of intelligence activities, and to be responsive to congressional requests.

(U) Relationship with Other Officers of the Intelligence Community

3. (U) The Intelligence Reform and Terrorism Prevention Act of 2004 provides that the Director of National Intelligence (DNI) shall ensure compliance with the Constitution and laws of the United States by the CIA. The Act also provided for the appointment of a General Counsel of the Office of the DNI.

A. (U) Describe your understanding of the relative responsibilities of the DNI General Counsel and the CIA General Counsel in providing legal guidance to ensure compliance by the CIA with the Constitution and laws of the United States. As part of your answer, describe what actions have been taken to coordinate the responsibilities of these two offices.

Answer: (U) The CIA General Counsel is responsible for the provision of legal advice and guidance to the D/CIA and other CIA officers regarding Agency activities. The DNI's General Counsel is the chief legal officer for the DNI and the Office of the DNI (ODNI) to provide legal guidance regarding ODNI activities. In my current position I frequently interact with the DNI's General Counsel, who also assists the DNI in carrying out his statutory responsibility to ensure compliance with the Constitution and laws of the United States by the CIA. We speak on a regular basis to ensure appropriate coordination of legal issues and discuss matters of mutual concern. I believe it is important to keep the DNI General Counsel, who does not have the day-to-day responsibility for advising CIA on the legality of CIA operations, informed of the nature of the legal issues facing CIA, and their disposition, to help ensure the DNI has an ongoing appreciation for the legality of CIA's activities to fulfill his statutory mandate. This is especially important with respect to the authorities for administrative matters, for example, because the personnel, contracting, and other administrative authorities that govern the Office of the DNI are applicable to the same extent and subject to the same limitations as those that govern CIA. It is important that CIA and the ODNI attempt to be consistent in the interpretation of those authorities.

(U) To help keep the ODNI advised of issues that arise, I provide the DNI's General Counsel copies of the quarterly reports my office submits to the President's Intelligence Oversight Board regarding CIA activities that indicate illegality and impropriety. Our offices also engage regularly on matters relating to the interpretation of guidance and directives implementing the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) to help ensure a common understanding of our obligations. CIA has several attorneys currently on rotation to the DNI's Office of General

Counsel. They and their CIA/OGC counterparts help facilitate the coordination of the responsibilities of our two offices through their frequent and regular interaction on matters of mutual interest or concern.

Question (3)(B) and its response appear in the classified annex.

C. (U) How would you handle a situation in which you and the DNI General Counsel have differing legal opinions on a matter?

Answer: (U) As a general rule, I would expect questions over differing legal interpretations to be resolved at the staff level. What often may be seen as disagreements on the law tend to result from imprecise or incorrect appreciation of the facts, or from disagreements among policy officials. If a legal issue could not be resolved at a lower level, the DNI General Counsel and I would consult to resolve the difference of opinion.

4. (U) In the past, disagreements have existed between the Office of the General Counsel and the Office of the Inspector General over interpretations of law applicable to CIA activities.

A. (U) How would you handle a situation in which you and the Inspector General have differing legal opinions on a matter?

Answer: (U) The manner in which I would handle such a situation depends on how the disagreement presents itself. If the Inspector General (IG) were to propose an interpretation of law with which I did not agree, I would discuss the issue with him. If, on the other hand, the IG were to make a formal, legal interpretation in writing on an issue, I would respond in kind by setting forth OGC's interpretation of the same law. I believe this is the appropriate course because the General Counsel and not the IG is the final arbiter within the Agency on the applicability of laws that govern the Agency's activities. That said, I should also note that as a practical matter such a disagreement has arisen very seldom in my experience over the years with a number of IGs, including the current IG, whom I have known and worked with well for over 20 years.

B. (U) Has such a situation arisen while you were serving as the Acting General Counsel or Senior Deputy General Counsel of the CIA? If so, how was the matter resolved? Provide details.

Answer: (U) Yes. Please see a detailed response set forth in the classified annex.

5. (U) The Attorney General is the chief law enforcement officer of the United States and gives advice and opinions to the President and to the heads of the departments and agencies of the US. Government when requested.

A. (U) How would you handle a situation where you and the Attorney General have differing legal opinions on a matter involving activities of the CIA?

Answer: (U) The process of seeking a legal opinion from the Attorney General involves considerable discussion, first at the Justice Department staff levels, then as necessary with the Attorney General, to ensure clarity and agreement on the facts and the issues. Typically such interaction serves to clarify and eliminate differences of opinion on the law. If, following such consultation and interaction, there continues to be a difference of legal opinion between the Attorney General and me, I would expect the legal judgment of the Attorney General, as the chief legal officer of the Executive branch, to prevail.

B. (U) Has such a situation arisen while you were serving as the Acting General Counsel or Senior Deputy General Counsel of the CIA? If so, how was the matter resolved? Provide details.

Answer: (U) No.

(U) Relationship to Congress

6. (U) Title V of the National Security Act of 1947 provides, among other things, that the President, the DNI, and the heads of all departments, agencies, and other entities of the U.S. Government shall ensure that the congressional intelligence committees are kept fully and currently informed of the intelligence activities of the United States. Section 502 and Section 503 specifically require that the DNI and the heads of all" departments, agencies, and other entities of the U.S. Government furnish the congressional intelligence committees any information or material concerning intelligence activities or covert actions that is within their custody or control, and which is requested by either committee in order to carry out its authorized responsibilities.

A. (U) Please describe your understanding of the effect of the phrase "To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters" in the context of Section 502 and Section 503.

Answer: (U) Sections 502 and 503 of the National Security Act establish as the basic principles and legal requirements that the congressional intelligence committees shall be kept fully and currently informed of intelligence activities, and that the heads of US Government elements shall furnish the intelligence committees with information or material concerning intelligence activities that either committee requests to carry out its authorized responsibilities.

(U) The "due regard" clauses in sections 502 and 503 reflect and embody a recognition that the need to protect vital intelligence sources and methods may result in decisions that certain information—such as the identities of CIA intelligence sources (especially highly sensitive sources) or similar sensitive operational detail—normally would not need to be, and would not be, provided to the intelligence committees.

(U) The legislative history makes very clear the congressional expectation that any decisions to not provide certain 'sources and methods' information to the intelligence committees would and should be strictly limited to extraordinary, rare, or highly sensitive matters or circumstances, and would and should be the product of mutual understandings and agreements. The longstanding, customary practice of not giving the intelligence committees the names of intelligence sources (with some limited, rare exceptions) is an example of such a mutual understanding. The legislative history also clearly expresses the view that any differences regarding the precise scope of the "due regard" preambles should be considered and resolved in a spirit of comity and of reasonable accommodation of the respective constitutional and statutory authorities and duties of the legislative branch and the executive branch. I share, and am committed to, the view that conflicts that may arise concerning the exact contours of intelligence committee access to information under section 502 or section 503 should be addressed and resolved between the Executive and Legislative branches in the spirit of compromise and mutual respect.

(U) Finally, I would note my understanding that the "due regard" clause was not intended to--and of course, cannot and does not--add to or detract from the constitutional authorities of either the Congress or the President.

B. (U) Please describe how your interpretation of the phrase discussed above, as well as your understanding of the history of negotiation between the congressional intelligence committees and the Executive Branch concerning access to information concerning intelligence activities and covert actions, informs your understanding of the obligations of the CIA under Section 502 and Section 503.

Answer: (U) Please see my answer to 6A. As indicated there, I believe that sections 502 and 503 of the National Security Act establish a broad, basic obligation on the part of the CIA to keep the intelligence committees fully and currently informed, and to furnish them with intelligence information or material that they request, subject to the limited "due regard" restrictions that have been developed or may be developed in the course of the Agency's past, current, and continuing interactions with the intelligence committees. The 'framers' of sections 502 and 503 (or the predecessor provisions) established a foundational statutory obligation on the part of the executive agencies to provide significant and substantial information to the intelligence committees. The framers of those provisions—and the Presidents who signed the laws including such provisions—also intended that disputes on the exact ambit of the obligation in particular cases would be negotiated and settled in a spirit of cooperation, care, and comity. I can make that statement on the basis of personal experience, having participated in the 1980s in the negotiations with the House and Senate Intelligence Committees that led to the formulation of the current language of Sections 502 and 503.

(U) It has been my experience over three decades of CIA service that almost all initial disagreements between the Agency and either or both intelligence committees relating to access to information ultimately have been worked out and resolved in a mutually agreeable manner. The committees have received the information that they need to carry out their crucial oversight functions while at the same time the two branches have been able to accord the most appropriate

protection to sensitive intelligence sources and methods. While it seems inevitable that some differences between the intelligence committees and the intelligence agencies (or between the committees and the President) on access issues will arise in the future, sections 502 and 503 clearly impose on the executive agencies a fundamental obligation to provide information to the intelligence committees, and that the agencies and the committees will and should work together in good faith to resolve the differences that do arise.

C. (U) What is your understanding of the phrase "fully and currently informed" as used in Section 502 and Section 503?

Answer: (U) The purpose of the "fully and currently informed" language was to provide in statute that the intelligence agencies have an affirmative duty (subject to any limitations worked out under the "due regard" language) to keep the intelligence committees informed of intelligence activities in a complete and timely manner. As Sen. Birch Bayh stated during the Senate's floor consideration of the conference report on the Fiscal Year 1981 Intelligence Authorization Act, the "fully and currently informed" language was designed to "place[ ] upon the intelligence agencies the obligation to tell the intelligence committees those things which in their judgment are of importance, current interest, and useful to policymakers and to bring this information to the attention of the committees in a reasonably timely fashion."

(U) Although section 502 literally directs the intelligence agencies to keep the intelligence committees fully and currently informed of all intelligence activities, the "fully and currently informed" provisions have never been interpreted—and reasonably could not be construed—to truly mean "all" intelligence activities. Those provisions expressly were not meant to constitute or amount to a 'standing subpoena' (to borrow a phrase used in floor discussion), nor to require that the intelligence agencies would deliver their total product and output by the 'truckload' (to borrow an image from some of the floor debate) on a daily basis to the intelligence committees. But the 'fully and currently informed' requirements have ensured that the executive agencies provide to the committees the significant and substantial types and amounts of information and material concerning intelligence activities that are necessary and appropriate to enable the committees to carry out their oversight functions.

D. (U) What is your understanding of the terms "significant anticipated intelligence activity" and "significant intelligence failure" in the context of Section 502?

Answer: (U) My understanding of these terms is based on legislative history as well as the history of briefings to the committees on such issues. The legislative history of S. Res. 400 states that: "An anticipated activity should be considered significant if it has policy implications. This would include, for example, activities which are particularly costly financially, as well as those which are not necessarily costly, but which have...[significant] potential for affecting this country's diplomatic, political, or military relations with other countries or groups...It excludes day-to-day implementation of previously adopted policies or programs."

(U) The legislative history associated with the Intelligence Oversight Act of 1980 indicates that the term 'significant anticipated intelligence activities' would include (though not be limited to) certain intelligence collection and counterintelligence activities (namely, those governed by high-level Executive branch approval requirements similar to those for covert actions; otherwise, those activities would be subject to the 'fully and currently informed' standards), and intelligence activities that affect foreign policy. The Senate report on the FY 1991 Intelligence Authorization Act states that "[t]he requirement to report significant anticipated activities means, in practice, that the committees should be advised of important new program initiatives and specific activities that have major foreign policy implications."

(U) With respect to "significant intelligence failures", the Senate report that accompanied S. 2284, a version of what became the Intelligence Oversight Act of 1980, states that "[s]ignificant failures to be reported would include major errors in analysis and/or prediction, failures in technical collection systems or other clandestine operations, and failures to protect sensitive sources and methods information from unauthorized disclosure."

(U) Agency internal guidance delineates broad illustrative categories of prospective intelligence activities that would or may constitute "significant anticipated intelligence activities" as well as failed intelligence activities that would be considered "significant intelligence failures." In addition, the Director of National Intelligence recently approved Intelligence Community Policy Memorandum (ICPM) Number 2005-100-3, "Reporting of Intelligence Activities to Congress," which revised the former Director of Central Intelligence memorandum on the same subject, and provides guidance on reporting as well. Categories for reporting include, among others, major budgetary actions not otherwise reportable; activities that entail a significant risk of exposure or compromise, and could result in loss of human life; and an extensive organizational change.

(U) The guidance, categories, and examples of "significant anticipated intelligence activities" and "significant intelligence failures" that are given in both the Agency internal guidance and in the DNI's recent ICPM build on and expand upon the guidance, categories, and examples outlined in the relevant legislative history materials. I believe that the Agency has given and continues to give the required and appropriately broad and liberal definition and scope to the two terms, and that the Agency would continue to err on the side of reporting too much rather than reporting too little.

E. (U) Do you believe the phrase "congressional intelligence committees" refers only to the full membership of each committee? On what basis do you believe the President, DNI, or Director/CIA may limit access to information pertaining to the intelligence activities to either the Chairman and Vice Chairman of the Committee or some other subset thereof?

Answer: (U) For almost all intents and purposes, and in almost all cases, the term "congressional intelligence committees" can and should be read to mean the full committee membership. I do not believe that the term necessarily must be construed in every conceivable scenario or context to mean only the full membership of each committee. If and to the extent that in certain rare cases or extraordinary circumstances the "due regard" clauses of sections 502 or 503 —or the President's constitutional authority—would allow certain information to not be provided at all to any member of the committees, then it would logically follow that a mechanism by which that information was

provided only to a limited subset of the committee members would also be legal, and in fact would contribute to facilitating oversight in those rare and extraordinary instances.

F. (U) If confirmed, will you commit to abide by the statutory requirements found in Section 502 and Section 503?

Answer: (U) Yes, I will comply with the requirements of sections 502 and 503 of the National Security Act of 1947. As a Federal official, I have taken an oath to support and defend the Constitution of the United States, and to "well and faithfully discharge the duties" of my office; and of course, Article VI of our Constitution provides that "the Laws of the United States which shall be made in pursuance [of the Constitution]...shall be [part of] the supreme Law of the Land". Moreover, as a member of the District of Columbia Bar and an officer of the court, I also have professional ethical obligations to support and abide by the Constitution and the laws of the United States.

G. (U) If confirmed, will you provide the congressional intelligence committees access to legal opinions issued by the Office of General Counsel governing the conduct of the CIA?

Answer: (U) If confirmed, I would be prepared to provide the congressional intelligence committees access to the substance of legal opinions issued by the Office of General Counsel governing the conduct of the CIA, except for any opinions or parts of opinions which contain information falling within the spirit of the "due regard" clauses, and/or for which a claim of executive privilege is properly asserted, and/or the provision of which DoJ deems would interfere with or jeopardize a criminal investigation, prosecution, or other proceeding.

H. (U) What role has the CIA's Office of General Counsel played in initiating and reviewing written notifications under Section 502(c) before they are sent to Congress? Please describe the CIA process for initiating congressional notifications and clearing them for Congress.

Answer: (U) All heads of CIA directorates and 'independent offices' have a continuing responsibility to ensure that any proposed or ongoing intelligence activity that could constitute a significant anticipated intelligence activity, significant intelligence failure, illegal intelligence activity, or activity falling under the 'fully and currently informed' requirement, is promptly reported by their respective components to the Office of Congressional Affairs (OCA) either directly or through the Office of General Counsel. The CIA General Counsel is, of course, the head of the CIA Office of General Counsel—one of the 'independent offices.' Accordingly, as a starting point, the General Counsel has at least the same responsibility as, say, the Chief Financial Officer (CFO) or the Director of Intelligence to ensure that all matters that may merit reporting under section 502 are identified and properly considered. In addition, OGC attorneys are specially situated and qualified to determine whether particular matters may be reportable under section 502, and are uniquely qualified within CIA to determine whether particular activities are or may be illegal.

(U) Most CIA notifications are drafted by the Agency component primarily involved in or with the particular activity. An attorney assigned to the component typically reviews the draft notification at an early stage. OCA chairs the Agency's Congressional Notification Board, which is responsible for vetting issues that may require congressional notification. The Board includes representatives from the Office of the Executive Director, the National Clandestine Service, OGC, and the Office of the CFO, and generally meets weekly. The Board ensures that representatives from any other affected or interested components are present or available to help inform the Board's consideration of the issues and to answer questions. The Board provides a corporate review—including, through the OGC representative, a legal review—of draft written notifications.

(U) The Office of the CFO and the facilities support element of the Directorate of Support play a key role in ensuring that the Agency provides necessary and appropriate notifications regarding various budget matters (e.g., transfers of funds, reprogrammings, 'new starts', and terminations of programs or projects, which meet specified thresholds or criteria), and regarding certain construction, renovation, and facility leasing activities. The written notifications on these matters typically are reviewed by OGC.

(U) CIA Career: Accomplishments and Highlights

7. **(U) If not described elsewhere, please describe your career within the CIA, including the positions you have held and your responsibilities in each. What are the major subjects or issues you have dealt with during your CIA career? What have been your most significant accomplishments during your CIA career?**

Answer: (U) I began my career with the Agency in January 1976 as an attorney advisor in OGC (at the time, the Office consisted of about 20 lawyers) and was assigned to the Operations and Management Law Division. During my first assignment, one of my most significant achievements was drafting and interpreting the Agency's internal regulations governing the CIA's relationships with US news media, clergy, academia and domestic business interests. Those regulations remain in effect, and largely unchanged to this day.

(U) In October 1979, I became counsel to the Directorate of Operations. At that time, I was the only attorney assigned to the directorate and was responsible for all legal questions regarding the initiation and implementation of intelligence collection and covert action operations.

(U) In September 1984, I went on rotational assignment to the CIA Office of Inspector General where I conducted two special investigations into alleged wrongdoing by Chiefs of Station abroad. I also took part in three inspections of CIA components.

(U) In January 1986, I was named Deputy Director of the Office of Congressional Affairs. Among my duties in that position included responsibility for coordinating all Agency communications and interactions with the House and Senate Committees investigating the Iran/Contra affair.

(U) In July 1988, I was appointed to the newly created position of Deputy General Counsel for Operations. In this position, I was once again responsible for the legal review of intelligence

collection and covert action activities but also managed the other attorneys then assigned to the operations directorate.

(U) In March 1995, I was named Senior Deputy General Counsel. Since then, I have served at various times as the Acting General Counsel when the General Counsel position became vacant.

8. (U) Please list any significant writing you have published, testimony you have given, or speaking you have done during your career at the CIA. Please provide the date, subject matter, and to whom the paper, opinion, memorandum, testimony, or speech was addressed. Please provide a copy of any such paper, opinion, memorandum, testimony, or speech.

Answer: (U) While I have not published any significant writing during my career. I have frequently spoken at law schools, as well as Bar Association events, on national security issues when asked to appear by a faculty member or Bar member. However, I do not keep a record of these occasions, and I do not prepare written speeches for them.

(U) As for testimony, to the best of my recollection, I have never testified before Congress in the sense of being sworn in and appearing as a witness. However, over the years, I have appeared and participated in numerous briefings of HPSCI and SSCI, and there may have been transcripts made on those occasions when Committee members were present.

9. (U) Please provide the opinions issued by the Office of General Counsel in which you played a significant role, whether direct or advisory, while you were the Acting General Counsel or Senior Deputy General Counsel.

Answer: (U) As Senior Deputy General Counsel or Acting General Counsel over the last ten years, I have played a significant direct or advisory role in numerous opinions of the office by either providing oral or written guidance on issues. If there are particular topics that the Committee would like to discuss during the confirmation process and would be amenable to narrowing the scope of this request, I can provide a more complete response to this question.

10. (U) During your career at the CIA, has your conduct, or any matter in which you had a significant role, been the subject of any review by the Office of General Counsel, the Office of Inspector General, any other CIA entity, the Department of Justice, the congressional intelligence committees, or any other element of the U.S. Government? If so, describe.

Answer: (U) I have been legal advisor to a wide range of intelligence collection and covert action matters over the years, and on occasion those matters have been the subject of review by the Office of Inspector General. If desired, I can describe some of the matters on a classified basis.

(U) Office of General Counsel

11. (U) Please describe the current organization of the CIA Office of General Counsel, including its staffing and budget.

Answer: (U) OGC is an Independent Office of the CIA that is headed by the General Counsel and that assists the General Counsel in carrying out his statutory and other responsibilities. The General Counsel is appointed from civilian life by the President, with the advice and consent of the Senate. The General Counsel is the chief legal officer of the CIA and is responsible for the sound and efficient management of the legal affairs of the Agency, and he performs such functions as the D/CIA prescribes. On behalf of the General Counsel, OGC provides legal advice and guidance to the D/CIA and the Agency.

(U) The FY 06 budget and staffing for OGC is classified and will be provided in the classified annex.

12. (U) If confirmed, what would be your priorities with respect to the management of the CIA Office of General Counsel?

Answer: (U) CIA must continue to attract, develop, and maintain highly capable attorneys and support personnel who can help guide Agency managers to conduct their activities within the bounds of applicable law. OGC attorneys must be objective team players with sound judgment who are able to advise CIA managers both as to the legality of their operations and the legal implications of proposed decisions. My overall priority is to assist the D/CIA and our other CIA clients achieve their mission objectives while ensuring they operate within the bounds of US law. To that end, my other major priority has been, and will continue to be, to recruit, train, and mentor the highest caliber of attorneys in OGC.

A. (U) How would you ensure the high quality and integrity of personnel of the Office of General Counsel?

Answer: (U) At the outset, I should note that for many years I have been actively involved in OGC's recruitment of new attorneys, and in fact, chaired OGC's Recruitment Committee for over a decade. To this day, I personally approve every employment offer to an applicant. A General Counsel must lead by example and ensure the office has a culture that expects and rewards high quality, objective advice of which the CIA, the Government, and the American people can be proud. The General Counsel and his management team must be uncompromising in this respect. I think CIA's Office of General Counsel has that culture today and any new General Counsel will start with a very accomplished and talented group of attorneys and recent law graduates. We also are fortunate that high quality attorneys and recent law graduates are applying to OGC in large numbers. In CY 2005 we received and reviewed over 2300 resumes from attorneys and recent law graduates, enabling us to be quite selective about the attorneys we hire.

(U) After attorneys enter on duty with OGC, we require that they attend "OGC University." This is a 12 part training program (one-half day of classroom training per part) that introduces OGC personnel to the laws and regulations applicable to CIA. Training is provided by some of OGC's most experienced attorneys.

(U) In addition to internal training, attorneys attend a wide range of legal courses offered by leading educational institutions and training providers, including Harvard, the National Employment Law Institute, Northwestern University's Kellogg School of Management, the US Army's Judge Advocate General's School, and the Department of Justice. We also have a standing management subcommittee comprised of attorneys and support staff that are dedicated to maximizing training opportunities for OGC personnel to ensure they deliver high quality legal services.

(U) With regard to ensuring the integrity of OGC personnel, in addition to adhering to Agency regulations regarding professional conduct and job performance in the workplace, the common performance standards for OGC attorneys include professional development and professional judgment. Attorneys are rated against these standards each year and I expect OGC managers to notify me when an attorney or other OGC employee exhibits a lack of professional judgment or difficulty in performance or professional development.

(U) I also require that all OGC attorneys attend the annual federal employee ethics training that OGC provides to Senior Intelligence Service (SIS) Officers. The US Office of Government Ethics requires this training for senior executives, and I require it for all OGC attorneys regardless of rank.

(U) As a condition of their employment with OGC, attorneys also must complete and report to OGC on the completion of their annual or other periodic continuing legal education requirements imposed by their state Bars. These requirements often include training in ethics.

B. (U) How would you ensure that CIA employees with "whistleblower" concerns are treated in a manner consistent with the law?

Answer: (U) The Intelligence Community Whistleblower Protection Act of 1998 ("Act"), which is incorporated into section 17 of the Central Intelligence Agency Act of 1949, as amended, governs actions to be taken when CIA employees have "whistleblower" concerns. In addition, CIA has published a regulation that describes the procedures for referring matters deemed to be of "urgent concern" to Congress in appropriate channels to ensure protection of classified information. OGC attorneys are responsible for advising employees on Agency regulations, including those concerning reporting matters to the Intelligence Committees. I take seriously my responsibility to ensure OGC attorneys properly advise employees who have concerns about Agency activities to bring those concerns to the attention of management and, if necessary, to report their concerns pursuant to the Act. One of the designated officials at CIA responsible for handling whistleblower concerns, in the first instance, reports directly to me. To the extent I, as General Counsel, would be privy to a complaint having been made, I would ensure that the procedures described in the Act and the internal regulation are followed (to include ensuring that the employee is not retaliated against for having made a whistleblower

complaint). I strongly support the Act and, if confirmed, I will ensure that all OGC attorneys share my commitment.

C. (U) Do you believe current and projected Office of General Counsel staffing levels are adequate? Do you believe Office of General Counsel personnel are deployed appropriately within the CIA?

Answer: (U) The staffing of OGC is, for the most part, adequate at the current time. I would expect to increase slightly the number of attorneys working in OGC over the next two years to meet increasing demands for legal services, particularly with regard to the National Clandestine Service (NCS). As the NCS grows and its mission continues to evolve, I anticipate the legal environment in which operations are conducted will continue to produce complex legal questions. As for the deployment of OGC personnel, I am very much in favor of OGC's existing rotational policy. I believe co-locating our attorneys with our NCS and other clients has served CIA well over many years. This deployment policy also requires that I remain mindful of the skills mix and regularly reassign attorneys with varying levels of legal expertise to new jobs so that they will enhance their legal skills at the same time they deliver high quality legal services to our clients.

D. (U) If confirmed, would you undertake any organizational or other management restructuring within the Office of General Counsel?

Answer: (U) Depending on the evolving nature of the structure of CIA, which I anticipate will continue under the new Director, I remain open to the idea of restructuring OGC. There are, however, several principles that I think are important in any office reorganization. First, I have learned that organizational change simply for the sake of change is seldom good. There must be valid, identified reasons that establish the need for organizational change. Second, with an identified reason for change, I would solicit the input of my attorneys, our clients, and senior management to validate the necessity for organizational change and to identify the options for organizational change. Finally, any proposed organizational change must recognize that OGC's workforce is extremely dedicated and talented, and take full advantage of the opportunities presented by such a dedicated and talented workforce. More specifically, I would seek to ensure to the maximum extent possible that subordinate managers and line attorneys are delegated sufficient authority to speed mission accomplishment while carefully ensuring compliance with applicable law and regulations.

(U) I also note that OGC underwent a significant overhaul of its management structure in September 2004. Those changes included the creation of a Management Committee and several management subcommittees that have empowered junior members of the office to help shape office policies and practices. We have successfully institutionalized those changes.

13. (U) Identify, for the past five years, any annual or other periodic reports that describe or summarize the work of the Office of General Counsel. Provide any such documents to the Committee.

Answer: (U) There have been no "annual or other periodic reports" as such over the past five years that describe or summarize the work of OGC as a whole. However, a portion of the CBJB describes OGC's resource needs each year, and portions of the semiannual reports of the OIG may describe or summarize discrete parts of the work of OGC as they relate to a larger audit or inspection the OIG is conducting of another directorate.

14. (U) For the past five years, has the CIA Office of Inspector General identified any deficiency in the conduct of the Office of General Counsel? If it has, identify the date and subject of any report, audit, or other document of the CIA Office of Inspector General, and provide to the Committee the relevant portions. Describe your assessment of each such matter.

Answer: (U) Please see the classified annex for the response to this question.

(U) Collection and Retention of U.S. Person Information

15. (U) The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction ("WMD Commission") concluded that the rules governing collection and retention of information on "U.S. persons" are complicated, subject to varying interpretations within each intelligence agency, and differ substantially from one agency to the next. The Commission concluded that analysts, as a result, have difficulties accessing "raw intelligence" information in the possession of particular collection agencies.

A. (U) Do you agree with the assessment of the WMD Commission?

Answer: (U) I understand that CIA analysts on occasion may have encountered difficulty in receiving information from other Intelligence Community (IC) entities and from law enforcement agencies, a difficulty that in part may be attributable to either a lack of clarity in the guidelines governing the retention and dissemination of U.S. person information at those other entities, or a lack of clarity in the application of those guidelines. However, I am not aware and do not believe that CIA's own Attorney General-approved guidelines, which have been in effect for many years, have presented any material difficulties with CIA's retention and onward dissemination of U.S. person information that it has collected based on its own authorities. The Agency's guidelines are relatively straightforward and designed to permit the Agency to collect, retain and disseminate the foreign intelligence information so crucial to the Agency's mission while, at the same time, remain mindful and protective of the privacy interests of U.S. persons. It is also important to keep in mind that the vast majority of foreign intelligence that the CIA collects bears no relation to U.S. persons. I believe the implementation of common definitions and interpretation of U.S. person rules across the Intelligence Community, to the extent feasible given the different missions of the various intelligence agencies, coupled with robust training of relevant IC personnel about those rule, would facilitate the sharing of information and, ultimately, would be beneficial to our national security.

B. (U) Has the Office of the DNI conducted any review or analysis of the rules governing U.S. persons information? If so, has that review or analysis resulted in any changes to CIA's rules or policies governing the collection and retention of information on U.S. persons?

Answer: (U) The Office of the DNI, operating jointly with the Justice Department's Office of Intelligence Policy and Review, has implemented one of the recommendations of the WMD and established a Working Group consisting of legal representatives from Intelligence Community members (IC agencies as well as components within IC agencies or the intelligence components of non-IC agencies). This group, referred to as the WMD 9.4. Working Group, is in the process of reviewing the U.S. persons rules that govern the collection, retention and dissemination of information by the various agencies and is seeking to identify and remove any inconsistent definitions or guidelines. The goal of the WMD 9.4 Working Group is to make the Attorney General guidelines consistent across the IC whenever possible and to supplement these guidelines with an IC-wide principles document that will contain standard presumptions and clarifications for implementation across the IC. This process is still ongoing and has not yet made any recommendation that would change or modify CIA's current rules.

C. (U) What principles, in your view, should govern rules and policies pertaining to the collection and retention of U.S. person information by U.S. intelligence agencies?

Answer: (U) The principles that govern the Agency's collection and retention of U.S. person information are well articulated at Executive Order 12333, Parts 1.1 (d) and 2.1, which state as follows:

(U) To the greatest extent possible consistent with applicable United States law and this Order, and with full consideration of the rights of United States persons, all agencies and departments should seek to ensure full and free exchange of information in order to derive maximum benefit from the United States intelligence effort.

(U) Accurate and timely information about the capabilities, intentions and activities of foreign powers, organizations, or persons and their agents is essential to informed decisionmaking in the areas of national defense for foreign relations. Collection of such information is a priority objective and will be pursued in a vigorous, innovative and responsible manner that is consistent with the Constitution and applicable law and respectful of the principles upon which the United States was founded.

(U) All agencies, of course, must comply with the Constitution and applicable laws, Executive orders, and policies relating to the collection, maintenance, and sharing of information about US persons. The IC policies should reflect an appropriate balance between the need to share with the appropriate consumers of intelligence timely and accurate information about the agents of foreign powers and terrorists, even US persons, and the need to protect appropriate privacy and civil liberties interests. Consistent with basic constitutional principles and US values, all elements of the US Government must observe reasonable expectations of privacy while helping preserve our Nation's security and national defense.

D. (U) Are any special rules or exceptions necessary for the collection and retention of U.S. person information by the CIA? Please explain.

Answer: (U) Yes, the CIA's current Attorney General-approved implementing procedures govern the collection, retention and dissemination of U.S. person information. A copy of those procedures has previously been provided to the Committee.

16. (U) Many of the CIA's collection authorities are defined by reference to the location at which the collection occurs (e.g., domestic or foreign). Do these rules continue to make sense in the context of CIA collection activities?

Answer: (U) CIA's legal authority to collect foreign intelligence is derived from the President's Constitutional authorities, from the National Security Act of 1947, as amended by the Intelligence Reform and Terrorism Prevention Act of 2004, the Central Intelligence Agency Act of 1949, and from Executive Order 12333. Those legal authorities must be governed by and interpreted in light of the fundamental rights afforded to all Americans by the Constitution, and other applicable statutory requirements, prohibitions and restrictions on lawful government activities. Because the exercise of some lawfully authorized collection techniques may implicate individual privacy interests, in my view it is entirely appropriate for the CIA's collection authority to be limited in some fashion when conducted within the United States or against U.S. persons wherever they might be located. However, these limits must be fashioned in a rational and up to-date manner. Rapidly evolving technology, particularly in the realm of global communications, has blurred the geographically based legal distinctions that have traditionally framed the CIA's collection authorities. This observation is particularly apt where the CIA's collection efforts are undertaken in a transnational environment against targets, such as international terrorists or those who seek to gain and use weapons of mass destruction, which are quite difficult to identify, locate, understand, and interdict.

(U) As a result, the interpretation of the laws applicable to the CIA's collection activities that are based in part on geographic distinctions has increased in complexity. The Office of General Counsel remains alert to and adept at reaching sound legal conclusions that facilitate collection activities in this demanding environment, and will continue to do so, as technologies evolve. Nonetheless, in the years ahead vigorous and continued consultation between the Executive and Legislative branches of Government will be important to develop a legal framework for intelligence activities that balance national security requirements and individual rights while accommodating and even taking advantage of evolving technologies.

17. (U) Should the CIA be authorized to conduct electronic surveillance within the United States (e.g., surveillance of non-U.S. person communications)? If so, under what circumstances would such authority be appropriate and useful?

Answer: (U) Section 2.4 of Executive Order 12333, signed by President Reagan in 1981, in part prohibits the CIA from engaging in electronic surveillance within the United States except for purposes of training, testing or conducting countermeasures to hostile electronic surveillance. This

prohibition is not required by the Constitution or other law, but instead represents a policy determination by the White House that the CIA's domestic collection activities should be curtailed in this particular respect. Whether to remove or amend this longstanding prohibition, and to what extent, is a question best left to the policymakers.

18. (U) In your view, does the application of certain general criminal prohibitions (e.g., prohibitions on material support to terrorism) to the conduct of CIA officers prevent aggressive actions to penetrate international terrorist organizations, proliferation networks, and other hard targets? Does the possibility of prosecution (even with the benefit of Department of Justice interpretive assurances) cause risk adverse behavior in the operational planning and execution of human intelligence missions?

Answer: (U) Across the board, intelligence officers must account for many types of risks when conducting the "risk vs. gain" analysis that is fundamental to the effective planning that presages any intelligence activity. In my experience, however, it is quite rare for a concern that CIA personnel might be subject to criminal prosecution to result in inhibiting the kinds of actions posed by this question. Whether or not the CIA has received the "benefit of Department of Justice interpretive assurances" with respect to a particular activity, it is well settled that criminal statutes of general applicability do not bind the sovereign with respect to its lawfully authorized activities and functions. Generally speaking, well-settled law, to the extent that it is effectively understood and applied in a good faith manner, does not cause risk of criminal exposure. In any case, OGC attorneys are on rotation to all NCS elements and provide timely legal guidance to intelligence officers involved in assessing risks, not only to ensure that they generally understand how the law may apply to intelligence activities, but also to counsel those officers as novel or unanticipated circumstances arise.

Please see the classified annex for responses to questions 19-40.

(U) The President's Terrorist Surveillance Program

41. (U) Were you involved in any discussions involving the establishment of the program authorizing the National Security Agency to intercept international communications into and out of the United States of persons linked to al Qaeda or related terrorist organizations? If so, describe.

Answer: (U) No.

Please see the classified annex for responses to questions 42-43.

SSCI# 2006 1230

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

March 16, 2006

The Honorable Pat Roberts
Chairman
Select Committee on Intelligence
United States Senate
Washington, DC 20510-6475

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by John A. Rizzo, who has been nominated by President Bush for the position of General Counsel, Central Intelligence Agency.

We have reviewed the report and have also obtained advice from the Central Intelligence Agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is a memorandum dated December 7, 2005, from Mr. Rizzo to the agency's ethics official, outlining the steps which Mr. Rizzo will take to avoid conflicts of interest. Unless a specific date has been agreed to, the nominee must fully comply within three months of his confirmation date with the actions he agreed to take in his ethics agreement.

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

Sincerely,

Marilyn L. Glynn
Acting Director

Enclosures

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Unclassified/FOUO

Form Approved:
OMB No. 3209-0001

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Date of Appointment, Candidacy, Election or Nomination (Month, Day, Year)	Reporting Status (Check appropriate boxes)	Incumbent	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate	Termination Filer	Termination Date *(If Applicable) (Month, Day, Year)*
03/01/1995		☐		☒	☐	

Reporting Individual's Name	Last Name: Rizzo	First Name and Middle Initial: John A.
Position for Which Filing	Title of Position: General Counsel	Department or Agency (If Applicable): CIA
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: Washington, D.C. 20505	Telephone No. *(Include Area Code)*:
Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held: Senior Deputy General Counsel	
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nominator:	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No

Certification I CERTIFY that the statement I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual	Date *(Month, Day, Year)*: 7 December 2005
Other Review (If desired by agency)	Signature of Other Reviewer	Date *(Month, Day, Year)*:
Agency Ethics Official's Opinion On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/Reviewing Official	Date *(Month, Day, Year)*: 8 December 2005
Office of Government Ethics Use Only	Signature	Date *(Month, Day, Year)*: 3/16/06

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

(Check box if filing extension granted & indicated number of days) ☐

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

Fee for Late Filing

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

Reporting Periods

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

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

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

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

Schedule B--Not applicable.

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

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

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

Agency Use Only

OGE Use Only

DEC - 9 2005

Reporting Individual's Name
Rizzo, John A.

SCHEDULE A

Assets and Income — BLOCK A

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

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

None ☐

Valuation of Assets at close of reporting period — BLOCK B

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

	Assets and Income	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				X												X						X										
	Doe Jones & Smith, Hometown, State			X																												Law Partnership [redacted]	
	Kempstone Equity Fund					X								X										X									
	IRA: Heartland 500 Index Fund							X						X											X								
1	Morgan Stanley Dividend Growth Securities B		X											X									X										
2	Morgan Stanley Strategist Fund B		X											X							X												
3	Morgan Stanley American Opportunities B		X											X							X												
4	Morgan Stanley Total Market Index Fund B		X											X							X												
5	Mainstay High Yield Corporate Bond B				X									X											X								
6	Mainstay Money Market B		X											X							X												
7	Mainstay Value Fund B		X											X							X												
8	American United Life Insurance Co. (Whole Life)		X																X			X											

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

Prior Editions Cannot Be Used.

Reporting Individual's Name
Rizzo, John A.

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

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

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
9	Met Life -- New England Financial --Variable Life invested in:		X											X																			
10	- BlackRock Bond Income		X											X								X											
11	- BlackRock Large Cap Growth		X											X								X											
12	- Davis Venture Value		X											X								X											
13	- Zenith Equity		X											X								X											
14	Mainstay Capital Appreciation Fund B			X										X							X												
15																																	
16																																	
17																																	

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

7 December 2005

MEMORANDUM FOR: Director, Central Intelligence Agency

FROM: John A. Rizzo
Senior Deputy General Counsel

SUBJECT: Ethics Agreement

The purpose of this memo is to describe the steps that I intend to take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of General Counsel for the Central Intelligence Agency (CIA).

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

I pledge to promptly inform the Alternate Designated Agency Ethics Official (ADAEO) of the CIA, of any acquisitions or sales of securities or other interests by my wife, my minor children or me after the filing of my nominee financial disclosure statement. I understand that in the event of a conflict of interest, I will disqualify myself, in writing, from taking any official action that would have a direct and predictable effect on the financial interests of that company or other entity. In

SUBJECT: Ethics Agreement

addition, if you determine that recusal and screening is not a viable option to preclude a conflict of interest under applicable Office of Government Ethics regulations, I will take the further steps you deem necessary to eliminate the conflicting interest, including divestiture if necessary and possible.

John A. Rizzo