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STATEMENT FOR THE RECORD
CONFIRMATION HEARING
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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 three 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 five 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% 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 humbly submit, it would be a healthy thing for the Office of General Counsel, the Agency, and ultimately, the country.

STATEMENT FOR THE RECORD
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 declassification 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.