

HEARING TO CONSIDER PENDING NOMINATION

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS

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HEARING TO CONSIDER PENDING NOMINATION

WEDNESDAY, APRIL 14, 2021

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 3 p.m., in Room 106, Dirksen Senate Office Building, and via Webex, Hon. Jon Tester, Chairman of the Committee, presiding. Present: Tester, Brown, Blumenthal, Sinema, Hassan, Moran, Boozman, Cassidy, Tillis, Blackburn, and Tuberville.

OPENING STATEMENT OF CHAIRMAN TESTER

Chairman TESTER. I want to call this hearing on the confirmation of Richard Stauber to serve as General Counsel for the Department of Veterans Affairs to order. I want to welcome Mr. Sauber. I hope I am not butchering your name. I never asked for a phonetic pronunciation.

Mr. SAUBER. That is correct.

Chairman TESTER. Good. But I want to welcome Mr. Sauber and his family here today, and thank him for the willingness to serve. I want to flag, for the members, that we have two votes beginning at 3:30, and I plan to wrap this hearing up in time for me to head over for the end of the first vote, which would mean you can go too.

We will leave the record open to include Statements and post-hearing questions until 5 p.m. tomorrow. Senator Moran, how does that sound to you?

Senator MORAN. Mr. Chairman, as usual I have no objection to your thoughts. Well, I do not know about your thoughts. I have no objection to what you just said.

Chairman TESTER. That is good. You are a great human being. And I will put my full Statement into the record, but I want to say a few words about the nominee, and to the nominee. If confirmed, you will be looked upon to provide a comprehensive evaluation of legislation. This is no small task. In fact, in recent years, VA's interpretation of statute has not been in keeping with congressional intent. That is a problem and one I will look to you to solve.

VA has also recently appealed several cases from the Court of Appeals of Veterans Claims to this court of appeals for the Federal circuit. These cases span a range of issues, including emergency care reimbursements. In Wolfe, the Department has failed to appropriately interpret the law.

Now there are veterans who have been waiting for care, waiting for years to be reimbursed for emergency room care.

One avoidable fact with this case is that appropriately applying the law will come at a cost. I want to say clearly to you that money should not matter when it comes to our nation's veterans. Fairness does.

I look forward to our discussion today and thank you again for your willingness to serve on behalf of our nation's veterans and their families. Senator Moran.

OPENING STATEMENT OF SENATOR MORAN

Senator MORAN. Chairman Tester, thank you. I too will cut my opening remarks short but do want to say a few things because I want to make clear what I am looking for in the job—for the individual we are about to confirm, and I would not want to discount the value of this hearing by shortening it, particularly for you but also for your wife and daughter.

So welcome. Thank you. Thank you for your past public service and your interest in serving the Department of Veterans Affairs and the veterans that that department serves. I look forward to assisting you, being your ally, and seeing that good things happen at the Department.

But I, too, would share the concern that was mentioned by the Chairman. In too many instances, we have had difficulty in getting the Department of Veterans Affairs to interpret the legislation as written. Too many times the law becomes something that is seemingly ignored at the Department, and they have their own thing and want to do it their own way. And I would insist that you, in your capacity, lead the effort to make certain that congressional acts of law, as written, as intended, are implemented at the Department of Veterans Affairs in compliance with those criteria.

I also, as the Chairman said, look forward to your leadership in helping the Veterans Benefit Administration, the Board of Veterans Appeals, and the Court of Appeals of Veterans Claims to work through the backlog. And last, I would indicate you have significant responsibilities to promote official compliance with Federal ethics laws and ensure that the work force is free from bad actors that do not share the VA's mission for caring for our nation's veterans.

While one part of this effort is cultural, making certain the VA's employees identify and report bad actors, VA leadership, along with the General Counsel, must make certain that those individuals are removed from employment within the Department of Veterans Affairs.

I look forward to your testimony and appreciate your presence today and your willingness to serve.

Chairman TESTER. Thank you, Senator Moran. Before we start with your testimony, Mr. Sauber, would you stand up please to take the oath. Please stand and raise your right hand, which you have done.

Do you, Richard Sauber, solemnly swear or affirm that the testimony you are about to give before the United States Senate Committee on Veterans' Affairs will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SAUBER. I do.

Chairman TESTER. Let the record reflect that candidate responded in the affirmative.

You have the floor, Mr. Sauber.

STATEMENT OF RICHARD A. SAUBER, NOMINEE TO BE GENERAL COUNSEL OF THE DEPARTMENT OF VETERANS AFFAIRS

Mr. SAUBER. Thank you, Mr. Chairman, Mr. Ranking Member. Let me just read my Statement and I will try to do it quickly, given the timeframe that we have.

I am honored to be President Biden's nominee for the position of General Counsel at the Department of Veterans Affairs. If confirmed by the Senate, I pledge to you that I will join and support Secretary McDonough's unequivocal commitment made to this committee to fulfill our sacred obligation to care for veterans who gave their all to protect our Nation and to assist their caregivers, families, and survivors whose sacrifices have played a vital role in support of our veterans.

It would also be my honor to serve in this position as my own contribution and expression of gratitude to the men and women who have served in our Armed Forces, and especially to honor the service of my father, who quit school to serve in the Army at the start of World War II, and my father-in-law, a 1955 graduate of West Point who served in the Army for 20 years, including service in Vietnam. He and my mother-in-law are interred together in Arlington National Cemetery.

You have already, Mr. Chairman, recognized my wife and daughter. I want to just introduce them again to the Committee. I would not be here without their support and love. We have one other daughter who I think will be watching online, and she is included in that penumbra.

Upon graduation from law school, I worked for 7 years as a prosecutor in the criminal fraud section of the Justice Department here in Washington. Within weeks of arriving, I was sent over to Crystal City to meet with Admiral Hyman Rickover to support him in his litigation regarding cost overruns with contractors who were building the 688's, the Los Angeles-class attack submarines. As a young prosecutor, it was a thrill of a lifetime to work closely with the father of the nuclear Navy, and it was my first opportunity to witness up close the dedication and patriotism of the men and women serving in the military.

Ever since, both in the government and out, I have actively sought to work with people in the Armed Forces and the companies who support them.

Toward the end of my years in the Department of Justice, I was asked to create and lead a joint task force of DOJ and Department of Defense personnel that would, for the first time, focus on military procurement fraud. The task force included representatives of the Army, Navy and Air Force, the Defense Logistics Agency, the DoD Inspector General, and the Defense Contract Audit Agency. I am quite proud of the work we did, and the change in the compliant culture we advanced, one that encouraged compliance and transparency.

In private practice I have had the good fortune to continue working in this field. I was cleared to have access to and work on issues related to the early development of the B-2 bomber, and I have also worked on matters related to the MX Missile, the AV-8B Harrier II jump jet, and the Air Launch Cruise Missile, among others.

Working with contractors for all these years also brought me into close daily contact with the huge number of veterans and military families who have found a continued sense of purpose and service through their new profession.

These are Americans who work tirelessly to support our troops, and their level of commitment to our country, and the people who defend it, is incredibly inspiring. It would be my great privilege to honor their service by doing my best to advance the mission articulated by Abraham Lincoln to care for veterans and their survivors.

I believe that if confirmed I can materially contribute to the mission and Secretary McDonough's leadership. First, I believe I have the trust and confidence of the Secretary, a vital asset for a General Counsel. I come to the job with a detailed understanding of government procurement, an area targeted for improvement within the Department. I have spent much of my career dealing with the challenges of creating an open, ethically pristine, compliant atmosphere in large institutions, and with significant experience demonstrating for leaders of those institutions that the creation of such a culture is in everyone's best interest.

Finally, my 7 years with the Justice Department were the most satisfying of my career, and to experience the satisfaction of working hard for the public interest, in the service of the country that gave my ancestors and extended family shelter when they fled persecution and violence in eastern Europe over 100 years ago, was an indescribable honor.

I am ready to dive back into that service, especially knowing that the goal is to fulfill this critical and central responsibility as a Nation. I am comforted too by the sense that I am honoring my father and my father-in-law for their service to the Nation, as well as the families that supported them, whose sacrifices we should never overlook or forget.

I commit to you that if confirmed I will work tirelessly to support and advance this mission, and I look forward to answering your questions.

Chairman TESTER. Thank you, Mr. Sauber. I am going to go last on my questions so I will go with Senator Moran.

Senator MORAN. Do you want me to do the same?

Chairman TESTER. Sure, if you would like.

Senator MORAN. Okay.

Chairman TESTER. Okay. Then we will go to Senator Hassan, virtually. Senator Hassan?

SENATOR MARGARET WOOD HASSAN

Senator HASSAN. I am right here. Thank you so much.
Can you all hear me?

Chairman TESTER. We can. Rock and roll.

Senator HASSAN. Okay. Thank you. Thank you, Chairman Tester and Ranking Member Moran, and thank you, Mr. Sauber, for not only being here today but for your willingness to serve.

Mr. Sauber, the Office of Special Counsel has repeatedly notified the VA of concerns with how it handles whistleblower claims, including claims made by whistleblowers at VA facilities that Granite State veterans rely on for their care.

In March of this year, the Office of Special Counsel again found a VA response to a whistleblower complaint to be not reasonable, this time regarding allegations at the White River Junction Medical Center. This highly concerning pattern of the VA mishandling whistleblower complaints puts our veterans at risk by contributing to a culture where VA employees are not comfortable coming forward to report misconduct.

As the VA General Counsel, how will you work to change how the VA handles whistleblower claims?

Mr. SAUBER. Thank you for the question, Senator. I read the reports, the public reports that you mentioned, and I think, to put it mildly, they are troubling. I have worked my entire private career to ensure that management understands that an open and transparent culture in an institution is in everyone's best interest. In a private world, it adds to the bottom line, and in a public institution it increases the efficacy of management.

So I know I have spoken to Secretary McDonough about this, and he and I both agree that regardless of what has happened over the last several years, it is our goal to make sure that the culture in the Department is such that anyone feels free to come forward with an allegation, with some concern, and that that person should not be persecuted, we should not look into their file for any reason that I can think of. The focus will be on the allegation and how we can use that allegation to improve the function of the Department, and I pledge to you that that is what the Office of General Counsel will do, if I am confirmed.

Senator HASSAN. Well, thank you. Will you also commit to reviewing the handling of whistleblower claims at White River Junction and working with our office on this matter, should you be confirmed?

Mr. SAUBER. Absolutely.

Senator HASSAN. Thank you. One additional question.

The COVID-19 pandemic has led to a significant increase in the backlog of veterans' disability claims and appeals. This is something I hear about through our Constituent Services Office in New Hampshire regularly. Especially during these difficult times, it is more important than ever that the VA does everything it can to get veterans the benefits they have earned and they deserve in a timely manner.

How can the Office of General Counsel help improve processes in order to reduce the current backlog and address ongoing delays?

Mr. SAUBER. Thank you for that question. I noticed, in preparing for this hearing and being briefed, that there are a number of concerns and complaints across the board about delay in Department functions, especially in the one that you mentioned. And I can commit to you that one of the principal goals that I will have, if confirmed, is to make sure, first, that the Office of General Counsel does not add to the sand in the gear, that we play no role in any sort of bureaucratic inertia, and to do my best with other parts of the Department to make sure that speed is important and that a

benefit delayed is a benefit denied, and I will do my best to make sure that does not happen.

Senator HASSAN. Well, I appreciate that very much and I would look forward to following up with you on that, as well as some of the things we have heard from VA employees may also be helpful as we try to address this issue.

With that I will yield the rest of my time by also just adding my thanks not only to you but to your family for being willing to serve in this way. Thank you, Mr. Chair.

Mr. SAUBER. Thank you.

Chairman TESTER. Thank you, Senator Hassan. Senator Moran.

Senator MORAN. Chairman, thank you. Let me begin with this question. In one of your responses to the written questions, my inquiry was does the Department's authority to suspend Community Care under the MISSION Act exist? And your response was no basis on which to opine on the question, noting that you will review the law, the goals of the program, the priorities of the Secretary.

That answer troubles me because I really am asking you, under the law—maybe your answer could have been, “I will review the law.” But if the law says that the MISSION Act is, what I think it is defined to be, if the answer to that question is what the law says then I think the goals of the program and the priorities of the Secretary become irrelevant. Am I missing something, and if you had now had a chance to review the law?

Mr. SAUBER. I have not dived into the law, but let me clarify, and really it is to pick up on something that the Chairman said. I mean, my job, if confirmed, as the General Counsel, will be to make sure that every aspect of the Department is following the law as it is articulated by congressional intent, and I do not see any legal room with respect to that. If the Secretary or other management officials within the Department disagree, I have no problem saying, “This is the law and this is what we should do.”

Senator MORAN. Thank you. I mean, it is the Secretary's decision on what happens at the Department, but it is your job to tell the Secretary what he is required to do, by law. Is that a truthful Statement?

Mr. SAUBER. Yes, and I have no problem articulating that to him.

Senator MORAN. Thank you. And then let me ask a question about, again, a statute. The Department is statutorily prohibited from providing abortion under Section 106 of the Veterans Health Care Act of 1992, authorizing the Secretary to provide women general reproductive health care.

In response to a question about whether the Secretary had plans to make changes to the VA regulations regarding abortion service and abortion counseling, the Secretary, in that House committee, indicated that the Department is prohibited from providing these services, quote, “under current regulations.” I think that the Department is prohibited from providing these services under the law, not under the regulations, and I would ask you to confirm what the truth on that topic is.

Mr. SAUBER. Again, I am not intimately familiar with the particulars of that issue but I can assure you that my advice to the Secretary will be to look at the law and follow it consistent with

the congressional intent, and if that is how it comes out then I will have no problem telling him that.

Senator MORAN. Thank you for that answer. And finally, the Secretary and I toured a number of veteran medical facilities in Kansas last week. We discussed a fallout from a slate of horrific sexual crimes that were perpetrated by a former VA physician assistant in Leavenworth. The Secretary shares my view about that the Department ought to have zero tolerance for policies for these incidents.

But the incidents in Kansas and West Virginia and other locations across the country show that more needs to be done, both legislatively and administratively. If confirmed, what steps would you have in mind to ensure the Department deters and removes bad actors from harming veterans?

Mr. SAUBER. Thank you for that question. Look, I think one of the things that, if confirmed, I will push for is an earlier answer to allegations. There should be an earlier report about what went wrong, why did it go wrong, and most particularly, what are the steps that we can take to ensure that a recurrence does not occur?

And I know that the Secretary is dead-set against allowing any kind of misconduct within the Department and the sorts of misconduct that you mention and the one that took place in West Virginia are so abhorrent that we are going to focus on making sure that we have lessons learned and that we spread those lessons across the Department to make sure there is no recurrence.

Senator MORAN. Thank you very much for that answer as well. Mr. Sauber, I have no doubt that you and I and the Secretary and almost everyone else agrees on the horrific nature, and we want to protect our veterans. The question is working together—Congress, the administration—what can we do to make sure that, as you say, a decision is made earlier than it has been, that the perpetrator is removed, punished, and we want to be helpful in that regard. But thank you for sharing your view.

Chairman TESTER. Senator Blumenthal.

SENATOR RICHARD BLUMENTHAL

Senator BLUMENTHAL. Thanks, Mr. Chairman. Thank you for your willingness to serve and for your past service, Mr. Sauber, and I am delighted that you are committed, as is our veteran Secretary to fight like hell for our veterans.

I want to ask a few questions about the rights of veterans who have claims to benefits, service-connected benefits, as a result of toxic substances. Veterans suffering from Agent Orange had to wait years, and they were fought by the VA, even after a court decision that accorded them rights. They were slow-walked and stonewalled and fought by the VA. How would you look to prioritize expeditious review of VA appeals of toxic exposure cases?

Mr. SAUBER. Thank you, Senator Blumenthal. I have seen some of the public reports recently and some of the film, unfortunately, about the burn pit victims as well, which I think falls into a similar category. Again, our goal, and my goal should I be confirmed, is to have the veteran come first and have his or her family come first.

So getting rid of, as I say, sand in the gears, any kind of delay in making a determination about the eligibility for benefits will be

a goal that I will have, if confirmed, and I know that the Secretary feels the same way. No one who is deserving should wait so that they are on death's door before the benefits are given, and you have my commitment that I will do everything I can to make sure that those decisions are made more expeditiously than they have been.

Senator BLUMENTHAL. I hope that is true in practice.

It is easy to say, but I hope that you will be able to come back to us, and I hope that you will commit to come back to us with specific steps you will take to prioritize those cases and make sure that veterans do not have to wait until they are about to die to get those benefits they deserve.

Mr. SAUBER. There is that and other areas of litigation. I know the Secretary, if confirmed, would like me to see if I can unravel, to the extent that we can find litigation where we should not be adverse to the very people that our mission is to help. We would like to untangle that, to the extent possible.

Senator BLUMENTHAL. Another area where the VA sometimes has been adverse to the people it is supposed to serve is in the area of less-than-honorable discharges. For 10 years this has been a mission of mine. I have worked every Secretary of Defense, beginning with Leon Panetta under President Obama, when I first came here, to try to upgrade the discharges, less-than-honorable discharges, bad—paper discharges, of people who suffered from post-traumatic stress, many of them Vietnam veterans when nobody knew what post-traumatic stress was. It was not a part of our vocabulary. But they acted out, they acted against their superiors, they were discharged less than honorably, and so they were denied treatment for the very conditions that caused them to be less-than-honorably discharged.

The challenge of enabling those people go through the Department of Defense access the Discharge Review Board still is there. It is not necessarily directly within your purview, but I hope you will commit to assisting the Department of Defense in that effort, as General Counsel of the VA, but also stop the unlawful turnaways, denial of health care, for veterans who have been less-than-honorably discharged and need the mental health care so they can go to work, avoid addiction to illicit substances, and so forth. We have seen this again and again and again.

So my question is, how would you ensure that the VA cooperates with the Department of Defense in that effort and also how to ensure that the VA is, in fact, serving veterans with other-than-honorable discharges seeking mental health services?

Mr. SAUBER. I have read the public reports about that issue and it does seem to me, without getting in the details at this point as a nominee, a little bit circular, and I think you put your finger on the circularity of the problem.

I know that Secretary McDonough has a close working relationship with the Secretary of Defense and he has said to me that he expects us, on a whole host of issues, including this one, to go out of our way to make sure that we are working together to achieve the ends that you suggest.

Senator BLUMENTHAL. Thank you. Thank you, Mr. Chairman.

Chairman TESTER. Thank you, Senator Blumenthal. Senator Tuberville?

SENATOR TOMMY TUBERVILLE

Senator TUBERVILLE. Thank you, Mr. Chairman. Thank you, Mr.—is it Sauber?

Mr. SAUBER. Sauber.

Senator TUBERVILLE. Sauber.

Mr. SAUBER. Yes.

Senator TUBERVILLE. I answer to Tuberville all the time, and people ask, “How do you pronounce that?” Thank you for being here, and your family. You and I have a lot in common. My dad quit high school to go to fight in World War II, and loved the military. My family was in it, and I did not serve in the military, and that is the reason I am here today. I retired after 40 years of coaching, and was fortunate enough to win the Senate seat here, and this is one of my goals was to try to be on this Committee. So I am here to help, as you are, so thank you for your service.

Just a couple of questions. You know, I would like to ask you about your experience leading a team of lawyers in private practice and how that transfers to managing an extensive team of attorneys at the VA. In fact, the Office of the General Counsel has a total of 832 career employees, of which 586 are attorneys. I have had a lot of good problems with attorneys before.

In this position, you will be defending the Secretary in litigation where veterans are seeking various medical and compensation benefits from the VA. Should you be confirmed, how do you plan to balance the needs of the veterans and defending the Secretary?

Mr. SAUBER. Thank you for the question, Senator.

Senator TUBERVILLE. Just call me “coach.”

Mr. SAUBER. That is hard to do but I will call you “coach.”

Senator TUBERVILLE. Okay.

Mr. SAUBER. The Secretary has made clear to me that our touchstone here in regard to this litigation that you mentioned is that, at a minimum, the tie goes to the veteran. So we do not want to spend our time, if confirmed, being adverse to the very people that it is our mission to help them out. So we want to reduce, if at all humanly possible, as much as we can being adverse.

I do not think the Secretary has any different view on that. He has told me that he wants to dial back some of the adversity that the last several years have been characterized by. As far as leading a group of lawyers that size, there is almost no job that has that scope, so that is one issue. But the leadership of a group of lawyers in the Department of Justice or in private practice, I think I have learned many of the sort of general characteristics of how best to lead a group of people. This particular group, the ones I met, this is a very fine group of career lawyers, and I think the very fact of the shared sense of mission makes the leadership of a group like this a little easier, and, if confirmed, I look forward to the challenge.

Senator TUBERVILLE. Thank you very much. Just one more, to see if I can get a commitment from you on this.

You know, the nationwide veteran suicide rate is 18 per day, and, I mean, this is tough, especially from guys like us that have veterans in our family. You know, the Hannon Act authorized \$179 million for community grants, and it was enacted 6 months, 179

days ago. It still has not been developed into regulation, into the grant program.

Should you be confirmed, can you commit to working with the VA colleagues to publish the regulations as swiftly as possible so we can get this done?

Mr. SAUBER. Yes, sir. In furtherance of what the Chairman said, any time Congress passes a law, if confirmed, it will be my job to make sure that we put that into effect as soon as humanly possible.

Senator TUBERVILLE. Thank you, Mr. Sauber. I look forward to working with you. Thank you, Mr. Chairman. I yield my time.

Chairman TESTER. Thank you, Senator Tuberville. Senator Boozman?

SENATOR JOHN BOOZMAN

Senator BOOZMAN. Thank you, Mr. Chairman, and thank you so much for being here, Mr. Sauber. We appreciate your willingness to serve, and like Senator Tuberville, coach, my father also was in the military, and I think we all realize that those are family affairs and we are committed to helping in any way that we can, realizing that we are talking about earned benefits, not gimmes.

But again, I would just reiterate the importance of the last question that Senator Tuberville talked about, you know, setting this program up. I visited with the Secretary. I think he is working very hard to get that done. These things take time and we want to do it right.

But I just want to put that on your radar also and be sure and tell the Secretary we appreciate the fact that he is working on it. But as soon as we can get that done I think that the VA is in total agreement. That is just going to give you another weapon, another tool in the toolbox as we fight a problem that simply just has not changed very much in the last 20 years.

The VA's Office of General Counsel provides conclusive interpretation of legal matters for the VA in assisting in drafting and implementation of relevant legislation. The work of the Department that it does with Congress is so important to make sure that the intended legislation is reflected in the text.

If confirmed, will you commit to providing the Committee with legal opinions on draft legislation detached from Department policy?

Mr. SAUBER. Yes, and I would like to take the opportunity, if I could, to say that I understand in the past there has been a designated lawyer in the Office of General Counsel to give direct legal technical assistance to the Committee, and absent something that I do not anticipate or know about in advance, that is a position and a relationship that it is my intent to resurrect and give life to.

Senator BOOZMAN. Good. Very good. And again, you have really covered so much of these things. Congress has made great strides to ensure that veterans are not taken advantage of when seeking services through the VA. However, there is always more that can be done to ensure that veterans do not fall victim to bad actors.

If confirmed, can you commit to assisting Congress in closing these legal loopholes, whether you can do that administratively or if we need to provide additional legislation, that are allowing these groups to continue operating within the VA system?

Mr. SAUBER. Without question, yes.

Senator BOOZMAN. Good. Well, again, thank you so much. Thank you for your willingness to serve. We appreciate you, Mr. Chairman.

Chairman TESTER. Thank you, Senator Boozman. Senator Sinema?

[No response.]

Chairman TESTER. Senator Sinema? Going once, going twice. Senator Blackburn?

SENATOR MARSHA BLACKBURN

Senator BLACKBURN. Thank you, Mr. Chairman. I had just a couple of questions, Mr. Sauber, and thank you for your willingness to serve.

One of my concerns is the way the VA's budget has doubled over the past decade. It has gone from \$122 billion in Fiscal Year 2011, and it is now at \$243 billion. But what we have seen is we still have waits, we still have lack of access to health care, we still have frustrations that are coming from our veterans who deserve to get this care.

So this is an area that we have to continue to work on to make certain that veterans are going to get access to care.

So what role will you have, in the Office of General Counsel, in making certain that the VA is going to be a good steward of those dollars and put them into care instead of putting them into overhead?

Mr. SAUBER. Thank you for the question, Senator. I think as I mentioned before I do see, in a number of the issues that I have been briefed on and that you raise, that there is substantial concern about delay, about the, at times, bureaucratic inertia. And what I can tell you is that one of my overarching goals, if confirmed, is to make sure that the Office of General Counsel does not become a choke point and that we, within the OGC, do everything we can to make sure that the dollars get where they belong in a timely fashion. And to the extent—

Senator BLACKBURN. I am sorry. I want to make certain that you are going to likewise use all of those tools to make sure that the MISSION Act is fully implemented, because that will help veterans have access to care that is going to be closest to their home.

Mr. SAUBER. Yes, without question. The Secretary has indicated to me that he wants the MISSION Act fully implemented, and he wants the OGC to be a major partner in making sure that that happens.

Senator BLACKBURN. Okay. And then, likewise, we want to make certain that this administration does not get on the track of trying to spend the next 4 years consolidating care back into VA facilities.

Mr. SAUBER. Thank you, Senator. That is a question a little bit above my pay grade, but I will commit to you that the implementation of the MISSION Act and the associated acts and regulations is a high priority for the Secretary, and, as a consequence, I can commit to you that, if confirmed, it will be one for me too.

Senator BLACKBURN. Well, thank you for that, and thank you also for your time in the call earlier. I appreciate that. And we talked about my concern over the health and well-being of veterans

and the claims process, and how long it is taking VA claims to be processed fairly and in a timely manner, and the backlog that we have on those claims, 202,000 backlogged claims at the Veterans Benefits Administration.

So how will you ensure that the VBA will implement the law objectively, in a way that will allow for a timely and consistent completion of these claims?

Mr. SAUBER. Thank you, Senator. The Secretary has made clear to me that, if confirmed, he wants OGC to play a major role in helping to reduce that backlog, which is unacceptable, and I can commit to you that is the focus of one of my priorities, if I am confirmed.

Senator BLACKBURN. Excellent. Thank you so much. Thank you, Mr. Chairman.

Chairman TESTER. Thank you. Senator Sinema?

SENATOR KYRSTEN SINEMA

Senator SINEMA. Thank you, Mr. Chairman, and thank you to our Ranking Member for holding this hearing. Mr. Sauber, congratulations on your nomination and thank you for being here today.

I continue to be very concerned about veterans who are targeted by scammers. Veterans who receive compensation benefits are particularly sought-after targets. The VA's General Counsel has limitations on their authority to address complaints about potential predatory practices and scams that target veterans. If confirmed, what do you see as your role to fight against those who try to take advantage of veterans, and how will you partner with other Federal agencies and State attorney general offices to do so?

Mr. SAUBER. Thank you, Senator. Two or three things do come to mind. One, this is the sort of problem, I think, that is usually susceptible to an educational effort, so to figure out a way to get to veterans information about these potential scams, so that is one thing.

Second, working with the Justice Department, but more importantly, as you put, the State attorneys general, which is an area that I have worked closely with those people all my life, and I will make sure that they focus on this issue.

And finally, I have thought perhaps there are so many legal, pro bono groups that help veterans and that focus on veterans. You know, perhaps it might be an idea to put some of these volunteer lawyers in our health care facilities so that veterans who come there have immediate and easy access to a lawyer who might help them through some of the issues that you are discussing.

Senator SINEMA. Thank you. The VA's General Counsel plays a critical role in everything the VA does, including ensuring that shared space and leasing agreements in VA construction projects can move forward. But the VA has pressing infrastructure demands, including at the VA medical center facilities in Arizona. Meeting these demands are critical to ensuring that veterans receive the care and support they have earned.

It is a long-held belief at the local levels that a VISN's ability to enter into these agreements and move forward with construction

contracts largely depends on the chief counsel in the districts and that some VISNs are afforded more flexibility while others are less.

If confirmed as General Counsel, how will you work to ensure that the VA facilities across the enterprise have the flexibility they need to pursue much-needed facilities projects?

Mr. SAUBER. Thank you. I do not know the particulars of what you are saying, but let me just commit to you that, if confirmed, the Office of General Counsel, all 500-some—odd lawyers, will speak with one voice, and if they do not, you know, that will be addressed quickly and decisively.

As I mentioned in my Statement, I have spent a lot of years in and around government procurement, and I will do what I can to make sure that the flexibility that you mentioned is an appropriate way that all of the different districts can address their construction contracts.

Senator SINEMA. I appreciate that. I look forward to us following up on this issue. Because of these perceived inequities, we want to make sure we get that resolved.

Mr. SAUBER. Absolutely.

Senator SINEMA. Procurements are a critical part of the VA enterprise, whether it be for goods like medical supplies or services such as compensation and pension exams or facilities upgrades. The General Counsel plays a critical role in ensuring that the procurement practices meet the needs of the veterans it serves. During the pandemic, the procurement procedures were heavily stressed, and the VA, like many medical facilities, have problems securing enough supplies, most notably, PPE.

Our office heard from staff at the Arizona VA medical centers who were extremely concerned about the lack of PPE.

We worked locally to help meet those concerns. During this time, though, we also saw instances of counterfeit goods being sold to the VA.

Now you have a background in procurement fraud. If confirmed, how will your background help equip you to address procurement needs and procurement fraud at the VA?

Mr. SAUBER. Thank you for that question. I do not know the details of how the Department handles its procurement, but I want to commit to you that that is an area that I will dive into, especially because I have the experience in it. And sometimes getting lawyers involved early in the writing and contract engagement is a help to avoid those kinds of issues, but I will look at that question seriously, if I am confirmed, and make sure that the procurement process is as smooth as it can be.

Senator SINEMA. Thank you. Thank you, Mr. Chairman.

Chairman TESTER. Thank you, Senator Sinema. I will make this painless with me. I only have one question, and that is—and it is a yes or no answer—do you believe the VA has an obligation to be responsive to congressional oversight?

Mr. SAUBER. Yes.

Chairman TESTER. Right answer.

Okay. I want to thank the Committee for its commitment to bipartisanship. I want to thank you, Mr. Sauber, for your willingness to serve in this important capacity. And I also want to thank your family for your support of your husband and father.

For the information of all members, questions for the record need to be in by 5 p.m. tomorrow to the Committee Clerk, and the record of the hearing will remain open until the same time for any additional comments.

In consultation with the Ranking Member, we have a new procedure that is going to start at the adjournment of this meeting, and that is that we are changing the recognition rules to give preference to those Senators who come to the Committee hearing in person. We will continue alternating between Democrats and Republicans, but starting at our next hearing, preference will be given to those who come to the Committee hearing in person. With that this hearing is adjourned.

[Whereupon, at 3:49 p.m., the Committee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

STATEMENT OF RICHARD A. SAUBER
NOMINATED TO BE GENERAL COUNSEL,
DEPARTMENT OF VETERANS AFFAIRS

I am honored to be President Biden's nominee for the position of General Counsel at the Department of Veterans Affairs. If confirmed by the Senate, I pledge to you that I will join and support Secretary McDonough's unequivocal commitment made to this committee to "fight like hell" as he put it, to fulfill our sacred obligation to care for Veterans who gave their all to protect our Nation and to assist their caregivers, families, and survivors whose sacrifices have played a vital role in support of our Veterans.

It would also be my honor to serve in this position as my own contribution and expression of gratitude to the men and women who have served in our Armed Forces, and especially to honor the service of my father, who quit school to serve in the Army at the start of WWII, and my father-in-law, a 1955 graduate of West Point who served in the Army for 20 years including service in Vietnam. He and my mother-in-law are interred together in Arlington National Cemetery.

I would like to introduce to the Committee my wife Pamela and daughters Jessica and Elyse.

Upon graduation from law school, I worked for seven years as a prosecutor in the criminal fraud section of the Justice Department here in Washington. Within weeks of arriving here, I was sent over to Crystal City to meet with Admiral Hyman Rickover to support him in his litigation regarding cost overruns with contractors who were building the 688's, the Los Angeles-class attack submarines. As a young prosecutor, it was a thrill of a lifetime to work closely with the father of the nuclear Navy, and it was my first opportunity to witness up close the dedication and patriotism of the men and women serving in our military. Ever since, both in the government and out, I have actively sought to work with people in the Armed Forces and companies who support them.

Toward the end of my years in the Department of Justice (DoJ), I was asked to create and lead a joint task force of DoJ and Department of Defense (DoD) personnel that would, for the first time, focus on military procurement fraud. The task force included representatives of the Army, Navy and Air Force, the Defense Logistics Agency, the DoD Inspector General, and the Defense Contract Audit Agency. I am quite proud of the work we did, and the change in the culture we advanced, one that encouraged compliance and transparency.

In private practice I have had the good fortune to continue working in this field. I was cleared to have access to and work on issues related to the early development of the B-2 bomber. I have also worked on matters related to the MX Missile, the AV-8B Harrier II jump jet, and the Air Launch Cruise Missile, among others. Working with contractors for all these years also brought me into close daily contact with the huge number of Veterans and military families who have found a continued sense of purpose and service through their new profession. These are Americans who work tirelessly to support our troops, and their level of commitment to our country, and the people who defend it, is incredibly inspiring. It would be my great privilege to honor their service by doing my best to advance the mission articulated by Abraham Lincoln to care for Veterans and their survivors.

I believe that if confirmed I can materially contribute to the mission and Secretary McDonough's leadership. First, I believe I have the trust and confidence of the Secretary, a vital asset for the General Counsel. I come to the job with a detailed understanding of government procurement, an area targeted for improvement at the Department. I have spent much of my career dealing with the challenges of creating an open, ethically pristine, compliant atmosphere in large institutions, and with significant experience demonstrating for leaders of those institutions that the creation of such a culture is in everyone's best interest.

Finally, my seven years with the Justice Department were the most satisfying of my career. To experience the satisfaction of working hard for the public interest, in the service of the country that gave my

ancestors and my extended family shelter when they fled persecution and violence in eastern Europe over 100 years ago, was an indescribable honor. I am ready to dive back into that service, especially knowing that the goal is to fulfill this critical and central responsibility as a nation. I am comforted too by the sense that I am honoring my father and my father-in-law for their service to the nation, as well as the families that supported them, whose sacrifices we should never overlook or forget.

I commit to you that if confirmed I will work tirelessly to support and advance this mission, and I look forward to answering your questions.

**Senate Veterans' Affairs Committee
Pre-Hearing Questions for Nomination of
Richard A. Sauber to be VA General Counsel**

Questions from Chairman Jon Tester

Question 1. Have you and Secretary McDonough discussed the role he would like you to assume as General Counsel if confirmed?

RESPONSE: Yes, Secretary McDonough has indicated that he would expect me, if confirmed, to play a senior role in the Department. He would like me to attend his daily meeting with the Deputy Secretary and his Chief of Staff, and, in addition to serving as the chief legal officer, he would expect me to be involved in the major decisions and initiatives of the Department.

Question 2. What role do you believe the General Counsel plays in evaluating legislation, both introduced in Congress and proposed by VA, for legal sufficiency and impact? Under your leadership, what would the Office of General Counsel's (OGC) role be in preparation of testimony for Congressional hearings?

RESPONSE: I believe the General Counsel, as the chief legal officer of the Department, has the responsibility to interpret laws and pending legislation, so that office would naturally have a central role in interpretation of legislation from Congress, and in the formulation of any legislation proposed by VA. As I understand it, OGC currently assists in preparation and review of testimony from a legal standpoint and helps to ensure the accuracy and responsiveness of any testimony by a Department witness. If confirmed, I would ensure this role continues for preparation of testimony for Congressional hearings.

Question 3. What do you see as the biggest challenges facing the OGC at this time?

RESPONSE: As a nominee who has not been confirmed it is somewhat difficult to answer this question with any specificity. However, based on my briefings and observations, I think that the OGC would have challenges and opportunities in the following areas:

1. How can OGC better advance and facilitate the Secretary's goals and initiatives?
2. How can OGC help to improve those Department functions that have been identified as "high risk" areas by the Inspector General and other reviewing agencies?
3. How can OGC improve its own functions, and help others also to improve their functions, in order to bring the appropriate services and support to deserving Veterans, their care givers, and their families, more consistently and quickly?

Question 4. Are you more of a "hands-on" manager or do you tend to rely on significant delegation? Do you seek to achieve consensus with those on your management team before making a decision or do you generally gather relevant information and input, and then make a decision?

RESPONSE: In a Department with more than 800 lawyers, the opportunities for a hands-on style are quite limited. With respect to my direct reports, I anticipate working closely with them until I am comfortable that they each understand my vision, goals, and priorities in order to operate more independently. It is critically important to me that all the supervisors in the OGC, especially the GC direct reports, possess the judgment to know which issues should be elevated and which issues can be handled at a lower level within OGC. I would hope that the most senior lawyers in the Department would work cooperatively with me so that nearly all of the most important decisions naturally become consensus decisions.

Question 5. Describe how you anticipate managing the work of Regional Counsels.

RESPONSE: It would be my hope that, if confirmed, I could fairly early in my tenure meet the District Chief Counsels, as they are now called, in person so that I could establish a connection and so that I could gain familiarity with

their responsibilities and their approach to the work. With so much physical distance, it would be critically important to establish an approach that is highly collaborative and highly communicative, ensuring that the field and headquarters components are in step with each other, and all in step with the Secretary's priorities, as well as providing timely and professional legal advice. I will also look to the GC direct reports to advise me on ways to improve coordination with and management of the District Chief Counsels.

Question 6. If confirmed, how do you envision collaborating with the Board of Veterans' Appeals, and specifically, with its Chairwoman?

RESPONSE: As I understand the Board's very key role in the claims process, I would expect there would be very close consultation among myself, key OGC attorneys, and the Chairwoman. I envision on most matters this would also include close collaboration with Veterans Benefits Administration officials. One important goal would be to work collaboratively with the key stakeholders to improve processes in order to reduce backlogs and unnecessary delays.

Question 7. What role do you believe the OGC should play in ensuring that VA understands and complies with decisions of the Court of Appeals for Veterans Claims and other courts?

RESPONSE: Providing VA management with clear, timely, understandable, and practical advice about compliance with court decisions should be a central responsibility of OGC, one on which I will focus. If confirmed, I will examine how OGC is presently fulfilling that role, and, if appropriate, make changes to ensure that VA management has the necessary advice and the tools to make compliance easier and as frictionless as possible.

Question 8. What part should the OGC play in determining whether a specific disease or illness should be presumed service-connected?

RESPONSE: I know from discussion with the Secretary as well as recent public discourse that this is an incredibly important issue of keen interest to VA, to the Committee and to Veterans. It would be premature for me to provide any substantive observations now. But if confirmed, one of my first

tasks would be to study in detail the process under law for how those decisions are made, and how scientific data gets considered. I want to make certain that these decisions are made in a timely manner so that deserving Veterans receive the benefits when they are most needed.

Question 9. VA must continue to make progress in improving the timeliness and quality of VA's claims adjudication process. What is the appropriate role for the OGC in VA's ongoing claims transformation? What ideas do you have that would complement existing transformation efforts?

RESPONSE: It would be premature for me to offer my own personal ideas at this moment, on what I understand to be a very complex topic. But, I can say I believe it will be vital for OGC to contribute to making the claims process one that works for Veterans and yields fair decisions in a timely way. As I mentioned previously, I think one of the most important challenges for OGC is to improve processes across the board to avoid unnecessary and unfair delays in every aspect of the VA mission.

Question 10. Do you agree to supply the Committee with such non-privileged information, materials, and documents as may be requested by the Committee in its oversight and legislative capacities for so long as you serve in the position of General Counsel?

RESPONSE: Yes.

Question 11. VA has appealed several recent decisions by the Court of Appeals for Veterans Claims to the Court of Appeals for the Federal Circuit. Skaar involves veterans exposed to radiation during the clean up after a 1966 crash involving a plane carrying atomic weapons. Further delays mean these veterans are less likely to see benefits during their lifetime. Wolfe, appealed on January 19, 2021, deals with emergency service reimbursements. Delaying proper payments to veterans may put them in further financial difficulties during the current pandemic. Do you plan to continue with these appeals or will you advise the Secretary to accept the decisions of the Court of Appeals for Veterans Claims?

RESPONSE: I have no basis on which to opine on these two pending court cases as a nominee, but if confirmed, I pledge to this Committee that I will review these legal issues and provide the Secretary with timely advice that, consistent with the law, advances and enhances the goals the Secretary has articulated and that goes to the heart of the VA mission.

Question 12. Currently VA submits the names of veterans determined to be mentally incompetent to the FBI for inclusion in the National Instant Criminal Background Check System (NICS). What are your views of VA's responsibility, under current laws and regulations, to report names for inclusion in NICS?

RESPONSE: Other than the straightforward answer that VA should follow the law, as a nominee I have no basis to offer my opinion on this issue. I also imagine VA's responsibilities and actions in this area could involve consultations with the Department of Justice.

Question 13. How do you envision the OGC working with the Special Counsel, the Inspector General and the Office of Accountability and Whistleblower Protection?

RESPONSE: My view is that OGC must play a central role in helping to create a workplace where VA employees feel free to raise concerns without fear of retribution. Promoting such a workplace culture actually enhances productivity and empowers an already talented set of employees at VA. I have reviewed public reports indicating that some whistleblowers may not in the past have been afforded the treatment they deserve, and I look forward to working closely with Special Counsel and the VA Offices you mention to improve the Department's performance. Encouraging a free flow of discussion within the workforce is, in my view, an element of good management, and I anticipate OGC will play a critical role in advising, educating, and encouraging VA managers to that end.

Question 14. Do you agree that VA employees have an absolute right to petition or communicate with members of Congress and congressional staff about matters related to VA matters and that right may not be interfered with or denied?

RESPONSE: Yes. There are, of course, certain types of information that Congress has mandated be kept confidential, but consistent with those requirements my answer is Yes.

Question 15. Have you ever served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the most significant matters with which you were involved in that capacity?

RESPONSE: No.

Question 16. Describe: the general character of your law practice and indicate by date when its character has changed over the years.

RESPONSE: Since entering private practice in 1984, and continuing through today my practice has essentially been the same and has included the following general categories of matters:

- a. Representation of companies and individuals in criminal and civil fraud matters.
- b. Representation of companies for which I conducted internal investigations.
- c. Representation of companies for which I conducted compliance reviews and designed, or upgraded, internal compliance systems.
- d. Pro bono representation of government employees in various investigations.
- e. Representation of companies in various types of civil litigation.
- f. Representation of companies in government contract bid protests.

Question 16a. Describe: your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

RESPONSE:

- Northrop Grumman Corporation
 - Bid protests
 - Government investigations
 - Internal investigations

- Community Health Systems
 - Government investigations
 - Internal investigations
- Jacobs Engineering
 - Government investigations
 - Internal investigations
- McKinsey and Company
 - Private litigation
- Las Vegas Sands Corporation
 - Private litigation
 - Derivative suits
- Permira
 - Compliance and due diligence reviews

Question 16b. **your practice, if any, before the U.S Merit Systems Protection Board, federal district courts, and the US Court of Appeals for the Federal Circuit.**

RESPONSE: Appearance in federal district courts and the Court of Appeals for the Federal Circuit:

- I have appeared in multiple federal district courts during my career, including a number of times in the Eastern District of Virginia, the Central District of California, the District of Columbia, and the District of Nevada.
- I have appeared once in the Court of Appeals for the Federal Circuit as counsel to Northrop Grumman in *Raytheon v. U.S., Lockheed Martin, and Northrop Grumman*, October 23, 2015, #2015-5086.

Question 17. **Litigation: Describe the most significant litigated matters that you personally handled. Give citations, if the cases were reported, and the docket number and date if unreported. Give a summary of the substance of each case. Identify the party or parties whom you represented, describe in detail the nature of your participation in the litigation and the final disposition of the case.**

RESPONSE:

- I have appeared as the lead trial lawyer in several cases in the state court of Nevada on behalf of Las Vegas Sands, Corp. The first was in the case of *Turok et al v. LVS*, summer of 2009, which settled mid-trial (#A516404).

The others were *Suen v. LVS*, tried twice, the first time in May 2013 and the second time (after appellate reversal) in March 2019, which finally settled mid-trial (#A493744).

- These trials all revolved around disputes about whether LVS owed the plaintiffs commissions or fees associated with the award, in 2002, of a gaming license to LVS by the Macau (China) Government. The cases involved claims for hundreds of millions of dollars.
- I was co-lead trial lawyer representing David Safavian in his retrial and his appeal of his conviction. The case involved accusations that Mr. Safavian had made false statements in connection with his relationship, while employed at the GSA, with lobbyist Jack Abramoff. 649 F3d 688 (DC Cir 2011).

Question 18. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation that did not progress to trial or legal matters that did not involve litigation. Describe the full nature of your participation in these activities.

RESPONSE:

- I have been the lead lawyer representing four senior individuals from McKinsey and Company who have been sued by Jay Alex in connection with alleged failures by McKinsey and its partners to disclose adequately the company's possible conflicts in federal bankruptcy matters. The case has involved RICO complaints filed by Mr. Alex as well as a host of allegations filed in various bankruptcy courts.
- I have been the lead lawyer representing Permira, a private equity firm based in London, in connection with several internal investigations and compliance reviews related to portfolio companies and proposed acquisitions. These representations have included, after an acquisition has been closed, design and implementation of internal compliance systems and codes of conduct.
- I was the lead lawyer in the New York Attorney General's investigation of Quadrangle, a private equity firm in New York, in connection with allegations of a "pay to play" scheme to obtain investments from the State of New York and other public pension funds.
- I have been the lead lawyer since 1990 on behalf of the Aga Khan and the Ismaili community in the United States. The Ismailis are a minority sect of Islam originally located in India and Pakistan. In 1972, Idi Amin of Uganda expelled all the Ismailis suddenly, many of whom came to the United

States. I have been working with the Aga Khan and the US community to facilitate their continuation of their religious practices in compliance with US regulations and laws.

- I represented Matt Cooper, a reporter at the time for Time Magazine, in the Valerie Plame matter. Mr. Cooper received a grand jury subpoena from Special Prosecutor Patrick Fitzgerald seeking to obtain the name of Matt's source for the article he wrote identifying Ms. Plame as a CIA employee. After numerous challenges and appeals, Matt still refused to reveal the identity of his source and was on the doorsteps of a civil contempt sentence in federal prison when his source, Carl Rove, released him from his confidentiality promise.

Question 19. As the Agency's Designated Ethics Officer, how do you anticipate dealing with conflicts of interest at VA or incidents in which the Department may fail to adhere to federal ethics rules?

RESPONSE: Your question presupposes that, if I am confirmed, the Secretary will designate me as VA's Designated Agency Ethics Official. If that occurs, I will follow the regulations defined by the U.S. Office of Government Ethics outlining the role of each executive branch agency's Designated Agency Ethics Officer (DAEO). Under these regulations, I would be responsible for, among other things, providing advice and counseling to prospective and current employees regarding government ethics laws and regulations, including those dealing with conflicts of interest; carrying out an effective government ethics education program; taking appropriate action to resolve conflicts of interest and appearance of conflicts of interest, through recusals, directed divestitures, waivers, authorizations, reassignments, and other appropriate means; and assisting the agency in enforcement of ethics laws and regulations when agency officials make appropriate referrals to the Inspector General or the Department of Justice.

In private practice, I represented the Chairman of the Securities and Exchange Commission in an ethics matter related to her SEC General Counsel. In that matter, I saw firsthand how strict compliance with the ethical requirements is not, in every case, the end of the inquiry when dealing with the public interest. There are some instances where, even though the ethics officer may have signed off on an action, the optics of a

particular matter may so undermine public confidence in Government that the best advice would be to forego an action altogether. I pledge to this Committee that, if confirmed, I will in addition to fulfilling my ethical responsibilities under the applicable regulations, also seek to protect the integrity and the perception of VA by advising against actions that I believe would undermine the public's confidence in our processes and activities.

Question 20. Last year VA proposed a rule change to limit VBMS access from law students, paralegals, and other non-accredited representatives. Previously law students and paralegals were given "read-only" access when working under an accredited attorney with written permission from the veteran. This helped lift the burden of a single accredited attorney given the size of the paperwork contained in some veterans' files. Will you review this issue and report your findings to the Committee within 60 days?

RESPONSE: Yes, if confirmed, I will report to you within 60 days.

Question 21. Access to various VA databases including VBMS and CAPRI for accredited representatives, agents, or attorneys assisting veterans with their claims or appeals is different depending on their title. Will you look into database access for all accredited representatives, agents, or attorneys, and the accreditation process and report back in 60 days any updates or changes you think are necessary?

RESPONSE: Yes.

Question 22. Describe your relationship with Freedom House.

RESPONSE: When I was a partner at Fried Frank, my partner at the time, Max Kampelman, was the Chair of Freedom House, and he asked me if I would take on Freedom House as a pro bono client, which I agreed to do. From that point in the 1990's through 2013, I provided pro bono legal advice to the organization. This advice took the form of conducting a few internal investigations, of advising the Chairman and the Board on governance issues and providing advice on international crisis situations involving Freedom House employees.

Question 23. Describe your employment with Georgetown University.

RESPONSE: I was an Adjunct from 2005-2007 during which I taught a National Security Law seminar in one semester and in the following semesters taught an evidence class on two occasions.

Question 24. In which states do you maintain a license to practice law?

RESPONSE: I have been an active member of the DC Bar since 1984. I joined the Rhode Island bar in 1977 and am currently an “inactive” member of that bar.

Question 25. Did you author “When Reporters Need Lawyers” for the Legal Times in 2006? Are there other publications you have authored that do not appear in your responses to the Committee’s questionnaire?

RESPONSE: Yes! I had completely forgotten about that article, and it did not appear on any Google search that I conducted. I have re-checked and do not recall, nor have I found other articles I have authored.

Questions from Ranking Member Moran

Question 1. The General Counsel is responsible for the work of hundreds of VA attorneys and hundreds more support staff across five regional offices. What qualifications prepare you for leading and managing this workforce?

RESPONSE: I believe that my career as a lawyer since 1977 have provided me with the background and the experience to allow me to rise to the enormous challenge and honor to lead the Department's Office of General Counsel (OGC). As a prosecutor, I was able to use the tools provided in new and creative ways to advance the goals of the Department of Justice (DOJ). For instance, I was the first prosecutor to pursue a criminal violation of the Natural Gas Act of 1938, a prosecution that served notice to the industry that the Government would no longer turn a blind eye to blatant and harmful violations of the natural gas regulatory scheme. Later in my DOJ career, I was chosen to create and then lead a task force of DOJ and DOD personnel to focus, for the first time, on procurement fraud. With an initial cohort of approximately 20 people, I believe we changed the mind-set in the defense industry and began a process that resulted in defense companies adopting and implementing robust compliance programs and attitudes.

In private practice at Fried Frank's Washington office, I became the Chair of the Litigation Department and a member of the firm's management committee. At Robbins Russell, I have been the Managing Partner for the past seven years, leading an office of approximately 40 lawyers and another 20 staff.

While none of these positions can compare in scope to leading an office of over 800 lawyers and other legal professionals, I think that the experience of leading groups of lawyers in DOJ and in private practice has provided me with a good foundation for what it takes to be a successful leader for OGC. I have a good idea for what works—and what does not work—in terms of creating a safe work environment where creativity is encouraged and where lawyers seek and accept new responsibilities. I intend to use my experience and the skills I have developed to improve the performance of the OGC in

helping the Department meet its sacred mission of providing our Veterans, their caregivers and their families, with the support, healthcare and benefits that they deserve in a timely and fair fashion.

Question 2. If confirmed, will you make any structural or operational changes to the Office of General Counsel?

RESPONSE: As a nominee, it would be premature for me to opine on recommendations on any changes to the structure or operations of the OGC. However, I pledge to this Committee that I will be constantly seeking ways to streamline OGC functions and reduce any friction in the system that unnecessarily delays the OGC input on Department functions that are critical to our mission.

Question 3. What role does the General Counsel play in relation to the functions of the Chief Counsels in each VA district office?

RESPONSE: It would be my hope that, if confirmed, I could fairly early in my tenure meet the District Chief Counsels in person so that I could establish a connection and so that I could gain familiarity with their responsibilities and their approach to the work. With so much physical distance, it would be critically important to establish an approach that is highly collaborative and highly communicative, ensuring that the field and headquarters components are in step with each other, and all in step with the Secretary's priorities while providing timely and professional legal advice. I will also look to the GC direct reports to advise me on ways to improve coordination with and management of the District Chief Counsels.

Question 4. What role does the General Counsel play in relation to the functions of the National Practice Groups?

RESPONSE: As I understand it, the National Practice Groups are virtual teams, with members spread across the country. Because the teams were originally conceived to work in a virtual environment, they have all the same challenges as any other practice groups highlighted by the purposeful decentralization of their leadership and dispersed nature of their expertise. While I believe they would have a lot to teach all of us about leveraging tools and techniques in a virtual environment, I would still find it crucial to maintain an approach that is highly collaborative and communicative, ensuring that the field and headquarters components are in step with each other, and all in step

with the Secretary's priorities while providing timely and professional legal advice.

Question 5. If confirmed, how will you work with officials across the Department to minimize the risk of litigation against the Department? Describe the types of preventive law activities you plan to implement.

RESPONSE: Litigation is often a cumbersome, wasteful, and inefficient way to settle disagreements and disputes, and I have worked my entire career to advise clients on the ways to avoid getting bogged down in litigation. A critical aspect of avoiding litigation is to have the lawyers in an organization play a role early in a process so as to provide advice that can minimize the risk of subsequent litigation. I will be advocating that approach should I be confirmed. Once disputes crystalize, litigation need not be inevitable: I have been a big proponent of the approach best described by Roger Fisher in his book "*Getting to Yes: Negotiating Agreement without Giving In*," a process by which two parties can try to find ways in which they can find mutually satisfactory ways to resolve a dispute. While I am not afraid to litigate, I will try my best to work with officials across the Department to limit risk, and I will make every reasonable effort to avoid this often unnecessary activity.

Question 6. How will you work with OAWP, LMR, OSC and the unions when it comes to holding employees accountable and upholding the changes in the law that Congress has passed and has been enacted by both Obama and Trump administrations to properly hold employees accountable, when necessary?

RESPONSE: If confirmed, I will work very closely and collaboratively with those offices to carry out the law, and fulfill its purpose to hold employees accountable in a fair and equitable fashion. As a nominee, I do not at this point know the details of the various provisions referenced so I cannot opine more specifically, but I pledge to this Committee that I will, if confirmed, dive into this issue to ensure the Department is following both the spirit and the letter of the applicable laws.

Question 7. What role does the General Counsel play in the rulemaking process of the Department? If confirmed, how will you ensure that Department rules and regulations are consistent with and do not exceed the Department's statutory authority?

RESPONSE: Consistent with my answer to Question # 5 above, if confirmed, I will ensure that the Department, in the creation of rules and regulations, relies heavily on the legal and practical advice provided by OGC. This not only helps reinforce the requirement that the Department abide by its statutory authority, but it also helps to avoid legal challenges and disputes that have the potential to result in litigation.

Question 8. The General Counsel advises the Department as to how to interpret and execute benefits law and represents the Secretary before the Board of Veterans Appeals and the Court of Appeals for Veterans Claims.

Question 8a. Are there actions OGC ought to take to reduce the current backlog of claims? If so, what actions do you plan to take as General Counsel?

RESPONSE: I know it is very important to the Secretary that VA ensures a claims process that is fair and timely. It would be premature for me to give recommendations on that front as a nominee, but I expect it to be a priority for OGC, working with the Veterans Benefits Administration (VBA) and the Board of Veterans Appeals.

Question 8b. How will you ensure that VBA is implementing the law in a way that will avoid negative rulings or remands from theCAVC?

RESPONSE: If confirmed, I know part of my responsibilities will be to help, in partnership with VBA and the Board of Veterans Appeals, ensure the timely, efficient completion of claims. My responsibilities will also be to help ensure we avoid unnecessary litigation and negative outcomes before judicial bodies by helping support the continued pursuit of a fair, impartial and reliable claims review process.

Question 8c. If confirmed, will you review and report back to the Committee with your assessment as to how to best reduce the current backlog in claims?

RESPONSE: Yes.

Question 9. What role does the general counsel play in ensuring that the

Department is in compliance with CAVC and other federal court decisions?

RESPONSE: I expect the General Counsel would play a central role in that function, but it would be premature for me as a nominee to detail precisely how that role would work.

Question 10. **What role does the general counsel play in determining when to appeal a decision made by the CAVC or other court? Who ultimately makes the decision to appeal or asks the Justice Department to appeal a decision?**

RESPONSE: I expect the General Counsel would play a central role in that function, but it would be premature for me as a nominee to detail precisely how that role would work. Overall, I understand the decision to recommend appeal to the Department of Justice ultimately would lie with the Secretary, with the General Counsel providing his or her best legal advice.

Question 11. **Last year, VBA ended the practice of allowing for a 48-hour review period for veterans' claims prior to promulgating a decision and removed the public-facing access to the Disability Benefits Questionnaire (DBQ). As a result of the "Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020," the DBQs have been reinstated, and the Department informed the Committee that it is working with VSOs and stakeholders to find a solution to the 48-hour review issue for claims. If confirmed, will you commit to working with this Committee and other stakeholders on a solution to the 48-hour issue that ensures due process for veterans and limits liability for the Department?**

RESPONSE: Yes, if confirmed.

Question 12. **Last year, VBA Education Service announced that it would take corrective actions against certain institutions for issues related to allegations of fraud but reversed course after the Department determined that VBA was exceeding its statutory authority. Although VBA eventually arrived at the correct course of action, its initial effort undermined the institutions' due process and misrepresented their legal status.**

Question 12a. **How will you ensure that the Education Service does not exceed its authority and that institutions receive due process?**

RESPONSE: I believe the General Counsel would have a central role in ensuring that no part of VA, including the Education Service, exceeds its authority, and all VA components follow the laws and the rules that involve due process rights of individuals or organizations.

Question 12b. **Title I of the “Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020” included new processes to address VBA’s actions of last year. If confirmed, will you ensure that VBA properly implements the processes outlined in that law?**

RESPONSE: Yes. I believe the General Counsel will have a large role in ensuring proper implementation of all applicable laws, including the law cited.

Question 13. **To exercise this Committee’s oversight and legislative functions, the Committee often seeks information and input from the Office of General Counsel.**

Question 13a. **If confirmed, will you commit to responding to information requests from this Committee in a timely manner?**

RESPONSE: Yes.

Question 13b. **OGC provides important expert legal analysis of legislation considered by the Committee. If confirmed, will you commit to continuing this practice in a way that is focused on legal sufficiency and impact, including when your legal analysis does not align with the policy goals of the Department?**

RESPONSE: Yes. I have an understanding of the legislative technical assistance function, where the Department will help the Committee ensure that draft legislation carries out the intent of the drafters. That assistance is not dependent upon the Department’s agreement with the policy embodied in the legislation.

Question 14. The Department has experienced cyber security breaches that have resulted in the compromise of personally identifying information of veterans and other stakeholders.

Question 14a. What are the relevant laws, rules, and regulations that guide and direct the Department's conduct relating to securing the personal information of Veterans, employees, vendors, and other stakeholders?

RESPONSE: The Department is subject to information protection statutes such as HIPAA, the Privacy Act, and the Federal Information Security Modernization Act. I understand there are also VA-specific information security statutes.

Question 14b. What role does OGC play in ensuring that these laws, rules, and regulations are followed by Department personnel?

RESPONSE: I am certain OGC plays a prominent role in that function, but it would be premature of me as a nominee to detail how that function is carried out.

Question 14c. If confirmed, how will you take a proactive approach to data privacy and security?

RESPONSE: I understand it is every VA employees' responsibility to take a proactive approach to data privacy and security. If confirmed, I would have extra responsibility to lead by example as well as work closely with our data security team to understand and support their crucial mission.

Question 15. The Department has balked at providing timely information relating to ongoing procurement actions to the Committee. Are there any laws, rules, or regulations that prevent the Department from sharing procurement information with the Committee? If so, what are they?

RESPONSE: I am not aware of any laws, rules, or regulations that prevent the Department from sharing such procurement information with the Committee, as the applicable confidentiality provisions permit such disclosure to either house of Congress or to a committee or subcommittee

with oversight authority, though if the requested information is contractor bid or proposal information, or source selection material, further release is restricted by law.

Question 16. At the outset of the pandemic, the Department suspended the Veterans Community Care Program(VCCP) for 90 days in contravention of the letter and spirit of the law. When Congress pressed the VA to cite its legal authority to suspend the program, VA pointed to two pre-MISSION Act regulations (38 CFR § 17.38(b); 38 C.F.R. § 17.4010(a)), both of which were superseded by the passage of the MISSION Act—which requires the VA to furnish non-Department care for certain veterans through the VCCP (38 USC § 1703).

Question 16a. Does the MISSION Act supersede both regulations or do you agree that both regulations provide the VA with authority to suspend the VCCP? Please explain your interpretation of the regulations as well as the interplay between the regulations and 38 USC § 1703.

RESPONSE: As a nominee, I have no basis on which to opine on this question, but if confirmed, I will review the laws governing provision of community care by the Department and provide the Secretary with timely advice that is consistent with the law and that advances the goals of the community care program and the Secretary's priorities of improving access and outcomes for Veterans.

Question 16b. Do you interpret 38 USC § 1703 to authorize the Secretary to unilaterally suspend community care without the veteran and clinician's consent?

RESPONSE: As a nominee, I have no basis on which to opine on this question, but if confirmed, I will review the laws governing provision of community care by the Department and provide the Secretary with timely advice that is consistent with the law and that advances the goals of the community care program and the Secretary's priorities of improving access and outcomes for Veterans.

Question 17. If confirmed, how will you ensure that the implementation of the law affecting veterans is consistent across all stakeholder agencies, including the Department of Defense, Department of Labor, and the Small Business Administration?

RESPONSE: I would ensure I stay aligned with the General Counsels across the Agencies of the Administration by attending any routine counsel calls led by the White House but also work individually and collectively, formally and informally with partner agencies to ensure the best outcomes and access for Veterans.

Question 18. **The Department plans to implement changes to the 85/15 rule, including a process to classify a “supported student” to take effect in July of this year. The new “supported student” classification strains the 85/15 regulation and its authorizing statute. If confirmed, will you review this plan to determine whether the Department has the authority to carry it out?**

RESPONSE: Yes

Senate Veterans' Affairs Committee
Post-Hearing Questions for
Nomination of Richard A. Sauber to be VA General Counsel
04-14-21

Questions for the Record from Senator Moran

Question 1. There are over 170,00 Indigenous veterans enrolled in VA, although there are several thousand more among 574 federally recognized tribes that are not enrolled. The greatest impediment to the receipt by veterans in indigenous communities of earned compensation, culturally competent healthcare, programs and services is the lack of culturally competent representation before the Agency by Tribal Veterans Service Officers within the tribal community. Accredited TVSOs are essential to the formulation of claims and the provision of counseling for veterans, survivors and dependents.

The promulgation in 2017 by VA of 38 C.F.R. Chaps.14.626-629 et seq., which require formation of "tribal organizations" rather than providing for individual TVSO accreditation, lies at the heart of the issue. To date not a single TVSO has been granted direct, individual accreditation under these regulations. Mr. Sauber, will you commit to finding a path to full direct accreditation of qualified TVSOs?

RESPONSE: Thank you for bringing this to my attention. If confirmed, I commit to working with Office of General Counsel staff and reaching out to stakeholders to see if our regulations governing recognition of organizations and accreditation of representatives can be modified to better address the unique situation of TVSOs.

Questions for the Record from Senator Murray

WORKING WITH CONGRESS

In 2015, a VA legal opinion would have drastically narrowed which veterans were eligible for homeless assistance programs. If not for Congressional action, providers who receive funding through VA's Grant and Per Diem program would have had to turn away veterans who did not meet the length of service or discharge requirements. While you must ensure that VA is complying with the law, we also must work together to fix deficiencies so veterans receive the best care possible.

Question 1. As General Counsel, how will you work with Congress to address issues as they arise to ensure VA is serving the needs of veterans?

RESPONSE: If confirmed, I pledge to work together with Congress to address issues as they arise, so Veterans receive the best care and services possible. If confirmed, I will ensure the Office of General Counsel (OGC) works with Congress early when OGC believes there may be some legal impediment to provision of needed care or services.

ACCOUNTABILITY

In the previous administration, the VA Office of Accountability and Whistleblower Protection (OAWP) had been criticized for its failure to properly implement the law and its failure to properly protect whistleblowers from retaliation or hold senior executives accountable. While that office is separate from the Office of the General Counsel, the two need to work together to ensure employees can report wrongdoing without retaliation in order to best serve our veterans.

Question 2. How will you work with OAWP to ensure VA is properly handling complaints and ensuring employees are able to report without retaliation?

RESPONSE: Both in my review of public material prior to the nomination hearing, and in the hearing, it was evident that OAWP's mission is vital to fulfill the Secretary's pledge to create a culture where VA employees are not afraid to bring problems to the attention of their supervisors or VA leadership. From the public materials I have reviewed it seems as if there are significant questions and

concerns about whether OAWP has appropriately fulfilled its obligations, and if confirmed it will be a priority of mine to provide any necessary legal support to that office to help it improve its focus and overall performance.

VA SUPPLY CHAIN

Last year, VA announced that it would be switching facilities in Spokane and Seattle to the Defense Logistics Agency Troop Support's medical supply chain. It is really important to keep veteran-owned and disabled veteran-owned small businesses in mind when VA makes decisions about contracting.

Question 3. How will you ensure that disabled veteran-owned small businesses continue to be included in VA's contracts?

RESPONSE: If confirmed, I commit to helping ensure VA complies with the terms, and just as importantly, the spirit of laws intended to provide special contracting status for veteran-owned and service-disabled veteran-owned small businesses in VA procurement. This is an important initiative that requires attention.

MINORITY VETERANS

The number of women veterans and veterans from other underrepresented backgrounds has grown significantly over the last decade and only continues to rise. To serve all veterans, VA will need to continue to build on its diversity, equity, and inclusion efforts across the department and every VA medical facility. VA also has the opportunity to right historic wrongs that continue to have an impact on veterans today by ensuring all veterans have equitable access to the benefits they have earned.

Question 4. As General Counsel, how will you ensure all veterans have equitable access to services, including health care as well as other benefits such as VA's home loan guaranty program?

RESPONSE: I note that Secretary McDonough recently established a 120-day task force to conduct a whole of VA review and to design and implement a holistic and integrated VA mission on inclusion, diversity, equity and access.

The Secretary recently stated that systemic barriers that underserved communities face many times negatively impact Veterans and that VA must tap into its vast diversity and use it as a major source of strength. If confirmed, I look forward to

being a part of that important effort.

MILITARY SEXUAL TRAUMA

According to VA, 1 in 3 women and 1 in 50 men respond "Yes," when asked by their VA provider if they experienced military sexual trauma. The Department of Defense has noted that the prevalence of military sexual trauma is increasing across the force and there are reports indicating experience with military sexual trauma can increase the risk of suicide.

Question 5. How will you ensure veterans who have experienced military sexual trauma are given the support they need?

RESPONSE: If confirmed, this will be a personal priority of mine, and it's been a very public and personal priority of the Secretary. He has said offices throughout VA understand that this is a priority, and importantly, that people who feel threatened or harassed understand that there's a place for them to go to, to be heard and to be heard in a way that's respectful and does not retraumatize survivors. We must make sure that these Veterans feel there's a place at VA where they can get help.

The Secretary has also stated that within the Department, VA must follow through on accountability measures across the board regarding sexual harassment and sexual abuse.

That is the Secretary's commitment, and if confirmed, it will be mine as well.

Question 6. Will you ensure that VA facilities carry out any and all required trainings on sexual harassment and sexual violence prevention in a timely manner?

RESPONSE: If confirmed, I will make it a priority for all OGC employees to be fully compliant with required training and take it to heart. And I would encourage that across the Department.

Questions for the Record from Senator Blackburn

Mr. Sauber, on our pre-hearing call, you mentioned how whistleblower complaints can be helpful when managing institutions. As a member of the Senate Whistleblower Protection Caucus, I appreciate this view.

Question 1. Could you please explain how whistleblower complaints can be used as a management tool?

RESPONSE: It is impossible, in my view, to be a good and effective manager if you do not have a realistic understanding of what the workforce is doing and the culture of an institution. For example, in private practice I dealt often with allegations within defense contractors that certain labor hours were improperly charged to the wrong contract or cost center, allegations that were raised at times by anonymous whistleblowers. This information is incredibly valuable for a manager since it implicates the following critical issues:

1. Are the financial figures you as a manager receive accurate or are they corrupted?
2. If supervisors are directing this inaccurate charging, how can you ever rely on them to be productive and efficient?
3. If employees are aware of these improper practices and bothered by them, how can they be comfortable and productive in the workplace?
4. If employees feel intimidated in raising concerns, how can these employees do their best work?

It is imperative in any institution for managers to have an understanding of these issues- or else they cannot effectively manage. The same analysis applies to managers in a public institution like the Department of Veterans Affairs - effective leadership requires a workforce that feels comfortable raising questions.

Question 1a. In the past, the VA has not had the best record properly handling whistleblower complains. How do you plan to bring your past experience handling these complaints to improve the VA from the bottom up?

RESPONSE: While there are several steps that can be taken, the most important is to convince managers that encouraging the work force to raise issues is an imperative and in their own interest. I am confident that Secretary McDonough shares my views, and the tone set at the top of the Department will be essential in improving the culture.

Question for the Record from Senator Brown

Question 1. **Mr. Sauber, the Office of the General Counsel plays a critical role in developing regulations to help implement laws enacted by Congress. If confirmed, how will you ensure that regulations put forth by the Department follow congressional intent?**

RESPONSE: My understanding is that OGC plays a large role in crafting regulations. I anticipate that if confirmed I will maintain an open and communicative relationship with this Committee and its staff so as to minimize any chance that OGC will misunderstand or misapply Congressional intent. It's a given that regulations must follow congressional intent, and if confirmed, I would make sure that is a fundamental element of OGC review.

PART I: ALL OF THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

1. Basic Biographical Information

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
<u>Name of Position</u>	<u>Date of Nomination</u>
<u>General Counsel, Department of Veterans Affairs</u>	<u>February 19, 2021</u>

<i>Current Legal Name</i>			
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>
Richard	Alan	Sauber	

<i>Addresses</i>					
<u>Residential Address</u> (do not include street address)			<u>Office Address</u> (include street address)		
			Street: 2000 K Street		
City: Washington	State: DC	Zip:20016	Washington	State: DC	Zip:20006

<i>Other Names Used</i>						
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	<small>Check if Maiden Name</small>	<u>Name Used From</u> (Month/Year) (Check box if estimate)	<u>Name Used To</u> (Month/Year) (Check box if estimate)
					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Birth Year and Place</i>	
Year of Birth (Do not include month and day)	Place of Birth
1950	Philadelphia, PA

<i>Marital Status</i>						
Check All That Describe Your Current Situation:						
Never Married	Married	Separated	Annulled	Divorced	Widowed	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<i>Spouse's Name (current spouse only)</i>			
Spouse's First Name	Spouse's Middle Name	Spouse's Last Name	Spouse's Suffix
Pamela	Goldstein	Sauber	

<i>Spouse's Other Names Used (current spouse only)</i>						
First Name	Middle Name	Last Name	Suffix	Check if Maiden Name	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
Pamela	Holly	Goldstein			7/60 Est <input type="checkbox"/>	6/95 Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

Children's Names (if over 18)			
First Name	Middle Name	Last Name	Suffix
Jessica	Hope	Sauber	
Elyse	Madeline	Sauber	

2. Education

List all post-secondary schools attended.

Name of School	Type of School (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	Date Began School (month/year) (check box if estimate)		Date Ended School (month/year) (check box if estimate) (check "present" box if still in school)		Degree	Date Awarded
		Est <input type="checkbox"/>	Present <input type="checkbox"/>	Est <input type="checkbox"/>	Present <input type="checkbox"/>		
Yale University	University	9/1968	<input type="checkbox"/>	6/1972	<input type="checkbox"/>	B.A.	6/1972
Oxford University	University	9/1973	<input type="checkbox"/>	6/1975	<input type="checkbox"/>	Master of Letters	6/1975
New York University Law School	Law School	9/1972	<input type="checkbox"/>	6/1977	<input type="checkbox"/>	Juris Doctor	6/1977
			<input type="checkbox"/>		<input type="checkbox"/>		

3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

<u>Type of Employment</u> (Active Military Duty Station, National Guard/Reserve, USPS Commissioned Corps, Other federal employment, State Government (Non-federal Employment), Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other	<u>Name of Your Employer/Assigned Duty Station</u>	<u>Most Recent Position Title/Rank</u>	<u>Location</u> (City and State only)	<u>Date Employment Began</u> (month/year) (check box if estimate)	<u>Date Employment Ended</u> (month/year) (check box if estimate) (check "present" box if still employed)
Federal Government	US Department of Justice	Trial Attorney	Washington DC	10/1977 Est <input type="checkbox"/>	6/1984 Est <input type="checkbox"/> Present <input type="checkbox"/>
Law Firm	Fried Frank	Partner	Washington, DC	10/1984 Est <input type="checkbox"/>	6/2007 Est <input type="checkbox"/>
Law Firm	Robbins Russell	Partner	Washington, DC	9/2007 Est <input type="checkbox"/>	present Est <input type="checkbox"/>
				Est <input type="checkbox"/>	Est <input type="checkbox"/>
				Est <input type="checkbox"/>	Est <input type="checkbox"/>

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

<u>Name of Government Entity</u>	<u>Name of Position</u>	<u>Date Service Began</u> (month/year) (check box if estimate)	<u>Date Service Ended</u> (month/year) (check box if estimate) (check "present" box if still serving)
		Est <input type="checkbox"/>	Est <input type="checkbox"/> Present <input type="checkbox"/>
		Est <input type="checkbox"/>	Est <input type="checkbox"/> Present <input type="checkbox"/>
		Est <input type="checkbox"/>	Est <input type="checkbox"/> Present <input type="checkbox"/>

6. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office?

No

<u>Name of Office</u>	<u>Elected/Appointed/ Candidate Only</u>	<u>Year(s) Election Held or Appointment Made</u>	<u>Term of Service</u> (if applicable)

(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.

<u>Name of Party/Election Committee</u>	<u>Office/Services Rendered</u>	<u>Responsibilities</u>	<u>Dates of Service</u>
Biden for President	Volunteer Legal Advice	Legal Advice	9/2020— 12/2020

8. Public Statements

(A) List any testimony, official statements or other communications relating to matters of public policy that you have issued or provided or that others presented on your behalf to public bodies or officials.

None

(B) List any speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the dates and places where such speeches or talks were given.

I have spoken at legal seminars in the 1990's but have no details or recollection of the dates.

(C) List all interviews you have given to newspapers, magazines or other publications, and radio or television stations (including the dates of such interviews).

I appeared several times on "Hardball" during the Valerie Plame matter, but have no details as to dates. I have been quoted at various times in newspaper articles about cases I worked on, but do not recall interviews.

9. Agreements or Arrangements

See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

As of the date of filing your OGE Form 278, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.

Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits.

<u>Status and Terms of Any Agreement or Arrangement</u>	<u>Parties</u>	<u>Date</u> (month/year)
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10. Lobbying

Have you ever registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State).

I have not registered as a lobbyist and I have done no lobbying.

11. Testifying Before the Congress

(A) Do you agree to appear and testify before any duly constituted committee of the Congress upon the request of such Committee?

Yes

(B) Do you agree to provide such information as is requested by such a committee?

Yes