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NOMINATIONS OF THE 112TH CONGRESS, SECOND SESSION, PART 2

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

DECEMBER 12, 2012

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HEARING ON PENDING NOMINATIONS

WEDNESDAY, DECEMBER 12, 2012

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

The Committee met, pursuant to notice, at 10:03 a.m., in room 418, Russell Senate Office Building, Hon. Patty Murray, Chairman of the Committee, presiding.

Present: Senators Murray, Sanders, Tester, Begich, Burr, Isakson, and Boozman.

STATEMENT OF HON. PATTY MURRAY, CHAIRMAN, U.S. SENATOR FROM WASHINGTON

Chairman MURRAY. Good morning. I welcome all of you to today's hearing to consider the nominations of William Greenberg, to be judge of the U.S. Court of Appeals for Veterans Claims, and Keith Kelly, to be Assistant Secretary of the Veterans' Employment and Training Service at the Department of Labor. I am very pleased this morning to welcome our nominees and their families and I congratulate each one of you on your nomination.

The nominees sitting before us have strong credentials and a history of service. Because we will learn more about their qualifications during their introductions, I will not spend time repeating what you will hear shortly, but I would, however, like to briefly discuss the positions for which these two gentlemen have been nominated and the challenges they are going to face.

Veterans and Members of this Committee know all too well the problems confronting the disability claims system, and we know that it still takes VA too long to address these decisions. We know that VA's error rate remains too high. We know that the number and complexity of claims being filed continues to grow. And we also know that the Court of Appeals for Veterans Claims occupies a unique position as the only national court that reviews veterans' benefit decisions. As a result, the problems that have for far too long plagued the disability claims system become the problems of the court.

Mr. Greenberg, if confirmed, you will be confronted with these problems. There is no shortage of potential cases that may reach the court in the very near future and you will be asked to carry a substantial workload. You also must know that, for many veterans, the court is seen as their last hope after fighting for months, years, and in some cases decades, to obtain the benefits that they have earned. They look to the court for a fair and equitable resolution of their claim. That is why any nomination to the Court of Ap-

peals for Veterans Claims is of such great importance and why any vacancy must be filled with a qualified, competent, and motivated individual.

So let me turn to the importance of the role of Assistant Secretary for the Veterans' Employment and Training Service. With the high rate of unemployment among our young veterans and the continued draw-down of troops in Afghanistan, ensuring servicemembers have the tools and resources needed to succeed in the civilian workforce has never been more important. The Department of Labor plays a critical role in this process. It provides servicemembers with employment and training information through TAP, monitors and develops local employment and training opportunities for veterans in its Jobs for Veterans State Grants Programs, and investigates allegations of wrongdoing under USERRA.

Mr. Kelly, if confirmed, you will be responsible for overseeing these programs and addressing the current employment and training needs of our veterans. Our veterans have the leadership ability, discipline, and technical skills to not only find work, but to excel in the civilian workplace. But despite all that, we still have a double-digit unemployment rate for our veterans. These veterans cannot find a job to support their families, do not have an income they need for stability, and they do not have work that provides them with the self-esteem and pride that is so critical to their transition home.

To help address this issue, I introduced and the President signed into law the bipartisan, bicameral, and comprehensive VOW to Hire Heroes Act of 2011. Among other things, this law calls on DOL to partner with Federal, State, and industry officials to eliminate the barriers preventing veterans from using their military training to acquire the licenses and credentials needed for civilian employment. I have heard from countless veterans in my homestate of Washington and throughout the country who have been turned away by employers for not having the proper civilian licenses and certifications, and that should not be the case. The Department of Transportation is now setting an example by working with stakeholders to overcome the barriers that prevent veterans from successfully transitioning from military service to careers in the transportation industry.

Mr. Kelly, if confirmed, I want to see VETS take on a more active role in addressing licensure and certification issues.

I also want to take a minute to talk about public-private partnerships. I have been urging companies, large and small, to provide employment opportunities for America's veterans. I have asked them to educate their human resources teams about the benefits of hiring our veterans and how skills learned in the military actually translate into work a company does. I have asked them to provide job training and resources for transitioning servicemembers, to publicize job openings with Veterans Service Organizations, at local military bases to help connect veterans with actual jobs, and to work with local one-stop career centers to develop an internal veterans' group to mentor recently discharged veterans, and to reach out to local schools to help develop a pipeline of the many veterans that are using our G.I. Bill.

I am concerned that VETS has not taken an active enough role in developing these very critical private-public partnerships, and if confirmed, I would like to see you change that.

So I look forward to hearing your testimony this morning and I look forward to learning more about your qualifications for the positions for which you have been nominated, and with that, I would like to turn it over to Ranking Member Burr for his opening statement.

STATEMENT OF HON. RICHARD BURR,
U.S. SENATOR FROM NORTH CAROLINA

Senator BURR. Good morning, Madam Chairman, and welcome to you and to my colleagues.

I want to also welcome our nominees, Mr. Kelly and Mr. Greenberg, thank you both for your willingness to serve this country. Today, the Committee will discuss your qualifications to fill positions that can significantly impact the lives of our Nation's veterans, their families, and their survivors.

To start with, the Assistant Secretary for Veterans' Employment and Training will lead an organization that administers employment and training programs for veterans, provides transition assistance to separating servicemembers, and helps enforce laws that protect employment rights of military personnel. Mr. Kelly, I appreciate your willingness to take the challenge and to serve in this role and I enjoyed the time that we spent together yesterday.

As you know, some of our Nation's veterans are facing an unemployment crisis. Even though there have been improvements, the unemployment rate for Gulf War II-era veterans still stands at 10 percent, and the unemployment among our youngest veterans is even worse. That is the case even though many of these servicemembers leave the military with skills and training that should be easily transferable to civilian employment. But each State has different requirements that veterans may have to meet to obtain the licenses and credentials that they need for a civilian career. You and I talked about this yesterday.

Because that can hinder their efforts to get a job, I introduced S. 3353, which would require each State to offer a test to veterans who have ten or more years of experience in an occupational field while in the military. If they pass the test, they would immediately be granted the needed license or credentials without additional training, without going through an apprenticeship.

Mr. Kelly, I look forward to working with you on this and other ways that we can break down the barriers that our veterans face when trying to translate their skills to a civilian career. This can be done, and I look forward to working with you.

This agency also oversees the Transition Assistance Program, or TAP, which is supposed to help provide military personnel with the information they need to navigate the civilian job market. For the first time in 20 years, TAP has been redesigned to try to make it relevant to the 21st century military personnel. A key function of the Assistant Secretary will be to ensure that these changes are actually effective in meeting the needs of transitioning servicemembers.

On top of that, I am sure you know that this agency experienced significant turmoil during the last 18 months after serious procurement irregularities were revealed by the Inspector General. I hope you will agree that helping to rebuild that workforce and public image and to ensure that these problems are not repeated should be among our top priorities.

Turning to you, Mr. Greenberg, the judges of the Court of Appeals for Veterans Claims provide justice to sick and injured veterans, their families, who may have already faced years of delays and frustrations while seeking benefits from the VA. The judges also issue precedential decisions that can have nationwide impact on VA claims processing systems and on individuals trying to navigate that system. Given these important responsibilities, candidates to serve on the court must be impartial, well qualified, and have sound judicial philosophy and temperament. They must be prepared to make decisions fairly, promptly, and efficiently. For this court, in particular, which has more than 4,000 pending cases, a new judge must be ready to hit the ground running and immediately help the court address the challenges that they face with caseload.

I also want to point out that, in my view, organizations tend to function at their best when the integral parts to the operation, like judges, are personally engaged on a daily basis. But if judges have to travel long distances to get to court, it could make it more difficult. That is why I introduced S. 2045, and my hope is that this will pass this body quickly, because it would require that judges of the Veterans Court live within 50 miles of the D.C. area, where the court is located. A similar residency requirement already applies to other Federal judges.

This bill is simply intended to stress that judges should live near enough to the court to allow them face-to-face discussions with other judges and allow the judges to be personally involved in the day-to-day operations of their chamber and the court. In my view, these expectations are completely in line with the Code of Conduct for U.S. Judges, which requires that, "duties of judicial office take precedent over all other activities." Madam Chairman, I think this is a bill that is simply common sense and I hope the U.S. Senate will pass it quickly.

I want to thank the Chair and again thank the nominees for their willingness to be here, and I recognize our colleague, Senator Menendez, who is a big champion of Mr. Greenberg.

Chairman MURRAY. Thank you very much.

Senator Sanders, do you have an opening statement?

STATEMENT OF HON. BERNARD SANDERS, U.S. SENATOR FROM VERMONT

Senator SANDERS. I will be very brief because I think Senator Murray and Senator Burr made the point that it just so turns out that both of you, while strong nominees, are being asked to address some of the most serious issues facing the veterans' community.

It is no secret that there is a backlog in terms of benefit claims. Our goal must be justice, making sure that those people who are entitled to the claims get them. But equally important, it must be done in an expeditious manner. I know that the VA is wrestling

with this problem and have gone forward, but we have more work to do and that court that you are applying for, Mr. Greenberg, is certainly an important part of that whole process.

And, Mr. Kelly, in terms of employment, we are in the midst of a major recession. Unemployment is much too high. But as Senator Murray indicated and as Senator Burr made the point, it is especially high for returning veterans. So we have people who, in some cases, in my State, where we had a National Guard playing a very, very active role, both in Iraq and Afghanistan, folks left their jobs and went away and came back, and in some cases those jobs were not there for them.

So I think, as a Nation, we have an absolute obligation to do everything that we can to make sure that people who serve this country get decent jobs, that we take advantage—and I think Senator Burr made an important point—people receive a lot of training in the military and it is an absolute shame that we do not utilize that training to help them into the civilian sector.

So there is a lot of work in both of the areas that you are applying for and I thank you very much for applying for these jobs.

Chairman MURRAY. With that, Senator Boozman, do you have an opening statement?

STATEMENT OF HON. JOHN BOOZMAN,
U.S. SENATOR FROM ARKANSAS

Senator BOOZMAN. Briefly, I look forward to Mr. Greenberg's testimony. I had a good visit with Mr. Kelly and was really impressed with a number of ideas that he has to try to address some of the problems that you all brought up. So, again, like I said, I look forward to your testimony.

Chairman MURRAY. All right. Senator Tester, do you have an opening statement beyond what we are going to have you do in a few minutes to introduce Mr. Kelly?

Senator TESTER. I will do that when you tell me to. [Laughter.]

Chairman MURRAY. OK.

Senator TESTER. I would just say one thing, Chairman Murray, before we start with this hearing, and that is today is the 12th day of the 12th month of 2012, and this may be our last Veterans' Affairs Committee meeting. I just want to thank you for your vision and your leadership for these 2 years.

Chairman MURRAY. Well, Senator Tester, I appreciate that very much. And my grandson is turning 12 today, so it is a very amazing day in my family, as well. He has only been counting days until this day for, like, 8 years, so——

[Laughter.]

Chairman MURRAY. Thank you very much. I appreciate it.

With that, Senator Menendez, I will turn it over to you for your introduction.

STATEMENT OF HON. ROBERT MENENDEZ,
U.S. SENATOR FROM NEW JERSEY

Senator MENENDEZ. Well, thank you, Madam Chair and Senator Burr and distinguished Members of the Committee, and I hope this is not your last meeting because I hope you have a business meeting to be able to vote out these nominees.

I am pleased to be here today to introduce a friend and a fierce advocate for the men and women who have served in uniform. Retired Brigadier General William Greenberg is about as passionate and committed to our veterans as anyone I have ever met. He does not just talk the talk, he walks the walk. He has stood for veterans and shown courage in living his values.

I have known Bill Greenberg and his wife, Tina, for a couple decades, and I have always known him to be a man who has never been afraid to speak truth to power. He has had several distinguished careers: soldier, lawyer, author, professor, public servant, and he has excelled in each of them.

In 2009, he was appointed by the Secretary of Defense and approved by the President to be Chairman of the Reserve Forces Policy Board, where he received the Secretary of Defense Medal for Distinguished Public Service and the praise of his colleagues.

When he began his career in 1967, he was selected as the Outstanding Cavalry Trooper of the Training Cycle at Fort Knox. He later was commissioned in the Judge Advocate General Corps in 1970 and served in various JAG positions in the Reserves, until his promotion to flag rank in 1990. He is a partner in one of New Jersey's oldest and the region's most respected law firms, McCarter and English.

He has served as a New Jersey State Commissioner of Investigation, Assistant Counsel to the Governor of New Jersey, Trustee of the New Jersey State Bar Association, and their first Adjunct Professor of Military Law at Seton Hall University School of Law. He received the Distinguished Alumnus Award from Johns Hopkins in 2010, the Rutgers Law School Alumni Association Prestigious Public Service award. But those long lists of accomplishments do not tell the real story and the real commitment of Brigadier General Bill Greenberg.

In June 2009, Bill received the highest award of the New Jersey State Bar Foundation's Medal of Honor for his tireless, extraordinary work with wounded soldiers at Walter Reed. What he has done to stand up for veterans, no matter who he had to engage or how powerful they might have been, he did what he believed needed to be done for the people he served, and that is an extraordinary measure.

During the last several years, he has personally, and together with members of the firm that he put together, represented pro bono more than 50 soldiers in hearings at Walter Reed and elsewhere to make certain that they received all the care and help for their combat wounds and injuries that they deserved.

He cares deeply and profoundly about the men and women who have served in this Nation. He has demonstrated a combination of public service and private accomplishment to which all citizen soldiers should aspire.

General Greenberg has dedicated himself to the highest ideals of our Nation, among them, making sure that those who are wounded in service to this Nation are treated with nothing less than the utmost care and with the fairness and dignity that they have earned and deserve.

Madam Chairman and Members of the Committee, I cannot think of a more qualified citizen soldier to preside over matters

concerning the men and women he has devoted a lifetime to helping. I am proud of his service, proud that he is from New Jersey, honored to call him a friend. He has the intellect, the experience, the judicial temperament, and the respect for precedent that would make him an extraordinary member of the court. I look forward to his, I hope, unanimous support in the Senate and for him to get to work on behalf of our veterans.

Thank you, Madam Chairman.

Chairman MURRAY. Thank you very much, Senator Menendez. We really appreciate your coming and introducing him.

Senator Tester, I turn to you for your introduction of Mr. Kelly.

STATEMENT OF HON. JON TESTER, U.S. SENATOR FROM MONTANA

Senator TESTER. Yes, thank you, Madam Chair. It is my honor to introduce a good friend of mine, Keith Kelly. I want to thank Keith for being here today and thank you for your service.

Keith and I have known each other for a long, long time. It has not been 35 years. As I was doing the math in my head, it has been 31 years since I first met Keith, when I was younger and he was younger, too. I had the good fortune to work with him when I was in the State Legislature. His lovely wife, Norma Jean, is not here, but be sure to send her my best.

Currently, Keith is Commissioner of Montana Labor and Industry. In that role, he works hard to promote the well-being of Montana's workers.

Keith is also a veteran. He served in the U.S. Army in the Vietnam War, earned a Combat Infantry Badge and a Bronze Star.

After returning from military service, Keith began 35 years in public service. He has served as Director of both Montana's and Arizona's Department of Agriculture. Under President Clinton, he served as a National Administrator for the Farm Service Agency. By all accounts, Keith has done a great job in all of the positions that he has held and he has valuable experience dealing with issues from the local, State, and Federal perspective.

I know that he has always been mindful, in particular, of the needs of our Nation's veterans. If confirmed, I have no doubt that he will do absolutely everything within his power to ensure that we fulfill our commitment to the promises that we have made our veterans and their families.

So, Keith, I want to once again thank you for your public service, for your record in that; I want to thank you for putting yourself through this exercise for confirmation, and thanks for being here today.

Chairman MURRAY. Thank you very much, Senator Tester.

Mr. Kelly, I understand your family is cheering you on from home, so they are not with you, but Mr. Greenberg, I understand you do have some family members here. If you would like to introduce them, we would love to——

Mr. GREENBERG. Yes. There are some at home, but my wife, Tina, is here and my son, Tony, who works in Washington, is also here today.

Chairman MURRAY. All right. Great. Well, thank you very much.

Mr. Kelly, I understand your family is at home cheering you on.

Mr. KELLY. Yes, and thank you. I hope they are, yes. [Laughter.]

Chairman MURRAY. All right. With that, under the rules of this Committee, the testimony of all Presidential nominees appearing before the Committee has to be taken under oath. So, Mr. Greenberg and Mr. Kelly, I would like you to stand right now and we will administer the oath. Please raise your right hand.

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

Mr. GREENBERG. I do.

Mr. KELLY. I do.

Chairman MURRAY. Thank you very much. You may be seated.

Mr. Greenberg, we will start with your testimony, and then we will turn to Mr. Kelly.

TESTIMONY OF WILLIAM S. GREENBERG, NOMINEE TO BE JUDGE, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

Mr. GREENBERG. Thank you, Chairman Murray, Ranking Member Burr, and distinguished Members of the Committee. I would like to thank Senator Menendez, also, for his very kind and gracious words. We do go back a long way.

I am honored to have been nominated by the President to be a judge of the U.S. Court of Appeals for Veterans Claims, and I am grateful for the opportunity to appear before you today.

With me, as I have just indicated, is my wife, Tina, who has been my best friend, partner, and principal support throughout my professional life and whose tireless generosity of spirit and family history of philanthropy have been shining examples to our three children—our daughters, Katherine and Elizabeth, and our son, Anthony, who is with us today. I am indebted to all of them for love, patience, and confidence.

I also wish to acknowledge my large extended family, law partners, and clients for their enthusiastic support of my nomination. I would like to pay special tribute to those who have served as exemplars over my long legal and military career. To Judge Robert A. Matthews, for whom I served as a Law Secretary, a Navy war hero who reminded me always to act in the name of the ethic, which gives meaning to it all. To Frank McCarter, a veteran of the Italian Campaign; Gene Haring and John McGoldrick, partners and mentors at McCarter and English; to Richard J. Hughes, Governor and later Chief Justice of New Jersey, from whom I learned the meaning of political and legal courage; and finally, to Major General Frank Gerard, the last active duty air ace of World War II, for whom I served as military subordinate, legal advisor, and advocate.

In a larger sense, I owe my career to the example set by my father, uncles, and great-uncles, as well as my brother, all of whom served in the Armed Forces. Some were in combat, and others, like my father, Master Sergeant Irving Greenberg of the Medical Service Corps, and brother Major Stephen Greenberg of the Medical Corps, served those who bore the physical and psychological wounds of battle.

During my 27 years in the Reserve components of the Army, I was an enlisted scout, an Army lawyer, and a flag officer. With that experience and my nearly four decades of private law practice, I recognized a need after the events of September 11 and established the New Jersey Military Law Institute and the New Jersey State Bar Association Legal Assistance Program.

During the past 10 years, I have been privileged to guide both endeavors in the pro bono service of Reservists wounded in Iraq and Afghanistan. We at New Jersey's oldest and largest law firm took the lead, together with the organized Bar, in representing these soldiers in their physical evaluation board hearings at Walter Reed and their claims in the regional offices of the Department of Veterans Affairs. I personally tried cases and supervised the work of our firm in dozens of matters over the past decade. Many of the lawyers who work with me had no prior military experience, but quickly gained the confidence of the soldier and were themselves rewarded by a strong sense of their unique accomplishment. There is no substitute for individual personal relationships between lawyer and soldier or veteran.

During my 45 years of private law practice, I have been fortunate to have served in many other facets of life, which I, with great respect, believe will serve me well if I am confirmed. I have been a Commissioner of the New Jersey State Commission of investigation, Chairman of the New Jersey State Bar Association Judicial and Prosecutorial Appointments Committee, the first Adjunct Professor of Military Law at the Seton Hall University, President or Trustee of New Jersey's two largest Bar Associations, a member of the New York City Bar Association Committee on Law and Justice, and more recently as Chairman of the Reserve Forces Policy Board in the Office of Secretary of Defense.

I have always been an advocate for the soldier and the veteran. My entire legal career has been in litigation, advising clients, and representing them before agencies and in courts. I believe I understand the importance and significance of becoming a judge of the U.S. Court of Appeals for Veterans Claims.

I fully comprehend the responsibility of that honored position. If confirmed, I believe I would apply the same zealousness and intellectual vigor as a judge that I have as counsel. I am equally certain that I will be true to the oath requiring swift, fair, and impartial appellate review.

I thank the Committee most sincerely for considering my nomination. Chairman Murray, I am pleased to respond to any questions you or any Member of the Committee may have. Thank you.

[The prepared statement of Mr. Greenberg follows:]

PREPARED STATEMENT OF WILLIAM S. GREENBERG, NOMINEE FOR JUDGE OF THE U.S. COURT OF APPEALS FOR VETERANS CLAIMS

Thank you Chairman Murray, Ranking Member Burr, and distinguished Members of the Committee. I am honored to have been nominated by the President to be a Judge of the United States Court of Appeals for Veterans Claims and I am grateful for the opportunity to appear before you today.

With me is my wife, Tina, who has been my best friend, partner, and principal support, throughout my professional life and whose tireless generosity of spirit and family history of philanthropy have been shining examples to our three children, Katherine, Anthony, and Elizabeth. I am indebted to all of them for love, patience,

and confidence. I also wish to acknowledge my large extended family, law partners, and clients for their enthusiastic support of my nomination.

I would like to pay special tribute to those who have served as exemplars over my long legal and military career. To Judge Robert A. Matthews, for whom I served as Law Secretary, a Navy war hero who reminded me always to act in the name of the ethic, which gives meaning to it all. To Frank McCarter, a veteran of the Italian Campaign, Gene Haring, and John McGoldrick, partners and mentors at McCarter and English. To Richard J. Hughes, Governor and later Chief Justice of New Jersey, from whom I learned the meaning of political and legal courage. And finally, to Major General Frank Gerard, the last active duty air ace of World War II for whom I served as military subordinate, legal advisor, and advocate.

In a larger sense, I owe my career to the example set by my father, uncles and great uncles, as well as my brother, all of whom served in the Armed Forces. Some were in combat, and others like my father, Master Sergeant Irving Greenberg of the Medical Service Corps, and brother Major Stephen Greenberg of the Medical Corps served those who bore the physical and psychological wounds of battle. During my twenty-seven years in the Reserve Components of the Army, I was an enlisted scout, an army lawyer, and a flag officer. With that experience, and my nearly four decades of private law practice, I recognized a need after the events of September 11, and established the New Jersey Military Law Institute and the New Jersey State Bar Association Legal Assistance Program. During the past ten years, I have been privileged to guide both endeavors, in the pro bono service of reservists wounded in Iraq and Afghanistan. We at New Jersey's oldest and largest law firm took the lead, together with the organized Bar, in representing these soldiers in their Physical Evaluation Board hearings at Walter Reed, and their claims in the regional offices of the Department of Veterans Affairs. I personally tried cases and supervised the work of our firm in dozens of matters over the past decade. Many of the lawyers who worked with me had no prior military experience but quickly gained the confidence of the soldier and were themselves rewarded by a strong sense of unique accomplishment. There is no substitute for the individual personal relationship between lawyer and soldier or veteran.

During my forty-five years of private law practice, I have been fortunate to have served in many other facets of life which I respectfully believe will serve me well if I am confirmed. I have been a Commissioner of the New Jersey State Commission of Investigation, Chairman of the New Jersey State Bar Association Judicial and Prosecutorial Appointments Committee, the first Adjunct Professor of Military Law at Seton Hall University Law School, President or Trustee of New Jersey's two largest Bar Associations, a member of the New York City Bar Association Committee on Military Law and Justice, and more recently as Chairman of the Reserve Forces Policy Board in the Office of the Secretary of Defense.

I have always been an advocate for the soldier and the veteran. My entire legal career has been in litigation, advising clients and representing them before agencies and in courts. I believe I understand the importance and significance of becoming a Judge of the United States Court of Appeals for Veterans Claims. I fully comprehend the responsibility of that honored position. If confirmed, I believe I would apply the same zealousness and intellectual vigor as a judge, as I have as counsel. I am equally certain that I will be true to the oath requiring swift, fair, and impartial appellate review.

I thank the Committee most sincerely for considering my nomination.

Chairman Murray, I am pleased to respond to any questions you or any Member of the Committee may have.

RESPONSE TO PREHEARING QUESTIONS SUBMITTED BY HON. RICHARD BURR TO WILLIAM S. GREENBERG, NOMINEE TO BE JUDGE, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

PUBLIC

Question 1. According to the questionnaire you submitted to the Committee, you were admitted to practice before the U.S. Department of Veterans Affairs (VA) in approximately 2010. It also reflects that you have represented military personnel involved in a medical evaluation board (MEB) or physical evaluation board (PEB).

A. Would you please describe approximately how many claimants you have represented before VA and the general nature of the cases you have handled?

Response. Our firm, McCarter & English, has represented approximately, pro bono, 70 to 80 soldiers or veterans. Of these, approximately 10 to 20 at the regional offices of the VA. While I had general supervisory responsibility for each of these

cases, the VA matters were handled directly by my partners with the aid of associates.

B. Would you please describe any training you have completed in the area of veterans' law?

Response. My training has been on the job training, including developing a knowledge of VA procedures and practices, as well as a comprehensive review of the case law, in preparation for teaching the Veterans Rights portion of the Seton Hall Military Law Course, and as the partner in charge of our individual cases.

C. Would you please describe approximately how many servicemembers you have represented at the MEB phase of the disability evaluation process and at the PEB phase and the general nature of the cases you handled?

Response. I had personal responsibility for approximately 10 to 20 of the PEB cases. I personally appeared at the hearings before the physical disability board at Walter Reed in approximately 10 cases between June 2007 and August 2009. I believe we were able to settle many other cases without appearing in person. I believe lawyers were not expected, nor permitted at the MEB stage. I believe that has changed recently. During the period 2009 through 2011, while serving as Chairman of the Reserve Forces Policy Board in the Office of the Secretary of Defense, I did not think it appropriate to personally represent individual soldiers or veterans in individual cases.

Question 2. The United States Court of Appeals for Veterans Claims generally hears appeals from claimants seeking benefits from VA.

A. How has your background equipped you to serve as an appellate judge?

Response. I believe, respectfully, that I am qualified to serve as an appellate judge because of my personal representation of individual soldiers and veterans over the past 5 years; my 45 years of private law practice in trial and appellate courts, at the state and Federal levels; my experience as Chairman of the New Jersey State Bar Association Judicial and Prosecutorial Appointments Committee; and my 27 years as an enlisted, officer and flag officer in the Reserve Components of the Army.

B. Have you previously sought any other judicial positions? If so, please explain.

Response. While I did not seek judicial positions, I was invited to participate as a candidate for Federal judicial positions by United States Senators from New Jersey in 1978, 1998, and 2002.

Question 3. A biography published on the Web site for McCarter & English indicates that you have "written regularly for legal periodicals and other publications" and "authored more than twenty five articles or monographs on litigation matters."

A. Would you please identify the legal periodicals and other publications for which you have written, other than those identified in your completed questionnaire?

Response. None of the periodicals or publications referred to were written during the past 10 years, with the exception of the June 2007 article in New Jersey Lawyer (attached below).

Also, if it may be response I also assisted in the creation of a video to educate returning reservists about their legal rights. The video can be seen at: http://www.njsba.com/resources/probono/military-legal-assistance/index.html

The articles generally refer to materials distributed as part of presentations at professional conferences and included a wide variety of subject matters. I do not presently have access to those articles or materials. To the best of my recollection, they were presentations at meetings of the young lawyers or litigation sections of the American Bar Association, and on matters covering environmental litigation for the natural resources section of the ABA. I lectured at the New Jersey Institute for Continuing Legal Education, and prepared articles or materials related to those lectures on a wide variety of subjects including Trying the Constitutional Tort Case, Trying the School Law Case and Dealing or Litigating with the Resolution Trust Corporation. I also prepared materials for, and lectured at, annual meetings of the International Bridge Tunnel and Turnpike Association, generally related to environmental litigation. I also believe I wrote for, and lectured to, meetings of the New Jersey Education Association, and the Association of Trial Lawyers of America, and its New Jersey affiliate.

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Offering Military Legal Assistance to the New Jersey Reservist: The State Bar Association's Response

by William S. Greenberg

On the cover of the March 26, 2007, edition of *The New Yorke*r appeared a haunting and ambiguous reminder of the nation at war. A wounded soldier in combat uniform, in a wheelchair at the bottom of a steep and daunting staircase leading to a medical facility, was alone. Preoccupied with other matters were three medical personnel in the standard light blue of hospital workers, oblivious to the existence and the plight of the soldier.

This combat veteran might have faced the very same challenges if it were March 1967, 1951, 1943, 1918, or even 1863. In each of those years unredeemed promises of medical and financial care had been made. In each of those years, there was no end in sight to a war in which the soldiers served and suffered. In each of those years plans were already being formulated, and programs begun, to treat the physical and emotional wounds of war, by government and private organizations.

In Sept. 2006, the New Jersey State Bar Association launched a structured program of public service directed to all New Jersey Reserve component personnel called to active duty and deployed to Iraq or Afghanistan after Sept. 11, 2001.

Not all of the grievous consequences of war suggested by the soldier depicted on *The New Yorker* cover are possible to redress with the implementation of the NJSBA

program, but participants are manifestly at work, doing their part in the war effort for the service members regardless of their view of this or any war.

The Program

Every lawyer who volunteers as a participant is required to agree to two main contingencies in order to be of public service to the soldier. First, the volunteer attorney must be a New Jersey lawyer in good standing (though not necessarily a member of the New Jersey State Bar Association). Second, participants must forego all professional fees and reimbursement of out-of-pocket expenses, and further agree that if fee-shifting statutes provide fees or other reimbursement, all such monies will be donated to the military charity or military aid program of the lawyer's choice, and in that lawyer's name.

Each participating lawyer registers with the program office at the New Jersey Law Center and lists the area of law or legal specialties he or she is willing to provide in litigation or litigation-directed legal assistance. It is not necessary to be proficient, or even knowledgeable in military law, nor in the substantive law particular to the status of the client as a Reserve service member.

The important element for the volunteer lawyer is the comfort level with litigation, or representation likely to lead to litigation, in the particular specialty or area of the law. The NJSBA program is intended to provide representation to eligible service members when all other efforts at settlement or redress have failed, and litigation is the most likely means of providing a remedy. Litigation includes traditional court proceedings, administrative agency determinations, and alternate dispute resolution proceedings, including arbitration and mediation.

The armed forces are unable to provide a uniformed lawyer qualified to represent the service member in civil litigation, either because of lack of lawyer resources or because military regulations prohibit such representation. While the military establishment has recently devoted considerable resources to increasing legal assistance (a military term of art generally encompassing all civil matters involving individual soldiers), there is insufficient personnel and uneven geographical distribution of military lawyers, to provide a stable source of representation now, and in the foreseeable future. This makes a legal assistance program a practical necessity for these troops.

Experience has long been a good predictor of what the program may expect, and therefore what the program will need by way of lawyer volunteer specialty. All legal assistance is civil. The military provides lawyers in criminal or military justice cases. To the extent that there is a civil law component to what is an essentially quasi-criminal or criminal matter, our program lawyers may participate. But the heart and soul of this program is to provide for the service member in the everyday areas encountered by civilians and their attorneys.

Employment and reemployment rights and responsibilities; creditor and debtor relationships; matrimonial and family matters, especially divorce and custody, and access to veterans and other military medical and financial and professional service benefits, are the bedrock issues upon which our program has been established.

From High Point to Cape May lawyers have volunteered for The State Bar Program administered at New Brunswick. Twenty New Jersey partners at McCarter &

English alone, have agreed to participate. The program must grow through awareness created by articles such as this, by the testimony to the New Jersey Assembly Military And Veterans Affairs Committee delivered early in March, through the annual military law institute in April, and by individual appearances before county and special bar associations during the next few months. Most importantly in the expansion of this program will be the power of word of mouth persuasion, lawyer to lawyer.

While we are working today on our individual cases and clients, we must be building the program through volunteer lawyers who will be available for the all but certain dramatic increase in clients that the new troop deployments and the ultimate end of the war will engender.

The program also anticipates the creation and customizing for New Jersey lawyers, training programs geared to the special needs of our reservists and the special requirements of federal and state law when servicemembers are the subject of civil or administrative legal proceedings.

Finally, the program anticipates that, consistent with professional responsibility and client privacy, appropriate public recognition of the lawyer volunteer will be offered by a grateful nation, state and local practice region.

THE SERVICEMEMBER.

All New Jersey residents who were called to active duty after September 11, 2001, as members of a reserve component of the armed forces, who were deployed to, or overseas in support of, Iraq or Afghanistan are eligible. The only other requirement is that the need for legal assistance arose out of the military status of the servicemember and was the result of the call to active duty.

For example, a member of the New York Army National Guard but a resident of New Jersey on active duty in Iraq is entitled to the benefits of the program in a dispute with his landlord over rent or the lease provisions, which arose because of his deployment. On the other hand, a member of the Army Reserve also a New Jerseyan, who is deployed after September 11, 2001, successfully completes the deployment and leaves military service, and thereafter enters into a lease, is ineligible for the program when a subsequent dispute arises between landlord and former servicemember tenant.

In short, the program is intended for the current, or former reservist, who, but for deployment to or in support of, Iraq or Afghanistan would not have had the specific civil litigation problem.

A helpful way of regarding the servicemember and the specific intent behind this program is to examine the definitions and purposes behind the two most important federal statutes in this universe of military legal assistance.

The Servicemembers Civil Relief Act, effective in December 2003, had its origin in 1918 and 1940. Among its purposes were provisions for, and strengthening and expediting the national defense "through protection…to servicemembers…to enable…(them)…to devote their entire energy to the defense needs of the Nation"; and "to provide for the temporary suspension of…proceedings…that may adversely affect the civil rights of servicemembers during their military service". 50 Appendix USCA 501, 502.

The Uniformed Services Employment And Reemployment Rights Act, effective in October, 1996, was intended "to encourage non career service…by eliminating or minimizing the disadvantages to civilian careers and employment…to minimize the disruption to the lives of persons performing service…as well as to the employers, fellow employees, and their communities, by providing…prompt reemployment…and…prohibits discrimination against persons because of their service in the uniformed services". 38USCA4301.

The spirit of the law has been enforced and reinforced through many state and federal proceedings over the years, and much litigation is to be expected because of the complexity of some specific provisions and because of ever changing attitudes of courts and employers to military service. This is particularly true with regard to reserve components service in time of war. It is well to remember that this is the first truly extended period of war since the end of conscription in 1973, and the first war without

full scale national mobilization which has depended substantially upon the deployment of strategic reserve components for the tactical prosecution of the war.

New Jersey will face more than the fair share of medical and financial civil litigation problems arising from the deployment and redeployment of reserve component forces when there is this level of commitment.

During the past year alone, in any given month, the number of reservists deployed in Iraq or Afghanistan has been between ninety thousand and one hundred and ten thousand. At any given time, the average composition of all deployed forces has included from forty to fifty percent reservists. More than half the married reservists report a loss of income because of mobilization. Three quarters of reservists cite family burdens as the reason to leave the military. More than half cite too many deployments as the reason for leaving the military. The, See, US Department of Defense Annual Survey Of The Status Of Forces.

These statistics, recent public revelations of bureaucratic bungling in the military and veterans medical and social services conceal a far more serious threat to the fabric of our military and to our society. With more than one million military personnel who will have been deployed and redeployed to combat or combat support before the end of this year, half of whom will have been reservists, the time for volunteers, and public service among New Jersey lawyers is now.

To quote the French Novelist Emile Zola, "the truth is on the march and nothing will stop it".

William S. Greenberg, *a partner at McCarter & English, is a former trustee of the New Jersey State Bar Association and the New Jersey State Bar Foundation. He served as chair of the NJSBA Military Law Committee, and was a founding member of the Military Legal Assistance Program. A retired brigadier general, he has served as special litigation counsel (*pro bono*) to the National Guard Association of the United States and The Adjutants General Association of the United States.*

B. If any of those writings were during the past ten years, please provide copies to the Committee.

Response. I believe the only writing during the past 10 years is attached. The Committee should also know that during the past 10 years as author, editor, and supervisor of the editorial staff, I devoted considerable time and energy to revisions and annual supplements of the *New Jersey Practice Series, Volume 47, Civil Trial Handbook*, published by Thomson Reuters, and now approximately 1400 pages, including the cumulative annual supplement.

Question 4. In response to question 6 of the Supplemental Questionnaire, you noted a number of significant cases in which you were involved. If applicable, would you please also describe at least five significant litigated matters in which you were involved during the past 10 years?

Response. Five significant matters I have served as lead counsel or co-counsel in the past 10 years are:

(a) *HealthNet ads. Wachtel*, a lengthy and complicated class action in Federal court in New Jersey, and at times in the third circuit, involving many issues related to the business practices of our client, a large HMO;

(b) *RobertPlan ads. New Jersey Insurance Commissioner*, a complex series of matters involving contract and constitutional issues between our client, an automobile insurer, and New Jersey regulators, at times in state, trial and appellate courts;

(c) *Verizon Wireless ads. Demmick*, a class action pending in Federal court in New Jersey concerning billing disputes in the telecommunications business;

(d) *Ullman vs. ExpressScripts*, a large breach of contract dispute, involving pharmacy benefit managers in the Federal district court in New Jersey;

(e) *Phelps Dodge ads. Reichhold*, lengthy litigation involving contribution issues under Federal environmental laws in the district of New Jersey.

Each of these cases required me to learn or concentrate on particular aspects of substantive law and differing factual settings. The common thread throughout was the intense participation by the clients, and the requirement of my personal involvement and responsibility on a regular basis.

Question 5. In response to question 13 of the Committee's Supplemental Questionnaire, you indicated that, as Chairman of the Reserve Forces Policy Board from 2009 to 2011, your goal was to "change the way in which health of the command was addressed" and that you had "urged radical changes in the way wounded/injured soldiers were treated."

A. Would you please share with the Committee what you perceived as the drawbacks of the then-current system and your ideas for change?

Response. Based upon my personal experience representing individual soldiers, as well as the knowledge I gained from presentations made to the RFPB by medical

professionals, I believe the following were drawbacks of the then-current system, and I suggested the following changes:

(1) the physical disability boards, as such, should be abolished and the percentage basis for compensating a soldier as medically unfit should also be abolished. I believe the medically unfit soldier should received 100% compensation. The soldier was either fit or unfit to remain in the military;

(2) I believe a greater effort should have been made to retain soldiers in uniform, notwithstanding physical or psychological issues. Changes in military occupation specialty or even changes in branches of the service, or transfers to other armed services, is preferable to discharge, for those who wish to stay;

(3) Lawyers should be provided at the earliest stages of the military medical evaluation process and carried through the administrative agency and court systems;

(4) The warrior transition units should be abolished completely, and the individual soldier should be under the direct command of the military hospital or the responsibility of his reserve unit commander;

(5) Provision should be made for reserve unit commanders to receive pay, allowances, and travel to superintend the care and treatment of members of their command;

(6) The determination of percentage disabilities, if they are to be retained, should never be reduced, but only increased if the soldier makes a case for a change in circumstances.

B. Under your leadership, what effect did the Reserve Forces Policy Board have on those issues?

Response. I believe the recommendations we made in our annual reports for 2010 and 2011, reports required by Congress, had a direct bearing on the way in which the physical evaluation board process has been administered by the military. Lawyers are involved earlier. Important psychological issues such as TBI and PTSD are now more easily dealt with by the soldier. Specifically, the practice of giving only one percentage rating per part of the body has been abolished.

Question 6. The 2010 Annual Report of the Reserve Forces Policy Board contains the following information about a November 2009 meeting of that Board:

> Hon. W. Scott Gould, Deputy Secretary of Veterans Affairs, was particularly knowledgeable and forceful in his formal presentation to the Board. Of particular interest and enlightenment for Secretary Gould and the Board members were the exchanges which took place among Board members, the Deputy Secretary and his staff, and other well-informed officials of the Department who attended the public session of this meeting.
>
> These exchanges led to the continuation of a very detailed dialog among Chairman Greenberg, former Chairman O'Connell, Deputy Secretary Gould and Secretary of Veterans Affairs, the Honorable Eric K. Shinseki. This led to a further exchange of memoranda on the subject of the status of deployed reservists, and ultimately to a decision to elevate the consideration of these issues to the Deputy Secretary level in each department. This led to the pilot DES program, endorsed elsewhere in this report.

A. Would you please describe the role of the Board in evaluating and recommending improvements with regard to the Disability Evaluation System?

Response. The most important improvement recommended by the RFPB, was the elevation to the highest levels of DOD and VA of the DES.

B. Would you please clarify what role the Reserve Forces Policy Board played in the creation of the Disability Evaluation System pilot?

Response. The DES pilot program was the work product of the high level agreements between DOD and VA. The RFPB was very careful to strongly recommend that the DES pilot be scrutinized and regularly and carefully monitored.

[The Committee questionnaire for Presidential nominees follows:]

QUESTIONNAIRE FOR PRESIDENTIAL NOMINEES

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

1. **Name** (Including any former names used).

William Samuel Greenberg

2. **Address** (List current residence, office and mailing addresses).

Home: 164 Hunt Drive, Princeton, NJ 08540
Office: 100 Mulberry Street, Newark, NJ 07102
Mailing: 164 Hunt Drive, Princeton, NJ 08540
Secondary Residence: 25 W54 New York, NY 10019
Secondary Office: 245 Park Avenue, New York, NY 10167

3. **Position to which nominated** Judge of the United States Court of Appeals for Veterans Claims

4. **Date of nomination** November 15, 2012

5. **Date of birth** (Month, day, year).

December 2, 1942

6. **Place of birth** (City, state, country).

New York, New York USA

7. **Marital status.** Married

8. **Full name of spouse** (including maiden name).

Betty Kaufmann Wolf Greenberg

9. **Names and ages of children** Katherine Shaffer Greenberg Herrera, 42
Anthony Wolf Greenberg, 36
Elizabeth Gene Greenberg, 28

10. **Education** (List all post-secondary institutions of higher learning, dates attended, degree(s) received, and date degree(s) granted).

Johns Hopkins (1960-1964) (AB)
Rutgers (1964-1967) (LLB/JD)
New York (1972-1973) (no degree)

11. **Honors and Awards** (List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognition for outstanding service or achievement).

2012: Special Military Award, New Jersey State Ballet/United States Military Academy Band

2011: Secretary of Defense Medal for Outstanding Public Service; Community Hope Heroes Award for Outstanding Commitment to our Service Men and Women

2010: Rutgers, The State University of New Jersey School of Law Public Service Award; Johns Hopkins Distinguished Alumnus Award

2009: New Jersey State Bar Foundation Medal of Honor; New Jersey Lawyer of the Year by the New Jersey Law Journal

2008: New Jersey State Bar Association Presidential Achievement Award;

2008-2012: New Jersey Super Lawyer, selected by Thomson Reuters West

12. **Memberships** (List all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable, and other organizations for the last ten years. Include the dates of any such memberships or offices).

2011-2012: Chairman, Judicial and Prosecutorial Appointments Committee, New Jersey State Bar Association

2002-present: Co-Founder, Co-Chairman, Lecturer, New Jersey Military Law Institute, New Jersey State Bar Association

2007-present: Founder and Chairman, New Jersey State Bar Association Military Legal Assistance Program

2007-present: Member of the New Jersey Supreme Court Civil Practice Committee

2007-present: Member, Johns Hopkins Undergraduate Advisory Board

2003-2011: Member of the Board, Thanks to Scandinavia, New York Charitable Trust

1973-present: Member and Chairman of Board of Trustees, Mary Sachs Charitable Trust, Harrisburg, Pennsylvania

13. **Employment record** (List all employment (except military service) since your twenty-first birthday, including the title, description of job, name of employer, location of work, and inclusive dates of employment).

1963-1964: Johns Hopkins Student Store, Manager, Baltimore, Maryland

1963-1964: United States Senate, Intern for Harrison A. Williams, Jr., Washington and Newark, New Jersey

1964-1966: United States Post Office, Letter Carrier, Maplewood, Bloomfield, Newark, New Jersey

1965: Roskein, Kronisch, Felzenberg, Law Firm, Summer Associate, Newark, New Jersey

1967-1968: Law Secretary to The Honorable Robert A. Matthews, Superior Court of New Jersey, Jersey City

1968: McCarter & English, Law Firm, Associate, Newark, New Jersey

1968-1970: State of New Jersey, Special Counsel to the Chancellor of Higher Education; Assistant Counsel to the Governor of New Jersey, Trenton, New Jersey

1970: McCarter & English, Law Firm, Associate, Newark, New Jersey

1970-1976: Sterns & Greenberg, Law Firm, Partner, Trenton, New Jersey

1976-1989: Greenberg & Prior (including Greenberg & Mellk, and Greenberg, Kelley & Prior), Law Firm, Founder and Partner, Trenton and Princeton, New Jersey

1982-1987: State of New Jersey, Commissioner, New Jersey State Commission of Investigation, Trenton (part-time)

1987-1990: Borough of Princeton, Prosecutor, Princeton, New Jersey (part-time)

1989-1993: Sills Cummis, Law Firm, Partner, Newark and Princeton

1993-present: McCarter & English, Law Firm, Partner, Newark and New York

14. **Military service** (List all military service (including reserve components and National Guard or Air National Guard) with inclusive dates of service, rank, titles, permanent duty stations and units of assignment, descriptions of assignments, any military medals, and type of discharge).

March 1967 – May 1970: Private/Specialist, Armored Cavalry Crewman, 5th Squadron, 117th Cavalry, 50th Armored Division, New Jersey Army National Guard

July 1967: State Active Duty for Civil Disturbances, Newark, New Jersey

August - December 1967: Active Duty for Training, Fort Knox, Kentucky, basic combat training and advanced individual training, awarded military occupation specialty 11D10, selected as the outstanding cavalry trooper of the training cycle

May 1970 – August 1990: First Lieutenant/Colonel, The Judge Advocate General's Corps., United States Army, Staff Judge Advocate, 50th Armored Division, and State Judge Advocate, New Jersey Army National Guard, Trenton, New Jersey

August 1990 – April 1994: Brigadier General, Assistant Adjutant General, New Jersey Army National Guard (with full federal recognition)

April 1994 – December 2002: United States Army Retired Reserve

2002 – 2012: Brigadier General, United States Army, Retired Army Commendation Medal, Meritorious Service Medal (second award), Legion of Merit

15. **Government service record** (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments other than those listed under Employment record, above).

Chairman of the Princeton Township Zoning Board (approximately 1997-1999)

Member of Princeton Regional Planning Board SubCommittee (approximately 1997-2001)

Commissioner, New Jersey State Commission of Investigation (1982-1987)

Commissioner of the New Jersey State Scholarship Commission (1970-1973)

Office of the Secretary of Defense, Chairman, Reserve Forces Policy Board (Special Government Employee, without compensation or reimbursement) (2009-2011)

16. **Published writings and public statements (in last 10 years)**

(a) List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published materials you have written or edited, including materials appearing only on the Internet. (Copies of any such materials may be requested by the Committee.)

1989-2012: Civil Trial Handbook, ThomsonWest, 2nd through 5th editions with annual supplements, approximately 1,500-1,700 pages, including predecessor titles/publishers.

2007: New Jersey Lawyer Magazine, Military Legal Assistance Programs for Soldiers and Veterans, New Jersey State Bar Association.

(b) List any reports, memoranda, or policy statements you prepared or contributed in the preparation of on behalf of any association, committee, conference, or organization of which you were or are a member.

August 2011: Annual Report of the Chairman, Reserve Forces Policy Board to the Secretary of Defense and other statutory officials

June 2010: Annual Report of the Chairman, Reserve Forces Policy Board to the Secretary of Defense and other statutory officials

(c) 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

(d) 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.

From 1967-2012 I have given approximately twenty-five to fifty speeches or lectures at various military schools or conferences and legal or professional conferences on various topics including litigation and related matters, to organizations which have included the American Bar Association; the Association of Trial Lawyers of America; The Association of Trial Lawyers of America, New Jersey; New Jersey State Bar Association; New Jersey Education Association;

International Bridge Tunnel and Turnpike Association; United States Army War College; The Lawrenceville School; The Johns Hopkins University; The Judge Advocate General's Law Center and School, United States Army; The Institute for Advanced Study, Princeton; The New Jersey State Judiciary, and the New Jersey Federal Judiciary.

Through a review of my personal files I have been able to identify some of the more recent speeches, lectures and presentations I have given. I have not retained any of the notes for these appearances.

Presentations to New Jersey Military Law Institute of the New Jersey State Bar Association, 2002 through 2011;

Acceptance Speech, Johns Hopkins Distinguished Alumnus Award, 2010;

Acceptance Speech, New Jersey State Bar Medal of Honor Ceremony, June 2009;

Acceptance of New Jersey Lawyer of the Year by New Jersey Law Journal, December 2009;

Comments to Newark Star Ledger and Philadelphia Inquirer on appointment as Chairman, Reserve Forces Policy Board, Office of the Secretary of Defense, August 2009;

Acceptance Speech, Rutgers Public Service Award, October 2010;

Acceptance of Heroes Award, Community Hope Benefit, October 2011;

Speech to Friends of the Institute of Advance Study on the Future of the all Volunteer Force, January 2011;

Speech at United States District Court Ceremony in Memory of 9/11, Camden, New Jersey, September 2011;

Presentation of Citizen Patriot Award to Senator Robert Dole, Washington, March 2011;

Presentation of Citizen Patriot Award to former Chairman Terrence O'Connell, March 2010;

Presentation of Citizen Patriot Award to Senator John McCain, Spring 2011;

Presentation of remarks and comments at meetings of the Reserve Forces Policy Board, Office of the Secretary of Defense, November 2009 through August 2011;

Presentations to the United States Army War College, Security Course, Washington, Spring 2010 and 2011;

Remarks to Reserve Component Officers During Official Briefing at United States Military Installation, Vicenza, Italy 2010;

Acceptance remarks GI-GO Fund, 2012 Leadership in Military and Veteran Justice Award, Newark, NJ (November 8, 2012).

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

Approximately June through October 2009 I gave various interviews concerning my appointment as Chairman of the Reserve Forces Policy Board in the Office of the Secretary of Defense, to the Newark Star Ledger; The Philadelphia Inquirer; WOR Radio, New York; The New Jersey Law Journal; New Jersey Commerce Newspaper; and, New Jersey Public Television; and The Johns Hopkins Magazine.

17. **Political affiliations and activities**

(a) List all financial contributions to any political party or election committee during the last 10 years.

I have done my best to identify all political contributions through a review of my personal files and searches of publicly available electronic databases. I have located the following:

FEDERAL

Adler for Congress	09/04/2007	500
Biden for President, Inc	06/22/2007	1,000
Bob Casey for Senate Inc.	01/28/2012	1,000
Bush-Cheney '04 (Primary) Inc.	12/19/2003	2,000
Carly for California, Inc	03/02/2010	1,000
Carper for Senate	11/23/2009	500
Chafee for Senate	10/21/2005	1,000
Citizens for Arlen Specter	10/19/2004	1,000
Citizens for Arlen Specter	11/01/2004	1,000
Citizens for Arlen Specter	10/07/2009	250
DCCC	09/30/2010	1,000
Debbie Wasserman Schultz for Congress	04/26/2012	2,000
DNC	12/31/2010	1,000
DSCC	12/31/2009	500
DSCC (via New Jersey Senate 2008)	12/31/2007	10,000
DSCC (via New Jersey Senate 2008)	10/24/2007	1,400
Friends for Harry Reid	09/30/2010	2,400
Friends of Chris Dodd	10/25/2004	1,000
Friends of Patrick J. Kennedy Inc.	08/30/2002	1,000
Hagel for Senate Committee	06/29/2007	1,500
Harold Ford Jr for Tennessee	05/19/2004	1,000
Harold Ford Jr for Tennessee	01/01/2006	2,000
Hillary Clinton for President	06/30/2007	1,000
John Carney for Congress	06/28/2010	1,000
John McCain 2008 (via McCain Victory 2008)	08/30/2008	1,000
Lautenberg for Senate	11/01/2002	1,000
Lautenberg for Senate	05/16/2007	1,000
Lautenberg for Senate (via NJ Senate 2008)	10/24/2007	2,300
Lautenberg for Senate (via NJ Senate 2008)	10/24/2007	1,300
Linda Stender for Congress	03/31/2006	500
McCain Victory 2008	08/19/2008	1,000
Menendez for Senate	03/27/2003	2,000

Menendez for Senate	04/12/2004	2,000
Menendez for Senate	03/30/2005	2,100
Menendez for Senate	03/30/2005	2,100
Menendez for Senate	04/17/2007	200
Menendez for Senate	04/17/2007	2,300
Menendez for Senate	10/20/2009	1,000
Menendez for Senate	10/20/2009	1,000
Menendez for Senate (via Menendez Victory Fund)	04/19/2010	1,200
New Jersey Democratic State Committee	03/07/2003	800
New Millennium Pac	03/20/2002	2,500
New Millennium PAC (via Menendez Victory Fund)	04/19/2010	1,200
Obama for America	11/24/2008	(2,300)
Obama for America	10/26/2008	2,300
Obama for America	10/26/2008	2,300
Obama for America	02/01/2009	(2,300)
Pascrell for Congress	06/04/2009	300
Rudy Giuliani Presidential Committee Inc.	06/05/2007	1,150
Sandhills Political Action Committee	05/27/2005	1,000
STATE		
Camden County Democratic Committee	02/15/2006	1,000
Camden County Democratic Committee	09/30/2006	2,000
Christie 2010 Inaugural Committee	03/16/2010	300
Corzine for Governor (Primary)	05/20/2005	1,000
Ellen Karcher for NJ State Senate	09/18/2003	1,000
Mercer County Democratic Committee	04/14/2005	1,500
NJ Democratic State Committee	10/14/2004	1,000
NJ Democratic State Committee	11/24/2003	2,000
NJ Democratic State Committee	12/19/2002	1,000
NJ Democratic State Committee	03/07/2002	1,200
NJ Democratic State Committee	10/20/2005	490
Richard Codey for NJ State Senate (Primary)	10/29/2004	1,000

(b) List all elective public offices for which you have been a candidate and the month and year of each election involved.

None.

(c) List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee.

I believe I am a member of the Senator Menendez finance committee.

18. **Future employment relationships**

(a) State whether you will sever all connections with your present employer, business firm, association, or organization if you are confirmed by the Senate.

Yes.

(b) State whether you have any plans after completing Government service to resume employment, affiliation, or practice with your previous employer, business firm, association, or organization.

No.

(c) What commitments, if any, have been made to you for employment after you leave Federal service?

None.

(d) (If appointed for a term of specified duration) Do you intend to serve the full term for which you have been appointed?

Yes.

(e) (If appointed for an indefinite period) Do you intend to serve until the next Presidential election?

Not applicable.

19. **Potential conflicts of interest**

(a) Describe any financial arrangements, deferred compensation agreements, or other continuing financial, business, or professional dealings which you have with business associates, clients, or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None.

(b) List any investments, obligations, liabilities, or other financial relationships which could be affected by policies which you will influence in the position to which you have been nominated.

None.

(c) Describe any business relationship, dealing, or financial transaction which you have had during the last 5 years, whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None.

(d) Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed.

None.

(e) Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements involved in Part II.)

Not applicable.

20. **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.

[Supplemental information to Presidential questionnaire:]

UNITED STATES SENATE
COMMITTEE ON VETERANS' AFFAIRS

SUPPLEMENTAL QUESTIONNAIRE FOR NOMINEES
TO THE U.S. COURT OF APPEALS FOR VETERANS CLAIMS

PUBLIC

1. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels, or conferences of which you are or have been a member, and provide the titles and dates of any offices which you have held in such groups.

   Association of Trial Lawyers of America, Committee Chairman, National Lecturer (approximately 1979-1989);
   Association of Trial Lawyers America, New Jersey, President (1986-1987) and other offices (1979-1989);
   American Bar Association, National Executive Council of the Young Lawyers Division (1973-1976);
   National Committees in the ABA Section of Litigation (approximately 1973-1979);
   New Jersey State Bar Association, Trustee (1973-1974);
   New Jersey State Bar Foundation, Trustee (approximately 1993);
   New Jersey State Bar Association, Chairman of the Judicial and Prosecutorial Appointments Committee (2011-2012);
   Founder and Chairman of Military Legal Assistance Program, NJSBA (2007-present);
   Co-Founder and Co-Chairman of New Jersey Military Law Institute, NJSBA (2002-present);
   Member, New Jersey Supreme Court Committee on Admission of Foreign Attorneys (approximately 1973-1974);
   Member, New Jersey Supreme Court Civil Practice Committee (approximately 2007-present);
   Lecturer at New Jersey Institute of Continuing Legal Education (approximately 1969-2009);
   New York City Bar Association, Committee on Military Law and Justice (2012-present) ;
   Mercer County and Essex County and New Jersey State Bar Association (approximately 1967-present);
   District of Columbia Bar Association (approximately 1972-present) ;
   New York State Bar Association (approximately 1984-present);
   Hudson County, New Jersey Bar Association (approximately 1968-1970).

2. **Bar and Court Admission**:

   a. Are you currently a member in good standing of the bar of a Federal court or of the highest court of a state?

      Yes.

b. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

New Jersey 1967; New York 1984; District of Columbia 1972.

c. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Provide the same information for administrative bodies that require special admission to practice.

New Jersey, United States District Court for the District of New Jersey, 1967; United States Courts of Appeal for the Third and Fourth Circuits, approximately 1975; New York, 1984; United States District Court for the Southern District of New York, approximately 1997; District of Columbia, 1972; Supreme Court of the United States, approximately 1974; United States Court of Federal Claims, approximately 1974; United States Court of Appeals for the Federal Circuit, approximately 2009; United States Department of Veterans Affairs, approximately 2010; Nevada (pro hac vice), approximately 1997.

3. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Question 12 on the Committee's initial questionnaire, to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, or conferences.

Friends of the Institute for Advanced Study, Princeton, New Jersey (approximately 2001-present);
Council of Friends of the Princeton University Library (approximately 2010-present;
Member of the Board, New Jersey Chapter, American Jewish Committee (approximately 1975-1979);
Springdale Golf Club (approximately 1998-present);
Nassau Club (approximately 1972-1974);
Army and Navy Club (approximately 1990-present);
Lotos Club (approximately 2011-present);
Grolier Club (approximately 2011-present);
Johns Hopkins Faculty Club (approximately 2004-present);
Fellow, American Bar Foundation (approximately 1977-present);
Life Member, Association of the United States Army (approximately 2001-present);
Life Member, Walter Reed Society (approximately 2008-present);

Life Member, National Guard Association of the United States and New Jersey (approximately 1994-present);
Life Member, United States Fencing Association (approximately 1999-present);
Life Member, United States Army War College Alumni Association (approximately 1992-present).

b. Indicate whether any of these organizations of which you are a member currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe what efforts, if any, you made to try to change the organization's discriminatory policies or practices.

No.

4. **Published Writings and Public Statements**:

a. If you have published any written materials (letters to the editor, articles, reports, memoranda, policy statements, friend of the court briefs, testimony or other official statements or communications) relating in whole or in part to matters of public policy or legal interpretation related to veterans issues, please supply those materials to the Committee.

2007: New Jersey Lawyer Magazine, Military Legal Assistance Programs for Soldiers and Veterans, New Jersey State Bar Association.

b. Supply transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions that related in whole or in part to veterans issues. If you do not have a copy of the speech or a transcript or recording of your remarks, provide the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

(Note: As to any materials requested in this question, please omit any confidential materials or materials protected by the attorney-client privilege.)

From 1967-2012, I have given approximately twenty-five to fifty speeches or lectures at various military schools or conferences and legal or professional conferences on various topics including litigation and related matters.

Through a review of my personal files I have been able to identify some of the more recent speeches, lectures and presentations I have given related to veteran's issues. I have not retained any of the notes for these appearances.

Presentations to New Jersey Military Law Institute of the New Jersey State Bar Association, 2002 through 2011;

Acceptance Speech, Johns Hopkins Distinguished Alumnus Award, 2010;

Acceptance Speech, New Jersey State Bar Medal of Honor Ceremony, June 2009;

Acceptance of New Jersey Lawyer of the Year by New Jersey Law Journal, December 2009;

Comments to Newark Star Ledger and Philadelphia Inquirer on appointment as Chairman, Reserve Forces Policy Board, Office of the Secretary of Defense, August 2009;

Acceptance Speech, Rutgers Public Service Award, October 2010;

Acceptance of Heroes Award, Community Hope Benefit, October 2011;

Speech to Friends of the Institute of Advance Study on the Future of the all Volunteer Force, January 2011;

Speech at United States District Court Ceremony in Memory of 9/11, Camden, New Jersey, September 2011;

Presentation of Citizen Patriot Award to Senator Robert Dole, Washington, March 2011;

Presentation of Citizen Patriot Award to former Chairman Terrence O'Connell, March 2010;

Presentation of Citizen Patriot Award to Senator John McCain, Spring 2011;

Presentation of remarks and comments at meetings of the Reserve Forces Policy Board, Office of the Secretary of Defense, November 2009 through August 2011;

Presentations to the United States Army War College, Security Course, Washington, Spring 2010 and 2011;

Remarks to Reserve Component Officers During Official Briefing at United States Military Installation, Vicenza, Italy 2010;

Acceptance remarks GI-GO Fund, 2012 Leadership in Military and Veteran Justice Award, Newark, NJ (November 8, 2012).

5. **Legal Career:** Answer each part separately.

   a. Describe chronologically your law practice and legal experience after graduation from law school including:

      i. whether you served as clerk to a judge and, if so, the name of the judge, the court, and the dates of the period you were a clerk;

      Law Secretary to the Honorable Robert A. Matthews, Judge of the Superior Court of New Jersey, Chancery Division, December 1967-September 1968

      ii. whether you practiced alone and, if so, the addresses and dates;

      None.

      iii. the dates, names, and addresses of law firms or offices, companies, or governmental agencies with which you have been affiliated, and the nature of your affiliation with each;

      McCarter & English, Newark, NJ, Associate, 1968;

      State of New Jersey, Special Counsel to Chancellor of Higher Education and Assistant Counsel to the Governor of New Jersey, 1968-1970;

      McCarter & English, Associate, 1970;

      Sterns & Greenberg, Partner, 1970-1976;

      Greenberg & Prior,1970-1989, Trenton and Princeton, Founder/Partner;

      Sills Cummis, Partner, 1989-1993, Princeton, Newark;

      McCarter & English, Partner, 1993-2012 Newark and New York;

      Borough of Princeton, Prosecutor 1987-1990;

      Commissioner, New Jersey State Commission of Investigation 1982-1987;

      Thomson West and predecessors, Author 1989-2012;

      Seton Hall Law School, Newark, Adjunct Professor of Military Law, 2008-2012.

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the ten most significant matters with which you were involved in that capacity.

None.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years;

The general character of my law practice has always been litigation.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized;

For the first ten years of my legal career, my clients were largely teacher, professor, and public employee organizations and individuals. During the next three and one –half decades, my clients have been corporations of all sizes. For the past 5 years, much of my legal time has been spent on the pro bono representation, directly or indirectly, of soldiers and veterans.

iii. any law practice or legal experience that involved veterans' law.

Apart from my representation of individual soldiers, in the military evaluation board/physical evaluation board process, I have directed our law firm program on military and veteran representation, and have taught an important portion of my military law course on veterans' issues.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

During the first two decades of my practice, I appeared in Court or before State or Federal Administrative agencies extremely frequently. During the past two and one-half decades, I have appeared in Court frequently, although far more of my professional time has been spent in organizing and directing litigation. I have been a Certified Civil Trial Attorney by the New Jersey Supreme Court since 1983, requiring re-certification every seven/five years, and requiring demonstration of substantial litigation experience. Attached is a list of representative published opinions beginning with 1969 and ending in 2009.

i. Indicate the percentage of your practice in:
   1. federal courts; 40%
   2. state courts of record; 40%
   3. other courts; 5%

4. administrative agencies. 15%

ii. Indicate the percentage of your practice in:
1. civil proceedings; 100%
2. criminal proceedings. 0%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Approximately 350 cases in which I was sole counsel or chief counsel; and approximately 50 cases in which I was associate counsel.

e. Describe your practice, if any, before the Supreme Court of the United States. Supply any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

None

6. **Litigation**: Describe the ten most significant litigated matters that you personally handled, whether or not you were the attorney of record. Provide the citations, if the cases were reported, and the docket number and date if unreported. Provide a summary of the substance of each case. Identify the party or parties whom you represented and describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;
b. the name of the court and the name of the judge or judges before whom the case was litigated; and
c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. **Passaic County Bar Ass'n v. Hughes, 108 NJ Super 161, 260 A2d 261 (1969)**
I represented the Governor of New Jersey in a dispute over Senatorial courtesy with regard to judges. Our position prevailed at the trial level and in the Supreme Court of New Jersey. Certiorari was denied by the Supreme Court of the United States. The Governor nominated five judges, the State Senator from Passaic County invoked senatorial courtesy. The County Bar brought suit alleging that because of the lack of civil judges, clients could not get their day in court and were thus being denied an important property right. The State senate asserted its custom as a separate branch of government. The Bar Association contended that the Governor was obligated to withdraw the nominations and put forward judges who could be confirmed. Our position was that once we had made the nominations, our Constitutional role had been fulfilled. The Courts agreed.

2. **Endress v. Brookdale Community College, 144 NJ. Super 109, 364 A2d 1080 (1976)**
My client was a college journalism professor who had been denied tenure. She was the advisor to the student newspaper and author of an editorial condemning the college Board of Trustees for the manner in which a no bid contract had been awarded. Her First Amendment rights to freedom of the press were at issue. I tried the case, without a jury. The trial judge awarded damages, attorneys' fees and ordered her reinstatement, thus conferring tenure as a matter of law. Because it was a matter of freedom of the press, involving among other things, the battle of experts as to the role of a college newspaper faculty advisor, the outcome was front page news in The New York Times, The Wall Street Journal, and wire services around the country. We also prevailed on appeal.

3. **American Ass'n of University Professors, Bloomfield College Chapter v. Bloomfield College, 129 NJ Super 249, 322 A2d 846 (1974)**
I represented the faculty of this small Presbyterian college which found itself in financial difficulty. The college had accepted the 1940 Statement of Academic Freedom and Tenure of the American Association of University Professors, which dealt specifically with financial exigencies. The College fired the entire faculty and made them at-will employees. We contended the acceptance of the 1940 Statement was a binding contract, breached by the college. I tried the case without a jury. The Judge agreed, as did the Appellate Courts. This was a case of first impression testing the status of the 1940 Statement as an enforceable contract.

4. **Nolan v. Otis Elevator Co., 102 NJ 30 (1986)**
My clients were employees of a manufacturer closing its New Jersey plant. The issue was age discrimination under New Jersey law. The lower courts agreed with our contention on the merits, but the Supreme Court of New Jersey held that as to age discrimination claims, federal law pre-empted State law. I took this case without fee; the Attorney General of New Jersey intervened as a party on our side. The original attorneys had missed the federal statute of limitations, which made the emphasis on State law more compelling.

5. **State of N.Y. v. U.S. Metals Refining Co., 771 F.2d 796 (3 Cir 1985)**
I represented an important secondary copper smelting plant, which was an important employer and defense industry in industrial New Jersey. After much hard fought litigation in various federal courts, of which this issue is a good example, the matter was ultimately settled on terms extremely favorable to my client. The continued employment of hundreds of industrial workers was thus guaranteed.

6. **United Jersey Banks v. Parell, 783 F2d 360 (3 Cir 1986)**
My clients were a group of relatively smaller banks. They alleged that New Jersey's largest bank had exceeded a state law limit of growth by acquisition, rather than by internal growth. The defendant claimed that State law was pre-empted. The Court disagreed. We prevailed on this important issue of the power of State banking regulators.

7. **White Birch Realty Corp. v. Gloucester Tp. Municipal Utilities Authority, 80 NJ 165 (1979)**

After a lengthy trial, the Court agreed with our position that real estate developers should not be made to bear an unreasonable burden of infrastructure costs as the price of municipal approvals. The Supreme Court of New Jersey agreed.

8. **Matter of Association of Trial Lawyers of America, 228 N.J. Super. 180**
As a former president of the state trial lawyers association, I was asked to challenge the statute as violation of State and Federal constitutional law. The principle was important, as were the merits of the case. The Appellate Court believed standing was more important.

9. **New Jersey Ed. Ass'n v. Burke, 579 F2d 764 (3 Cir. 1978)**
I represented the largest public school teacher association which challenged New Jersey's rules concerning bilingual education. The federal court of appeals held that we were entitled to test the facts and the law relating to the fundamental fairness of these regulations in the trial court. After a lengthy trial, my client ultimately prevailed on the most important aspect of the challenge.

10. **Pitt v. Pine Valley Golf Club, 695 FSupp 778 (DNJ 1988)**
My client was denied membership in a private country club, often referred to as the finest golf club in the United States. I challenged the status of the country club as a sham in that it was identical with the Borough of Pine Valley. My pro bono representation based upon the belief that a private club could not use the benefits of municipal status to exclude non-members, as a matter of constitutional moment, was rejected on a highly technical jurisdictional issue.

Each of these cases provides a sample from a long and broad practice over 45 years. I was the attorney, solely responsible for the strategy and presentation at trial, and on appeal of each of these matters. I may have had the assistance of other counsel, but these cases, as well as the other representative matters submitted herewith, were ultimately my responsibility.

Attached are copies of these opinions, as well as a list of other representative matters together with their citations.

7. **Judicial Opinions/Offices:**

a. If you are or have ever been a judge, attach a statement providing (1) citations for the ten most significant opinions you have written, (2) a short summary of and citations for all appellate opinions either reversing your decision or confirming it with significant criticism of your substantive or procedural rulings, and (3) citations for significant opinions on federal or state constitutional issues, together with citations for any appellate court rulings on your decisions in those cases. (If any of the opinions were not officially reported, please provide a copy of the opinions.)

Not applicable.

b. State (chronologically) any judicial office you have held and whether you were elected or appointed. Please provide a description of the jurisdiction of each such court.

Not applicable.

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

(Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

After a long career in litigation, the following are a representative sample of cases in which I was counsel, but did not result in published opinions:

1. I was co-counsel with Joe Jamail and Harry Reasoner of Houston, Texas in a patent litigation in Nevada involving the ownership of the patent to the Bar Code Reader. William Magrath of Reno was also co-counsel in the case. We represented United States Metals which employed in the early 1950s the alleged patent holder. He had executed a fully enforceable assignment agreement with our client. He was notorious for claiming patent infringement, having made a fortune in litigating his claims. Although the matter was ultimately dismissed in State Court in Nevada on a laches argument, it was one of the most enjoyable and instructive collaborations of my professional career.

2. In representing Wheaton Industries, then one of New Jersey's largest private employers, I established principle that State regulatory officials must be properly trained before enforcing State Environmental Regulations. The State Court Judge, while correctly deciding in our favor, was courageous in his ultimate decision. This occurred early in my career and was important in reinforcing my instinctive belief in an independent judiciary.

3. As Law Secretary to Judge Robert Matthews, who sat in a particularly busy trial court across the Hudson River from New York City, I gained enormous experience in a variety of litigated matters, including one in which the Judge ruled in favor of a case brought by Gloria Steinem challenging the prohibition of women standing at a bar in Bayonne taverns.

4. I represented Chanel in Federal Court. The issue was New Jersey's franchise protection statute. After removing the case to Federal Court, itself a significant victory, the matter was ultimately resolved by mediation.

5. I represented the Township of Gloucester in a landfill dispute, litigated for nearly a decade and involving dozens of appearances before a Magistrate Judge who now

serves as the Chief Judge of the Federal Court in New Jersey. While many of his decisions in this matter were published, his preparation, moderation, and patience were necessary in reaching an extremely complicated settlement.

6. Before the untimely death of my client, a self-made, highly successful businessman, I was prepared to try this case of David (my client) against Goliath before a federal judge in New Jersey. Her thoughtful and imaginative rulings resulted in a highly favorable settlement in late 2011.

9. **Lobbying Activities:** List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s).

   (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

   None.

10. **Teaching**: What, if any, courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide copies to the committee.

    Since 2008 I have taught the first military law course offered by Seton Hall University School of Law. It is a broad course in military justice, veteran's benefits, and other statutory and constitutional considerations applicable to the armed forces. In 2008, I had 9 students. In 2012, I will have approximately 38 students. Each year the enrollment has increased. A copy of the current syllabus, substantially consistent with previous years, is supplied.

11. **Outside Commitments During Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

    No.

12. **Principal Office of the U.S. Court of Appeals:** By statute, the principal office of the U.S. Court of Appeals for Veterans Claims is in the Washington, D.C., metropolitan area. If confirmed, would you maintain your permanent residence within commuting distance of the Court while in active service?

    Yes.

13. **Charitable or Volunteer Work:** Please describe any charitable or volunteer work, including pro bono work, you have performed, particularly any work involving military personnel, veterans, or their families.

During the past 5 years from approximately June 2007 through the present, I have devoted hundreds of hours in direct support of military personnel and veterans in their struggles with the military and veterans benefits systems. I created the New Jersey State Bar Association Military Legal Assistance Program, described in detail in the June 2007 edition of New Jersey Lawyer Magazine. During those past 5 years I have represented personally at medical evaluation/physical evaluation boards at Walter Reed, individual members of the Reserve Components, wounded in combat or otherwise injured as a result of deployment to Iraq or Afghanistan. I have personally directed the program at our law firm, and with the help of my partners and associates, we have represented nearly 100 individuals, and resolved each of their cases, either by hearing or by settlement.

During my two years (2009-2011) as Chairman of the Reserve Forces Policy Board in the Office of the Secretary of Defense, I had as my primary personal goal, an effort to change the way in which the health of the command was addressed. At each formal meeting, and in each of the two annual reports for which I was primarily responsible, I urged radical changes in the way wounded/injured soldiers were treated.

I have spoken often, received many awards for my efforts, and believe that there is much left to be done. In these last few years of my professional career, I have come to consider myself, more than any other attribute, a soldier's lawyer.

I am happy to say that throughout my professional career I have had early and sustained financial success and together with my wife and children have supported many charitable institutions. We have established endowed scholarships and prizes at Johns Hopkins and Brown University, at The Lawrenceville School, and Memorial Sloan Kettering Cancer Center. I served both as a Commissioner and a benefactor of the New Jersey World War II Memorial Commission, dedicated in Trenton in the fall of 2008. We regularly contribute approximately 10 to 20% of our annual earned income to such causes as the Archdioceses of Newark, New York, and Washington for the benefit of wounded soldiers, to the American Jewish Committee, the United Jewish Appeal and the Jewish Community Centers, as well as local charities.

I served as a Board Member for several years, and contributed substantial resources to the Thanks to Scandinavia Charitable Trust, which gives scholarships to Scandinavian students in recognition of the saving of Jewish people during World War II. I have been a member since 1973 and now serve as Chairman of the Mary Sachs Charitable Trust, established by my great Aunt, at her death in 1960, for the benefit of charitable and educational causes in Central Pennsylvania and elsewhere.

In addition to serving in various public or civic minded activities in our home town, we are also regular and substantial supporters of the Institute for Advanced Study in Princeton and the Princeton University Library and Art Museum.

[Letter from Judicial Conference of the United States:]

JUDICIAL CONFERENCE OF THE UNITED STATES
COMMITTEE ON FINANCIAL DISCLOSURE

Judge Joseph H. McKinley, Jr., Chair

Judge Roger T. Benitez
Judge J. Daniel Breen
Judge Virginia M. Hernandez Covington
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Judge Laurie Smith Camp
Judge Anthony John Trenga

One Columbus Circle, N.E.
Washington, D.C. 20544
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Facsimile: (202) 502-1899

December 5, 2012

The Honorable Patricia L. Murray
Chairman
The United States Senate
Committee on Veterans' Affairs
448 Russell Senate Office Building
Washington, D.C. 20510

Re: Nomination Financial Disclosure Report of William S. Greenberg

Dear Chairman Murray:

The attached nomination financial disclosure report filed with the Judicial Conference of the United States Committee on Financial Disclosure by William S. Greenberg has been reviewed and, based upon the information contained therein, found to be in compliance with applicable laws and regulations.

Sincerely,

Joseph H. McKinley, Jr.
Chair

Chairman MURRAY. Thank you very much, Mr. Greenberg.

Mr. Kelly, we welcome your testimony.

TESTIMONY OF KEITH C. KELLY, NOMINEE TO BE ASSISTANT SECRETARY OF THE VETERANS' EMPLOYMENT AND TRAINING SERVICE, U.S. DEPARTMENT OF LABOR

Mr. KELLY. Thank you, and good morning, Chairwoman Murray, Ranking Member Burr, and distinguished Members of the Committee. Thank you for the opportunity to testify before you today and for considering my nomination to serve as the Assistant Secretary for Veterans' Employment and Training. Your commitment to our Nation's veterans and the transitioning servicemembers and their families is truly inspiring.

I would also like to personally thank Senator Jon Tester here for his gracious introduction and for his unwavering support and friendship over the many years. As many of you may know, Sen-

ator Tester is committed to serving veterans and their families in Montana and the Nation and he is an outstanding advocate for our State, and for that, I thank you, Senator Tester.

I am humbled and honored by President Obama's nomination and the confidence of both he and Secretary Solis have shown in me.

During the past few days, I have been privileged to meet with many of you and your staff and have received invaluable guidance and insights into the Committee's priorities and concerns. If confirmed, I look forward to continuing this dialog and working with you.

While they could not be here today, I would also like to thank my family for their love and support. We have a long history of service in our family. My wife, Norma Jean, was serving our country at the homefront (at home) by taking care of my young family while I fought in Vietnam. I am grateful to her and all of the other military families who also serve our country. Her father, Joe Walsh, served in the U.S. Merchant Marines during World War II.

I would also like to thank my children, Keith, Shannon, Conan, and Kevin, who is no longer with us. My oldest son, Keith Joseph, has made a career as a servicemember with the Montana National Guard and has already served in Iraq.

I would also like to acknowledge and thank Governor Brian Schweitzer for his service to the great State of Montana and to his support for me as Commissioner at the Montana Department of Labor and Industry. They have all played a part and a role in my being here today.

During the Vietnam War, I served in the 101st Airborne Division as a sergeant in charge of an infantry squad and later full-sized platoon. We operated in the field with daily reconnaissance sweeps and nightly ambushes. It was through these activities that I honed my leadership skills and earned the Combat Infantryman Badge and the Bronze Star.

When I returned home from service with the Army, my family and I, like most military families, faced the challenge of my transition from a military combat life to my role as a father and husband and part of an American workforce. At that time, there was very little transition support, and as a result, the experience was unnecessarily difficult. Today, thanks to the dedication of the people in this room and the dedication of so many who care about our servicemembers and their families, significantly more transition resources and support are now available.

However, we can and we must do more. If confirmed, I pledge to do my level best to ensure that the men and women who serve our country have the best services and benefits our Nation has to offer.

After I returned home from Vietnam and graduated with a Master's degree in agriculture economics and economics, I began my 35-year career dedicated to public service. I believe in bipartisanship. I have worked for and with Republicans and Democrats throughout my career and in State and Federal Governments. I have faced difficult issues, and, if confirmed, my experiences to overcome those challenges will improve my work at VETS.

It is in my current position as Commissioner of the Montana Department of Labor and Industry I have become more engaged with

labor and veterans' programs and have worked on many of these programs administered by the VETS. So my vision for every day is we are reminded with the tremendous sacrifices made by the members of the U.S. Armed Services, the National Guard and Reserve. Yet all too often, those who have given so much for America kind of face a difficult transition back to civilian life.

If confirmed, I would strive to achieve the following goals. Number 1, improve our reach to servicemembers, veterans, and their families and other stakeholders.

Number 2, sustain and bolster intensive employment service for those with significant barriers to employment.

Three, fully implement and continuously improve the redesigned Transition Assistance Program.

Four, continue to partner with other Federal agencies implementing the redesigned Employer Workshop.

And last, five, increase and enhance VETS' ability to measure and report on the impact of our programs.

In conclusion, if confirmed, I will work closely with you, with the incredible VETS team, and with our partners and stakeholders to provide veterans and soon-to-be veterans and their families with the best possible resources there are.

Thank you again for considering my nomination. It will be a privilege and honor to serve those who have served our Nation. I appreciate having this opportunity to testify before you today and am happy to answer any questions you may have. Thank you.

[The prepared statement of Mr. Kelly follows:]

PREPARED STATEMENT OF KEITH KELLY, NOMINEE TO BE THE ASSISTANT SECRETARY FOR VETERANS' EMPLOYMENT AND TRAINING SERVICE, U.S. DEPARTMENT OF LABOR

Good Morning Chairwoman Murray, Ranking Member Burr and distinguished Members of the Committee. Thank you for the opportunity to testify before you today and for considering my nomination to serve as the Assistant Secretary for Veterans' Employment and Training. Your commitment to our Nation's veterans, transitioning servicemembers and their families is inspiring.

I would also like to thank Senator Tester for his gracious introduction and for his unwavering support and friendship over the years. As many of you know, Senator Tester is committed to serving veterans and their families in Montana and the Nation. He has been an outstanding advocate for our state. Thank you, Senator.

I am humbled and honored by President Barack Obama's nomination and the confidence both he and Secretary Hilda Solis have shown in me. President Obama and Secretary Solis are committed to ensuring that the men and women who serve this country have the employment support, assistance and opportunities they need and deserve to successfully transition to the civilian workforce, and find and secure meaningful careers. If confirmed, it will be my honor and privilege to work with this Committee to achieve that goal.

During the past few days, I have been privileged to meet with many of you and your staff and have received invaluable guidance and insight into the Committee's priorities and concerns. If confirmed, I look forward to continuing this dialog on an ongoing basis.

While they could not be here today, I would like to thank my family for their love and support. We have a long history of service in our family. My wife, Norma Jean, has been the backbone of our family. She cared for our family while I served with the 101st Airborne Division in Vietnam. I am grateful to her and all of the other military families that serve our country. Her father, Joe Walsh, served in the U.S. Merchant Marines during World War II. I would like to thank my children, Keith, Shannon, and Conan and Kevin (deceased). My oldest, Keith Joseph, has made a career as a servicemember with the Montana National Guard and has served in Iraq. I would also like to acknowledge and thank Governor Brian Schweitzer for his service to the great state of Montana and his support of me as Commissioner of the Montana Department of Labor and Industry. They have all played a major role in my being here today.

MILITARY SERVICE

During the Vietnam War, I served with the 101st Airborne Division as the Sergeant in charge of an infantry squad and later a platoon. We operated in the field with daily reconnaissance sweeps and nightly ambushes. We conducted combat assaults both in the jungle and on fire-support bases. It was through these activities that I honed my leadership abilities and earned my Combat Infantryman Badge and Bronze Star.

When I returned home from my service with the Army, my family and I, like most military families, faced the challenge of my transition from a military combat life to my role as father, husband, and part of the American workforce. This period was the most difficult time in our young marriage, for our family and for my professional career. At that time, there was very little support or assistance for transitioning servicemembers or their families. As a result, the transition was unnecessarily difficult and we had to navigate these challenges largely by ourselves.

Today, thanks to the dedication of the people in this room and many others in Congress and throughout the Federal Government, significantly more resources are available to support service men and women with this transition. However, we can and must do more. President Obama and Secretary Solis are committed to serving our servicemen and their families as well as they've served us by providing them with the support they need and deserve to successfully transition to the civilian workforce and find and secure meaningful careers. If confirmed, I pledge to do my best to ensure that the 1.5 million servicemembers expected to transition out of the military over the next five years, are not alone. I will work every day to fulfill the promises of the President and the Secretary to provide them with the best services and benefits our Nation has to offer.

PUBLIC SERVICE

After returning home from Vietnam, I used my GI benefits to attend Montana State University and graduated with masters' degrees in Agricultural Economics and Economics. I then returned to public service and have dedicated the past thirty-five years of my professional career to this endeavor. I believe in bipartisanship and have worked for and with Republicans and Democrats throughout my career. I served as the Director of the Montana Department of Agriculture for six years under a democratic Governor and spent seven years as the Director of the Arizona Department of Agriculture under a republican Governor. Then, as now, state and Federal Governments faced difficult issues and, if confirmed, my experiences overcoming those obstacles will inform my work at VETS. For instance, in 1994 we faced significant revenue shortfalls. My agency experienced a 20% reduction in our budget. However, I succeeded in making difficult decisions and meeting the reduction goals and was singled out by the State Department of Administration for my excellent management abilities.

It is in my current position as Commissioner of the Montana Department of Labor and Industry, that I have become more engaged with labor and veterans' programs. As chair of the Veterans' Affairs Committee of NASWA (National Association of Workforce Agencies) from 2008–2010, I interacted with and worked on many of the programs administered by VETS. During my tenure, the Committee evaluated these programs and submitted recommendations to the NASWA Board to improve the employment and training services for America's Veterans.

VISION FOR VETS

Every day, we are reminded of the tremendous sacrifices made by the members of the U.S. Armed Services, National Guard and Reserve. They leave their friends, families and careers behind to defend our freedoms around the world. These brave men and women deserve a hero's welcome and a chance to utilize their unique skills to help rebuild our economy when they return home. Yet, all too often, those who have given so much for America face a difficult transition back to civilian life and struggle to find a job worthy of their talents. President Obama and Secretary Solis have made a commitment to provide the men and women who serve this country and their families with the employment support, assistance and opportunities they need and deserve to find and secure meaningful careers. If confirmed, I would work with this Committee, Congress, my fellow agencies at the Department of Labor and within the Administration as a whole to fulfill this commitment.

In particular, I would strive to achieve the following goals:

(1) Improve outreach to servicemembers, veterans and stakeholders to ensure they are aware of and have access to the programs and services available to help them achieve their employment and career goals;

(2) Sustain and bolster intensive employment services to those with significant barriers to employment;

(3) Fully implement and continuously improve the redesigned DOL Transition Assistance Program (TAP), continue to partner with the Departments of Veterans Affairs, Defense, Homeland Security and others to by implementing the redesigned DOL Employment Workshop as part of comprehensive effort to seamlessly transition servicemembers, Guard and Reserve members and their families from active duty to civilian life; and

(4) Increase and enhance VETS ability to measure and report on the impact of our programs by improving data collection and reporting.

In conclusion, if confirmed, I will work closely with you, with the incredible VETS team and with our partners and stakeholders to provide veterans, transitioning servicemembers and their families with the best possible resources and services to enable their success in today's economy. Thank you for your unwavering commitment to veterans and for considering my nomination. It would be a privilege and an honor to serve our Nation's veterans, transitioning servicemembers and their families.

I appreciate having the opportunity to testify before you today and am happy to answer any questions you may have.

RESPONSE TO PREHEARING QUESTIONS SUBMITTED BY HON. PATTY MURRAY TO KEITH C. KELLY TO BE ASSISTANT SECRETARY FOR VETERANS' EMPLOYMENT AND TRAINING, U.S. DEPARTMENT OF LABOR

Question 1. Have you and Secretary Solis discussed the duties and the role you would assume as Assistant Secretary for Veterans' Employment and Training if you are confirmed? If so, what specific areas of the job were discussed?

Response. Yes. In our conversations, she has made it abundantly clear that veterans and VETS are a high priority for her. Specifically, we discussed:

- enhancing coordination within the Department on those programs that support the training and hiring of veterans;
- improving coordination with other Federal agencies that have programs to support veterans, including but not limited to the Department of Veterans' Affairs and the Department of Defense;
- developing programs that can more successfully reach homeless veterans;
- increasing outreach young veterans through via various social media; and
- including all immediate family members in the transition process for the transitioning servicemember.

Question 2. Have you and Secretary Shinseki discussed the relationship you would have with the Department of Veterans Affairs (VA) in your capacity as an Assistant Secretary within the Department of Labor (DOL)?

Response. I have not yet had the opportunity to meet with Secretary Shinseki, but it will be one of my top priorities if I am confirmed.

Question 3. What policymaking role do you anticipate having if you are confirmed?

Response. If confirmed, my role will be to support the Secretary's policymaking responsibilities by serving as her principal advisor and partner on issues relating to Veterans' employment and training.

Question 4. If confirmed, what would you most like to accomplish in your new position? What would you hope your legacy to the Department would be?

Response. My goal is to ensure that the transition for the military personnel to civilian life is less burdensome and more rewarding for veterans and their families. In particular, I would strive to achieve the following goals:

- Improve outreach to servicemembers, veterans and their families to ensure they are aware of and have access to the programs and services available to help them achieve their employment and career goals;
- Focus on providing intensive employment services to those with significant barriers to employment;
- Improve the Transition Assistance Program (TAP), in collaboration with the Departments of Veterans Affairs, Defense, Homeland Security and others to by implementing the redesigned DOL Employment Workshop as part of comprehensive effort to seamlessly transition Servicemembers, Guard and Reserve members and their families from active duty to civilian life; and
- Increase and enhance VETS ability to measure and report on the impact of our programs by improving data collection and reporting.

Question 5. How would you describe your management style and how is it suited to this particular position?

Response. Throughout my career, I have always worked to communicate the agency's goals in the broader sense and empower staff to implement the policies and programs within a defined timeframe. I work to develop working relationships built on trust and mutual respect. I am viewed as a 'bottom up' administrator that seeks and receives a variety of input from staff and stakeholders and ultimately make a decision that has been thoroughly vetted and has 'buy in' from all interested parties.

Question 6. What in your experience do you believe contributes to your qualifications for this new position?

Response. As a veteran myself, I have experienced firsthand the challenges of returning from a combat environment and transitioning into a civilian environment. I have a career in public that spans three decades and includes leading, under both republican and democratic Governors, three state agencies in two states. These agencies have ranged in scope, both in terms of size and budget, as well as in mission. As head of the Farm Service Agency at the U.S. Department of Agriculture, I led an agency of 13,000 full-time employees with a budget of $1.1 billion and today as Commissioner of the Montana Department of Labor I oversee an agency with a budget of nearly $60 million and 750 full-time employees.

Question 7. I believe much can be done to improve the coordination and cooperation between VA and DOL? What thoughts do you have as to how this might be achieved?

Response. I would agree completely. I look forward to partnering with you, other Members of Congress, and staff at the VA to maximize our ability to serve veterans.

Question 8. Are there any specific problems or challenges that you have already identified that you would like to tackle in this new position?

Response. Since the intent to nominate, my involvement with DOL has been minimal. Consequently, my first priority will be to learn more about the agency, observe operations in the field, assess the current impact of its programs, and solicit input from VETS' team members, veterans and stakeholder groups.

Question 9. How do you believe special hiring authorities—for example, veterans' preference, might be promoted to increase the employment of veterans across all Federal agencies?

Response. VETS' responsibilities in this area complement OPM's responsibility of developing and managing human capital for the Federal Government. VETS should continue to work in partnership with OPM to increase awareness, understanding and support of these authorities within all Federal agencies, with particular outreach to human resources and management decisionmakers. VETS should also enhance the synchronization of our efforts with stakeholders such as the VSOs, state workforce agencies, VA's Vocational Rehabilitation and Employment Service, and other government entities at the Federal and state levels.

Question 10. How do you plan to use your role to enhance employment opportunities for homeless veterans?

Response. If confirmed, I am committed to supporting President Barack Obama's promise to combat homelessness among our Nation's veterans by expanding proven programs and launching innovative services.

Effectively addressing Veterans' homelessness will require working in partnership with VA, HUD, HHS and other Federal agencies. While employment is a key component of freedom from homelessness, the problem needs to be addressed in a holistic, interagency manner with other important stakeholders—government and nongovernmental—at the national, state and local level, such as community-based organizations and neighborhood partnerships.

Question 11. Too often, servicemembers leave the military unaware of the benefits and services they have earned. It is important to ensure transitioning veterans are aware of the resources available to them. What role should VETS have in this process?

Response. If confirmed, I have identified several goals that I would like to accomplish in my capacity as Assistant Secretary for VETS. The first of those goals is to improve outreach to servicemembers, veterans and their families to ensure they are aware of and have access to the programs and services available to help them achieve their employment and career goals. I will exhaust all means to ensure that transitioning services are educated on the many opportunities, programs, and resources available to them.

Question 12. The unemployment rate among young post-9/11 era veterans has been consistently higher than their civilian counterparts. If confirmed, you will oversee several programs that serve this population. What improvements should be made to such programs to better assist these individuals?

Response. If confirmed, I will ensure that VETS is doing all it can to increase outreach young veterans. I will engage a variety of stakeholders to determine the most effective way to reach this population and provide them with tools that allow them to reintegrate into the workplace.

Question 13. The way in which job-seekers search for employment opportunities has changed. Many individuals search online job banks for possible employment. What emphasis will you place on assisting veterans in finding employment by using online tools?

Response. Particularly for those younger veterans, if confirmed, I would place a high emphasis on the technology they are comfortable with and utilize regularly. Sites such as Facebook and LinkedIn offer many opportunities for veterans to navigate the business world and job opportunities that are available. The challenge has always been and will continue to be ensuring the process is intuitive and user friendly.

Question 14. Do you agree to appear before the Committee at such times and concerning such matters as the Committee might request for so long as you serve in the position for which you now seek confirmation?

Response. Yes. I look forward to working collaboratively with Congress.

RESPONSE TO PREHEARING QUESTIONS SUBMITTED BY HON. RICHARD BURR TO KEITH C. KELLY TO BE ASSISTANT SECRETARY FOR VETERANS' EMPLOYMENT AND TRAINING, U.S. DEPARTMENT OF LABOR

Question 1. The completed questionnaire you submitted to the Senate Committee on Veterans' Affairs reflects that you were president of Kelly & Associates from 2001 to 2002.

A. Please identify the jurisdiction(s) where this entity was licensed to do business and the current status of this entity. If it is no longer in existence, please explain how and when it was dissolved.

Response. Kelly & Associates was registered in the Commonwealth of Virginia. The business was closed in 2002 when I moved back to Montana to accept a position with the State of Montana.

B. What was the nature of that business entity?

Response. Government Relations

C. Please explain the general nature of the customers/clients served by that business.

Response. Kelly & Associates' primary client was an economic analysis firm that specialized in risk management including assessing probabilities for weather related crop losses in order to build sustainable actuarial tables for crop insurance.

Question 2. Question 19(d) of the Committee's questionnaire requests information on any activities you have engaged in during the last 10 years for the purpose of passing, defeating, or modifying any legislation or impacting the administration of laws or public policy. In response, you indicated: "NONE; NASWA does lobby on behalf of State Workforce Agencies."

A. Would you please clarify whether, as a member or officer of the National Association of State Workforce Agencies (NASWA), you personally engaged in any activities for the purpose of passing, defeating, or modifying any legislation or modifying the administration of laws or public policy? If so, please provide a description of those activities, including the legislation, laws, or policies you were seeking to change.

Response. As a member of NASWA, I accompanied staff of NASWA to meetings with Members of Congress and/or their staff to discuss issues important to the publicly-funded workforce system, including unemployment insurance, reauthorization of the Workforce Innovation Act, and annual appropriations.

B. Would you please clarify whether, as a state employee, you personally engaged in any activities for the purpose of modifying any legislation or laws? If so, please provide a description of those activities, including the legislation or laws you were seeking to change.

Response. As Commissioner of the Montana Department of Labor &Industry, I testified on behalf of the Schweitzer Administration on both budgetary issues and policy considerations. During that time, there were successful efforts to pass comprehensive Workers Compensation reform; legislation to increase and index the minimum wage; and legislation that would allow Montana to operate as a single State Workforce Investment Board. Additionally, the Montana Department of Labor & Industry provided data and responded to questionnaires for NASWA which were

used to develop recommendations for implementation of various policies impacting the workforce system and unemployment programs.

C. Question 16(b) of the Committee's questionnaire requests information about any reports, memoranda, or policy statements you may have helped to prepare on behalf of any organization. In response, you indicated: "N/A." Would you please clarify whether, as a member or officer of the National Association of State Workforce Agencies, you contributed to any reports or policy statements for that organization? If so, please provide a copy of any such materials.

Response. As stated in my response to Question 2(B), while serving as Commissioner, the Montana Department of Labor & Industry provided data and responded to questionnaires for NASWA which were used to develop recommendations for implementation of various policies impacting the workforce system and unemployment programs,. All policy and budget recommendations were first recommended by the Executive Committee and then voted on by the full board, which included the heads of all 50 state agencies. Any documents or reports released by the organization were drafted by NASWA staff.

D. According to information from NASWA, you previously served as the chair of the NASWA Veterans' Affairs Committee. Would you please describe your responsibilities and activities in that role?

Response. The role of NASWA's Veterans' Affairs Committee is to advise State Administrators on issues related to workforce programs for veterans, primarily the Disabled Veterans Outreach Program and the Local Veterans Employment Representative program. The Committee provides a forum for state veteran program leaders to discuss issues regarding legislation, policy, and procedures for these programs. As Chair, in co-ordination with NASWA staff, I led two annual meetings with 15–20 staff to discuss policies and budgets for successful implementation of these programs.

Question 3. The Veterans' Employment and Training Service (VETS) oversees a range of programs and complicated laws. For fiscal year 2013, the President has requested $258 million for VETS, including over $220 million for various grants and approximately $38 million for a nationwide staff of 218 Federal workers.

A. What do you see as the key functions performed by VETS?

Response. I am committed to serving our military families as well as they've served us by providing them with the support they need and deserve to successfully transition to the civilian workforce and find and secure meaningful careers. VETS plays a critical role by serving America's veterans and separating servicemembers by preparing them for meaningful careers, providing employment resources and expertise, and protecting their employment rights.

B. What do you see as the key responsibilities of the Assistant Secretary for Veterans' Employment and Training?

Response. If confirmed, I will consider my responsibilities to be the following: leading the organization in an ethical and inclusive manner; building upon the vision of President Obama and Secretary Solis to restore our Nation's sacred trust with Veterans and providing them and transitional servicemembers with better services; advising the Secretary on relevant policy matters; and reporting to the Secretary, Members of Congress, and stakeholders on the results of VETS' efforts.

C. How has your background prepared you to take on these responsibilities, and what prior experiences do you believe qualify you to manage a budget of this size?

Response. As a veteran myself, I have experienced firsthand the challenges of returning from a combat environment and transitioning into a civilian environment. I have a career in public that spans three decades and includes leading, under both republican and democratic Governors, three state agencies in two states. These agencies have ranged in scope, both in terms of size and budget, as well as in mission. As head of the Farm Service Agency at the U.S. Department of Agriculture, I led an agency of 13,000 full-time employees with a budget of $1.1 billion and today as Commissioner of the Montana Department of Labor I oversee an agency with a budget of nearly $60 million and 750 full-time employees.

D. How would you measure your success in fulfilling those responsibilities?

Response. I believe that I have left each agency stronger, more efficient, and fiscally sound than when I arrived.

E. What steps would you take to ensure that all of those funds are well spent?

Response. I take my responsibility as a steward of American tax payer resources very seriously, and if confirmed will strive to utilize the resources allocated to VETS as efficiently and effectively as possible to accomplish the agency's mission.

Question 4. A 2011 Department of Labor Office of Inspector General (IG) report on VETS found inappropriate procurement practices within VETS headquarters.

The report also included other allegations that called into question the agency's workplace culture. This IG report led to the resignation of Assistant Secretary Ray Jefferson. What steps will you take to ensure that the problems identified by the IG will not reoccur if you are confirmed as the Assistant Secretary?

Response. I have always maintained the highest ethical and professional standards for myself and my staff. I know the Department of Labor has taken additional steps in the wake of Mr. Jefferson's resignation to ensure that all agency heads and staff at the Department understand their responsibilities and obligations under Federal procurement rules and ethics procedures. I will abide by and adhere to those requirements and will demand the same of my staff.

Question 5. According to a recent Government Accountability Office (GAO) study, there are 23 Federal employment and training programs in which veterans can participate. Of those, six are specifically targeted at veterans and administered by the Department of Labor (DOL). Veterans can also participate in programs under the Workforce Investment Act, administered by DOL, and receive preference.

A. What is your current assessment of Federal employment and training programs and how they specifically affect veterans?

Response. While some employment and training programs may have overlapping eligibility, they often have unique goals and outcomes and serve specific subpopulations, for instance the Homeless Veterans Reintegration Program. It seems to me that veterans and their families benefit from the variety of services and programs available to help them obtain and retain good jobs and become self-sufficient. I also believe that veterans benefit from the integration of the veteran specific programs into the rest of the workforce investment system where they receive priority of service. This allows veterans to benefit from the diverse array of training and employment programs funded by DOL.

B. Are veterans currently searching for a job best served with a system that includes many overlapping programs or do you believe that there need to be changes made to consolidate services?

Response. I have not yet had the opportunity to learn about all of the current programs and services in place to determine if there are any changes that may be necessary to ensure veterans are receiving the best services possible. However, if confirmed, I look forward to hearing input both from Congress and stakeholders on how to improve the provision of services to veterans.

C. Do you have any initial recommendations on how to improve the delivery of services to ensure that veterans are receiving the most wide ranging and beneficial services available?

Response. I have not yet had the opportunity to learn about all of the current programs and services in place, to determine whether improvements could be made on the delivery of services.. However, if confirmed, I look forward to hearing input both from Congress and stakeholders on how to improve the provision of services to veterans.

Question 6. VETS administers programs, including the Jobs for Veterans State Grants Program, which provides funding for the Disabled Veterans' Outreach Program (DVOP) and Local Veterans' Employment Representative (LVER) program.

A. What is your initial assessment of this program?

Response. VETS offers employment and training services to eligible Veterans primarily through Jobs for Veterans State Grants Program (JVSG). JVSG provides funding to the states to hire, train and support Veteran employment staff (LVERS and DVOPs). These staff specialist are located in a number of service delivery points, most notably the American Job Centers that are delivery point for a wide set of employment and training services funded by the Workforce Investment Act and the Wagner-Peyser Act. While, I have not been fully briefed on the JVSG program, I can say from my own experience that Veterans and eligible spouses benefit by the collaboration and coordination of these services and by maximizing the employment and training opportunities developed though relationships with State Workforce Agencies.

B. One concern Congress has voiced regarding this program is the lack of quality performance measures to determine each state's usage of the grant funding. What do you believe is the best way to evaluate the effectiveness of grant dollars distributed by this program?

Response. Like you, I believe in the implementing quality performance metrics to strengthen and manage programs on an ongoing basis. Moreover, I take very seriously the responsibility of stewardship of taxpayer dollars and if confirmed would work to ensure VETS is regularly monitoring the states' use of Federal dollars.

C. Do you have any preliminary thoughts on how this program could be improved to better assist veterans with finding jobs?

Response. Before making specific recommendations, if confirmed I would like the opportunity to first initiate a review of states to assess which programs execute successful program implementation and which are facing challenges. That review would allow the agency to identify best practices and pinpoint obstacles that may impede system-wide implementation.

Question 7. VETS administers and helps to enforce the Uniformed Services Employment and Reemployment Rights Act (USERRA), which provides reemployment rights and employment discrimination protections for veterans and members of the Guard and Reserves.

A. Do you foresee the possibility for a surge of USERRA claims as the troop levels in Afghanistan are drawn down and more Guard and Reserve members return home? If so, what steps would you take to help ensure that any claims from these returning servicemembers are handled expeditiously?

Response. Yes, I believe that there will likely be an increase in USERRA claims as increasing numbers of our men and women transition out of active duty service and return to the civilian workforce. I am committed, if confirmed, to the President's promise of fighting employment discrimination against veterans and returning servicemembers. USERRA compliance and support will be a top priority. If confirmed, I will work to ensure that VETS closes each case within the statutory timeframe, or when necessary obtains extensions to continue its investigative efforts. One step that I would take is to focus on education and outreach. In my experience, most employers seek to comply with the law and support our Nation's service men and women. Disputes arising under the law are often the result of misunderstandings about respective rights and responsibilities, and one of VETS most important functions is to avoid those disputes before they become formal investigations. Thus, if confirmed, I will focus on ensuring VETS is continuing to reach out and educate the public as well as providing assistance directly to questions and inquiries.

B. How important is it for VETS to cooperate and coordinate with other entities that help enforce USERRA (such as the Office of Special Counsel and the Employer Support of the Guard and Reserve) and what steps would you take to facilitate any necessary coordination and collaboration?

Response. Collaboration and coordination are critical to effectively administering and enforcing USERRA. As you know, DOL shares responsibility for educating, administering and enforcing USERRA with numerous other agencies including the U.S. Office of Special Counsel, the Government Accountability Office, the Office of Personnel Management, the Departments of Justice and Defense. I believe that the best way to protect the rights of our service men and women, Guard and Reserve is to work collaboratively with all entities involved. If confirmed, I will review current processes and the extent of collaboration to ensure that VETS is fully engaging with our fellow agencies and fulfilling any and all MOUs.

C. What role should the Office of Special Counsel play in handling USERRA claims? For example, should the Office of Special Counsel be allowed to handle all USERRA claims against Federal agencies?

Response. It would be premature for me to make a judgment in that regard until I have an opportunity to fully understand the role that the Office of Special Counsel currently plays in the handling of USERRA claims.

Question 8. During the first half of 2013, VETS will be finalizing its redesign of the Transition Assistance Program (TAP), the first such redesign in nearly 20 years. The new TAP will be deployed around the world to assist servicemembers prior to leaving the military.

A. Have you had an opportunity to review the new TAP curriculum? And if so, do you have any thoughts or concerns about the redesign?

Response. No, at this time I have not reviewed the curriculum.

B. Given that performance data on the newly redesigned TAP will not be available initially, how will you, if confirmed, determine the effectiveness of TAP in 2013?

Response. It is my understanding that the Department recently finished piloting the new curriculum and has already begun to phase in the new DOL Workshop at bases across the country and the initial feedback has been very positive. If confirmed, I would want to work with stakeholders and others to collect feedback from participants and develop an initial process for review to ensure continuous improvement and refinement in the program.

C. TAP is a collaboration between the Department of Defense, DOL, and the Department of Veterans Affairs. If confirmed, how will you ensure that the three agencies work together to provide separating servicemembers with the tools they need?

Response. I am committed, if confirmed, to working hand in hand with our fellow agencies to ensure veterans are aware of and receive the services they need to successfully and seamlessly transition to civilian employment. If confirmed, I would also continue to work with DOD, VA and DHS to ensure that the Employment Workshop is cleanly integrated into the overall Transition program so that all components complement and build upon the others.

[The Committee questionnaire for Presidential nominees follows:]

QUESTIONNAIRE FOR PRESIDENTIAL NOMINEES

PART 1: ALL OF THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

1. **Name** (Including any former names used).

   Keith Claire Kelly

2. **Address** (List current residence, office and mailing addresses).

   7683 Highway 12 West, Helena, Montana, 59601

3. **Position to which nominated**

   Assistant Secretary of Labor for Veterans Employment and Training/ USDOL

4. **Date of nomination.**

   19Sep2012

5. **Date of birth** (Month, day, year).

   November 28, 1945

6. **Place of birth** (City, state, country).

   Billings, Montana, U.S.A.

7. **Marital status**

   Married

8. **Full name of spouse** (including maiden name).

   Norma Jean (Walsh) Kelly

9. **Names and ages of children**

   Keith J. Kelly(43); Shannon Claire Kelly(41); Conan John Kelly(37); Kevin Michael Kelly(deceased)

10. **Education** (List all post-secondary institutions of higher learning, dates attended, degree(s) received, and date degree(s) granted).

    Augustana College, Sioux Falls, S.D. 1963-64

    Montana State University, Bozeman, Mt. 1965-68, B.S. Agri. Business, June 1968

Montana State University, Bozeman, Mt. 1970-73, M.S. Agriculture Economics and Economics

11. **Honors and Awards** (List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognition for outstanding service or achievement).

U.S. Army1968-70; Combat Infantry Badge (CIB); Bronze Star 1970

National Association of Workforce Agencies (NASWA) Eagle Leadership Award, 2008

12. **Memberships** (List all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable, and other organizations for the last ten years. Include the dates of any such memberships of offices).

Ancient Order of Hibernians: Member 2007-Present

Montana 4-H Foundation: Director 2005-2011

National Assoc. of Workforce Agencies (NASWA) 2004-Present; Secretary 2010

13. **Employment record** (List all employment (except military service) since your twenty-first birthday, including the title, description of job, name of employer, location of work, and inclusive dates of employment).

List below all positions held since the nominee turned 21 years of age, including the title or description of job, name of employer, location of work, and dates of inclusive employment.	
Salesman/Ossello's Furniture, Butte, MT.	07/1968-10/1968
Infantry Soldier/U.S. Army; Republic of Viet Nam	11/1968-09/1970
Graduate Student/Montana State University; Bozeman, MT	09/1970-06/1973
Mktg. Specialist/Montana Wheat Commission; Gt. Falls, MT	07/1973-06/1974
Asst. Director/Western Wheat Associates, Washington, D.C.	07/1974-08/1976
Admin Asst./ MT Office of the Governor; Helena, MT	09/1976-12/1980
Deputy Director/MT Dept. of Agriculture; Helena, MT	01/1981-12/1982
Director/ MT Dept. of Agriculture; Helena, MT	01/1983-12/1988
Ex. Director/Helena Capitol Centennial Comm.; Helena, MT	01/1989-02/1990

Dep. Secretary of State/State Capitol; Helena, MT	03/1990-06/1990
Director/Arizona Dept. of Agriculture, Phoenix, AZ	07/1990-05/1997
Administrator/Farm Service Agency/USDA; Washington, D.C.	06/1997-01/2001
President/ Kelly & Associates; Alexandria, VA	02/2001-07/2002
Administrator/MT Dept. of Labor & Industry; Helena, MT	08/2002-12-2004
Commissioner/MT Dept. of Labor & Industry; Helena, MT	01/2005-present

14. **Military service** (List all military service (including reserve components and National Guard of Air National Guard) with inclusive dates of service, rank, titles, permanent duty stations and units of assignment, descriptions of assignments, any military medals, and type of discharge). **U.S. Army; Nov 1968-Sep.1970, E-6 SSgt. 101st Airborne Division, Republic of Viet Nam,Oct.69-Sep.70, Combat Infantry Badge(CIB), 1970, Bronze Star, Sep.1070; Honorable Discharge,Sep.1070**

    Montana National Guard: 1970-71; SSgt., 163rd Calvary Regiment, Bozeman Mt.

15. **Government service record** (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments other than those listed under Employment record, above).

    Mt. State Workforce Investment Board: 2004-Present

    Mt. Office of Community Services: member 2004-Present

    ***both positions by virtue of being Commissioner of Mt. Dept. of Labor & Industry**

16. **Published writings and public statements (<u>in last 10 years</u>)**

    (a) List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published materials you have written or edited, including materials appearing only on the Internet. (Copies of any such materials may be requested by the Committee). **As Commissioner of the Montana Department of Labor and Industry, there are numerous monthly, quarterly & annual reports that are prepared by the agency for public distribution. ie; Economy at a Glance: monthly; unemployment statistics: monthly: Labor Day Report: annually; Workers Compensation Annual Report; etc. All publications are required by Montana Law and a matter of Public Record.**

(b) List any reports, memoranda, or policy statements you prepared or contributed in the preparation of on behalf of any association, committee, conference, or organization of which you were or are a member. **N/A**

(c) 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. **As Head of the Agency, I have testified before various Montana Legislative Committees in all Bi-annum sessions beginning in 2005 through 20011 inclusively on proposed bills and appropriation matters that are pertinent to the Agency. All testimony is a matter of Public Record and Archived by the Montana Legislative Council.**

> **At the National Level; official testimony and statements of behalf of State Workforce Agencies are prepared and delivered by the Washington staff/officers of National Assoc. of State Workforce Agencies(NASWA)**

(d) 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. **As Commissioner of the Mt. Dept. of Labor & Industry(Mt. DLI) for the past 7 ½ years, I have given numerous welcome addresses and participated in various panels reporting on the programs and policies the Department is charged with administering. ie: job training, unemployment trends, economic development issues, workers compensation, continuing education trends, veterans training, etc. All speeches are extemporaneous with talking points as an outline. The talks may include current data the Department collects; presentations of Federal/Montana Law. I'm estimating that I speak in my official capacity an average of 10-15 times per year. <u>All</u> meetings/presentations are subject to Montana Open Meeting Law.**

(e) List all interviews you have given to newspapers, magazines or other publications, and radio or television stations (include the dates of such interviews). **As Commissioner of the Montana Department of Labor and Industry, I provide interviews to the press on topics the Department has Statutory responsibility over. Most typical are radio/television comments upon the press release of the official monthly unemployment statistics for the state. I have also conducted interviews/press releases on Workers Compensation, safety & wage and hour issues.**

I estimate that approx. 20 press releases under my name are issued annually.

17. Political affiliations and activities

(a) List all financial contributions to any political party or election committee during the last 10 years.

National Democratic Committee	$500.00	2004
MT Democratic Party/member	$500/yr.	2004-present
Schweitzer for Governor 2008	$1000	2008
Clinton for President 2008	$200	2008
Obama for President 2008	$250	2008
Tester for Senate 2012	$350	2012
Obama for President 2012	$500est.	online
Bullock for Governor 2012	$400	2012
Wilmer for Congress 2012	$200	2012
Bucy for Attorney General 2012	$300	2012

(b) List all elective public offices for which you have been a candidate and the month and year of each election involved. **Kessler School Board, Helena Mt. Nov. 1982 and Nov. 1985. Elected to two 3-yr. terms**

(c) List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee.

N/A

18. Future employment relationships

(a) State whether you will sever all connection with your present employer, business firm, association, or organization if you are confirmed by the Senate. **YES**

(b) State whether you have any plans after completing Government service to resume employment, affiliation, or practice with your previous employer, business firm, association or organization. **NO**

(c) What commitments, if any, have been made to you for employment after you leave Federal service? **NONE**

(d) (If appointed for a term of specified duration) Do you intend to serve the full term for which you have been appointed? **YES**

(e) (If appointed for an indefinite period) Do you intend to serve until the next Presidential election? **YES**

19. Potential conflicts of interest

(a) Describe any financial arrangements, deferred compensation agreements, or other continuing financial, business, or professional dealings which you have with business associates, clients, or customers who will be affected by policies which you will influence in the position to which you have been nominated. **NONE**

(b) List any investments, obligations, liabilities, or other financial relationships which could be affected by policies which you will influence in the position to which you have been nominated. **NONE**

(c) Describe any business relationship, dealing, or financial transaction which you have had during the last 5 years, whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated. **Natl. Association of Workforce Agencies(NASWA)**

(d) Describe any activity during the past 10 years in which you have engaged for the purpose of directly or influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed. **NONE; NASWA does lobby on behalf of State Workforce Agencies**

(e) Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements involved in Part II.) **RESIGN membership and RECUSE myself of any potential conflict of interest as determined by Counsel of the USDOL.**

20. Testifying before 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**

[A letter from the Office of Government Ethics follows:]

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

OCT 10 2012

The Honorable Tom Harkin
Chairman
Committee on Health, Education,
Labor, and Pensions
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Keith C. Kelly, who has been nominated by President Obama for the position of Assistant Secretary for Veterans' Employment and Training, Department of Labor.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

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

Sincerely,

Don W. Fox
Acting Director

Enclosures

[Letter from Keith Kelly to the Office of General Counsel, U.S. Department of Veterans Affairs:]

September 24, 2012

Robert A. Shapiro
Associate Solicitor
Office of Legal Counsel
Office of the Solicitor
U.S. Department of Labor
Rm. N2700
200 Constitution Ave., NW
Washington, DC 20210

Dear Mr. Shapiro:

The purpose of this letter is to describe the steps I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor.

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

Upon confirmation, I will resign from my position with the Bank of the Rockies. For a period of one year after my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which the Bank of the Rockies is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

Upon confirmation, I will resign from my position with the State of Montana. Following my resignation, I will continue to receive from the State of Montana payout of my leave that has accrued up to the date of my resignation. Until I have received these payments, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the ability or willingness of State of Montana to make these payments to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). For a period of one year after my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which the Montana Department of Labor and Industry is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with other ethics agreements of Presidential nominees who file public financial disclosure reports.

Finally, I understand that as an appointee I am required to sign the Ethics Pledge (Exec. Order No. 13490) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this and any other ethics agreement.

Sincerely,

Keith Kelly

Keith C. Kelly

Chairman MURRAY. Thank you both very much for your testimony. We will now turn to a period of questions from the Committee members, and I will begin.

Mr. Greenberg, as I mentioned in my opening statement, and particularly over the past year, we have seen the claims backlog continue to grow at the VA. The error rates remain high, and the number and complexity of claims is continuing to rise. Each of those facts is going to impact the court and its workload. And on the other side of it, the court has to make sure that veterans have a very meaningful judicial review of the decision.

There has been some debate here in Congress about how Congress and the stakeholders should measure the court in meeting its responsibilities and I wanted to ask you, in your opinion, how should court efficiency be measured?

Mr. GREENBERG. Well, I believe Congress already has a certain way of looking at it. In the statute creating the court, it requires the court to report annually to Congress on the disposition of its cases in various categories. That does not deal at all, in my view, with the qualitative determinations, but merely asks the court to report, as it does, each year on its disposition rate.

My view is that, as with all Federal courts for which these reports are required, the Committee, or Congress as a whole, should take a very close look at whether the mere disposition of a certain number of cases is consistent with a qualitative determination on a case-by-case basis. But it is a court of appellate review and, therefore, sets precedent.

My own review of the cases over the last 5 years has been that the court probably does a very superior job when compared with other courts of appeal in the Federal system in prompt disposition of a large number of cases that come before it. My own experience is generally with the other courts of appeal and the Federal District Courts, and I would say that it compares very favorably, in my view, based upon my experience, substantively as well as quantitatively.

My own view is it probably can expect to have a great deal more by way of work to do, and I would expect that I would be part of that workload; and I would expect the workload to increase; and I

would expect the workload to require, in my view, a more explicit explanation in each case for the determination so that it acts more explicitly as precedential value. That is my view of it.

Chairman MURRAY. OK. During the past few years of your professional career, you have been a very forceful advocate for our servicemembers and veterans. In fact, you noted, in response to the Committee's questionnaire, that you have come to consider yourself as a soldier's lawyer.

Mr. GREENBERG. Yes.

Chairman MURRAY. How would you respond to those who would question your ability to be impartial, given your record of strong advocacy on behalf of servicemembers and their——

Mr. GREENBERG. That is a very good question, Chairman. Sorry. As you will also note from my record of 45 years, it seems like a long time, but I feel, looking in that mirror, as if I am looking at a 25-year-old lawyer with enthusiasm. My wife will disagree. She can see me from the back——

[Laughter.]

Mr. GREENBERG [continuing]. And knows that a lot of poundage has increased over those years.

But my view is that I have taken an oath as a soldier, as a lawyer, as a crime commissioner, as Chairman of the RFPB, and when I take those oaths, I think I have adhered to those oaths. So there may be an inconsistency in all the things that I have done over the course of a very long career, but I believe in my heart of hearts, without question, having seen judges, appellate and trial judges, knowing them as lawyers before they were in those positions, that I can fairly, impartially, and most importantly, or as importantly, efficiently, meaning swiftly, adhere to my oath of office, notwithstanding the fact that I have been an advocate exclusively for lawyers—excuse me, for soldiers—when it is a soldier case.

Chairman MURRAY. OK. I appreciate that very much.

Mr. Kelly, let me turn to you. Last year, Congress passed and the President signed into law the VOW to Hire Heroes Act. That legislation included provisions like mandatory TAP and increased education and training opportunities for our servicemembers and veterans and underscores the real need for Labor and Defense and VA to work together to address unemployment for our veterans. In your opinion, what can these departments do and how will you work collaboratively to ease the transition between military and civilian life?

Mr. KELLY. Thank you, Chairwoman Murray. You have hit on a very specific and important thing, the collaboration of working together between the agencies. I am most familiar with the role of the U.S. Department of Labor and veterans' issues. However, I am fully aware that the Veterans Administration, the Department of Defense, and I guess Homeland Security have a piece of that, too.

I will point to how will I address that. I am a very collaborative sort of person. We all have the very same goal: that is to treat veterans and, as simply and succinctly as possible, to get them the best services. We are all on that same page. And so it is working across the agencies.

My experience, I will point out in Arizona, I "created" the Arizona Department of Agriculture after the legislature mandated the

situation of creating a cabinet-level department. It was four very different cultures that were brought together: the Arizona Livestock Board; the Arizona Ag and Horticulture Commission; and two other boards and one other commission, to make a cohesive department that has different cultures.

My other sense is that we all have our expertise in life—I am mostly familiar with the Department of Labor and Industry in our State—and throughout the country are experts, and I recognize that, as such; and with regards to employment and training across the gamut for whomever it is, and now with specific emphasis and a priority of service given to veterans.

So I really look forward to working with my counterparts in the appropriate way in these other major agencies of the Federal Government. I welcome it. We are all headed to the same place. Thank you.

Chairman MURRAY. OK. I have used my time. I am going to turn it over to Senator Burr.

Senator BURR. Thank you, Chairman.

To both of you, thank you for your service to the country.

Mr. GREENBERG. Thank you, Senator.

Senator BURR. Mr. Kelly, we have exhausted a lot of questions and answers and the only thing that I missed in my conversation with you was that you were friends with Tester. [Laughter.]

Now, that might have generated a different line of questions to cover, but I will overlook that and I will move to Mr. Greenberg.

Mr. Greenberg, I mentioned that I hope Congress will soon pass legislation requiring judges of the Veterans Court to live in the D.C. area, where the court is located. The current Chief Judge expressed his belief that, "the idea of residency requirement in the area is the encouragement of the members to recognize that the court's presence is here at the chambers or here, the court staff are here, their hearing room is here, and that you can come to agreement better when you see eye to eye." Do you have any disagreement with that?

Mr. GREENBERG. Not at all.

Senator BURR. Good. Mr. Greenberg, you also indicated in your statement earlier, you have worked in the legal profession for almost four decades and served in the Army for 27 years as a Reservist. After such a long and successful career, what led you to want to do this?

Mr. GREENBERG. Well, it is a very good question. It is now 45 years. It was four decades when I started my program, and that is the relationship. That is what makes me want to do this, is what I have seen over the last 10 years in everyday practice. I have been in a situation where the Army refuses to give adjournments to lawyers representing soldiers at their hearings at Walter Reed, so the Chief Justice of New Jersey and the Chief Federal Judge said, you are doing good work. You get the adjournments from the judges and we will let you go to Washington.

I have just experienced 10 years of working with wounded and injured soldiers that convinced me that after a lifetime in private practice with these other public service commitments, all of which were part-time; and when the opportunity, honestly, arose through the President and Senator Menendez, I said yes, with alacrity.

Senator BURR. I appreciate that answer. You were the one who alluded to how long in the tooth you might be getting.

Mr. GREENBERG. Yes.

Senator BURR. I just remind you that this is a 15-year term——

Mr. GREENBERG. Yes.

Senator BURR [continuing]. And it has an exit point after ten. But I just want to make sure, and I am sure you are astute enough to recognize the fact that after that 10 years, there is the likelihood that a Chief Judge can recall a judge back to the bench. Just understanding that that comes with the duties, you are comfortable with that?

Mr. GREENBERG. They are going to have to pry my cold hand from the gavel at age 85, if I am confirmed and live that long. The rule of 80 does not interest me at all, Senator.

Senator BURR. That probably is more in your wife's hands.

Mr. GREENBERG. Well, that is right. [Laughter.]

Senator BURR. As you mentioned, a judge needs to be impartial in their decisions. So permit me to explore a few of your quotes and your answers to questions.

In 2009, you were quoted as saying the disability system for military personnel should be overhauled because, "creates this way of looking at things so that individuals at fairly low levels think they are saving the government money by haggling with wounded soldiers." Let me just give you an opportunity to clarify. Do you believe that government employees are intentionally providing inadequate ratings just to save money?

Mr. GREENBERG. No. By the way, that was addressed to the military evaluation system, the so-called MEB/PEB side of things, rather than the veterans' side, although I will say, in fairness, that it could be applied. I do not think there is any ill will. I do not think there is any animus toward soldiers or veterans. I think there are probably a lot of reasons for it. But in my personal experience, the inclination, rather than—seems to be one of looking at a claim from an insurance company standpoint as opposed to a, what I would hope would be perhaps an irrebuttable presumption, but a presumption nonetheless, in favor of the soldier or the veteran. That is the point I was trying to make and that is—I hope I am clarifying it.

Senator BURR. Sure. Along the same lines, you have said that servicemembers who are being medically discharged from the military should not have to prove the extent of their disabilities in order to receive benefits. In fact, in response to a prehearing question, you said that you believe, "the medically unfit soldier should receive 100 percent compensation." Now, how would that belief impact your ability to be impartial when it comes to decisions in front of the court?

Mr. GREENBERG. Twofold, Senator, if I may.

Senator BURR. Sure.

Mr. GREENBERG. Senator, one, that does relate exclusively to the military side, and I have always had a philosophical view that if—and a practical view in arguing these cases at Walter Reed, which is the hearing location that begins the process, or is in the middle of it—that if you are medically unfit, why are we talking about percentages, which is an entirely different thing than on the veterans'

side, where you have a service-connected condition or disability and where a percentage of that disability is a relevant consideration. You are either fit or unfit, in my philosophical view, on the military side.

To answer part two of the question that you posed, Senator, I have no difficulty—once I take the oath—I have been an advocate all my life. I have also been in a position as a Commissioner, as the Chairman of the RFPB, to listen to all sides and make recommendations. In this case, if honored to be confirmed and I take that oath, I take the oath seriously.

Senator BURR. So you would have no problem ruling against a disabled veteran seeking a higher disability rating if the facts did not substantiate that?

Mr. GREENBERG. Facts and law, exactly.

Senator BURR. My last is question along those lines. You stated in the prehearing questions, "the determination of percentage disabilities, if they are to be retained, should never be reduced but only increased if a soldier makes a case for a change in circumstances." Is that, again, just on the military side, or how would you respond if, in fact, the VA sought a reduction in benefits and the substantiation was there for it?

Mr. GREENBERG. Again, that is a philosophical point of view. It is fundamentally the military side. It focused, in my mind, on the PTSD situation, which I encountered in a great many cases. But the same answer would be true there, with respect, Senator—that is, if the law required me as a Federal appellate judge on this court to make a determination resulting in a reduction, I would, if the facts dictated it.

I was stating my own personal view that there should be some repose with the veteran, that if he or she were granted a certain percentage of disability they should have the comfort or the knowledge of knowing that that cannot be taken away from them. I assume that there was a legitimate process which resulted in the award or the determination, that they went through the appellate process and came to that conclusion. That is more philosophy than anything else. And again, if Congress does not change the law, if the requirements remain the same and it can go up and down, it would be determined on a case-by-case factual basis.

Senator BURR. OK. My clock is broken. My time has probably run out. But since my clock is broken, I am going to ask one more question.

Mr. GREENBERG. Yes, sir.

Senator BURR. The Chairman already alluded to this. During 2011, it took an average of 584 days for an appellant to receive a single-judge decision from the Veterans Court and it took 763 days for an appellant to receive a decision by a panel of judges. Based upon your years of litigation experience, can you set what you think is a reasonable timeframe for the court to make a decision?

Mr. GREENBERG. A lot less than that. I cannot quantify it——

Senator BURR. I think that——

Mr. GREENBERG. By the way, I took a look at the last report that was required by Congress, the 2011 report. You might have more updated information than I do. But as I read it, the report compares the disposition of cases by this court most favorably with all

other courts of appeal. Now, this is a specialized court, I understand that, and it is more likely that you have single-judge dispositions in this court than panels, and so forth. But if honored to be confirmed, I am ready to hit the ground running, as I think you alluded to, and I am sure there is a way, even with what I would anticipate is a greater increase in the number of appeals, to work it out so that that length of time, which sounded a little long to me, Senator, with respect—I am sure you have the facts better than I do, but——

Senator BURR. I think the Chairman alluded to the fact that this is the only thing that we have to gauge it on and——

Mr. GREENBERG. Yes.

Senator BURR [continuing]. We think it is——

Mr. GREENBERG. I think it is too long.

Senator BURR. And I would, on behalf of all of us, solicit any thoughts that you have on an ongoing basis as to how we can change that to make sure that our veterans and their families do not have to wait too long for these decisions, and that is an ongoing solicitation.

Again, Mr. Kelly, thank you. I will not hold Tester against you. [Laughter.]

Mr. Greenberg, thank you.

Chairman MURRAY. I would just add, if that is the right way to measure these very complex cases, increased workloads. I think that is a question that needs to be asked, as well. Thank you very much.

Senator Tester.

Senator TESTER. Well, I want to start out by saying thanks to Ranking Member Burr for his openness.

As long as you are warmed up, Mr. Greenberg, could you, as concisely as you possibly can, tell me what the position—describe the position that you are being nominated for.

Mr. GREENBERG. It is one of nine judges on the U.S. Court of Appeals for Veterans Claims, an Article I court, meaning I do not serve during good behavior. I serve for a fixed term of 15 years. It has an extremely narrow jurisdiction set by Congress, which I fully understand and understood when I was asked if I would be willing to serve on this board, if nominated and confirmed. And that narrow jurisdiction, relatively speaking, is to make legal and constitutional determinations of the administrative decisions below and not to substitute the court's judgment on a de novo basis for that made by the agency below. That is in the statute. That is how I understand it.

Senator TESTER. Very good. They have talked about backlogs. They have talked about your background, and I applaud you both for what you have done. One of the things—and I am not an attorney—from the job that you have described that I think would be very, very difficult is people who are appealing a previous decision that have an unseen injury, Post Traumatic Stress Disorder, a Traumatic Brain Injury, the signature injuries coming out of Iraq and now Afghanistan. What criteria do you use in that particular case to make a decision to determine whether you are going to rule on the side of the soldier or——

Mr. GREENBERG. Well, again, this is an appellate court and the determination is made on the record made below. That is why there are a great number of remands for additional information or additional testimony or evidence, whatever it is. Remember—I hope I am answering your question—there is no statute of limitations on a veteran making an initial claim. The problem begins to develop once you are within the system, and that is where these time limits become important to the veterans' claims. So if you go all the way through the court and then develop this condition, which the onset may not come for years——

Senator TESTER. That is correct.

Mr. GREENBERG [continuing]. You can start all over again and add that. But I would—it is not up to me, it is really up to Congress—make a determination as to how to either allow a consolidation of the new claim or expand upon that claim at any point in the judicial process, in other words, while the case is pending before the court.

Senator TESTER. OK.

Mr. GREENBERG. So that is up to Congress to do, not up to the court.

Senator TESTER. I have got you. That is fine.

Mr. Kelly, you know all too well the unemployment rates. Montana fares a little better than most of the country, but the fact is that it is unacceptably high in the private sector and it is particularly unacceptably high amongst our veterans, and if you want to add Native Americans on top of that, it continues to get higher and higher. You have been addressing this issue for some time. I guess what I would ask is, having served at the State level, what lessons have you learned?

Mr. KELLY. Thank you, Chairwoman Murray, Senator Tester. The last 8 years in this economy, this economic hiccup that we went through, I have learned a lot. Of course, the unemployment piece is within the Department of Labor and Industry in Montana, as well, with all the extended unemployment benefits. As the rural State that Montana is, it is always a challenge of providing services out there to the people.

And what I guess I have learned most, and I want to compliment both the Chair and the Vice Chair, with regards to one of the hiccups on licensing and those things that go along with certifications, is kind of a key point to keep moving this and getting these veterans brought back into the workforce somehow. There has got to be a better way. Montana is a little unique from most State labor departments, but the professional occupational licensings are within the jurisdiction of the Department of Labor and Industry and that is clearly something—there are 50 State laws to look at with the rules and policies and regulations and who can be an EMT or who can be a truck driver, and so the gatekeepers there at those States need to be synchronized, and I look forward to working with the States to get that, which seems to be a very fixable piece to address.

In Montana, I think the biggest challenge is unemployment, and I think we just now are going to announce coming underneath 6 percent. And with that is some of the training that this handicap or this impediment that is out there for those people who could cer-

tainly work in the oil patch between North Dakota that has certainly moved into Montana. In a lot of those positions, there just seems like, to me, there is some common sense type of work activity there.

And so I—you know, on the ground and delivering these services, it is always a challenge, the collaboration. We have those same challenges at the State Government level that you pointed out here at the Federal level, and that I have learned, as well, and have been able to navigate through most of them.

Senator TESTER. My time is up.

Chairman MURRAY. Senator Isakson.

STATEMENT OF HON. JOHNNY ISAKSON, U.S. SENATOR FROM GEORGIA

Senator ISAKSON. Mr. Kelly, I like Jon Tester, so I have no problem whatsoever.

[Laughter.]

Mr. KELLY. So do I.

Senator ISAKSON. He is a great Member of the Committee and the Senate.

As you know, last year, we made the TAP program mandatory in terms of transition assistance.

Mr. GREENBERG. Yes.

Senator ISAKSON. One of the reasons we did that was because there seemed to be a black hole that veterans fall in between finding opportunities and being prepared for those opportunities. What will you do in your position to close that black hole and assure opportunity and preparation are major efforts of the Department of Labor and the Department of Defense for our veterans?

Mr. KELLY. Thank you, Senator Isakson. I applaud the effort that is ongoing right now, in the whole rework of the TAP and the mandatory piece in that, to really keep that moving.

As front-end as we can, and on the back end, to make sure that these people are exposed to TAP, I really applaud and like the idea that they do that in a military setting for the very first, initial time, because the culture in the military setting—you are pretty well managed in the military culture to the point of blowing taps at six o'clock in the morning to get up. So now they are transitioning into a whole civilian life where more of the accountability and responsibility falls to them, and I think them being aware of that sooner than later is better. The whole TAPS rewrite as I understand it is just underway of finalizing, kind of getting rolled up with the Department of Labor's piece is very important.

The other part, which I tried to emphasize in my testimony is the inclusiveness of the whole family, which I think is very important. It was in our case. I can look back at that and that struggle. I have witnessed it with big mass layoffs in certain other places there. The networking that spouses do can help move the various things along is critically important.

So my sense is, and I am not an expert on that, but it does seem to be removed with regard to TAPS, that we are kind of working across the agencies better and getting the total picture more holistically of the resources that should be available to these veterans to go forward. That is my sense of it.

We in Montana, I think, probably—going back to what Senator Tester said about other lessons learned—we get about 40 percent that come in the door of the local one-stop job service office. The other 60 percent, where are they at? That has been a challenge and a problem, and I think I have shared that with—I think it was Senator Burr—that that is the sacred DD–214. That starts a lot of things up. We are finally getting that so we can help track that. It is the data that—and running these people is not the right word, but being able to know their last address or telephone number or contact number is critically important.

So, hopefully, I think the cap is certainly positive and we are moving in a good direction. It seems to me that it is well underway and I am encouraged to work with Congress, review it, see where it is really working, what are the unintended consequences, and keep pushing to make a more streamlined process.

Senator ISAKSON. Well, we appreciate your service to the country and your taking on this responsibility.

Mr. Greenberg——

Mr. GREENBERG. Yes, Senator.

Senator ISAKSON [continuing]. Your November 9, 2009, article in the *Star-Ledger* is what probably prompted both the Chairman and the Ranking Member's question about "can you handle these decisions objectively because you were so passionate in your advocacy about the system." I am not a lawyer, but I learned a long time ago that a lawyer's judgment is directly proportionate to who is paying him. So I assume you understand that you will be paid by the American taxpayer in your new job and that is the way, yes, that will ensure your objectivity in those decisions.

Mr. GREENBERG. Yes.

Senator ISAKSON. Good. I happen to share a lot of the passion that you had in that particular article and I hope you will take, as a judge and an arbiter of individual decisions, some time to help advocate on what we can do to compress the time to go from the serviceman being injured to he or she getting a determination of disability. It is really offensive to me that we have not been able to shorten the time. I know we have to have a judicial review. I know we have to have medical review. I know a lot of these are sort of tissue injuries, not broken bones. But it is critical, I think, to improve it where it goes from almost 2 years, if you go through the appeal process——

Mr. GREENBERG. That is right.

Senator ISAKSON [continuing]. To some reasonable period of time, because these people have given everything for the country. We owe them the benefits that they have fought for and earned, and we owe them an expedited review that is judicious.

You are a very outspoken individual and I read what you said about Fort Hood and that tragedy. I have read some of the things that you have done. I hope you will take that passion and be an advocate to the Veterans Administration as to how they can better expedite these claims. You will be reviewing these claims and be making judgments on appeals, which means you will have the whole fact record before you. Be an outspoken judge, just as you have been an outspoken lawyer, and just remember who is paying you when you make those decisions.

Mr. GREENBERG. I will, Senator. Thank you very much.

Actually, if I may, Chairman, just respond to the Senator. If I may add, I do not ever anticipate losing the passion or objectivity. I have to exercise objectivity in every case. Shall we settle, I say to my client. We had terrific results because we have won below or we have gotten an adequate award for them. But I would bring, I think, 45 years of that function, the concept of being an advocate, being in a courtroom, dealing with judges, adversaries, clients, to this particular unique set of circumstances. I view that as a plus in my qualifications, with great respect, Senator, that I will not lightly lose that enthusiasm regardless of age or who is paying me, and I understand who is paying me and I understand the role of a judge.

Senator ISAKSON. Well, I appreciate that answer, and my time is up, but let me just end with a comment. You have a unique opportunity to be a change agent. You have been on every side of the issue, from representing the veteran to representing the taxpayer. You are going to review every bit of the process from the time of entry to the time of decision. So you have the opportunity, if you take advantage of it, to advocate for changes we can make as a government in our system to improve the efficiency with which we make these decisions and, I think, be much more fair to our veterans. So I hope you will do that.

Mr. GREENBERG. Thank you, Senator.

Chairman MURRAY. Well stated, Senator Isakson. Thank you.

Senator Begich.

STATEMENT OF HON. MARK BEGICH,
U.S. SENATOR FROM ALASKA

Senator BEGICH. Thank you very much.

Let me follow, if I can, on that, Mr. Greenberg, and thank you for your willingness to put your name forward and serve. We have talked a lot here about the appeal process and how to improve it, or that we all want to improve it, that we want to make it more efficient. Can you—maybe it is too early, but my guess is that your mind is already working in hope of being appointed—what do you see as some specific ideas, and maybe you cannot do it right now, but some specific ideas that you see to really improve the system so when those cases do come before you, that they can be dealt with in a fairly decent manner, but also the system prior to that. Do you have any specific thoughts?

My guess is your mind is kind of working on it. As you probably got the suggestion of being appointed to this position, you have been thinking of all these things and you are anxious to kind of probably get to work. But do you have any thoughts on the specifics? I know we have talked all about—we all are on the same page here, improving the system——

Mr. GREENBERG. Yes, and I appreciate the question, Senator. I would not presume—A, I have not been confirmed——

Senator BEGICH. Correct.

Mr. GREENBERG. B, I have not served 1 day on that court——

Senator BEGICH. Fair.

Mr. GREENBERG [continuing]. And so I would not presume to——

Senator BEGICH. Have all——

Mr. GREENBERG [continuing]. Substitute my judgment——

Senator BEGICH. Sure.

Mr. GREENBERG [continuing]. For those of people with experience. But what I have done is been a lawyer all these years and seen how courts of all kinds, all——

Senator BEGICH. Right.

Mr. GREENBERG [continuing]. And I think the mere fact that a person from the private sector with this long record that I have in and of itself may prove to be a beneficial example. Let us apply some of the things that happen in everyday courtrooms and everyday appellate courts to this specialized court. That is number 1.

I mean, there is no substitute, as I said, for the personal relationship, and there is no substitute for collegiality or a feeling that someone is bringing something that we have not had before. Again, I would never presume to substitute my experience or judgment for those who sit there. I believe in collegiality, but I also believe that it is a good thing to get somebody from a different background every now and then, particularly on a specialized court such as this.

Senator BEGICH. Thank you, Mr. Greenberg.

Let me follow up to the Ranking Member's comment regarding presence here, being here, having the court here, but let me take you now to an extreme situation. I come from Alaska, which is very rural. We utilize video-teleconferencing quite a bit from hearings to medicine to education. Are you—tell me your feelings on that. You know, to be frank with you, to have a veteran come from a small village in Alaska to have to deal with their case in this body here in Washington, DC, spending, my guess would be, based on my own experience, if you travel from a small village to Washington, DC, that experience, being here 3–4 days, could be $6,000 or $7,000: hotel, travel, time away. It is very expensive.

Mr. GREENBERG. It is.

Senator BEGICH. So, tell me your view on how to utilize video-teleconferencing and would you be seeing that as an opportunity, recognizing no one is denied that right to come face to face. So tell me your thoughts on that.

Mr. GREENBERG. Well, I will answer your question this way, and then if you would like, I would comment on the implication of the Ranking Member's question, as well.

Number 1, I do not have any difficulty with that. You have that—the big Ninth Circuit includes Alaska——

Senator BEGICH. That is right.

Mr. GREENBERG [continuing]. And goes all the way down the coast. You cannot have a bigger circuit geographically than that. So that presents problems. The much maligned Ninth Circuit, I might say, has done a very good job on that *Veterans for Common Sense* opinion that they then reversed. I may be going off topic a little here, but——

Senator BEGICH. I feel your passion.

Mr. GREENBERG [continuing]. But it was reversed by the court, so that will be the rule. That will be the law.

As to making available either individual judges or panels of judges to ride the circuit and handle—I think it has to be done efficiently, when you have a whole group of cases. We are going to sit

here for 3 days in the far West or the Midwest or wherever, and we are going to hear these cases, then we are going to take them back to Washington to decide. I have no difficulty with that, with the use of very sophisticated technological abilities.

But, to answer Senator Burr's question, I do not see how the court can work unless it comes together and meets on a regular, daily basis——

Senator BEGICH. As a body.

Mr. GREENBERG [continuing]. Here, as a body, in Washington.

Senator BEGICH. Very good.

Mr. GREENBERG. That is my view.

Senator BEGICH. OK. Mr. Kelly, let me—and I appreciate the position and I appreciate that you are from Montana for a lot of reasons, and because it is a rural State. I would tell Jon, not as rural as Alaska, but we would debate that all the time, and we do. Both of our States have a sizable amount of veterans per capita, the highest in the Nation. And the last occupant of your position, Ray Jefferson, we had him come up to Alaska. I encourage, I invite you up there. He came in February. That gave him a lot of extra points, just to say that out loud here. So think about that. Winter is better, extra points, but you have been in Montana, so you are used to it.

I would ask you to come up there, but on a larger issue, more and more veterans are living in rural parts of our country, Alaska, Montana, North Dakota, so forth and so on. Do you have any specific kind of thoughts of how you will go after that group to make sure they have the ability to be employed, and knowing that you have Department of Labor programs, you have VA programs, you have programs in HHS—I mean, there are all these different programs around—how you can help crystalize those programs and hone them to really help our veterans in rural areas.

Mr. KELLY. Well, thank you, Senator; and I really do look forward, even if it is February, coming to Alaska. I look forward to it. And I have the same challenges that your veterans in Alaska have, which is transportation, getting from here to there.

Senator BEGICH. That is right.

Mr. KELLY. As you know, it is not easy. Our gateway is through Seattle to most things happening in Alaska, and I look forward to that.

Senator BEGICH. That is good.

Mr. KELLY. And I think it was mentioned here, House Resolution 4072, that we try to work forward with the ideas that you may have here, that helps us within the Federal Government, across the multiple agencies that are serving veterans, to make a more seamless product. I am anxious to work with the VA. I am anxious to work with the Defense Department to see where the pieces are, that we would all bring our expertise to the table. Where do we together say, you know, the goal is the same. Where can we find ways to streamline that whole process?

Specifically to rural veterans, Montana is in the very same situation, and I think of it as a lesson learned. The State of Montana has 23 job service offices—600-and-some miles across, 400 miles this way—scattered across a very rural State, and a total of combined 12 DVOPs and LVERs. Now, of course, you assign them to

work some of the highest needs and priorities, like the air base in Great Falls would obviously be one, and, of course, one of the major metropolitan areas on a Montana standard, Billings, Montana. But we also need to be mindful of the person up in Glasgow, Montana, which is a long ways from anywhere.

And with that, through our workforce services, that is why my experience, which I am committed to, is that we have the Wagner-Peyser, the Workforce Investment Act, those local one-stop shops there, where our DVOPs and LVERs are co-located, at least in Montana, to provide that service. The scarce resources we have all been faced with in the last decade, my experience in my 8 years here is to be innovative and creative, knowing you have got to cover all the bases; and with those DVOPs and LVERs and other resource personnel, so we are not spending all the windshield time running somebody out from here to there.

The other piece that was mentioned, I think, was the technology idea. My sense is that there is nothing better than personal, face-to-face time. My experience has been that. However, I do recognize in this world, and there is a whole generation out there that is very comfortable with the newer technology, that you can address isolated parts of Montana that probably had no option before, or an isolated part of frontier Alaska that there were no options for.

So with the technology, we have Internet, too. I know you do in Alaska. And I know that probably you can now stream into some of these places that——

Senator BEGICH. Right.

Mr. KELLY [continuing]. I am not sure what the challenges were 10 or 15 years ago. They just probably did not spend the several thousand dollars to come and make an argument. And so technology is helping us, I think, kind of interconnecting us together some, most of it in a good way, I hope.

Senator BEGICH. Let me just say thank you very much, and again, I look forward to hopefully both of you being confirmed. We will talk more as you get, hopefully, into office, and spend the time discussing what we can do to make sure all these different departments are coordinated on job opportunities for our veterans. Thank you very much.

Mr. KELLY. Thank you.

Chairman MURRAY. Thank you very much, Senator Begich.

I just had one last question for you, Mr. Kelly. You are up for nomination to an agency and department that is extremely important to many Members of this Committee, I think to the country, in terms of making sure that our veterans are employed. It is what I hear when I talk to veterans everywhere, that one of their biggest concerns is getting a job, and you will be overseeing an agency that has a lot to do with that. So my question really to you is, day one, what is going to be your priority?

Mr. KELLY. Thank you. Day one, the priority is collaboration, to visit with the Congressional people that know a lot more about this and the issues that you face and the stakeholders; to really ask, where are the impediments, the true impediments, to better understand and develop the information to get that service to people. I have a sense of it, a personal sense of what it is. Some of it is the barriers for these people who cannot get to training. It is a per-

sonal barrier. I watch it from running a State agency. And so outreach to all of those stakeholders, especially, you know, The American Legion, VFW, the Vietnam veterans groups, that they probably have got a pretty good body of information. Here is where the hiccups are in the system and here is what you need to do to address them; to get that collaborative effort going.

And at the same time and in parallel on day one is to start the process of working with Congress. I applaud you folks for all the things that you have done trying to get us all on the same page, working better together, and I am really anxious to work on that piece of it with our other Federal stakeholders here.

Chairman MURRAY. What do you think the biggest challenge is today?

Mr. KELLY. Today? Chairwoman, I have served in bureaucracies a long time. Somehow, we can get ourselves, I will not use the word "stovepiped," but we can get the barriers up with laws and regulations. The point you made in here on certification and licenses is a classic example. Fifty States are following specifically the laws that are before them, that they have promulgated by their boards and what not, on what it takes to become an EMT in Montana or Washington or someplace else, and that creates a real roadblock, I see. That is one example with regards to what we are trying to do to provide service in the cross-certification and cross-licensure that veterans are faced with.

I read the papers, too. It is very obvious to me that, somehow, in the eyes of the public, we have failed, or not the word "failed." It is a quantum leap from the Vietnam days. We have recognized the veterans now. It is time for us to say, welcome here, and here is something I can do for you.

An improving job market in the holistic sense will help take care of that. The training out there and the certification and licensure, it seems to me from visiting with several of you in the past several days, it seems to be kind of a point that I think is a problem.

Chairman MURRAY. Thank you. Thank you very much, both of you.

Senator Burr, did you have any additional questions?

Senator BURR. No.

Chairman MURRAY. Senator Tester?

Senator TESTER. You actually asked them.

Chairman MURRAY. All right. Very good.

Well, I want to thank both of our nominees for being here today and for answering our questions, and most importantly, thank you for your desire to serve our Nation's veterans. The importance of these nominations cannot be stressed enough. It is critical to put in place permanent leadership at VETS and provide the court with needed support, so Senator Burr, I look forward to working with you on moving these nominations in an expeditious way.

With that, this hearing is adjourned.

[Whereupon, at 11:18 a.m., the Committee was adjourned.]

A P P E N D I X

LETTER OF SUPPORT FROM CHARLES MCGLEW, FOUNDER, WORKFORCE DATA SERVICES LLC

From: chuck@workforcedataservices.com
To: VAEmail (Veterans Affairs)
Subject: WebSite Email
Date: Sunday, December 02, 2012 2:44:15 PM

Mr. CHARLES MCGLEW
4027 Centennial Drive
Broomfield, CO 80023

RE: CONFIRMATION HEARING FOR KEITH KELLY

I strongly encourage the Senate Committee on Veterans' Affairs to confirm the appointment of Mr. Keith Kelly to be the Assistant Secretary for Veterans Employment and Training within the ETA of the USDOL.

I am a veteran and was an Unemployment Insurance Director for the Connecticut DOL for many years. I had the pleasure of working with Mr. Kelly in his position as Commissioner of the Montana DOL. In the past few years in my position as a workforce development consultant I have had many occasions to meet with Mr. Kelly and discuss topics relating to workforce development in general and with regard to issues facing veterans.

In my experience Mr. Kelly is an able administrator, has expert insight into issues relating to veterans employment, and will provide the leadership and expertise to ensure that veterans employment and training issues are addressed at the national level and throughout the state networks of workforce development agencies.

Thank you.

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