

Stenographic Transcript
Before the

Subcommittee on Personnel

COMMITTEE ON
ARMED SERVICES

UNITED STATES SENATE

HEARING TO RECEIVE TESTIMONY ON
PUBLIC INTEGRITY AND
ANTI-CORRUPTION LAWS AT THE
DEPARTMENT OF DEFENSE

Wednesday, April 26, 2023

Washington, D.C.

ALDERSON COURT REPORTING
1111 14TH STREET NW
SUITE 1050
WASHINGTON, D.C. 20005
(202) 289-2260
www.aldersonreporting.com

1 HEARING TO RECEIVE TESTIMONY ON PUBLIC INTEGRITY AND
2 ANTI-CORRUPTION LAWS AT THE DEPARTMENT OF DEFENSE

3
4 Wednesday, April 26, 2023

5
6 U.S. Senate
7 Subcommittee on Personnel,
8 Committee on Armed Services,
9 Washington, D.C.

10
11 The subcommittee met, pursuant to notice, at 3:00
12 p.m., in Room 222, Russell Senate Office Building, Hon.
13 Elizabeth Warren, chairman of the subcommittee, presiding.

14 Subcommittee Members Present: Senators Warren
15 [presiding], Kaine, Scott, and Budd.

1 OPENING STATEMENT OF HON. ELIZABETH WARREN, U.S.
2 SENATOR FROM MASSACHUSETTS

3 Senator Warren: I am pleased to welcome you all to
4 today's hearing to receive testimony on public integrity
5 and anti-corruption laws at the Department of Defense. The
6 people who choose to serve at the Department of Defense are
7 talented and dedicated professionals who are committed to
8 their mission of keeping American lives safe.

9 Like all Americans, I appreciate their service and I
10 appreciate their commitment to our nation. But respect for
11 these individuals cannot blind us to an ugly underbelly at
12 DOD. There has long been a too cozy relationship between
13 the department and the increasingly powerful group of
14 defense contractors that reach -- reap huge profits from
15 hundreds of billions of dollars in Government contracts.

16 The appearance and the reality of the Pentagon being
17 captured by the defense industry undermines our public
18 confidence and threatens our National Security. Every
19 year, the Department of Defense receives more discretionary
20 taxpayer dollars from the Federal budget than any other
21 part of Government.

22 DOD and the defense industry often defend the enormous
23 Pentagon budget by pointing out that it supports
24 substantial investments in development and research to make
25 our country more innovative and more competitive, but that

1 story does not fit the facts.

2 A recent DOD study reported that defense contractors'
3 Federal investments are increasingly going to their
4 shareholders rather than being invested in more research
5 and development.

6 In fact, from 2010 to 2019, big defense companies
7 spent 73 percent more on stock buybacks and dividends than
8 they did during the previous decade. Because Federal
9 contracts are so profitable for defense companies, these
10 companies want the inside track on how to win those
11 contracts.

12 A preferred strategy is to hire former Pentagon
13 employees to put together the bids and then to present them
14 to their former colleagues in Government. After all, if a
15 defense industry staffer used to work in the next cubicle
16 over from a Pentagon acquisitions officer, there is a
17 better chance that the industry staffer can get his phone
18 calls and emails returned. A better chance the industry
19 staffer can schedule a sales pitch.

20 A better chance that the sales pitch will go well.
21 And with all the latest intelligence on what the department
22 wants to fund, the industry staffer who just left the
23 Department of Defense, has the best possible chance of
24 turning former friendships into dollar signs for the
25 defense industry.

1 This model is not hypothetical. A 2019 analysis by
2 the GAO found that the Pentagon's 14 largest contractors
3 have on staff 1,700 former Department of Defense senior
4 civilian and military officials -- 1,700 former DOD people
5 using their DOD contacts on behalf of the defense industry.

6 That is an entire small town working full time just to
7 gather in Government contracts for the defense industry.
8 Now, those who defend the revolving door between the
9 Pentagon and the defense industry say that these Government
10 employees are hired for their expertise. But again, the
11 facts belie that story.

12 In fact, a new analysis released today by my office,
13 which is right here, check out the graphics, found that 91
14 percent of Government employees hired by the top defense
15 industries don't become top executives. Nope. 91 percent
16 of the Government employees hired by the top defense
17 industry companies become registered lobbyists for their
18 new employers.

19 The biggest weapons contractors all have former senior
20 Pentagon officials on their board. Their star-studded cast
21 includes Lockheed Martin with a former Chairman of the
22 Joint Chiefs of Staff and a former DOD General Counsel on
23 their board. Boeing with a former Chief of Naval
24 Operations.

25 Raytheon with a former Deputy Secretary of Defense and

1 Vice Chairman of the Joint Chiefs. General Dynamics with a
2 former Secretary of Defense. And Northrop Grumman with a
3 former Air Force Chief of Staff and Chief of Naval
4 Operations. It is clear that these companies think that
5 the best way to succeed is to buy influence with the DOD.

6 Influence peddling occurs in multiple forms. Instead
7 of going to work directly for a single giant defense
8 industry contractor, some former military officers hang out
9 a shingle when they retire and offer their services to
10 foreign governments. They rake in the cash. A former Navy
11 SEAL earned \$258,000 a year as a special operations adviser
12 for Saudi Arabia.

13 An Air Force colonel received \$300,000 a year to work
14 for a Russian owned satellite company. These foreign
15 governments claim they are buying advice, but no one is
16 fooled. In reality, they are purchasing favors, influence,
17 and a good name for themselves in Washington, whether that
18 is in America's National Security interest or not. Ethics
19 lapses take other forms as well.

20 The Wall Street Journal reported on DOD and other
21 Executive Branch officials who own stock in companies that
22 stood to benefit from their official activities. In one
23 case, a Pentagon official owns stock in Aliaba while
24 weighing in on whether the U.S. Federal Government should
25 bar other Americans from investing in Aliaba because of its

1 ties to the Chinese government.

2 The worst part, the DOD signed off on the official's
3 work and didn't see a problem. Ethics requirements are
4 essential to safeguard the integrity of the Pentagon's
5 work, but too often, legislation has moved our ethics laws
6 in the wrong direction.

7 Last year's National Defense Authorization Act got rid
8 of a requirement for the DOD Inspector General to report on
9 certain aspects of the department's ethics compliance. A
10 few years ago, I barely defeated a proposal that DOD
11 advocated for writing into Federal law that would have
12 further watered-down lobbying restrictions on former
13 Pentagon officials. We need more oversight of ethics
14 enforcement, not less.

15 I was concerned to see that DOD's written testimony
16 for today's hearing claims that DOD specific rules can be,
17 and I quote, "counterproductive" and "undermine rather than
18 promote a shared commitment to ethics." What undermines
19 this commitment is DOD fighting laws passed by Congress
20 instead of enforcing those laws.

21 Now, to be clear, problems of undue influence are not
22 unique to the Department of Defense. I have introduced
23 comprehensive legislation to address ethics failures both
24 at DOD and across the Federal Government.

25 But failure to strengthen ethics laws elsewhere in

1 Government is not an excuse for tolerating terrible ethics
2 lapses at DOD. Ultimately, these conflicts of interest
3 hurt competition, and they create an uneven playing field.

4 At today's hearing, I want to hear from our witnesses
5 about the threats posed by conflicts of interests, whether
6 current protections in Federal law are sufficient to
7 protect those conflicts, the process for approving retired
8 National Security officials who are working for foreign
9 governments, and any other areas where law and policies
10 could and should be strengthened.

11 In 1959, Congress held 25 hearings to investigate the
12 revolving door between defense contractors and senior
13 military officials. General Omar Bradley, our country's
14 first Chairman of the Joint Chiefs of Staff, testified that
15 he did not believe any former Government official should,
16 "bring any influence" to win contracts for a company.

17 The generation that fought World War II took ethics
18 responsibility seriously and we should do the same. When
19 defense contractors have an outsized influence over the
20 Pentagon, or when senior leaders see no issue with selling
21 their credentials to the highest bidder, our National
22 Security is compromised and it is time to put a stop to
23 this.

24 So, to our witnesses, I say thank you and welcome for
25 appearing. I want to turn to Ranking Member Scott for his

1 comments to open this hearing.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATEMENT OF HON. RICK SCOTT, U.S. SENATOR FROM
2 FLORIDA

3 Senator Scott: Sure. First, I want to thank Chair
4 Warren. I look for -- first of all, I look forward to
5 reading your report. I want to thank Chair Warren for one,
6 to make sure individuals and industry do not exploit
7 American taxpayers to gain unfair advantage over others or
8 jeopardize our National Security.

9 My understanding is that under current law, former
10 Department of Defense employees, whether military or
11 civilian, are held to a higher standard of ethical conduct
12 than former employees of any other Federal agency.

13 Also, my understanding that DOD employees are subject
14 to standard conflict of interest rules for which violations
15 are punishable by jail time. They are also subject to
16 enhanced restrictions on post Government appointment.

17 They are enforced through a variety of civil
18 punishments, including recoupment of pension payments. I
19 know these -- there have been some recent reports in the
20 press about perceived issues with DOD ethics rules.

21 You can also read in these articles evidence that our
22 current rules are working. In all the media reports,
23 personnel had undergone a rigorous screening process from
24 the Department of Defense and State to read them waivers to
25 work.

1 In fact, much of this reporting reveals that in many
2 circumstances, applicants are denied by the Government, and
3 the individuals discussed in the articles have been
4 extensively vetted and cleared. This is supported by a
5 report issued by the GAO in September 2021.

6 And additionally, in Section 1073 of Fiscal Year 2023
7 National Defense Authorization Act, a study is required to
8 evaluate these issues. And I think the -- I think Chair
9 Warren was instrumental in that. I hope we will wait for
10 the results of that study before imposing any additional
11 requirements on the DOD.

12 Now, let me be clear, I think it is wrong and we do
13 not want individuals or industry to exploit situations to
14 gain unfair advantage over others or jeopardize the
15 interest of our National Security. It is important that we
16 not let people game the system and should never tolerate
17 something -- someone doing so in a way that risks National
18 Security. I think it is important the two things exist at
19 the same time.

20 One, military and civilian personnel should be able to
21 pursue meaningful employment to further advance U.S.
22 National Security interests. And two, DOD must be able to
23 protect against and punish unethical behavior without
24 making service so much a sacrifice that we drive away those
25 we truly need to protect our country.

1 While it appears that we are doing a good job of this
2 right now, I think it is important to always do exactly
3 what Senator Warre is doing and be an advocate for
4 improvements and second looks. We should be constantly
5 reviewing policies and spending, and everything else that
6 Government does to make sure it is working the right way.

7 Again, I want to thank Chair Warren for holding this
8 hearing today. I would also like to address my concerns
9 regarding one of our witnesses today. I appreciate Colonel
10 Wilkerson's service to our country, but I am highly
11 troubled by his repeated and longstanding criticism in the
12 harshest terms of Israel and those who disagree with the
13 Colonel.

14 I am referring to his repeated public statements
15 calling Israel an apartheid state, certain that controls
16 U.S. foreign policy. Clearly, the Obama, Iran deal blows
17 that assertion out of the water. Israel did not support
18 that deal. Colonel Wilkerson has also suggested that
19 Israel, not Syria, used chemical weapons, and has asserted
20 the U.S. should never have recognized the state of Israel
21 because it has been a disaster for us and the world.

22 I think countries like Jordan, which also wouldn't
23 exist without Israel's help, and the Abraham Accords states
24 would say differently. So, I do think those countries
25 around the world whose trade, economy, and security have

1 improved because of their ties to Israel, like India, would
2 also disagree with the Colonel.

3 The Colonel's continued attacks against former U.S.
4 Government officials fails to add to reasonable debate that
5 can improve policymaking. As to the Colonel's references
6 to former Government officials he thinks are too close to
7 Israel and favor too much, I remind us all that every
8 country represents itself to the U.S. Government and each
9 of us to attempt to influence our directions, our
10 decisions, as do interest groups and private companies.

11 I hardly think these -- those representing Israel or
12 its interests deserve more scrutiny than anyone else. I am
13 particularly bothered by what appears to be an obsession by
14 Colonel Wilkerson with the Jewish state of Israel and some
15 of the most ardent defenders who, of course, are Jewish
16 Americans.

17 With the Colonel's past comments, it makes it
18 difficult to have high expectations he will be able to
19 contribute to our hearing today. With that, thank you to
20 the witnesses for appearing before the subcommittee today.
21 I look forward to your testimony and want to thank Chair
22 Warren for hosting this meeting.

23 Senator Warren: So, I also want to thank -- I want to
24 thank my partner here, Senator Scott. And we will get
25 started with our panels. We are going to have two panels

1 today. The first panel consists of outside witnesses to
2 provide their perspective on where current ethics and
3 public integrity laws are falling short.

4 We will have Lawrence Wilkerson, Retired Colonel and
5 Former Special Assistant to Chairman of the Joint Chiefs of
6 Staff, Colin Powell. And we will have Danielle Brian,
7 Executive Director of the Project on Government Oversight.

8 Mr. Wilkerson, I am going to recognize you first. And
9 with apologies, I am going to go vote, handing the gavel
10 over to Senator Scott, and I will return as quickly as I
11 can. In the meantime, it is up to you.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATEMENT OF COLONEL LAWRENCE B. WILKERSON, USA
2 (RET.), FORMER SPECIAL ASSISTANT TO THE CHAIRMAN OF THE
3 JOINT CHIEFS OF STAFF

4 Mr. Wilkerson: Well, thank you, Madam Chairwoman, and
5 Ranking Majority, or Minority Leader, and also the two
6 Senators, at least one now who are in attendance, my own
7 Senator from Virginia, Senator Tim Kaine.

8 Let me respond to some remarks that were just made by
9 the minority leader. George Washington was the one who
10 opined first and most powerfully that any nation that ties
11 its interests totally with the interests of another nation
12 is bound to be punished for it. And of course, he was
13 talking about France at the time, but that is applicable to
14 any relationship that the United States might have with a
15 friend, ally, non-NATO ally, or whatever.

16 And let me thank you for asking me to come here today
17 to talk about this. I think this is a serious issue, but I
18 want to put it in some context, if I may, with a few
19 minutes that I have and take it to a wider red, if you
20 will, but with pertinence and relevance, to be sure.

21 We have been at war for more than 20 years. I see in
22 Houston, Los Angeles, San Francisco, Chicago, where I was
23 last week, soldiers of all components, Marines and others
24 walking around in battle dress uniform. First of all, I
25 can tell you that would have been anathema to my old boss,

1 Colin Powell, but it is not what we are. We are not a
2 Republic that has soldiers in the street dressed for combat
3 all the time.

4 20 years of war plus and trillions of dollars spent,
5 and yet we have nothing like was created on the 1st of
6 March 1941 and called essentially by SR71, and called
7 essentially a committee to investigate the national Defense
8 Program and chaired by, of course, Harry Truman, who said,
9 this is going to be my main task, to ensure the big man
10 doesn't get away with things that hurt the little man.

11 Typical Harry Truman language. And that Senate
12 investigating committee did enormous service for America.
13 It pointed out many problems with an existential conflict,
14 if you will. That is to say, one that we had to win on two
15 fronts, in the Pacific and in Europe. Great service done
16 by Harry Truman. I would say is the greatest service as he
17 did as in the Executive Office. We have nothing like that
18 today.

19 Now, I know the rejoinder would be we have all kinds
20 of SBCs, Senate Budget committee, Senate Appropriations
21 committee, Armed Services committees in the House and the
22 Senate to do this or do that, but nothing like this, which
23 is focused on what I call the National Security budget,
24 which, ladies and gentlemen, is over \$1.6 trillion annually
25 now.

1 That is including everything that should be under
2 National Security. That is a lot of money. That is a huge
3 amount of money. We even got CBO reports that postulate it
4 might take all discretionary Federal spending in a few
5 years just to pay for defense if we keep up at this rate.

6 So, contributory to this and to these prices is
7 another story I will relate to you about Norman Augustine.
8 Many of you probably know who Norman Augustine is. He was
9 head of the Red Cross. He was CEO of Lockheed Martin. He
10 was Assistant Secretary of Defense for Defense and
11 Engineering. He was head of the Defense Science Board.
12 His portfolio goes miles, associated mostly with National
13 Security.

14 Norm told Colin Powell and others of us when H.W.
15 Bush, President H.W. Bush, decided to downgrade the
16 defense industrial base in the armed forces by about 25 to
17 30 percent, depending on what you are talking about. Norm
18 said, you know what you are going to get with the defense
19 contractors, don't you?

20 You are going to get six or seven that run everything,
21 and they are going to monopolize, and they are going to
22 build shoddy products and charge you a maximum price. That
23 is what is going to happen. And by God, that is pretty
24 much what has happened.

25 And the chairman actually indicated that in some ways,

1 with the stock sell offs and the share price increases and
2 all the money going to the CEO and the VPs and the CFO
3 rather than to the floor workers and such -- Halliburton, I
4 think, by some estimates, made \$44 billion off Afghanistan
5 and Iraq alone.

6 When there is that much influence out there from the
7 defense contractors, it is not like you call up, say,
8 example -- for example, Vice President Dick Cheney and say,
9 give me a war, but there is a hell of a lot more influence
10 for National Security decision making whose objective is
11 just that.

12 And that is what these Generals and Admirals and
13 others contributed to by constant movement through what we
14 call a revolving door and out to help that industry. Thank
15 you.

16 [The prepared statement of Mr. Wilkerson follows:]

17

18

19

20

21

22

23

24

25

1 STATEMENT OF DANIELLE BRIAN, EXECUTIVE DIRECTOR AND
2 PRESIDENT, PROJECT ON GOVERNMENT OVERSIGHT

3 Ms. Brian: Thank you, Chairman, and thank you,
4 Senator Scott, for inviting me to testify today. I want to
5 focus on three legal but corrupting phenomena that
6 undermine integrity at DOD.

7 The revolving door, as has been mentioned now, while
8 some important reforms were passed in the 2018 and 2022
9 NDAA's, there really remain some significant loopholes. And
10 let me give you three examples and why they matter.

11 When the Chief of Naval Operations announced his
12 intention to retire nine littoral combat ships, he stated
13 that one more dollar in that system would result in a less
14 capable, less lethal, and less ready Navy.

15 But an intense lobbying campaign led by former Navy
16 officials who had gone to work for companies with contracts
17 to support those ships successfully prevented the Navy's
18 retirement of five of those ships.

19 Now, current lobbying restrictions did not prevent
20 this because they only prohibit a very narrow definition of
21 lobbying activities for very senior officials. When then
22 Undersecretary of Defense Pete Aldridge served on the
23 Pentagon's Defense Acquisition Board, he helped decide that
24 the Air Force's F-22 program should proceed.

25 Two months later, he joined the board of Lockheed

1 Martin, the maker of the F-22. After only six years,
2 Defense Secretary Gates canceled production of that
3 aircraft, saying they weren't relevant to current wars.
4 The revolving door laws did not apply to Aldridge because
5 he was too senior to be considered an acquisition official.

6 And when Lieutenant General Heebner was Assistant to
7 the Army Chief of Staff Shinseki, they announced moving to
8 an all-wheeled army away from tracked vehicles. One month
9 later, General Heebner was hired to become Senior Vice
10 President of General Dynamics, and you guessed it, the
11 maker of the wheeled Stryker vehicle.

12 Now, as we are supplying Ukraine with equipment to
13 defend themselves, we are sending over 40-year-old tracked
14 Bradley fighting vehicles because they are preferable for
15 the offroad mobility, especially in mud. Revolving door
16 restrictions did not apply to General Heebner because he
17 became an executive and not a lobbyist for the company.

18 So, these examples demonstrate the impact of the
19 revolving door. This is not just a nicety. It is about
20 military readiness and effectiveness, and whether we are
21 actually putting our troops' interests and our National
22 Security first.

23 My written testimony includes specific recommendations
24 to close these and other loopholes. The second phenomenon,
25 undermining the integrity of DOD is the occurrence of

1 former U.S. military and reserve personnel receiving
2 waivers of the Constitutional Emoluments Clause to work for
3 foreign governments.

4 POGO's investigation that was concurrent with the
5 Washington Post identified more than 500 instances of these
6 waivers over ten years. Shockingly, the State Department
7 are even approving waivers to work for countries notorious
8 for serial human rights violations, including for former
9 National Security adviser James Jones, who reportedly
10 increased his work for Saudi Arabia even after their
11 horrifying murder of U.S. resident and journalist Jamal
12 Khashoggi.

13 These waivers have most frequently benefited the
14 United Arab Emirates, which had 280 former U.S. military on
15 their payroll during that timeframe. Our investigation
16 even found four people who were approved to work for
17 entities owned by the Chinese government.

18 We have several recommended reforms in my written
19 testimony, but there should be no waivers for former U.S.
20 military personnel going to work for countries identified
21 by the State Department as guilty for a pattern of human
22 rights violations, or which are our country's rivals. And
23 finally, ownership of defense stocks by senior officials.

24 Currently, only acquisition officials are banned from
25 owning stock in the top ten defense companies. But until a

1 few years ago, this committee, the Senate Armed Services
2 committee, required every nominee to divest all stock from
3 any defense contractor before being confirmed.

4 I have brought with me two examples of ethics
5 agreements from officials who agreed to this committee's
6 requirements in 2010 and 2014 to divest from and not invest
7 in any company identified as a DOD contractor as a
8 condition of their confirmation.

9 In the short term, I encourage the committee to revive
10 that rule, but Congress should codify a more expansive
11 plan. If the Congress does accomplish this suite of
12 reforms, it will increase public confidence in the
13 integrity of the DOD, and more importantly, it will improve
14 our military readiness and capability, and we had POGO
15 would be thrilled to help you do so.

16 [The prepared statement of Ms. Brian follows:]

17

18

19

20

21

22

23

24

25

1 Senator Warren: Thank you very much, and it is good
2 to be back with you. So, I am going to recognize myself
3 here for first round of questions. Decisions made at the
4 Department of Defense and other Federal agencies should be
5 based on one thing and one thing only, what is in the best
6 interests of the American public.

7 But big defense contractors have a different set of
8 incentives. They are responsible to their shareholders,
9 and that means their job is to make as much as they can in
10 profits. Mr. Wilkerson, you have decades of experience in
11 Republican and Democratic Administrations, both in uniform
12 at DOD, ultimately, as Special Assistant for the Chairman
13 of the Joint Chiefs, Colin Powell, and as a civilian in the
14 State Department.

15 So, you have seen the relationship between the Federal
16 Government and private industry up close and personal.
17 Now, there are a lot of different ways that industry seeks
18 to influence decision making at the Pentagon, and a key one
19 is by use of the revolving door.

20 So, Mr. Wilkerson, let me just ask you, were you
21 lobbied by former colleagues who were hoping to influence
22 your decision making when you worked either at the Pentagon
23 or at the State Department?

24 Mr. Wilkerson: I was at both places. I was asked
25 legally, in view of the administrative instructions I

1 received when I became Director and Deputy Director of the
2 Marine Corps War College in Quantico, Virginia.

3 In other words, they came to me after I retired. In
4 State, it was quite the opposite. I had to tell them
5 midsentence, as it were, stop. Motion my staff assistant
6 come in. Escort this gentleman out, please, because he is
7 getting ready to make an offer of employment to me, and I
8 can't, you know, listen to it.

9 And that was my administrative instructions when I did
10 my financial disclosure form and went through the White
11 House background investigation and everything else. I knew
12 that I could not entertain an offer for civilian employment
13 post my position until I was out of it.

14 Senator Warren: So, you are telling me -- I am just
15 making sure I am following you as we go through this. So,
16 you are saying while you were still working for the
17 Government, that there were defense contractors who were
18 pretty clearly willing to step over the line to try to make
19 you an offer of employment while you were still a
20 Government employee?

21 Mr. Wilkerson: Yes, ma'am.

22 Senator Warren: How about on the other side? Were
23 they lobbying you about contracts, other things?

24 Mr. Wilkerson: Not directly. It is a little bit more
25 pernicious than that. For example, when I would sit down

1 at lunch with Turki al-Faisal, who at that time was head of
2 Saudi intelligence, with David Ignatius from the Washington
3 Post on the other side of me, and listen to the
4 conversation at the table, I knew there was influence being
5 peddled.

6 Was there an exchange of money? I don't know. I
7 myself was offered a couple of thousand dollars from the
8 Saudi official in order to do this, that, and the other
9 thing. And I told him simply, I can't take it. If there
10 is a really, truly pernicious relationship with flag
11 officers, and I am sad to say, colonels too, I am sad to
12 say it seems to be dominating the Air Force.

13 It is everywhere, but in the Air Force, it is really
14 bad. It is Saudis, going to work for the Saudis in
15 whatever it is they do for the Saudis. I spent a lot of
16 time in this building lobbying to get the Senate to pass
17 and then in the House to get the House to pass the
18 legislation under the War Powers Resolution that would get
19 us out of the war in Yemen.

20 We got it passed in both houses. Unfortunately,
21 President Trump vetoed it. I encountered people all the
22 time who were being influenced by Saudi money that was
23 exercised, if you will, in order to keep that vote from
24 being successful.

25 Senator Warren: So, let me just back it up a little

1 bit. I very much appreciate your firsthand account here.
2 To ask you that based on your experience in Government, I
3 just want to focus on the part about why defense
4 contractors, not just foreign governments, but defense
5 contractors like Boeing or Raytheon, why is it they want to
6 hire former Pentagon employees to work for them as
7 lobbyists?

8 What do they see is the benefit? Why is it better to
9 have someone who, for instance, they could hire people
10 whose profession is lobbying, someone who is lobbying in
11 another field, say, for another ten -- for the last ten
12 years? They don't want that. They will take somebody who
13 has never lobbied before, but who has been employed at the
14 Pentagon. Why is that?

15 Mr. Wilkerson: Well, there are a number of reasons
16 for that. I think the number one reason is because they
17 know people who are their contemporaries who are in the
18 building, as it were, or wherever it happens to be.

19 And they also know that that individual usually 06,
20 07, 08, or up, has contacts elsewhere in the defense
21 contracting business. Now really just about 8Bs. And they
22 know that that person knows how to work those contacts.

23 And if it is a specific program like the F-35, for
24 example, with which I am somewhat familiar, then you get
25 people who are very familiar with that on the inside, know

1 all about the lies that you have been telling the Federal
2 Government with regard to the program, and we will come out
3 and reinforce those lies, deceit, if you will, from their
4 position with your business. It is a very insidious,
5 pernicious thing.

6 Senator Warren: So, I take it that this is really why
7 Federal law has long recognized the importance of trying to
8 insulate the work of the Federal Government from the
9 influence of private industry. We have been driving in
10 this direction for a long time, just not very successfully.

11 You know, Federal law requires that Government
12 officials, depending on where you are, wait one year or two
13 years based on their seniority before lobbying their former
14 agency. I think this is called a cooling off period.

15 Ms. Brian, let me ask you about this. You run an
16 organization called POGO that works as a nonpartisan
17 Government watchdog. Is a two-year cooling off period
18 sufficient to address concerns about conflicts of interest?

19 Ms. Brian: It is a step in the right direction,
20 Chairwoman, but it is not enough. It has been clear to us
21 that you really need to, especially when you are talking
22 about political appointees, look to the end of an
23 Administration, the length of the time of an
24 Administration, which is often four or even longer,
25 depending on if the person is reelected.

1 And this is something that we have done an analysis
2 of the past Presidential ethics orders all the way back to
3 President Clinton. Each President has had some form of
4 ethics order, often applying as much as a five-year cooling
5 off period.

6 But we do think a four year or at least to the end of
7 the Administration when it comes to those appointees is
8 important. And I would love to include for the record,
9 sort of our evaluation of those various considerations and
10 how they could be applied through legislation.

11 Senator Warren: Without objection.

12 Ms. Brian: Thank you.

13 Senator Warren: You know, one of the common arguments
14 that some of my colleagues make about cooling off periods
15 is that if we lengthen them, it will make it tougher to
16 recruit talented people to work at DOD.

17 Now, I always want to pause when I hear that argument
18 and say, think about that for a minute. The claim is if
19 somebody knew that Federal law would prevent them from
20 becoming a lobbyist after they left their Federal job, that
21 they would choose not to come to work at the DOD in the
22 first place.

23 Mr. Wilkerson, based on your experience, if we told
24 people who were in line for top Pentagon jobs that they
25 would need to wait four years instead of three years or two

1 years before they could become lobbyists after they left
2 that job, do you think this would make it harder for DOD to
3 attract the talent that they need?

4 Mr. Wilkerson: I don't. And I go back to Admiral
5 Spruance, Admiral Nimitz, Admiral Halsey, General
6 Eisenhower, and a host of other characters whom we all know
7 from World War II who weren't so motivated. They didn't
8 have that incentive to do what it was they did, which was
9 quite phenomenal, if you think about it.

10 Senator Warren: And is it your experience or your
11 sense that extending our cooling off period would
12 strengthen or weaken our National Security?

13 Mr. Wilkerson: I don't know what the exact time would
14 be that would be most effective, but I think it is a
15 measure. It is a measure. I would rather see, frankly, I
16 would rather see the military reinstitute what I got at the
17 Naval War College from Admiral Stockdale and a guy by the
18 name of Joe Brennan, which was ethics and military service,
19 and be a subject of a seminar, for example, that had
20 standing room only crowds in it, because that is not
21 something we teach as a country anymore.

22 Senator Warren: Fair point. Fair point. I am going
23 to do one last question, because I am way over time. I was
24 filling in while everybody was voting here. But my last
25 question is to you, Ms. Brian.

1 POGO has been around for over 40 years, that you have
2 been looking at this issue, you have been investigating
3 these problems for nearly that long. Do you think we need
4 more studies before we take steps to strengthen Pentagon
5 ethics requirements?

6 Ms. Brian: My plea is not for us to do any more
7 studying. As you mentioned, POGO ourselves have been doing
8 this work since the 1980s with analysis, the GAO has at
9 least 40 years of reports, more than 40 years of reports
10 studying this, the Inspectors General have as well.

11 We don't really need to be studying this anymore. We
12 really do know the problem here, and we just need to fix
13 the problem. If I could add to the point, you raised
14 before about those who might not want to come into
15 Government, if they -- or into the Defense Department, if
16 they know they can't become lobbyists afterwards, I would
17 argue I don't want them in the Defense Department then, and
18 I am glad that they are reluctant to go in.

19 Senator Warren: Right. So, thank you. You know, I
20 just want to close this by saying I have a bill that would
21 combat giant defense contractors capture the Pentagon by
22 making some ethics reforms.

23 We should close influence peddling loopholes so the
24 definitions of lobbying capture all of the work that
25 corporations do to try to tilt the system in their favor.

1 We should extend recusal periods for people who come to DOD
2 from giant Pentagon contractors, and we should require more
3 public reporting on these companies about their hiring a
4 former Department of Defense officials.

5 A good place to start this is by extending those
6 cooling off periods for at least four years. And with
7 that, I apologize to my colleagues for going so long and
8 turn this over to Mr. Scott.

9 Senator Scott: Thanks, Senator Warren. Thank you all
10 for being here. So, I am sorry I had to leave when you
11 were in your presentation, but do you have specific
12 recommendations that you would make?

13 Like, let me ask -- so here is an example. A, do you
14 think we ought to prevent a former DOD personnel that --
15 working for a defense contractor, if they had nothing -- if
16 they are going to do work in an area or even lobby an area
17 that had nothing to do with their job in the military ahead
18 of time --?

19 Ms. Brian: No, no I don't.

20 Senator Scott: Okay.

21 Ms. Brian: And actually, I am glad you came back,
22 Senator, because I did want to respond to something you had
23 in your opening statement about the fact the DOD does have
24 more -- which is true, there are more ethical or conflict
25 of interest restrictions for a DOD. But I think that is a

1 good thing. DOD has such an important mission. Yes, so I
2 think that is okay.

3 Senator Scott: Yeah, it is a pretty big budget.
4 There was a GAO study in, I guess, 2021 that talked -- said
5 that there is something like, you know, 1.1 million people
6 get out of the service in between 2014 and 2019, but only
7 about 1,700 were, you know, former DOD senior acquisition
8 officials, you know, ended up working for defense
9 contractors. Does that sound right?

10 Ms. Brian: It sounds correct. But I don't think it
11 is right. I mean, I think it is terrible.

12 [Laughter.]

13 Senator Scott: That is not exactly why I asked the
14 question --

15 [Laughter.]

16 Senator Scott: So, do you think that is about the
17 right number? So, what we should be looking at is what
18 happens -- you know, what the impact of those 1,700, right?

19 Ms. Brian: Well, that GAO report only looked at the
20 top 14 contractors and there are about 100,000 DOD
21 contractors. So, I really would have preferred if DOD --

22 Senator Scott: Do you think the number is quite a bit
23 bigger?

24 Ms. Brian: But I think that it is important to know
25 those were the 14 biggest ones. And I think that as the

1 chairwoman reflected, that is a lot of people for 14
2 companies.

3 Senator Scott: So, what do you -- so let's say you
4 have somebody that has a successful military career and, or
5 worked at DOD and things like that, whatever they did.
6 What do you think they should do when they finish? Because
7 they clearly have gained a lot of knowledge. I mean, so do
8 you think they should be completely eliminated from being
9 able to work in defense or for a defense contractor? What
10 should they do with their time?

11 Ms. Brian: I think it really depends on the
12 circumstance of what their position was when they were at
13 DOD. But for the vast majority of cases, they have a world
14 of opportunities without having to trade on their influence
15 peddling.

16 And I think it is important to remember that in the
17 private sector, almost every company now has non-compete
18 clauses where you can't go to the competitor, which those
19 clauses that are being upheld in the courts are quite
20 narrow in their scope.

21 And I think that is the same thing in this case where
22 if a person had been involved, for example, in deciding
23 that the F-22 program should go forward, they should not be
24 allowed to go to Lockheed. That doesn't mean there aren't
25 a world of other companies they could go to work for.

1 Senator Scott: Yes. So, Colonel -- and Israel is a
2 big and very important to a lot of citizens of Florida, as
3 you would expect. You have stated that Israel will be gone
4 in 20 years. And you said that, I think last year, a year
5 before. So why would you believe that, and why do you
6 think that?

7 Mr. Wilkerson: Because Bibi Netanyahu is the leader.
8 If he weren't the leader, I wouldn't say that.

9 Senator Scott: So, it is only because -- well, he
10 probably wasn't the leader for a while there.

11 Mr. Wilkerson: Oh, he has been the leader for a long
12 time. He worked with Marc Rich to get discounted oil and
13 break our sanctions in Iraq for Israel as the finance
14 officer, if you will.

15 Senator Scott: So, you have said the recognition of
16 Israel was a mistake. So do you think when you look at the
17 Abraham Accords and the success, we have had with those, do
18 you think -- and there is a lot of countries now benefiting
19 from Israel. Do you think that our recognition of Israel
20 is -- or continues to be a mistake?

21 Mr. Wilkerson: What worries me the most right now,
22 Senator, is a change in the unified command plan, because I
23 know how the military fought that change for over half a
24 century. I know how Colin Powell would have fallen on his
25 sword over that change.

1 And that puts Israel for the first time in its history
2 and central command's history in the AOR, the area of
3 responsibility with all the Arab countries. Had we done
4 that when we put together the 600,000 man coalition that
5 included the French, the Syrians, and others in the first
6 Gulf War, it would have collapsed right away.

7 The Abraham Accords is not sufficient enough, nor the
8 rapprochement between Tehran and Riyadh to convince me that
9 that change should have been made unless we are planning on
10 war with either Israel leading and us following, or us
11 leading and Israel holding our coat, or together.

12 That is the only reason, as a military professional of
13 31 years and a student of the UCP in particular, a document
14 signed by the President would be changed to that effect.

15 Senator Scott: Thank you, Chair.

16 Senator Warren: Thank you. Senator Kaine.

17 Senator Kaine: And thanks for doing this hearing. I
18 really appreciate it. It is an interesting day to be
19 having discussion about Israel because it is the 75th
20 independence anniversary today.

21 And I think Israel and the United States have been
22 great allies. You talked about President Truman. That was
23 one of his proudest accomplishments was the recognition of
24 Israel. And that --

25 Mr. Wilkerson: Over George Marshall's objections --

1 Senator Kaine: He did. He said, the person he most
2 admired in the world, George Marshall, told him not to do
3 it, but he had the strength as a guy with a high school
4 degree from --

5 Mr. Wilkerson: I am a fan of Israel, Senator --

6 Senator Kaine: -- to stare down -- well, just let me
7 finish. He had the strength to stare down a guy who had
8 won the Nobel Peace Prize and say, yes, but I think this is
9 the right thing to do. That doesn't mean you can't
10 criticize Israel. And it doesn't mean we shouldn't also
11 recognize the huge protests that are going on in Israel --

12 Mr. Wilkerson: Yes.

13 Senator Kaine: -- right now are the sign of a
14 functioning democracy. Peaceful --

15 Mr. Wilkerson: And gives me hope.

16 Senator Kaine: I wish we could get as many Americans
17 to peacefully protest about some things that I wish would
18 change. So, there is some very hopeful signs, challenging
19 signs. No country is perfect. I am troubled -- I have a
20 lot of questions I want to ask.

21 I am troubled by The Washington Post reporting that
22 says 95 percent of the time when somebody who is a retired
23 military officer asks for a waiver to work for a foreign
24 government, the answer is yes.

25 That is just -- without even knowing the details of

1 the individual cases, that percentage strikes me as very
2 troubling. And it reminds me of the challenge we got into
3 with military housing a few years ago.

4 In the military housing contracts, the base commanders
5 had the authority to decide at the end of the year whether
6 the housing, the private housing companies got a bonus or
7 not, and they were giving the bonus like 98 percent of the
8 time.

9 And all you needed to know is to look at that and then
10 know there is going to be a huge problem. And of course,
11 there was. That problem was actually facilitated by
12 actions that this committee sadly took a few years before
13 when we shrunk the size of headquarters staff and in an
14 arbitrary across the board way.

15 And what that meant was a lot of people, like folks
16 running housing programs, got shrunk. So, you have to be
17 careful when you do something like that. But I am really
18 troubled by this 95 percent number, and it just seems to me
19 like that is a symptom of something that is wrong. What is
20 the fix for that?

21 Ms. Brian: Well, Senator, this is only happening
22 because the Congress has actually given the authority to
23 the State Department to authorize these waivers. So,
24 Congress, this is a perfect place for Congressional
25 oversight to look into.

1 What are the standards that the State Department is
2 applying? They also have -- in our written comments, we
3 have a lot of additional recommendations that include more
4 transparency.

5 We had to litigate, and so did The Washington Post, in
6 order to even get the very, very redacted waivers that we
7 were able to accomplish. So not only is this happening
8 with alarming frequency, it is happening under a veil of
9 secrecy as well.

10 Senator Kaine: I know Ms. Brian you said we don't
11 need more studies. And I hate just study after study after
12 study. I like action. But there are nuances here and I
13 wonder what you would think.

14 In terms of more restrictions for people leaving the
15 Pentagon and going to work for businesses in the defense
16 space, does it matter what level they are?

17 Would you -- you know, would you set it and have a
18 higher level of restriction for, you know, higher level
19 officials, lower level restriction for people junior in
20 their career?

21 Ms. Brian: Oh, absolutely. I mean, one of the things
22 that is ironic about the current restrictions is they, many
23 of them apply more to more junior people than they do to
24 the more senior people.

25 And so, I think if the Senate were to focus really

1 just on those more senior people, I think you would have
2 really a lot of important loopholes being closed.

3 Senator Kaine: And then to a point that was raised by
4 the chairwoman in her opening. You know, if it is about
5 sharing expertise, but the overwhelming majority of people
6 who go are going into lobbying or adjacent influencing
7 rather than providing expertise in the design of a program,
8 you could also have limitations that might not stop you
9 from joining but might stop you from joining in a kind of a
10 lobbying or influencing capacity.

11 Ms. Brian: Absolutely.

12 Senator Kaine: You know, I was supervising the, you
13 know, maintainers of a particular air platform, okay, doing
14 things that would enable that platform to require less
15 maintenance. Okay, that would be a good thing. That would
16 be a sharing in expertise. But going into influence and
17 Government relations, that -- you might draw some
18 distinctions there.

19 Ms. Brian: Absolutely. You will see in our breakdown
20 of the kinds of loopholes to be closed, it really is about
21 closing the access of influence peddling, is really the
22 central problem.

23 Senator Kaine: Right. And to your point, Madam
24 Chair, I think the way we define lobbying -- we define it
25 pretty narrowly now and pretty -- and you know, smart

1 lawyers and others can figure out how to lobby without it
2 being lobbying, and that probably requires us to be a
3 little more diligent as well. I yield back.

4 Senator Warren: Senator Budd.

5 Senator Budd: Thank you, Madam Chair. Again, thank
6 the witnesses for being here today. I think we all can
7 agree that maintaining the trust of the American people is
8 a fundamental aspect of public service, and the trust is
9 earned, not given.

10 But I am deeply concerned with the message that the
11 American people are being sent today about the men and the
12 women in uniform, as well as senior leadership across the
13 Department of Defense.

14 I think this message is a wrong one, in my opinion. I
15 am deeply concerned about the message that is being sent to
16 those considering raising their right hand in defense of
17 this nation. There is a certain undertone to some of the
18 testimony we have already heard. And frankly, the fact
19 that we are having this hearing, I think that makes a
20 statement.

21 We are told to beware the Beltway bandits, the likes
22 of specifically to name a few, Lockheed, Grumman, Raytheon,
23 and Boeing. The American companies that, yes, they make a
24 profit, but they also create jobs, they innovate, they help
25 deter our adversaries, and they maintain American peace and

1 prosperity. We are told of a, "deterioration of ethics in
2 the military officer corps," the lure of filthy lucre, the
3 lifestyle preferences, the elixir of continued power and
4 influence.

5 And that, again, "the Army does not usually produce
6 many giants of integrity." I couldn't disagree more. The
7 military has produced giants like Washington, Eisenhower,
8 Nimitz, and Stockdale, Colonel, some that you mentioned
9 earlier.

10 And for the last 20 years, all volunteer force has
11 transformed into a generation of combat leaders, some of
12 whom are now general and flag officers or senior civilian
13 leaders in the Pentagon.

14 The American people have invested heavily in these
15 leaders with years of training and professional military
16 education. Particularly at a time we are already facing a
17 recruiting shortage, we should be wary of telling
18 prospective recruits that their would-be leaders are
19 corrupt or that they should give the nation decades of
20 service -- or should they give the nation decades of
21 service, that their future career options would or should
22 be limited.

23 Now, I am not arguing that there are no bad apples,
24 but it seems to me that any insinuation that senior
25 military leaders are inherently corrupt or easily

1 influenced by defense contractors or foreign powers, I
2 think that is just wrong.

3 Colonel Wilkerson, how is accepting a job that uses
4 your well-earned knowledge, experience, and judgment
5 pernicious and I am quoting here, "pernicious, corrupting,
6 and damaging to the interests of the country?" Briefly,
7 please.

8 Mr. Wilkerson: Well, a specific example, Senator,
9 would be -- a specific example, Senator, would be those
10 people who work against, for example, the idea that the A-
11 10 Warthog is a better close air support aircraft for my
12 fellow infantrymen than the F-35, which any infantryman
13 knows will never come down to provide close air support for
14 them.

15 And should it do it from altitude, it will be
16 ineffective. And yet we are getting rid of the very best
17 platform for that that we have ever created, the A-10,
18 principally because we have people who are pushing the F-35
19 so hard.

20 And I really have a hard time blaming them because it
21 is costing astronomically and they have got to have
22 something to prove that that aircraft is worth it. But I
23 don't want the GIs on the battlefield and the Marines on
24 the battlefield have to suffer for that.

25 Senator Budd: Thank you, Colonel. And again, you

1 want to evaluate those on a case-by-case basis.

2 Mr. Wilkerson: Yes.

3 Senator Budd: And I would agree with that. Madam
4 Chair, I have a series of articles regarding past comments
5 made by Colonel Wilkerson. I would like to submit it for
6 the record.

7 Senator Warren: Without objection.

8 [The information referred to follows:]

9 [SUBCOMMITTEE INSERT]

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Senator Budd: Thank you. Colonel Wilkerson, on the
2 issue of foreign influence, you have been quoted as saying,
3 "the Jewish lobby, and AIPAC in particular, played an
4 outsized influence in the run up to the Iraq war."

5 You have called Israel, one of our closest allies, an
6 apartheid state. And it just concerns me that with
7 comments like those, are we supposed to take your testimony
8 here today seriously, particularly when you talk about
9 foreign influence? But again, I appreciate you being here.
10 And Madam Chair, I yield back.

11 Senator Warren: Thank you. So, I want to do a second
12 round of questions for anybody who wants to do it. As I
13 mentioned in my opening statement, and Senator Kaine
14 referred to it, there is a recent investigation by The
15 Washington Post and POGO that found that hundreds of
16 retired military officers have gone to work for foreign
17 governments.

18 And Senator Grassley and I launched our own bipartisan
19 investigation, and it was not intended to be partisan. We
20 wrote to the Department of Defense. We asked for detailed
21 information about DOD's processes for how they approved of
22 this work and how much these retired officers expected to
23 receive in payment from foreign governments.

24 And what we discovered is that the approval rate from
25 DOD is in excess of 95 percent, as you underscored, Senator

1 Kaine, and that the officers themselves made a lot of
2 money. An Air Force general working for Saudi Arabia was
3 getting paid \$24,000 a month, which just about doubled what
4 he was already receiving from his military pension.

5 What troubles me in particular about this is how hard
6 it is to get the information. Senator Grassley and I were
7 successful because we were able to bear down on it with
8 some Senate elbow grease on this.

9 But the information is not made public. And
10 Washington Post and POGO had to dig this out in other ways.
11 So now that we have got this information, I just want to do
12 a little bit more on the summary. High approval rates by
13 DOD. Mr. Brian, can you just say a word about the kinds of
14 countries that are employing our former generals, colonels,
15 admirals?

16 Ms. Brian: Well, I think that is -- the thing that
17 was most shocking to me was when we are talking about
18 countries not only that are serial violators of human
19 rights, the United Arab Emirates, for example, with 280 of
20 these people on their payroll.

21 But the fact that we were able to find four people who
22 were approved to work for entities owned by China, which is
23 obviously a rival to our country, that to me, was -- what
24 standard are they using to approve these?

25 Senator Warren: Right. So, a little troubling about

1 the particular countries that are being approved here. The
2 number of retired officers working for foreign governments
3 was made public by your outside investigation.

4 Can you just say a word about what it would mean if we
5 required from the get-go that any employment by a former
6 high-level Department of Defense official by a foreign
7 government had to be made public and available for anyone
8 in the public to see? What would be the consequence of
9 that, in your view?

10 Ms. Brian: I think it would be extremely valuable, in
11 part because remember, these people are not just on the
12 payroll, but as you noted, some of them are very high
13 level, including former National Security adviser or the
14 head of the NSA.

15 And then they are also commenting in the media, but it
16 is not also identified in their comments that they are on
17 the payroll of a foreign country. They are just
18 acknowledged as a former National Security official. And
19 so, the public needs to know and the Congress needs to know
20 who is paying you for these comments.

21 Senator Warren: And just to make clear, so everybody
22 is kind of following what happens here. Does the United
23 States Government place restrictions on our ability as a
24 Government to help countries, for example, that are
25 identified as having terrible human rights records or to

1 help the Chinese government, for example?

2 Ms. Brian: I mean, there is certainly all kinds of
3 considerations that the State Department and DOD go into
4 before they are evaluating whether those agreements are
5 agreed to. But in this case, clearly, that is not what is
6 happening.

7 Senator Warren: Well, I am particularly concerned
8 that what has happened is there has been -- this has become
9 a way to bypass those restrictions and to be able to
10 communicate with and influence Government and evade the
11 sanctions or the restrictions that are otherwise in place.
12 So, thank you again very much.

13 Thank you for initiating this study and bringing this
14 to light so that Senator Grassley and I could follow up and
15 we could do more to highlight what is happening here.
16 Senator Scott, do you have anything more? Senator Kaine?

17 All right. With that, thank you very much, both of
18 you, for being here, and I call up the second panel.

19 [Pause.]

20 Senator Warren: So, our second panel will consist of
21 counsels from the department and from the military
22 services. Caroline Krass is General Counsel for the
23 Department of Defense. Carrie Ricci is General Counsel of
24 the Army. Shaun Coffey, or John Peace, sorry, Coffey is
25 General Counsel of the Department of the Navy. And Peter

1 Justice Beshar is General Counsel of the Department of the
2 Air Force.

3 Thank you all for being here today. I understand you
4 have one joint statement that will be delivered by Ms.
5 Krass.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATEMENT OF HON. CAROLINE D. KRASS, GENERAL COUNSEL,
2 DEPARTMENT OF DEFENSE; HON. CARRIE F. RICCI, GENERAL
3 COUNSEL, DEPARTMENT OF THE ARMY; HON. JOHN P. COFFEY,
4 GENERAL COUNSEL, DEPARTMENT OF THE NAVY; HONORABLE PETER J.
5 BESHAR, GENERAL COUNSEL, DEPARTMENT OF THE AIR FORCE

6 Ms. Krass: Thank you very much. Chairman Warren,
7 Ranking Member Scott, and distinguished members of the
8 Senate Armed Services committee, Personnel subcommittee, I
9 want to thank you for the opportunity to testify today.

10 I would also like to thank the General Counsels of the
11 military departments who are testifying alongside me. As
12 you just introduced them, Carrie Ricci, Army General
13 Counsel, Shaun Coffey, Navy General Counsel, and Peter
14 Beshar, Air Force General Counsel.

15 I value their strong partnership in reaffirming DOD's
16 commitment to ensuring that all personnel carry out their
17 duties and responsibilities ethically. In these remarks, I
18 would like to highlight two principles in particular.

19 First, DOD's strong commitment to ethical conduct.
20 And second, the comprehensive set of existing ethics laws
21 and regulations across the Executive Branch that create a
22 clear, consistent, and balanced framework appropriately
23 tailored to promote integrity and to prevent conflicts of
24 interest. I have submitted a longer written statement for
25 the record. Let me begin with DOD's commitment to ethical

1 conduct.

2 As the largest Government agency, DOD has
3 approximately 3 million personnel, filling nearly 675
4 distinct occupations worldwide. Across this vast and
5 varied enterprise, DOD remains deeply committed to ensuring
6 that our personnel carry out their duties ethically and
7 free from any actual or perceived conflicts of interest.

8 The DOD ethics program embraces a tone from the top
9 model, with participation from the highest levels of DOD
10 leadership, including the Secretary of Defense, who
11 consistently communicates his expectations to all of us
12 regarding ethical conduct.

13 As one of my many duties, I serve as the department's
14 primary designated agency ethics official. We have 16
15 additional designated agency ethics officials and more than
16 3,000 ethics officials at every level, each of whom is
17 required to be an attorney.

18 Together, we administer strong ethics programs
19 designed to facilitate compliance through extensive
20 training and enhanced financial disclosure reviews, as well
21 as to identify and address potential violations.

22 DOD's financial disclosure programs help detect and
23 prevent potential conflicts of interest, with a focus on
24 individuals whose position or duties creates a potential
25 for conflicts of interest. Our ethics attorneys provide

1 extensive guidance, including assisting individuals in
2 comprehending the often intricate and overlapping patchwork
3 of post-Government employment laws that apply to DOD
4 employees in particular.

5 In fact, GAO released a 2021 report recognizing the
6 effectiveness of DOD's programs in preventing violations of
7 those post-Government employment laws. The report also
8 noted that both DOD and defense contractors benefit from
9 the contractors' employment of former Government officials
10 by leveraging the general knowledge and skills that these
11 officials developed during their Federal service and
12 improving communications between industry and the
13 Government.

14 I would now like to touch upon the existing framework
15 of comprehensive ethics laws and regulations that we work
16 to uphold every day. Executive Branch wide criminal ethics
17 laws and implementing regulations create a clear,
18 consistent, and balanced framework that is appropriately
19 tailored to promote integrity and to prevent conflicts of
20 interest.

21 They are also supported by years of interpretive
22 guidance from the Office of Government Ethics, the
23 Department of Justice, and the Federal Courts. Generally,
24 these laws and regulations prohibit an employee from
25 participating in particular matters that would affect the

1 employee's financial interests, to include the financial
2 interests of their family members or certain other entities
3 with which they have or have had an outside relationship.

4 Importantly, these laws and regulations require a
5 nexus between an employee's duties and the financial
6 interest or relationship in order for a conflict of
7 interest to arise.

8 In addition, under the Executive Branch wide ethics
9 regulations, incoming Government employees have a one year
10 cooling off period from interacting with their former
11 employer, and a criminal statute restricts former
12 Government employees from communicating back to the
13 Government on matters in which they were personally and
14 substantially involved.

15 This time-tested standard protects against undue
16 influence without unreasonably interfering with the ability
17 of veterans and other public servants to use their
18 education, skills, and expertise to earn a living and
19 support their families following service to our country.

20 I believe there is always room for improvement, and
21 DOD supports well-coordinated and integrated efforts to
22 enhance Executive Branch wide laws. But imposing
23 additional ethics restrictions that apply only to DOD can
24 be counterproductive, if they diverge from longstanding and
25 well-known Executive Branch wide ethics laws.

1 They can create unnecessary complexity and confusion
2 and may also put us at a disadvantage from our recruitment
3 and retention perspective. Recognizing these concerns in
4 the Fiscal Year 2023 NDAA, Congress directed an independent
5 review of the impact that DOD specific ethics laws may have
6 on recruiting and retention.

7 This review is underway and the Department looks
8 forward to sharing the results with you when it is
9 complete. Finally, my colleagues will be happy to discuss
10 with the committee the processes for evaluating requests
11 from retired service members regarding foreign government
12 employment or compensation.

13 To help ensure a consistent approach across DOD, the
14 Undersecretary of Defense for Personnel and Readiness
15 recently directed the military services to conduct a 90-day
16 assessment of those processes and to provide any
17 recommendations for improvement. The Department looks
18 forward to briefing the committee on the results.

19 In closing, I would like to thank you for holding this
20 important hearing today, and to reiterate DOD's commitment
21 to maintain the public's trust as we defend the nation. My
22 colleagues and I look forward to answering your questions.

23 [The prepared joint statement of Ms. Krass, Ms. Ricci,
24 Mr. Coffey, and Mr. Beshar follows:]

25

1 Senator Warren: Thank you very much. So, I am going
2 to start with the first round of questions, and I just want
3 to say how glad I am to have all four of you here today,
4 that we have four general counsels for the Department of
5 Defense, the Army, the Navy and the Air Force.

6 The four of you are the top lawyers at the Pentagon,
7 and it is your job to oversee compliance with our ethics
8 laws. I am deeply grateful for your work. I obviously
9 believe it is very important, and I appreciate your being
10 here to explain to us and to say publicly how these laws
11 work.

12 So, what I want to do is I just want to kind of run
13 through some examples and make sure I understand exactly
14 how some of these pieces go. One of the key guardrails in
15 our conflict of interest laws says that if a program -- if
16 an official is, "personally and substantially involved" in
17 a Pentagon program and then leaves to go to work for a
18 defense contractor, they are permanently barred from coming
19 back and lobbying the Pentagon on behalf of the company on
20 issues related to the program that they used to work on.

21 Boy, do I get what we were trying to accomplish with
22 that and I think that is terrific. I just want to look at
23 maybe some loopholes in that.

24 So, Ms. Krass, let's say that a Pentagon official
25 helped write the contracts between the Pentagon and

1 Lockheed Martin for a multibillion-dollar weapons program.
2 Under current law, as written, would that person be
3 prohibited from leaving the Pentagon and joining Lockheed
4 Martin's board?

5 Ms. Krass: Thank you, Senator. And I absolutely
6 share your commitment to maintaining the public's trust and
7 to avoiding any appearance of conflicts. Applying these
8 laws is very context dependent and fact specific, but in
9 general, the procurement integrity laws would prevent an
10 acquisition official from accepting any compensation from a
11 defense contractor for --

12 Senator Warren: So, anybody who helped write these
13 contracts. So, when Jim Mattis was told that he couldn't
14 represent Theranos on a particular matter, but that he was
15 free to go join their board of directors, that was okay.

16 Ms. Krass: So, I can't opine on that particular
17 situation but --

18 Senator Warren: That is what happened.

19 Ms. Krass: But if, generally speaking, if somebody
20 has left, if they have worked on a particular matter
21 involving specific parties, they may not come back to the
22 Government on that particular matter.

23 Senator Warren: But they can join the board of
24 directors of the company that is talking to the Government.

25 Ms. Krass: So, if, as I mentioned, if they are a

1 former acquisition official, then they would not be able
2 to, if they were involved in a contract of \$10 million or
3 more.

4 Senator Warren: So, you don't think Jim Mattis was
5 involved in any contracts worth \$10 million or more? This
6 is just public record.

7 I am just going by what's public here. It looks like
8 to me there is a big loophole for people who go off and
9 just join the board of directors, which, by the way, is a
10 pretty good job. Because it turns out, according to their
11 SEC filings, Lockheed paid its board members more than
12 \$300,000 a year.

13 So, it is a nice gig. So let me ask you another one.
14 Ms. Krass, under our current ethics laws, would this person
15 be allowed to be a consultant paid by Lockheed Martin, to
16 advise Lockheed Martin on how to respond to DOD in order to
17 win future contracts from the Pentagon, so long as they
18 personally didn't come in and lobby. Would that be, okay?

19 Ms. Krass: So, they would not be able to -- and
20 again, you know, these are all context dependent.

21 Senator Warren: I understand that and we will keep
22 that as a running objection.

23 Ms. Krass: Okay. But they would not be allowed to
24 use any proprietary information or any other non --

25 Senator Warren: The point is -- the question I am

1 asking is, can they come in? Can they consultant and tell
2 you how to do it as long as they are not the ones who show
3 up in the office?

4 Ms. Krass: I think under existing laws, they have to
5 be careful not to use any proprietary or other nonpublic
6 information.

7 Senator Warren: Right, but otherwise, they get to do
8 that. Let me try one more. Under current ethics laws,
9 could this former Pentagon official's consulting work
10 include helping Lockheed Martin develop a public campaign
11 to win new contracts, including targeting former
12 colleagues, again, so long as they don't do any direct
13 lobbying themselves? Would that be, okay?

14 Ms. Krass: I think that, again, the same laws would
15 apply in terms of not being able to use any proprietary --

16 Senator Warren: I understand that. But the question
17 I am asking is, can they come and do this under the current
18 rules? You sound like you are reluctant to say yes, but we
19 know it is happening. It is in the public domain. We have
20 already read these stories. People have testified to it
21 directly.

22 Ms. Krass: What I can say is that on the DOD side of
23 the equation, we are committed to -- and our officials are
24 committed to upholding the ethics laws and making sure that
25 they are not --

1 Senator Warren: I understand that you are committed
2 to upholding them as written. And I am not trying to give
3 you a hard time here. I am just trying to see how
4 effective what is written and what you have got to deal
5 with.

6 I get it that you can't enforce laws that don't exist.
7 What I am trying to do is figure out from the point of view
8 of the Congress whether or not we need to do a little more
9 with those laws so that there aren't as many holes in them.

10 So let me try another one. Mr. Beshar let's say that
11 Raytheon hires this colonel one week after -- oh, I have
12 got one. I am sorry, I set it up wrong. Let's say we have
13 an Army colonel who worked at the Defense Security
14 Cooperation Agency, DSCA, which is responsible for
15 overseeing arms sales to foreign countries.

16 So, Mr. Beshar, let's say that Raytheon hires this
17 colonel one week after he retires from the military to help
18 them lobby to speed up approval of a Patriot weapons system
19 that will make them a lot of money. And he reaches out to
20 the Air Force, you get where I am going with this, for a
21 meeting. Is there any reason an Air Force official can't
22 take that meeting?

23 Mr. Beshar: Senator Warren, Ranking Member Scott,
24 Senator Kaine, I appreciate the opportunity to be here
25 today. And I am joined this morning by a number of my

1 colleagues from the Ethics Department within the Air Force,
2 and they provide a vital service to the department and they
3 do it well. To your specific example, provided that the
4 hypothetical colonel is not subject to a lifetime bar or a
5 two year --

6 Senator Warren: That is my question. Is he subject
7 to a lifetime bar if he goes over and lobbies the Army
8 instead of DSCA?

9 Mr. Beshar: Yes, and assuming that he is not subject
10 to such a bar or a supervisory bar, then he could have such
11 a meeting, because at that O6 level he is not subject to
12 the cooling off period.

13 Senator Warren: Okay. I am just trying to get how
14 skinny this thing is. And the last question I want to ask
15 is about the one we were talking earlier about going to
16 work for Saudi Arabia and other foreign countries.

17 So, I just have a question around that, and maybe, Ms.
18 Krass, you are the one to ask this. When this more than 95
19 percent approval rating that is coming through on the DOD
20 approval of our high-ranking military officials going to
21 work for foreign governments, I just want to ask, is there
22 any requirement under current law for the Pentagon to
23 consider whether this work would enhance the National
24 Security of the United States of America?

25 Ms. Krass: Yes, Senator Warren. So the way that the

1 system, as you, I am sure you well know, is set up is that
2 the Emoluments Clause precludes accepting compensation or
3 from working for a foreign government in Congress has
4 consented -- I mean, unless Congress consents, and Congress
5 has consented to that in certain circumstances when the
6 Secretary of the military department has approved and the
7 Secretary of State has approved.

8 Senator Warren: I understand that and I appreciate
9 it, and I am way over time and my colleagues are being very
10 generous with me.

11 The question I am trying to ask you is, is there
12 anything that requires the Pentagon to look at whether or
13 not it is in our national interest to permit this general
14 or admiral to go work for a foreign country?

15 Ms. Krass: So, I would like to do is to defer to any
16 one of my colleagues, perhaps --

17 Senator Warren: Mr. Coffey?

18 Mr. Coffey: -- because in fairness to Ms. Krass,
19 Congress delegated the approval authority to the military
20 -- the Secretaries and really don't include the Secretary
21 of Defense. Although always happy to get --

22 Senator Warren: Fair enough. Fair enough.

23 Mr. Coffey: -- guidance from her friends on the third
24 deck.

25 Senator Warren: Glad to have the help.

1 Mr. Coffey: Which we get a lot. The answer is, yes.
2 In the Department of the Navy, there are -- the standard
3 is, would approving the employment be inimical to the
4 National Security interests of the United States? That is
5 sort of the headline.

6 Senator Warren: Okay. That is inimical though.

7 Mr. Coffey: Yes, it is. There are four sub-
8 standards, which I am happy to share with you of the
9 department --

10 Senator Warren: Okay.

11 Mr. Coffey: -- but remember, we are talking about
12 whether somebody who has served their country and has
13 retired, what restrictions, if any, we are going to put on
14 their employment.

15 Senator Warren: Right.

16 Mr. Coffey: Obviously, we have the Emoluments Clause
17 and then we have permission from Congress if two Federal
18 entities, two Executive Branch entities approve it.

19 Senator Warren: Right.

20 Mr. Coffey: The Department of the Navy and Secretary
21 of State. So, the questions that are posed, and there is a
22 very rigorous process, which I am happy to share with you
23 either today during questions, or questions for the record
24 afterwards. But among the questions that in the Navy and
25 the Marine Corps -- are the following, whether the foreign

1 civil employment will adversely affect --

2 Senator Warren: Okay, I get adversely -- you heard my
3 question. You can just answer my one question. Are you --
4 do you, as part of your routine questions, ask, does having
5 this admiral or general go work for a company that works
6 for the People's Republic of China or for Saudi Arabia or
7 for the UAE, enhance the National Security for the United
8 States of America? Is that one of your questions?

9 Mr. Coffey: Among the only files that I have
10 reviewed, I have seen that discussion. For example --

11 Senator Warren: Okay. Is that one of the questions
12 you are internally required to ask? This shouldn't be that
13 hard.

14 Mr. Coffey: It is certainly in all of the various
15 files that I have looked at, it is there. Ultimately the
16 State Department decides whether it is in the interest of
17 the United States and whether it should be approved. But
18 it is --

19 Senator Warren: That is what I am trying to get at.
20 If anybody is actually looking at that. You are telling me
21 it is a question that you answer each time, and the 95 plus
22 percent that you approved, you believed that it would
23 enhance the national interests of the United States of
24 America for that general or that admiral to go work for the
25 UAE or Saudi Arabia. Is that right? That is what you are

1 telling me?

2 Mr. Coffey: Madam Chair, what I am saying is that the
3 standard is a negative standard. It is the opposite of
4 what I said before. However, in the files that I reviewed
5 --

6 Senator Warren: That was the question I asked.

7 Mr. Coffey: That is where. And I will just say that
8 Undersecretary Cisneros has directed each of the Mil-Dep
9 Secretaries to take 90 days to look at this and come up
10 with whether we can do this a better way. And I can tell
11 you we are all jumping in on that. I have had a chance to
12 look at how Army does it, how Air Force does it. We think
13 we can improve it. We are looking at that.

14 Senator Warren: Please understand, I am not your
15 enemy here and I am not the enemy of the people who are
16 sitting behind you.

17 I am grateful for the work you do. I just want you to
18 have the tools so that you are getting backed up by the
19 United States Congress and that you are not in a position
20 where the standard is so flimsy or where there are so many
21 exceptions that there are other ways to accomplish what it
22 is that we clearly didn't want to have happen.

23 And I am just really concerned. I see a 95 percent
24 plus approval rating to go work for countries like Saudi
25 Arabia and the UAE, and countries that have terrible human

1 rights abuses, and I think, how could that be good for the
2 United States of America? And that, to me, has to be our
3 standard. So, I just want to get us in the right place.
4 Senator Scott.

5 Senator Scott: Thank you, Chairwoman. First of,
6 thanks to each of you for being here. And I appreciate the
7 fact you guys were willing to go through the horrible
8 confirmation process that each of you went through, so -- I
9 wouldn't want to do that. I don't know if it is worse than
10 an election.

11 Senator Warren: It is not --
12 [Laughter.]

13 Senator Scott: The -- have any of you approved
14 anybody, since you have been there, do you know of anybody
15 that has been approved to work for China? To go to work
16 for or either a -- the government of China, an entity
17 controlled by the government of China, or a company
18 majority owned by Chinese officials. Do you know of any?

19 Ms. Ricci: The Army does not.

20 Senator Scott: You don't have any?

21 Mr. Coffey: Nor does the Navy, Senator.

22 Mr. Beshar: I believe we are in the same position,
23 Senator.

24 Senator Scott: Okay. Without even -- you know, I
25 don't want you to breach of confidence, but without naming

1 a name, could you give me an example of who you -- an
2 example of where somebody got turned down.

3 Because you heard what we were told, that 95 percent
4 of the people are getting approved, right. And, you know,
5 I don't know if that is good or bad. You could argue -- I
6 mean, I think Senator Kaine would say that it seems a
7 little high, right.

8 But maybe just everybody is doing a really good job of
9 compliance, right. So, give me an example of people who
10 have gotten turned down.

11 Mr. Coffey: I will start. Again, I am going to be very
12 generic. An applicant was denied in part because of the
13 counterintelligence diligence that had been done and it
14 felt it would be adverse to the National Security, if it
15 were approved.

16 Mr. Beshar: Senator Scott, I thought it might be
17 helpful to briefly describe the way we have changed our
18 process at the Department of the Air Force.

19 So, in 2020, we overhauled the protocols and the
20 policy for approving or reviewing foreign government
21 employment. And there are three changes in particular that
22 were made. First was to create a board, a three-person
23 board for the first time that would review these
24 applications. Second was to articulate a clear standard.

25 So, some of the questions that Senator Warren asked,

1 would this potential engagement be embarrassing to the
2 United States is an example, has a proper
3 counterintelligence assessment been performed by the Air
4 Force Office of Special Counsel, and has the country in
5 question taken actions that would be contrary to the
6 interests of the United States.

7 And the third important change was putting a three-
8 year temporal limit on any approvals that are granted so
9 that the individual, after three years, if they wanted to
10 continue, would have to come back into the process to the
11 Department of the Air Force.

12 Senator Scott: Okay.

13 Ms. Ricci: Senator Scott, in the Army we have --
14 there have been some of these approvals -- [technical
15 problems] -- and we have found that we have had to -- there
16 have been denials for people with derogatory information in
17 their files that would reflect negatively on the United
18 States and would also make them susceptible to foreign
19 influence.

20 But I also want to add, I know that Senator Warren
21 mentioned the UAE and Saudi Arabia, and I have looked at
22 the approvals in the files, and they are largely connected
23 to our foreign military sales programs.

24 The vast majority of Army personnel who have been
25 approved have not been general officers. They have been

1 maintainers who have been hired by these countries to help
2 maintain the equipment that through security cooperation,
3 the Government has determined it is in our interest for
4 these -- to make these sales to these countries.

5 And these soldiers who are now retired have been able
6 to find employment with them, maintaining the same
7 equipment that they maintain for the Army. And that has
8 been the majority of our approvals.

9 Senator Scott: So, have you -- I assume what you guys
10 do every day, you have the -- like the process you talked
11 about. You have a process and you go through the process.
12 Have you come to the -- have any of you come to a point
13 where you say, I don't think we should do this, but I don't
14 have the authority to not allow it to happen? Have you
15 ever felt like that in any case where you think, no, we
16 shouldn't really be doing this, but you can't stop it.

17 Mr. Beshar: Senator Scott, very briefly. We have had
18 instances where individuals have withdrawn because of some
19 of the rigors of the process. And also, the concept
20 broadly that the Congress has really created a two-pronged
21 approval.

22 And so, the focus of the Department of the Air Force
23 is more on security and counterintelligence, whereas the
24 State Department is the final approval authority, is a bit
25 more on the foreign policy considerations.

1 Ms. Ricci: Yes, Senator Scott, I have not felt that
2 way at all. And in fact, the Army has undertaken a review
3 of our regulation because we want to strengthen our
4 requirements, and our requirements currently exceed what is
5 required under the statute.

6 Mr. Coffey: And I concur. I don't feel that way.
7 And I do think taking a hard look at how we do things and
8 see if we can tighten things up and get on the same page as
9 our sister departments is a good exercise and we are doing
10 that now.

11 Senator Scott: Is there -- have you felt like -- just
12 and I don't think you guys were there for any of it, but
13 have you felt like there is a difference between
14 Administrations and how this is handled? Has it changed
15 much, you know, when you guys came in?

16 Mr. Coffey: On foreign government employment, sir?

17 Senator Scott: Yes.

18 Mr. Coffey: Certainly, preparing for the hearing
19 today, you know, none of us were here in the prior
20 Administration. I certainly did not detect any material
21 difference in how things were treated. Perhaps that is
22 consistent with the 95 percent approval rate.

23 Senator Scott: Have you seen anything different?

24 Ms. Ricci: I have not seen anything different in the
25 Army. And there was a dip in applications because of the

1 COVID period. There was about a two-year period where we
2 had far fewer. But comparing the before and the current, I
3 have not seen any change in how they are treated or
4 evaluated.

5 Senator Scott: Have you felt any -- do you guys feel
6 any pressure from anybody to be more lax or be more strict?
7 I mean, do you -- is there any political pressure at all
8 that you guys ever feel?

9 Ms. Ricci: Senator, not at all. And in fact, I will
10 say that in the Army we have individuals -- this is a self-
11 reporting requirement, and we have individuals who come
12 forward even when they know it is not a foreign government,
13 but it is a company working in that foreign government, out
14 of an abundance of caution.

15 And we encourage that and we find that this is very
16 helpful. And we just are pleased to say that there is a
17 high compliance rate. And that probably speaks to why so
18 many are approved, because it is a self-reporting
19 requirement and these are responsible individuals seeking,
20 you know, solid employment.

21 Senator Scott: You make the argument that people have
22 been in the military probably are real followers, to a
23 great extent.

24 Ms. Ricci: Exactly. Yes, yes.

25 Senator Scott: Thanks.

1 Senator Warren: Senator Kaine.

2 Senator Kaine: Just to pick up on it, the 95 percent
3 figure I just find very troubling. This is different than
4 CFIUS, but there is some an analog and I am sure that the
5 CFIUS approval rate is at 95 percent based on my own
6 experience and working with American companies, where there
7 is going to be some investment by, you know, a Chinese food
8 company into Smithfield Foods.

9 The degree to which that gets scrutiny enough from two
10 sources but from multiple sources, is pretty intense. And
11 I bet the approval rate is at 95 percent. I credit that,
12 a, probably people don't apply if it is a stretch, okay.
13 So, people aren't trying to -- a lot of military folks
14 wouldn't push the envelope.

15 And, b, they withdraw maybe in the middle of the
16 process and that is not counted as a turn down, so that
17 reduces the number. And, c, that -- Ms. Ricci, I
18 appreciate you pointing out this maintainer point. If the
19 U.S. is approving foreign military sales of a platform and
20 there is a specific need to maintain that platform, that
21 would seem to be an obvious case where it might be
22 warranted.

23 But I just still am troubled by a 95 percent approval
24 rating. There is just something odd about that to me. I
25 am not surprised that it may not be different among

1 Administrations, but I applaud the fact that the DOD is now
2 doing a 90-day assessment of this, because that seems
3 unusual.

4 I wondered, you know, if Congress were just to do one
5 thing in this and say, and if approved, there must be some
6 report to Congress about it and it should be public. I
7 wonder if that might change either, a, who applies or, b,
8 what gets approved, or both. So, but this is helpful. Let
9 me ask you one other thing.

10 A number of us have filed a bill to restrict the
11 ability of members of Congress to trade in stocks because
12 we come up -- we get all kinds of information, sometimes
13 classified, sometimes not, but information that the general
14 public doesn't get that could affect our ability to trade
15 stocks.

16 And so, I have cosponsored a bill with Senator Merkley
17 and others, and there are other bills out there that
18 essentially attempt the same thing. From an ethics
19 standpoint within the service branches, what is the normal
20 protocol to analyze whether people's financial holdings
21 pose conflicts of interest in the work that they do?

22 Mr. Coffey, you jump to the mic. You look like you
23 are moving to the mic first, so I am going to ask you.

24 Mr. Coffey: I think Mr. Beshar looked over me and --
25 well, I think it starts with the Criminal Code, 18 USC 208

1 which states that you are not to participate in any matter
2 that might affect you or your family's financial status.

3 I mean, that is a pretty, pretty stark rule. And I
4 know there has been a lot of talk about whether you make
5 certain laws applicable down to 06s or below, etcetera, but
6 that law applies to everybody, regardless of you are an
7 acquisition or anything else. So, then you have more
8 specific laws specifically directed at stocks.

9 And all of us had to divest if we owned any defense
10 stocks to de minimis, or for the well counseled people, to
11 zero, and ensure that we have -- that we are just crystal
12 clean on that. So, you know from my perspective, and I am
13 very proud of the ethics program with the Department of the
14 Navy, we have 900 ethics counselors.

15 From day one, you are told about ethical behavior. We
16 have annual reviews. We have 41,000 people who file
17 financial disclosure forms, every one of which is reviewed
18 by a supervisor who knows what they are working on and can
19 detect whether there is any nexus between their financial
20 status and what they are working on.

21 And so, I think we have in place a clear, consistent,
22 and balanced program. We can always improve it. And, you
23 know, whatever you give us in terms of laws, we will
24 vigorously enforce. But I think the current state of play,
25 as the GAO found in the 2021 report, was we have a pretty

1 effective program.

2 And frankly, there are some benefits when I am sitting
3 across from somebody who served, you know, to know that
4 they have -- they can explain to their fellow board members
5 or others at the company, you know, why we need that tech
6 data for that F-35. That, you know, and I would like to
7 think that they are in there explaining to their fellow
8 board members, you know, this is why they are being pains
9 in the butt, it is because they really need it.

10 So, you know, I think like the GAO found, there are
11 some benefits to having veterans in the Pentagon who have
12 been in private industry. I wasn't in the defense
13 industry, but I can see the benefits of it and vice versa
14 for people who have retired, and in order to make a living,
15 go work for the defense Industry.

16 Senator Kaine: I can -- I will just hand it back to
17 the chair. I can see benefits, too. I mean, I can
18 definitely see benefits both directions, but I just want
19 there to be appropriate guardrails so that the benefits of
20 expertise are not overcome by, you know, abuses, even if
21 not ill-intended. There can be, you know, kind of an
22 unintentional slippage toward abuse, and I think we need to
23 guard against that. But thank you all, and I will hand it
24 back to you, Madam Chair.

25 Senator Warren: Thank you, Senator Kaine. And in

1 fact, I want to follow up on Senator Kaine's questions. I
2 take this one kind of personally. A few years ago, I
3 pushed hard for a law that we passed that barred many
4 Department of Defense officials from owning more than
5 \$15,000 in stock in the largest defense contractors. It is
6 a law that you all are now out there enforcing.

7 That law also says that senior officials who work on
8 contracts can't own or buy large amounts of stock in
9 contractors that were the top ten recipients of DOD dollars
10 in the last five years. And for everyone, DOD is supposed
11 to make sure that no one is working on a project that has
12 stock holdings that could create a conflict of interest,
13 going into your general point about this. But I want to
14 talk a little bit about the big gaps here.

15 We saw a recent Wall Street Journal report that
16 highlighted the case of the DOD policy official who owned
17 somewhere between \$15,000 and \$50,000 of stock in the
18 Chinese company Aliaba, who was actively working on a
19 policy about whether Aliaba's ties to China meant that the
20 company should be on a list of companies that Americans
21 could not invest in.

22 Two weeks after the official purchased the stock,
23 Aliaba got what it wanted. It was omitted from the list of
24 prohibited companies, and the company's stock increased
25 immediately by 4 percent. A nice return in a very short

1 period of time.

2 So, Ms. Krass, Aliaba is not a defense contractor, so
3 current law did not prevent this DOD official from owning
4 its stock. But ethics officers still should have spotted
5 that his possession gave him insider information that could
6 boost his personal finances, going to the point that Mr.
7 Coffey made, and could influence the advice that he was
8 giving to the Government, a possible conflict of interest
9 here.

10 So, I understand, you were not at DOD when this
11 happened. But why didn't DOD officials pick up that this
12 was a conflict of interest? There clearly is a conflict
13 here, right?

14 Ms. Krass: Senator, absolutely. I agree that
15 employee may not participate in any matter in which they
16 have a financial --

17 Senator Warren: So why didn't they pick this up?

18 Ms. Krass: -- and they need to either have recused
19 themselves from those matters or they need to have divested
20 of the financial interest so as to avoid the problem. As
21 you mentioned, I was not at the department at the time, and
22 I am happy to take back any questions that you have on
23 that.

24 Senator Warren: I guess that is, I don't know?

25 Ms. Krass: What I do know is that my team works

1 extremely hard, as Mr. Coffey indicated.

2 Senator Warren: I understand that. Let me ask about
3 another loophole. Stock ownership limits apply to certain
4 senior department officials, but they do not apply to
5 everyone. So, would the Chief of Staff to Secretary Austin
6 or the Chief to the Chairman of the Joint Chiefs of Staff
7 be allowed to own \$30,000 in Lockheed Martin, DOD's top
8 contractor?

9 Ms. Krass: So, in the review of a financial
10 disclosure form, any potential conflicts are identified and
11 it is determined whether or not an employee would need to
12 divest the stock because they can't perform their duties
13 appropriately, if they were to continue to hold the stock
14 and recuse themselves. There is the other option to
15 recuse. If it would interfere with the employee's
16 performance of their official duties in a significant way
17 --

18 Senator Warren: The person has come to you for
19 advice. Are they covered by the current statute? This is
20 somebody who is not confirmed by the Senate and is not an
21 acquisitions officer. Are they covered by this rule?

22 Ms. Krass: So, by 18 USC 208, everybody is covered by
23 that rule.

24 Senator Warren: So, you are saying you would tell
25 them they have to divest the stock?

1 Ms. Krass: Yes. I would either have them divest or
2 recuse depending on what the scope of their official duties
3 would be.

4 Senator Warren: Okay. I hope that is the advice that
5 you are giving. So let me ask one more. If the Chief of
6 Staff to Secretary Austin helps make decisions about
7 whether or not their boss should meet with the company.
8 They don't give advice on acquisitions, but they decide who
9 gets access. This is the gatekeeper. Does that change
10 whether or not they can own \$30,000 of Lockheed Martin
11 stock?

12 Ms. Krass: They would still -- that is beyond the de
13 minimis amount and they would not be able to participate in
14 a decision about whether to recommend a meeting unless they
15 had divested of the stock.

16 Senator Warren: So -- okay, I hope that is the case.
17 That is not what public reporting seems to indicate, but I
18 hope that is the case.

19 You know, I want to do one more and then I will quit,
20 and hand this over to Senator Scott. Some of the recent
21 biggest procurement fights have been between smaller but
22 still huge tech companies like Oracle, Microsoft, Amazon,
23 who are all fighting over which company was going to get
24 the \$10 billion JEDI contract, which would have provided
25 cloud computing for DOD.

1 One of the Pentagon officials involved in deciding
2 which company got the contract owned Microsoft stock. Now,
3 Microsoft had received \$400 million in DOD contracts, which
4 is not high enough for them to be listed in the prohibited
5 stock list.

6 DOD is just supposed to keep an eye out for problems
7 if they pop up here. So, the official disclosed that she
8 owned Microsoft stock to DOD, she disclosed it to DOD. Did
9 anyone at DOD say that this was a problem given her
10 acquisitions' role?

11 Ms. Krass: So, again, as we were discussing, you --

12 Senator Warren: This is a matter of public record.

13 Ms. Krass: Yes, but I was receiving my tenure,
14 Senator, and I cannot speak to the specifics of that, but I
15 would be happy to, again, take any questions.

16 Senator Warren: Well, I will just tell you the
17 answer, no. It was not raised by DOD. DOD did not have a
18 problem with this. You know, look, ultimately, in this
19 case, the person was referred for prosecution.

20 But I am concerned about the process here. And I am
21 concerned that we are keeping too narrow. I understand the
22 overall rule is a conflicts rule, but I am concerned that
23 we are too narrow in what we look at and how we define it
24 and whether we get enough disclosure that these pop up and
25 we can see them.

1 And then I am concerned about the fact that we don't
2 have public reporting of this so that, quite frankly,
3 somebody to look over your shoulder and say, I get it, I
4 see what is happening here, and here is where I disagree,
5 and we need to tighten up the laws. That is the part that
6 I am worried about, and that is what this is about today.
7 Senator Scott.

8 Senator Scott: So, do you think more public
9 disclosure would be helpful? I got to be honest, I was
10 Governor of Florida for eight years. Everything was
11 public. So, you just got used to it. Every text, every
12 email, everything was public record. So, it is -- life is
13 actually, for me, I came to the conclusion life is easier.
14 Everybody knows everything. So, what do you all think?

15 Ms. Krass: Yes, I will start and then invite my
16 colleagues to join me. I think that as we think about
17 increased transparency, we of course have already published
18 financial disclosure form reports. But I think we just
19 need to always be mindful of any privacy interests that are
20 at stake.

21 And of course, the Privacy Act does not apply between
22 us, you know, as branches of Government, but it does apply
23 to us as the Executive Branch in disclosing individuals'
24 information, and so we just need to be mindful of that.

25 Senator Scott: They didn't worry about it when I was

1 Governor. I mean, every text, every email, everything is
2 public. So, you learn to be smart.

3 Ms. Krass: I try to write my emails as if they might
4 become public just in case.

5 Senator Scott: Yes. So, do you all think more
6 transparency would be helpful?

7 Mr. Coffey: Well, as a general principle, it is hard
8 to disagree with that, but I do think there are privacy
9 interests involved.

10 I look forward to seeing what the independent
11 commission comes up with that Congress has directed to see
12 what they come up with on that idea. I just -- Senator
13 Warren, to make you feel better, I certainly think that the
14 Department of the Navy breeds ethical behavior. We had a
15 big black eye a few years ago with GDMA.

16 And, you know, we set the tone at the top and it is --
17 from the day you get in the door and when you are leaving,
18 it is about ethical behavior. We have bad eggs. We are
19 big department.

20 You are going to have a couple of bad eggs. But I can
21 tell you, when I hear someone wants to come to see the
22 Secretary, the answer is, if you see that person, you are
23 going to see everybody in that industry.

24 You know, you are not going to play favorites. And we
25 have a lot of ethical advisers at the Secretariat and all

1 up and down the chain of command. And I just want to leave
2 you with some comfort that we are being very vigorous in
3 our enforcement of the ethics laws.

4 And if you decide to give us some new ones, all we ask
5 for, at least on my part, is that they be clear so we can
6 advise our people. That they be consistent --

7 Senator Scott: It is easier, right?

8 Mr. Coffey: Yes.

9 Senator Warren: We are very much in that direction.
10 But let me just ask you, privacy interests, what is the
11 privacy interest, and you work for the Department of
12 Defense, and you own defense industry stock. What is the
13 privacy interest?

14 Mr. Coffey: Well, again, I think in part, you know,
15 the trial lawyer keeps thinking about causation and the
16 link. There needs to be a link between the financial
17 interests of the person to the Department of Defense and
18 what they do --

19 Senator Warren: No. If you are a lawyer, you
20 understand appearance of impropriety. We don't ask for
21 lawyers or judges to actually prove that this person has a
22 conflict of interest. We talk about the appearance and why
23 the appearance matters, because our job is to build public
24 confidence.

25 And you build public confidence when everybody knows

1 that every email is going to be disclosed. You build
2 public confidence when you say if you want to invest, have
3 at it, but don't invest in Department of Defense stocks if
4 you work for the Department of Defense.

5 That one is just a no. And if that so crimps your
6 investing style, then go work somewhere else. And I just
7 don't get why this is a privacy issue. I don't know what
8 is there. Sorry, I interrupted, Senator Scott.

9 Senator Scott: Now, we have to disclose everything.
10 Run for office. They expect you to disclose everything.

11 Senator Warren: My taxes are online.

12 Senator Scott: Have you referred anybody -- any of
13 you refer to anybody for criminal prosecution?

14 Mr. Coffey: As a department? Certainly. The answer
15 is yes.

16 Senator Scott: You have while you have been there?

17 Mr. Coffey: Yes. And I will say that as a result of
18 the Washington Post articles, and, you know, we have
19 checked and some of the people in the article did not
20 apply. And we are proceeding accordingly. I will just
21 leave it there.

22 Senator Scott: Okay. Anybody else?

23 Mr. Beshar: We are in a similar position, Senator
24 Scott, and I very much like the way you opened the hearing
25 by saying that there is always opportunity for improvement.

1 You know, I think any leader should have the mindset of
2 continuous improvement.

3 And so a number of the studies that are being done,
4 whether it is the review by Undersecretary Cisneros, what
5 he has directed on foreign government employment, or it is
6 the 1073 review that will look into really the post-
7 Government employment restrictions and where is the right
8 balance to be struck, I think all of us are trying to have
9 an open mind about how we can make our protocols and
10 procedures as appropriate as we can.

11 Senator Scott: Have you have had to? Have you had to
12 refer anybody --?

13 Ms. Krass: I have not.

14 Ms. Ricci: I have not during my tenure.

15 Senator Scott: Okay. Just to finish, the question
16 about Aliaba, could you just get us information, if there
17 is -- you might not be able to find any information, but if
18 you do, can you get it to Senator Warren and me?

19 Ms. Krass: Yes.

20 Senator Scott: I mean, I think it is pretty
21 interesting, right, so technically -- you shouldn't be able
22 to do that. I mean if those are the facts. I mean, this
23 is something that was written, so if those are the facts,
24 those are the facts, right. Okay, thank you. Thanks for
25 doing your job, by the way.

1 Senator Warren: Yes. And I do. I appreciate the
2 work that you all do. I just want to give you the tools so
3 you can do it even better. I want to thank all of our
4 witnesses for their testimony today on the first and second
5 panel.

6 I also want to thank John Clark, and Gary Leeling, and
7 Andy Scott, and Sofia Kamali, and Noah Sisk, and Jenny
8 Davis, and Sean O'Keefe, and Katie Magnus, and Brendan
9 Gavin for their work in putting together today's hearing.
10 These hearings take a lot of work, and I appreciate all
11 that they have done.

12 And we just go into this with a mindset of we want to
13 do better. We want to have complete confidence that when
14 the Department of Defense submits a budget, it is because
15 the Department of Defense and its top officials believe
16 this is what is best for the United States of America, this
17 is not something that helps out some particular individual
18 in their personal financial circumstances.

19 That is all we are looking for here, is the best way
20 to tell that to the American people. So, appreciate your
21 work, and with that, we close this hearing. We are done.
22 Thank you.

23 [Whereupon, at 4:44 p.m., the hearing was adjourned.]

24

25