

Nomination of Ivan K. Fong
General Counsel of the Department of Homeland Security
Senator Joe Lieberman
April 30, 2009

Good morning. The hearing will now come to order. Today our Committee will consider the nominations of Ivan K. Fong to be the General Counsel of the Department of Homeland Security and Timothy W. Manning to be the Deputy Administrator of FEMA in charge of national preparedness. I also want to welcome my friends and colleagues, Senator Sherrod Brown, who will be introducing the nominee and my Senate neighbor, Senator Bingaman who is here to introduce Mr. Manning.

Senators, since I know the two of you have busy schedules I will hold off on my opening statement and ask the two of you to make your introductory remarks.

Senator Brown?

[Senator Brown introduces Ivan Fong]

Thank you Senator. Senator Bingaman?

[Senator Bingaman introduced Timothy Manning]

Thank you Senator. We will move to our first nominee this morning, Ivan Fong who has been nominated to serve as General Counsel of the Department of Homeland Security. Mr. Fong has an impressive record, both academically and professionally, and a breadth of experience that will serve DHS and the General Counsel's office well.

He has both a bachelor's and a master's degree in chemical engineering from the Massachusetts Institute of Technology, where he was elected to Phi Beta Kappa. He received his J.D. with distinction from Stanford Law School and was president of the Stanford Law Review. He was a Fulbright Scholar at Oxford University, and clerked for Federal Appeals Court Judge Abner Mikva and Supreme Court Justice Sandra Day O'Connor.

After a period at the law firm of Covington and Burling, Mr. Fong joined the Clinton Administration Justice Department as a Deputy

Associate Attorney General where he oversaw civil litigation, environmental matters, and technology issues. He was the principal author of a seminal report on cyber crime called *The Electronic Frontier: The Challenge of Unlawful Conduct Involving the Use of the Internet*. Mr. Fong returned to the private sector after his DOJ experience, most recently serving as the Chief Legal Officer at Cardinal Health, a Fortune 20 company. We are grateful you are now willing to return to public service.

The position of General Counsel is obviously a critical one at the Department, and the challenges and issues you will confront are likely to be as diverse and varied as the challenges faced by the Department as a whole.

First and foremost, the General Counsel must advise the Secretary and manage the legal functions of the Department. But the General Counsel must also ensure that the fundamental rights of American citizens are protected as the Department carries out its mission.

The General Counsel also occupies a central position with respect to the relationship and interaction between the Department and Congress: the General Counsel must counsel the Secretary on how the laws Congress passes should be interpreted and implemented. The General Counsel also has an important part in guiding the Department's interactions and relationships with the other federal agencies and departments with which it partners to keep us all secure.

Good lawyers help their clients reach their goals quickly and with a minimum of risk. But the mark of a great lawyer is not just the desire "to get to yes," but to do so with the courage and wisdom to know when to say "no."

Indeed, the responsibilities of – and burdens placed upon – a lawyer in government service are different from those in the private-sector. The private sector lawyer has the luxury of being singularly focused on his or her client's needs. The government lawyer has the obligation to look beyond the immediate demands of the agency and to consider the broader public interest.

I am confident that Mr. Fong understands these heavy responsibilities. He is an extraordinary well-prepared nominee for this position, and I look forward to his testimony. Thank you.

Nomination Hearing for Timothy W. Manning
Chairman Joseph Lieberman
April 30, 2009

We will now move to the second panel for today's hearing and consider the nomination of Timothy W. Manning to be Deputy Administrator for FEMA in charge of national preparedness.

First, let me thank you for your commitment to public service. For many years, Mr. Manning has served in a number of positions directly relevant to national preparedness, most recently as the Director of New Mexico's Department of Homeland Security and Emergency Management and as Homeland Security Advisor to the Governor. He has also held numerous positions with the New Mexico Department of Public Safety - Deputy Cabinet Secretary, Director of the Office of Emergency Management, Director of the Office of Emergency Services, and as coordinator of hazardous materials. Significantly, he has also had front line experience, working as a fire fighter and rescue mountaineer on a voluntary basis.

With this experience, Mr. Manning would bring to FEMA the perspective of a state official and a first responder, which would help strengthen the coalitions between the many entities involved in preparing for disasters. The current public health emergency surrounding the swine flu demonstrates beyond a shadow of a doubt that in times of crisis, we need response and preparedness officials who know what they are doing and that the functions of prevention and protection must be closely integrated with preparedness and response.

In 2006, following this Committee's extensive investigation into the bungled response to Hurricane Katrina, Senator Collins and I co-authored reform legislation to strengthen the agency so that it would be capable - for the first time in its history - of responding to a disaster as catastrophic as Hurricane Katrina proved to be.

The Post-Katrina Emergency Management Reform Act gave FEMA the responsibility to lead our efforts to prepare for and respond to disasters of all kinds – whether a natural catastrophe, a devastating accident, or a terrorist attack. If necessary, FEMA would be able to draw on the many resources and assets of the entire Department. We added

resources for FEMA, elevated its position within DHS, and redesigned its leadership structure.

One of our most important proposals to remake FEMA into a world-class disaster response agency was to rejoin its preparedness and response capabilities, which had been split apart. We don't want FEMA to be in the position again where it is trying to build the kind of teamwork and logistical relief operations among all levels of government in the midst of the confusion that inevitably follows a disaster. This is what happened during Hurricane Katrina.

Mr. Manning, if you are confirmed, your key responsibility will be to make sure that this important provision of the Post-Katrina Act will be fully implemented and that FEMA's preparedness capabilities are fully integrated into across all stages of emergency management, including mitigation, response, and recovery. This is central to the nation's homeland security, and I look forward to discussing how, if confirmed, you will work to achieve that.

Catastrophes and disasters – natural and man-made – occur all too frequently. As we all know, we are in the midst of a health emergency

now, and I hasten to add that the federal response has been strong and reassuring.

We must be prepared at all levels of government, at all times, for the next disaster, because it will come, and we don't want to hold any more hearings to ask the question: "Why weren't we prepared." Thank you.

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