

1 HEARING ON PENDING NOMINATIONS

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3 WEDNESDAY, NOVEMBER 6, 2019

4 United States Senate,
5 Committee on Veterans' Affairs,
6 Washington, D.C.

7 The Committee met, pursuant to notice, at 9:35 a.m.,
8 in Room 418, Russell Senate Office Building, Hon. Jerry
9 Moran presiding.

10 Present: Senators Moran, Boozman, Cassidy, Rounds,
11 Sullivan, Tester, Brown, Blumenthal, Hirono, Manchin, and
12 Sinema.

13 OPENING STATEMENT OF SENATOR MORAN

14 Senator Moran. Good morning. The hearing will come
15 to order. In the absence of Senator Isakson today I am
16 pleased to chair the Veterans' Committee hearing on these
17 two witnesses. Let me begin with a few opening remarks
18 and then followed by Senator Tester, and we will swear in
19 our witnesses and hear their testimony.

20 Welcome to our nominees, Grant Jaquith and Scott
21 Laurer. Congratulations on your nominations, and you
22 have been nominated to be judges of the Court of Appeals
23 for Veterans Claims. Thank you for your willingness to
24 serve our nation's veterans on this court and to ensure
25 that all veterans receive the benefits they are due

1 according to the law and according to congressional
2 intent.

3 The court is relatively new, when compared to other
4 courts, at just over 30 years old. I look forward to
5 hearing from each of you how you will help shape the
6 character and legacy of the court for the future, if you
7 are confirmed.

8 In 2018, the court received 6,800 appeals. That is
9 2,000 more claims than during any other year in the last
10 two decades. With the Board of Veterans Appeals
11 increasing its output every year, it is critical the
12 court remain at full capacity, with nine sitting judges,
13 so that we can assure swift and accurate resolution of
14 cases.

15 I look forward to hearing more from you about your
16 qualities and your experience, what you would bring to
17 the court. I also acknowledge and thank your families
18 for being here today and for supporting you both in your
19 long and continued service to our nation.

20 So thank you very much, and I recognize the Ranking
21 Member, Senator Tester.

22 OPENING STATEMENT OF SENATOR TESTER

23 Senator Tester. Well, I want to thank Chairman
24 Moran. I want to also thank both of you for being here
25 today. I want to thank you both for your military

1 experience--military service to this country, and thank
2 you for your willingness to continue to serve on behalf
3 of our nation's veterans.

4 Although I have met personally with you both, and
5 you have responded to written questions, your answers
6 today will help many of us make our final decisions about
7 whether you are up for the job to which you have been
8 nominated.

9 Mr. Laurer, in particular, given your present
10 assignment to the White House, working on the National
11 Security Council, as an ethics counsel, and in records
12 management, and the experience with the European Russian
13 Affairs Directorate, we will want to know more about your
14 role in recent events.

15 The uniqueness of this court cannot be understated.
16 Formed in 1988, the Court of Appeals hears appeals from a
17 system unlike any other Federal court. If confirmed, you
18 will be charged with the sacred duty, not simply as
19 Federal judges but as the only judges in the country
20 solely tasked with making determinations for those who
21 have served their country.

22 For many veterans, the court is seen as their last
23 hope after fighting for months, years, and in some cases,
24 decades, to obtain the benefits that they have earned.
25 They look to the court for a fair and equitable

1 resolution of their claims.

2 Now a few issues to address. Over the last few
3 years, the court has seen a 30 percent increase in
4 decisions appealed to the Federal circuit. I wonder if
5 these appeals are necessary to establish precedent,
6 because so many of the decisions on the Veterans Court
7 are made by a single judge rather than a panel.

8 Mr. Jaquith, in response to my written questions you
9 mentioned that panel decisions might not take as long if
10 there were more established precedent from this court. I
11 would like both of you to discuss whether you think the
12 court should be using single-judge decisions or more
13 panel decisions to establish precedent.

14 According to last year's annual report, the court
15 had over 10,000 filings. Now most of these were
16 dismissed, but the court still made more than 8,000
17 dispositions. The average wait time between filing and
18 disposition went from 301 days to 233 days over the last
19 two years. We are moving in the right direction but
20 eight months is still far too long.

21 In responses to my pre-hearing question on the
22 length of time it should take to make a decision, both of
23 you said it could only be determined on a case-by-case
24 basis. If confirmed, I want to hear what you would do or
25 suggest to bring down the wait time veterans have to get

1 a decision. We, in Congress, and especially on this
2 Committee, have dedicated a lot of work to modernizing
3 the claims process and improving the quality of care and
4 benefits for veterans. I want to hear how you will
5 ensure our work to serve veterans is carried out.

6 On that note, the court's recent decision in Wolf,
7 righting a wrong, working to clear the way for many
8 veterans who sought emergency treatment outside the VA to
9 receive the benefits that they were promised. By
10 continuing your life of service, this is an example of
11 what you can do to help your peers receive justice.

12 Both of you have dedicated your lives to serving
13 this country. I hope you remember your service and
14 appreciate that your fellow veterans are counting on you
15 when deciding the cases that come before your court.

16 I look forward to our discussion today and thank you
17 again for your willingness to serve.

18 Mr. Chairman?

19 Senator Moran. Senator Tester, thank you very much.
20 We will swear in the witnesses. If you both will stand.
21 Please stand and raise your right hand.

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

1 Mr. Jaquith. I do.

2 Mr. Laurer. I do.

3 Senator Moran. Thank you. Please be seated.

4 Mr. Jaquith, we will begin with your testimony. You
5 may want to introduce family or friends that are here, if
6 you would like.

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1 TESTIMONY OF GRANT C. JAQUITH, NOMINATED TO BE
2 JUDGE OF THE U.S. COURT OF APPEALS FOR VETERANS
3 CLAIMS

4 Mr. Jaquith. Chairman Moran, Ranking Member Tester,
5 and distinguished members of this Committee, thank you
6 for the opportunity to speak with you today. I am
7 honored to have been nominated by the President to become
8 a Judge on the United States Court of Appeals for
9 Veterans Claims.

10 This great privilege is the result of my family's
11 love, support, and example. My wife, Rosemarie, and my
12 six children, Amanda, Larene, Gordon, Olivia, Isabelle,
13 and Colton, mean everything to me.

14 My inspiring wife is an accomplished lawyer and
15 community leader who spoke only Spanish when she started
16 kindergarten. Her parents came to the United States from
17 Cuba as teenagers to find a better life. She is here
18 today, along with three of the children and some of their
19 family members, including three of my grandchildren. All
20 of my children and grandchildren are with me always. One
21 is in Federal service. My son, Gordon, is the Director
22 of the Naval Forces Division of Cost Assessment and
23 Program Evaluation in the Office of the Secretary of
24 Defense. That is him in a similar hairstyle to his
25 dad's.

1 And the rest is my wife, Rosemarie; son-in-law,
2 Chris; daughter, Amanda; daughter-in-law, Hannah; her
3 father, Dr. Steve Dubansky; my daughter, Larene's
4 husband, Tony Davenport; and grandchildren Allison,
5 Pauly, and Jack.

6 Senator Moran. Welcome to all of you, to see your
7 relative testify today before the Committee.

8 Mr. Jaquith. My own roots in service run deep. I
9 am descended from a Mayflower passenger, a servant who
10 signed the Mayflower Compact 399 years ago. The first
11 Jaquith born in America died in 1678, of wounds received
12 three years earlier in King Philip's War. Several
13 Jaquiths answered the call to arms in Lexington,
14 Massachusetts in April of 1775. A grandfather six
15 generations back served in the War of 1812.

16 During the Civil War, my great-great-grandfather was
17 a private in the 12th Vermont volunteers engaged in the
18 defense of Washington. And in the 1950s, my father
19 served in the Navy as a machinist's mate, contracting
20 pneumonia, returning to work too soon, and developing
21 persistent lung problems that resulted in a permanent
22 disability rating.

23 My parents taught me to judge people on merit, based
24 upon their character and conduct, and to care about them.
25 They found fulfillment in dedication to family, church,

1 community, and country, and illustrated industry and
2 perseverance. They expected nothing and were grateful
3 for everything.

4 My mother is watching now on television and cheering
5 my efforts to live up to their example. She instilled my
6 interest in history. From reading biographies of famous
7 people, I concluded that those who shaped our nation most
8 often were lawyers or soldiers, and a dream was born--to
9 become both.

10 I signed my first contract with the United States of
11 America about a month before my 18th birthday, accepting
12 the ROTC scholarship which enabled the son of postal
13 worker and a homemaker to go to a private liberal arts
14 college. I was commissioned upon graduation, but was
15 granted an educational delay to go to law school, leading
16 to a summer judicial clerkship, work in the public
17 defender's office, and then the Army Judge Advocate
18 Generals Corps.

19 After six years of active duty, I joined a large law
20 firm in Syracuse. In 1989, I came to the U.S. Attorney's
21 Office. I remained in the Army Reserves, rising to the
22 rank of Colonel, and serving as a trial judge from
23 2001 to 2010. In the U.S. Attorney's Office, I have been
24 a supervisor since 1998, including serving as Criminal
25 Chief, First Assistant U.S. Attorney, and United States

1 Attorney.

2 My 32 years of active military service involved a
3 broad range of legal work, including general practice
4 assisting soldiers, veterans, and their families;
5 advising commanders regarding operational,
6 administrative, and disciplinary matters; addressing
7 civil claims; prosecuting criminal cases; and presiding
8 over courts martial throughout the United States and in
9 Germany and Korea, including cases involving soldiers
10 with significant service-connected health issues.

11 I have spent over 30 years in the U.S. Attorney's
12 Office conducting investigations, trying complex cases of
13 different types, handling appeals, and leading the effort
14 by lawyers and support staff to secure justice in civil
15 and criminal cases throughout a district encompassing
16 30,000 square miles.

17 In striving always to fulfill our responsibility to
18 do the right thing in the right way, I have learned from
19 eight excellent United States Attorneys; an outstanding
20 leadership team, including my First Assistant, and many
21 talented colleagues.

22 My diverse case work included prosecution of a
23 research coordinator at a VA medical center who falsified
24 patient records to enroll them in cancer treatment
25 studies, including those of a patient who died from the

1 resulting infusion of chemotherapeutic drugs, as well as
2 the Chief of Oncology who failed to ensure that accurate
3 case histories were maintained and that treatment was
4 based on actual laboratory results.

5 As Vice-Chair of the Servicemembers and Veterans
6 Rights Subcommittee of the Attorney General's Advisory
7 Committee, I have initiated greater dialogue with the
8 Department of Veterans Affairs about the importance of
9 retrievable patient records to the quality of medical
10 care for veterans and later litigation about that care,
11 under both the current VA health records systems and the
12 modernized comprehensive electronic system being designed
13 and fielded.

14 My family and professional history have imbued me
15 with reverence for the service and sacrifice of veterans
16 and the rule of law for the fair, impartial, and orderly
17 resolution of disputes. These cornerstones of our
18 country are connected in the Court of Appeals for
19 Veterans Claims.

20 I have learned from exceptional jurists I have
21 appeared before and worked for that excellence depends
22 not only on integrity, judgment, knowledge, and common
23 sense, but also on humility. They showed that good
24 judging comes from listening and learning to understand
25 the facts and the law, and fairly apply the latter to the

1 former. If confirmed, I will follow their example and
2 work tirelessly to resolve cases justly and swiftly.

3 Thank you for considering my nomination to this
4 crucial court. I would be pleased to answer any
5 questions you have.

6 [The prepared statement of Mr. Jaquith follows:]

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1 Senator Moran. Mr. Jaquith, thank you.

2 Mr. Laurer, you are welcome to present your family
3 and friends in the room, and if you would provide your
4 testimony.

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1 TESTIMONY OF SCOTT J. LAURER, NOMINATED TO BE
2 JUDGE OF THE U.S. COURT OF APPEALS FOR VETERANS
3 CLAIMS

4 Mr. Laurer. Good morning, Mr. Chairman, Ranking
5 Member Tester, and distinguished members of the
6 Committee. Thank you for the opportunity to testify
7 before you today and for the Committee staff's assistance
8 in connection with my nomination.

9 I am honored that the President has nominated me to
10 serve as a judge on the United States Court of Appeals
11 for Veterans Claims. I would not be here without the
12 support of many people, and today I would like to
13 particularly acknowledge my family.

14 My father's parents and mother's grandparents sailed
15 to the United States in search of better lives for
16 themselves and future generations. Most did not even
17 have the equivalent of a high school degree; however,
18 they valued education, embraced hard work, and proudly
19 became American citizens. They labored humbly in a
20 Kansas City slaughterhouse, as a domestic helper in
21 Topeka, and as a custodian, domestic helper, dressmaker,
22 and roofer in Philadelphia.

23 My parents made extensive sacrifices raising seven
24 children. After two of our grandparents lost their
25 spouses, my parents also welcomed the surviving

1 grandparents into our home. Anything our large family
2 lacked in material wealth was surpassed by mutual
3 affection and happiness. Growing up, our parents taught
4 us to treat everyone with respect, the importance of
5 personal commitment, and the value of hard work and
6 teamwork, lessons that would serve me well throughout my
7 military career.

8 While a second-year law student, I met my future
9 spouse and best friend. During our 28 years of marriage,
10 11 permanent change of station moves, and multiple
11 deployments, her support has been unwavering. Our two
12 children have also backed me in countless ways, while
13 being towed around the globe attending a dozen different
14 primary and secondary schools between them. I thank my
15 family members for their love, selflessness, and support
16 to our nation. And I would like to introduce my wife,
17 Kim, in the red dress; my daughter, Ada, in black; and my
18 son, Ethan. I am very proud of all of them and I am very
19 thankful for them joining me this morning.

20 I wanted to become a lawyer since high school. As
21 the son of a Korean War-era veteran and nephew of a
22 Vietnam War veteran, I was also drawn towards military
23 service. I did not know it was possible to serve as both
24 an officer and an attorney until I met Judge Advocate
25 General's Corps officers who were recruiting at my law

1 school. The more I learned about the JAG Corps, the more
2 eager I became about serving in the dual professions of
3 arms and the law. The Navy JAG Corps selected me for its
4 Student Program, and I was commissioned in January 1989.

5 The United States military offered me the privilege
6 of service, unparalleled leadership experience, and a
7 wide range of legal skills. During nearly 30 years of
8 active-duty service, I provided legal services to
9 military service members, veterans and their families,
10 and I advised our country's most senior civilian and
11 military leaders on complex legal issues in combat zones,
12 at sea, overseas, and here in Washington, D.C. Through
13 these diverse experiences, I have demonstrated my ability
14 to faithfully interpret and apply laws and regulations to
15 factual situations and to communicate effectively, in
16 speech and in writing, my reasoning behind legal
17 conclusions.

18 Veterans and their families deserve judges serving
19 on the United States Court of Appeals for Veterans Claims
20 who are impartial, diligent, skilled, and devoted to the
21 law. If confirmed, I will uphold those solemn
22 obligations and enhance the Court's efforts to decide an
23 individual veteran's appeals fairly and expeditiously.

24 Thank you again for the opportunity to appear before
25 you today. I would be glad to answer your questions.

1 [The prepared statement of Mr. Laurer follows:]
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1 Senator Moran. Mr. Laurer, thank you very much and
2 thank you for your family's presence with you today.

3 I will defer and recognize the Senator from
4 Arkansas, Senator Boozman.

5 Senator Boozman. Thank you so much, Mr. Chairman,
6 and also you, Mr. Tester. We appreciate you guys doing
7 this in an expeditious way so we can get these things
8 done. As was just said by Mr. Laurer, fair and
9 expeditious, you know, is so, so very important. This is
10 such a big job. We appreciate you all in the sense of
11 your service to your country in the past and your
12 willingness to serve now.

13 I had really good meetings with both of you all, and
14 I think you were able to answer my questions, you know,
15 as we talked at length about what the job entails. And
16 so I guess one thing I would like to know is you all have
17 both--were in the military, you know, both veterans
18 yourselves, many years of service. How will that
19 experience affect you as you do your duties regarding the
20 court? What does that bring to the table, in the sense
21 of being a veteran and kind of understanding some of the
22 issues that are out there?

23 Mr. Jaquith. Thank you, Senator. As I indicated, I
24 think my over three decades of military service imbued me
25 with great reverence for the service and sacrifice of

1 veterans, but also a personal understanding of the
2 frustrations sometimes experienced when seeking
3 administrative action, particularly when not on active
4 duty.

5 My military experience is an important reason why I
6 am here, both as the foundation of my professional
7 success and the impetus for my interest in dedicating the
8 rest of my professional life to this court. The breadth
9 of my military experience has been a real catalyst for
10 professional development.

11 In nearly 29 years in the Army Judge Advocate
12 General's Corps I performed a wide array of functions,
13 and having to learn and adapt to each one. They included
14 providing legal assistance to soldiers, veterans, and
15 their family members in all areas of civil law, including
16 those involving military and veterans' benefits. I
17 advised a depot commander on matter of command
18 administration, contracts, environmental law, Federal-
19 State relations, and personnel law, and did similar work
20 advising other commanders at all levels, including, as
21 the staff judge advocate advising the New York Army
22 National Guard commander and his staff. I investigated
23 and settled civil claims against the Army arising in a
24 29-county area. I provided instruction on military
25 justice, operational law, law of war, ethics,

1 mobilization preparedness, and veterans' re-employment
2 rights, and the protections of what is now known as the
3 Servicemembers Civil Relief Act.

4 As trial counsel, my prosecutors included a wide
5 variety of serious cases. I served as a Special
6 Assistant United States Attorney in both the Western
7 District of Missouri and the Western District of New
8 York, and some of the cases I worked on as a trial
9 counsel and a SAUSA involved significant medical
10 evidence.

11 As an Army trial judge from 2001 to 2010, I presided
12 over courts martial, including trials on charges of
13 heinous crimes such as solicitation of murder and rape,
14 and some of those cases involved soldiers whose work
15 involved combat injuries that was presented as mitigating
16 evidence.

17 And this broad perspective, I think, if confirmed,
18 will enable me to apply the exercise of the good judgment
19 developed in that career in trying to achieve fair and
20 equitable results, expeditiously, for veterans.

21 Senator Boozman. Mr. Laurer, quickly, or he is
22 going to gavel me.

23 Mr. Laurer. Thank you, Senator. I guess you could
24 say that both Mr. Jaquith and myself have walked a mile
25 in veterans' shoes, and that is obviously important for

1 understanding, particularly with respect to veterans'
2 benefits, the frustrations perhaps that they may deal
3 with.

4 In my case, as a result of my military experience, I
5 have had the privilege of service, first and foremost,
6 some unparalleled leadership experience, to include being
7 in command of a legal organization, and a wide range of
8 legal skills.

9 Why do I think that is important? Well, first of
10 all, my main role, if confirmed, would be to faithfully
11 interpret and apply laws and regulations to the factual
12 situations. It is not enough just to be able to do that,
13 however, as I am sure we will discuss later. You have to
14 be able to communicate effectively, both in writing as
15 well as orally, in order to help with some of the
16 challenges in the system as they currently exist.

17 I would also note that both on the Joint Staff and
18 my most recent detail to the National Security Council, I
19 have coordinated extensively using the interagency
20 process. And that is important because, if confirmed,
21 you join a court that is composed of currently nine
22 judges, and you need to be able to collaborate, and based
23 on what I know about the current judges and their
24 diversity of experiences and their incredible knowledge
25 base, that is important to be able to work, whether it is

1 on a single judge alone decision or certainly in panels
2 or en banc, or all together.

3 And then, finally, I mentioned earlier that I have
4 led organizations in command and in other situations
5 during my career, and one of the important things to
6 remember with judges, again, is that even though you are
7 not in command of something, you are in a leadership and
8 a supervisory role, not only with your chambers, of
9 course, and are responsible for developing the personnel
10 under your charge, but also working across the court with
11 other members, their chambers, and in general. Thank
12 you.

13 Senator Boozman. Thank you.

14 Senator Moran. Senator Boozman, thank you. Senator
15 Tester.

16 Senator Tester. Thank you, Mr. Chairman, and I want
17 to thank you both for being here today. I want to also
18 thank your families for being here today. I think it
19 speaks well of both of you.

20 Before I get into my questions I would just say that
21 I am impressed with the qualifications that both of you
22 bring to the table. I think that it is good to have
23 people with your background on the Court of Appeals for
24 Veterans Claims.

25 Mr. Laurer, from August of '17 to August of '18 you

1 served as Ethics Counsel on the National Security Council
2 at the White House. I believe that is correct, isn't it?

3 Mr. Laurer. Yes, Senator.

4 Senator Tester. And from August of '18 until
5 recently you served as Deputy Legal Advisor to the
6 European Russian Affairs Directorate. That is correct?

7 Mr. Laurer. Yes, Senator.

8 Senator Tester. Okay. It has been a rather
9 tumultuous time at the NSC, and it would be, I think,
10 helpful for the Committee to know a little bit more about
11 any specific role that you may have played. So did you
12 have any knowledge or involvement regarding the July 2019
13 call between President Trump and President Zelensky?

14 Mr. Laurer. Thank you for your question, Mr.
15 Senator. First, if I may explain a little bit about the
16 National Security Council--

17 Senator Tester. Sure.

18 Mr. Laurer. --staff, for those that may not be
19 aware. The staff is composed primarily of detailees.

20 Senator Tester. Yep.

21 Mr. Laurer. In my case, I was detailed from the
22 Department of Defense, and that is true, of course, for
23 the Legal Affairs Directorate as well. So I was one of
24 six detailees. So just to provide a little bit of
25 background.

1 Senator Tester. Yep.

2 Mr. Laurer. As you know, I have been nominated to
3 serve as a judge on the Court of Appeals for Veterans
4 Claims, and I am here in that capacity today, obviously.
5 Because of concerns about protected information, I am
6 unable to discuss the specifics of any matter that I may
7 or may not have worked on while detailed to the National
8 Security Council.

9 Senator Tester. If we were able to, with the
10 Chairman's agreement, be able to go into a closed
11 session, could you tell us about that?

12 Mr. Laurer. Senator, there would be some of the
13 same concerns with respect to protected information, and
14 if I may briefly explain what those would be--

15 Senator Tester. Yes.

16 Mr. Laurer. --national security interests, of
17 course, first and foremost, to include classified
18 information; client confidences that may exist; as well
19 as protections of the separation of powers between co-
20 equal branches of the government.

21 Senator Tester. Okay. So we would not want you to
22 give away anything that would make the country less safe.
23 I do not think that would be there. But if there was any
24 role that you played it would be helpful to know, and
25 that is really where the questions would come from. For

1 example, were you aware or did you have any role in John
2 Eisenberg's decision to move the transcript of the July
3 25th call to a highly classified server?

4 Mr. Laurer. Again, Senator, I would express the
5 same concerns.

6 Senator Tester. Okay. So it was good. I get it.
7 I just--it would be good to know that. And I do not--I
8 think if you did not have any role in that there is no
9 problem. If you did have a role in it, we would like to
10 know what it was, and I do not think that brings forth
11 national security issues.

12 I am going to ask him to do it. If you will do it,
13 that will be fine. If not--and that, by the way, does
14 not take away from your qualifications and the fact that
15 you were a detailee, and the fact that you went there
16 because you were assigned that job. It is just if there
17 are any roles there I would just like to know. I think
18 you are a fine man. I think you have got a fine family,
19 and, by the way, your son is a chip off the old block.

20 But the fact of the matter is, is that this is kind
21 of important information moving forward. And so if we
22 could--you seem to be a straight-up guy, an honest guy,
23 somebody who is a no-BS guy. I like that about you. And
24 so if we could get that stuff--it is not real heady, and
25 I have got a notion you probably did not have a hell of a

1 lot to do with it, but I would like to know that. Okay?

2 Mr. Laurer. Thank you, Senator. I understand.

3 Senator Tester. Okay. Let me go with the single

4 judge question that I brought forth in my opening

5 question. With a single judge can decide an appeal more

6 quickly than a panel, are there any downsides to a single

7 panel decision, just as lack of precedence being

8 established? Either one can go first. It does not

9 matter.

10 Go ahead, Mr. Jaquith.

11 Mr. Jaquith. Thank you, Senator. There is not a

12 downside. Single-judge decisions certainly have their

13 place.

14 Senator Tester. So would it be helpful to have more

15 panel decisions?

16 Mr. Jaquith. Well, I think it is important to

17 maintain the construct of the internal operating

18 procedures that the court has in place. The single-judge

19 resolutions are designed, as I understand the rules, for

20 relatively simple cases where the outcome seems not

21 readily debatable. And so having a single judge decide

22 those cases can be done more quickly.

23 Panel decisions are very important, and so it may be

24 that it is screening judges should be sparing resolving

25 questions of doubts about whether a panel is warranted or

1 not in favor of a panel deciding the case, because the
2 additional time it takes to get three judges together
3 and--

4 Senator Tester. Gotcha.

5 Mr. Jaquith. --work on a case, has the advantage of
6 setting precedent that could speed up cases throughout
7 the system.

8 Senator Tester. That is correct. What is your view
9 on it, Scott?

10 Mr. Laurer. Senator, I would echo what Mr. Jaquith
11 said. I would add that when considering this question
12 obviously there is guidance for the judges, and we would
13 have to follow that. But in addition, the annual reports
14 clearly show that--state the obvious, which is that
15 whenever you have a panel or certainly en banc, it takes
16 longer. And so as I recognize there is a need both in
17 terms of first and foremost getting it right and being
18 fair to the veterans, but also this need to do so in an
19 expeditious manner.

20 And so there are certainly advantages and
21 disadvantages. I would be comfortable, if confirmed,
22 with following the existing guidance, but also looking
23 for other ways to be more expeditious in resolving cases.
24 And the advantage, obviously, with a panel decision is
25 that it has precedential value. That would be helpful

1 not just for the board but also all the way down the
2 chain to the regional offices and to the veterans
3 themselves.

4 And so, again, if you meet as a panel and if you
5 provide a decision that is very clear and instructive, it
6 is very difficult because it is hard to capture what
7 those metrics would look like. But common sense tells
8 those of us in the room that if you were to be clear in
9 providing that it could perhaps prevent the need to
10 remand cases to the board, and therefore be more
11 efficient.

12 Senator Tester. Thank you. Thank you, Mr.
13 Chairman.

14 Senator Moran. Senator Brown.

15 Senator Brown. Thank you, Mr. Chairman. Thank you
16 for that. Thank you both for your willingness to serve.
17 And I reiterate what Senators Tester and Moran said about
18 your qualifications, and good luck through the process,
19 and thank your families for being here.

20 Following up--Mr. Laurer, following up on Senator
21 Tester's question, in your questionnaire you affirmed you
22 would appear and testify before a duly constituted
23 committee of Congress. If subpoenaed regarding the
24 Ukrainian controversy, are you willing to appear and
25 testify regarding your actions and your position as legal

1 advisor for European Affairs in the NSC?

2 Mr. Laurer. Thank you, Senator. I stand by my
3 response in the questionnaire, and so for a committee
4 that would call me, my response is yes.

5 Senator Brown. Okay. Thank you for your direct
6 answer.

7 Also following up on Senator Tester's line of
8 questioning, in your role at the NSC, Mr. Laurer, were
9 you aware of, as Ambassador Taylor's written testimony
10 details, a, quote, "irregular policy channel running
11 contrary to the goals of long-stand U.S. policy, vis-à-
12 vis Ukraine"? Were you aware of that written testimony?

13 Mr. Laurer. Thank you, Senator. Again, I would
14 state that based on concerns about protected information,
15 I am unable to discuss specifics of any matter that I may
16 or may not have advised on while detailed to the National
17 Security Council.

18 Senator Brown. But you would be willing, if called
19 back, in a classified setting, to at least appear?

20 Mr. Laurer. Again, my response to the
21 questionnaire, Senator, is yes, that as a--

22 Senator Brown. A lot of us were pretty stunned by
23 the political reaction, or politicized reaction to Mr.
24 Taylor's testimony, and with criticism, sort of an angry
25 criticism of him as a public official and public servant.

1 Did you have a reaction to the criticisms of Mr. Taylor
2 in the ensuing days of his testimony?

3 Mr. Laurer. Senator Brown, I do not know Mr.
4 Taylor, and I had no reaction to the publicly available
5 information.

6 Senator Brown. Okay. As someone with as
7 distinguished a record as you did I just wonder if--as
8 you have had, and as a patriot, and someone who has
9 served his country as admirably as you have, and as
10 admirably as he had, I would just wonder if it sort of
11 hit you in the gut when you see those kinds of criticisms
12 targeted at a public servant like him. But I understand
13 your answer.

14 Mr. Jaquith, one question for you. If confirmed,
15 when reviewing a case, how would you raise--how would you
16 weigh congressional intent against VA regulation, given
17 the recent Supreme Court ruling in Kisor v. Wilkie?

18 Mr. Jaquith. Thank you, Senator. I mean, analysis
19 starts and sometimes ends with the text of the statute.
20 If the words are clear and unambiguous they are applied
21 as written, and in making that determination I would
22 construe the words in accordance with their ordinary
23 usage and context, reflecting how they were most likely
24 understood by Congress and the public and most compatible
25 with the surrounding law into which they were integrated.

1 Legislative history may be helpful in ascertaining
2 the reasonable construction of the statutory language,
3 and, of course, we have the Veteran Canon, that
4 interpretive doubt is to be resolved in the veteran's
5 favor.

6 This year, as you reference, interplay of the canons
7 of statutory construction and the deference to be
8 accorded reasonable agency interpretation of that
9 ambiguity in statutes, under Chevron, or regulations
10 under Auer, has been the subject of two important cases,
11 Procopio v. Wilkie, in which the Federal circuit held
12 that the statute unambiguously applied to veterans who
13 had served in the Blue Water territorial seas of Vietnam,
14 and Kisor v. Wilkie, in which the Supreme Court expounded
15 on the proper place for Auer deference. And I would
16 carefully study those recent decisions and apply them to
17 the standards of statutory construction that I had
18 earlier described.

19 Senator Brown. Thank you, Mr. Jaquith.

20 The last point, Mr. Chairman, I would like to enter
21 into the record, and I would ask unanimous consent, an
22 article in the Post today with salaries lagging far
23 behind private sector, VA has 49,000 positions vacant. I
24 know how much you care about this, about the VA, Mr.
25 Chairman, and that Senator Isakson does, and Senator

1 Tester, and Senator Hirono. All of us, we are all
2 concerned about that. It is partly salaries. It is also
3 partly the attacks on Federal employees that we see from
4 the White House, and the undermining of civil service.

5 Again, I understand it is partly a dollar figure, a
6 dollar issue, and I understand it did not begin with
7 President Trump. There have been shortages before. But
8 this stepping up criticism of Federal employees, and
9 coupled with the threats, again, for a government
10 shutdown, makes it even harder to recruit.

11 So I would like, Mr. Chairman, to enter this into
12 the record.

13 Senator Moran. Without objection.

14 [The information follows:]

15 / COMMITTEE INSERT

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1 Senator Moran. Senator Hirono.

2 Senator Hirono. Thank you, Mr. Chairman.

3 I ask all nominees before any of the committees that
4 I sit on the following two questions to start, and I will
5 ask these two questions of both of you, starting with Mr.
6 Jaquith.

7 Since you became a legal adult, have you ever made
8 unwanted requests for sexual favors or committed any
9 verbal or physical harassment or assault of a sexual
10 nature?

11 Mr. Jaquith. No, I have not.

12 Mr. Laurer. No, Senator.

13 Senator Hirono. Have you ever faced discipline or
14 entered into a settlement related to this kind of
15 conduct?

16 Mr. Jaquith. No, Senator, I have not.

17 Mr. Laurer. No, Senator.

18 Senator Hirono. For Mr. Laurer, you have had a
19 number of questions relating to your work at the National
20 Security Council. I just want to clarify, was one of
21 your responsibilities to assist the National Security
22 Advisor and the National Security Council staff on
23 interpretations of U.S. and international law relevant to
24 U.S. national security?

25 Mr. Laurer. Yes, Senator.

1 Senator Hirono. So Tim Morrison, the former Senior
2 Director for European Affairs at the White House and NSC
3 testified in detail about his recollections relating to
4 the July 25th telephone call between President Trump and
5 Ukrainian President Zelensky.

6 Morrison stated, quote, "After the call, I promptly
7 asked the NSC Legal Advisor and his Deputy to review it.
8 I had three concerns about a potential leak of the
9 MemCon. First, how it would play out in Washington's
10 polarized environment. Second, how it would play out in
11 Washington's--second, how a leak would affect the
12 bipartisan support our Ukrainian partners currently
13 experience in Congress. And third, how it would affect
14 the Ukrainian perception of the U.S.-Ukrainian
15 relationship."

16 Were you the deputy referenced in Mr. Morrison's
17 testimony?

18 Mr. Laurer. Senator Hirono, I know who Mr. Morrison
19 is. I cannot, in this setting, get into any details
20 about any advice that I may or may not have provided.

21 Senator Hirono. Oh, so you are saying that you were
22 the deputy referred to by Mr. Morrison.

23 Mr. Laurer. No, Senator. That is not what I said.
24 What I said is that I know who Mr. Morrison is, as a
25 Senior Director on the NSC staff, but that in this--

1 Senator Hirono. I am not--excuse me, I am not
2 asking you tell us what you said. I am just asking
3 whether you are the deputy that Mr. Morrison referred to.
4 Yes or no?

5 Mr. Laurer. I do to believe that I am the deputy
6 that he referred to.

7 Senator Hirono. So, I figure--you testified that
8 you would be fair and impartial. You would abide by the
9 rule of law. I would expect that for both of you. And I
10 am just wondering, the concerns relating to the telephone
11 call was first raised to the public by basically a valid
12 complaint brought on by a whistleblower. We do have
13 statutes that require a Federal employee, if they see any
14 misconduct, et cetera, to come forward, and we do have
15 statutes that protect a whistleblower.

16 Do you think that the whistleblower's identity
17 should be disclosed?

18 Mr. Laurer. Senator, I have no opinion on that.
19 What I can assure you is that throughout my career of
20 public service that I have always acted in accordance
21 with the law and integrity, and I stand on my reputation
22 in that respect, and having done so for almost 30 years
23 on active duty and even longer as a commissioned officer,
24 I have a very clear record in that respect.

25 Senator Hirono. So are you aware that we do have

1 laws that protect a whistleblower?

2 Mr. Laurer. Yes, I am.

3 Senator Hirono. And you would abide by those laws.

4 So some of those laws would be that a whistleblower
5 should not be subjected to threats, intimidation, or
6 retaliation, and you would support those.

7 Mr. Laurer. Yes, Senator, I can assure you that in
8 any context I am familiar with whistleblower laws and
9 that in any context I would respect those laws.

10 Senator Hirono. It would be good if others did
11 likewise.

12 For both of you, as you know there has been a claims
13 backlog at the VA, which ultimately will affect the
14 workload for the court, and many veterans have been
15 waiting, as you are probably aware, for years for their
16 claims to be adjudicated, and we owe them swift justice.
17 What can you do as a judge to decide cases on a timely
18 basis? And since I am running out of time I just need
19 short responses from you, of whether, you know, this
20 would be something that you would pay attention to and
21 try to come up with ways to just effectively move things
22 along.

23 Mr. Jaquith. Hard work and quick action.

24 Senator Hirono. Long hours.

25 Mr. Jaquith. Long hours. I think, you know, a

1 career in litigation and working through the thicket of
2 legal and factual issues under deadlines would help me in
3 that regard, getting from intake to action. There are
4 some other things that are promising--the Appeals
5 Modernization Act, the potential for class action
6 litigation, and as we have already discussed a little
7 bit, the importance of issuing clear, precedential
8 decisions that it is hoped would speed up the entire
9 system.

10 Senator Hirono. Mr. Laurer?

11 Mr. Laurer. Senator, I would add to that obviously
12 Mr. Jaquith and I are not currently sitting on the court,
13 but I recognize, and I am humble enough to know that if
14 confirmed, based on my willingness to make things better
15 and improve things, that I would look around and I would
16 add to that diversity of the experience that currently
17 exists on the court, by bringing to bear ideas that I may
18 have. But it would be very presumptuous at this point to
19 say what those may be, because I am not sitting there.
20 But I would certainly, as part of the learning curve that
21 anyone undergoes with respect to a new position, would be
22 very attuned to that and would be looking for ways to
23 bring hard work to it and innovative ideas.

24 Senator Hirono. Thank you. Thank you, Mr. Chair.

25 Senator Moran. Thank you, Senator.

1 Maybe for Mr. Jaquith, but either one of you, you
2 mentioned, I think, Mr. Jaquith, about the presumption of
3 agencies, the deference to their views. What is the
4 current state of that law? What is the court's role in
5 deference to the Department of Veterans Affairs
6 positions?

7 Mr. Jaquith. Well, thank you, Senator. There is a
8 statutory standard--it is Section 7261 of Title 38--for
9 reviewing those, and legal questions, de novo, factual
10 findings, clearly erroneous.

11 In terms of the interpretation of regulations, it
12 has been the subject of a lot of litigation, you know,
13 first--

14 Senator Moran. So is the answer, at the current
15 state is it is uncertain?

16 Mr. Jaquith. I think the state of the law still is
17 that there is deference to be accorded to agency
18 determinations when those determinations are grounded in
19 the specialized expertise of the agency. That is, I
20 think, the essence of Justice Kagan's opinion in Kisor.
21 But first you have to determine if there actually is
22 ambiguity or not. That is not--you do not just
23 immediately to deference--and factor in--and I do not
24 think this was discussed by the court in Kisor--the
25 Veterans Canon. So, you know, interpretive doubt is

1 resolved in favor of the veteran.

2 Senator Moran. Mr. Laurer, anything I should know
3 beyond what I just learned?

4 Mr. Laurer. No, Senator. I would concur with Mr.
5 Jaquith.

6 Senator Moran. Thank you. Let me ask this. In the
7 interpretation of laws, I assume there are circumstances
8 in which Congress has created uncertainty, one statute
9 saying one thing, one statute saying presumably something
10 different. And I know there would be instances in which
11 regulations, at the Department of Veterans Affairs, might
12 be in conflict with the statutes.

13 I would ask you, if and when you know of those
14 instances, if you would inform--would this be part of
15 your role, informing this Committee, Congress, of those
16 circumstances? One of the things in regard to the
17 question of backlog, if we can reduce the level of
18 uncertainty as to what the status of the law is, and
19 whether a regulation is complying with the statute, we
20 can reduce the amount of litigation, I think, the amount
21 of uncertainty that veterans face in needing a pending
22 claim.

23 Do you have suggestions for me of how we can make
24 certain that Congress knows when it might have the
25 opportunity to clear the air about a law and work to make

1 certain that the Department is operating within the law?

2 Mr. Laurer. Senator Moran, my commitment would be
3 to work with, if confirmed, other members, of the court
4 and also with the other branches of the government. As I
5 have stated with Committee members and staff that we have
6 had the great fortune to speak to over the course of the
7 last few days, I view this as a collaborative effort
8 between the court, the Executive, and Legislative co-
9 equal branches of the government. And so you have my
10 commitment to work. I do not know the actual mechanics
11 of how we would do that yet, but you have my commitment
12 to do everything within my power to do so.

13 Senator Moran. Thank you. Mr. Jaquith, anything?

14 Mr. Jaquith. Mr. Chairman, as I understand the role
15 of the court, I think, if confirmed, I would participate
16 in making the determination of whether regulations are
17 consonant with statutes in the context of cases, and it
18 would be through those decisions that that message would
19 get out.

20 In terms of the interface with this Committee, I do
21 not have an insider's knowledge of that but I presume,
22 perhaps from the reporting requirement that is part of
23 the expansion of the court, that any of that sort of
24 communication would come through the Chief Judge.

25 Senator Moran. Thank you. Mr. Tester.

1 Senator Tester. Well, I want to thank you for that
2 question, Mr. Chairman, because I think it is really
3 important, and if there are conflicts we have got to
4 figure out a way to resolve them or we have got to make
5 sure that that communication chain is there. And so
6 short of doing it the old-fashioned way of just picking
7 up a phone and saying, "Hey, Jerry Moran, we have got an
8 issue here," or "Jon Tester, we have an issue here," we
9 have got to figure out how to do it, because the truth is
10 it would make your job better and it would just be good
11 government.

12 Look, you guys have extensive experience. Is there
13 anything--and you are not on the court yet, but is there
14 anything, any certain area that you think that you are
15 going to need to bone up on to be on the court?

16 Mr. Jaquith. Thank you, Senator Tester. Thought I
17 believe the nature and breadth and extent of my work over
18 37 years as a lawyer has been outstanding preparation for
19 service on the court, if I am concerned, there is no
20 question that the focus on the specifics of veterans' law
21 is essential, and I have been doing that, reading the
22 statutes, rules of practice, the internal operating
23 procedures, many precedential cases and the reviews of
24 such cases, and analyses and commentaries on the
25 development of the court, and significant issues that

1 have arisen. I have spoken with some knowledgeable
2 people on the subject, watched oral argument, listened to
3 a podcast or two.

4 One of the energizing aspects of a career in
5 litigation is the variety of subjects encountered, and I
6 am excited by this one and the possibility of focusing
7 further on veterans' law, if confirmed.

8 Senator Tester. Okay. Mr. Laurer?

9 Mr. Laurer. Senator, the fundamental skills have
10 been demonstrated with respect to interpreting laws and
11 regulations and fairly applying those. I would say that,
12 as has been the case throughout my career, any time that
13 I have gone to a different assignment there has been some
14 learning to do, and I would expect that I would approach
15 it humbly, and like Mr. Jaquith already started that
16 process without presuming anything, of course, because,
17 as you noted, we have not been confirmed. But certainly
18 reviewing the seminal cases, articles, and doing as much
19 in preparation for today's hearing and this process as
20 possible. So I would continue to do that.

21 I can tell you that any time I have moved, and I
22 have done so every two years, in the United States Navy,
23 I have had some homework to do before getting there, and
24 then certainly upon arrival, but quickly getting up to
25 speed. Thank you.

1 Senator Moran. Senator Blumenthal.

2 Senator Blumenthal. Thanks, Mr. Chairman. I want
3 to join in the comments made by Senator Tester about the
4 importance of the Wolf case and the need to provide
5 veterans with reimbursement for the non-VA emergency care
6 that they have paid for. I know you are familiar with
7 the case. I think that the court's decision there was
8 really enormously instrumental and important in
9 vindicating the rights of veterans, and now alerting
10 veterans, making them aware of their rights to that kind
11 of reimbursement. There are literally, as you know,
12 millions of dollars that veterans are due under that
13 decision, and I know that we are going to keep pushing
14 for that kind of fairness in reimbursement.

15 I hope that you will agree that veterans should not
16 have to wait years, generally, to get medical care from
17 the VA, and that claims and appeals should be resolved as
18 quickly as possible. And I am proud of the fact that we
19 have worked, in the Congress, on a bipartisan basis, to
20 pass the Veterans Appeals Improvement and Modernization
21 Act of 2017.

22 My understanding is that VA has doubled the number
23 of appeals it has decided from 52,000 in 2017 to 95,000
24 in fiscal 2019, and I think one of our main goals has to
25 be ensuring that the Court of Appeals of Veterans Claims

1 continues to operate to decide these claims as quickly
2 and fairly as possible, and I hope that both of you
3 agree.

4 Mr. Jaquith. Yes, Senator. If confirmed we will
5 certainly do our best to ensure that that occurs.

6 Senator Blumenthal. Mr. Jaquith, in your responses
7 to the Committee you mentioned that you had a substantial
8 caseload in defending VA malpractice claims, claims
9 against the VA based on malpractice. Why do you think
10 there are so many of those claims?

11 Mr. Jaquith. Senator, I think, in the main, it is a
12 result of the volume of care that is provided. I do not
13 mean to suggest that the incidence of medical malpractice
14 claims is any greater in Veterans Affairs medical centers
15 than in other medical facilities, although I have done no
16 study of that so I do not know whether that is true.

17 In our work with the VA, it has been my observation
18 that there are outstanding professionals there, as there
19 are in civilian hospitals, so I would not draw any
20 negative inference from that experience. And that was my
21 experience in a criminal case that I handled that
22 involved VA medical care. And I am working in my
23 capacity as Vice Chair of the Servicemembers and Veterans
24 Rights Subcommittee in a very positive way with VA
25 representatives on the issue of complete retrievable

1 electronic patient records.

2 Senator Blumenthal. In the Northern District of New
3 York, those claims came from which facilities?

4 Mr. Jaquith. We have two big VA medical centers in
5 Syracuse and in Albany.

6 Senator Blumenthal. And so you would defend the VA-
7 -

8 Mr. Jaquith. Yes.

9 Senator Blumenthal. --in those claims--

10 Mr. Jaquith. Yes, Senator.

11 Senator Blumenthal. --in Federal court.

12 Mr. Jaquith. When lawsuits are filed against the VA
13 or its doctors and caregivers, then it falls on the
14 United States Attorney's offices to provide
15 representation, and it is in that context that we often
16 experience the issues with retrieving and providing
17 discovery of patient records.

18 Senator Blumenthal. You mentioned that there was a
19 criminal case. Did you--you prosecuted it, I assume?

20 Mr. Jaquith. I did, Senator. It involved a
21 research coordinator that was falsifying patient records
22 to enroll and maintain patients in cancer treatment
23 studies, and a patient died because his compromised liver
24 and kidney function, as would have been revealed by
25 accurate laboratory results, made him susceptible--made

1 the infusion of chemotherapeutic drugs fatal.

2 Senator Blumenthal. Because of your experience in
3 those cases, both civil and criminal, do you think you
4 have any predilection either for or against the VA?

5 Mr. Jaquith. No, Senator, I do not. I am certain
6 that I could be, if confirmed, fair and impartial in
7 deciding all the cases that come before the court.

8 Senator Blumenthal. Thank you. Thanks, Mr.
9 Chairman.

10 Senator Moran. Senator Tester.

11 Senator Tester. Yeah, thank you, Mr. Chairman. I
12 just wanted a quick statement to put into the record. I
13 want to ensure that I give Chairman Isakson the
14 opportunity to review the discussion. I know Adam is
15 here and he will make sure he gets the discussion. As
16 such, I will confer with Chairman Isakson on whether
17 these matters should be discussed in closed session, and
18 then we will bring the Committee back at a later date to
19 have a broader discussion with all Committee members on
20 whether these issues require the meeting to be closed.

21 Look, I want to ensure that we are in accordance
22 with the rules of Senate. I also want to give Chairman
23 Isakson the opportunity to review the proceedings today.

24 I know we are waiting for another member to come.
25 Chairman Moran and I were just sitting here talking. You

1 guys are really incredibly qualified for this job, and I
2 hope I am--I hope that everything works out with the NSC
3 stuff so that both of you can get confirmed, because I
4 think you are going to do a marvelous job. And if you do
5 not, I am going to be really disappointed, because you
6 certainly have the pedigree to do some really good work
7 and the experience to really meet the needs on the
8 appeals court, so thank you both for being here.

9 Mr. Laurer. Thank you, Senator.

10 Mr. Jaquith. Thank you, Senator, for your kind
11 words.

12 Senator Moran. Senator Tester, thank you. I too
13 confirmed with Committee staff and here is my suggestion
14 with the issues that have been raised in regard,
15 particularly, to Mr. Laurer and his role at the NSC.
16 What I would suggest is that Committee members submit
17 written questions to the witnesses, and those questions
18 then be answered by the witnesses in writing, to be
19 submitted to the Committee. And if the answer involves
20 an inability to answer the question, if the response
21 involves the inability to answer a question, then explain
22 the legal justification for that inability.

23 Then Senator Tester, the Ranking Member, and Senator
24 Isakson, the Chairman of the Committee, can then have the
25 conversation about what should be the next step, if any,

1 in regard to a different setting for this Committee.

2 That would put into the record the question, and it would
3 put into the record the legal basis for which the
4 question was not answered. And then you and Chairman
5 Isakson can reach a conclusion to how best to handle that
6 circumstance.

7 I think this concludes our hearing. I always in
8 hearings that I chair if there is anything that either
9 witness, either of you would like to say, that has not
10 been asked, that you wish to correct something, you wish
11 something was on the record. And I have already taken
12 too much time because Senator Sullivan has now arrived.

13 But I will give you that opportunity when we
14 conclude the questioning by Senator Sullivan.

15 Senator Sullivan. Thank you, Mr. Chairman, and I
16 apologize. Thank you for keeping the hearing going here.
17 This is an important position. Congratulations to both
18 of you.

19 You know, my state, the great state of Alaska, we
20 have more vets per capita than any state in the country.
21 And one of the biggest challenges that I have seen is the
22 delay and the backlog with regard to appeals. And so I
23 would just like to get your sense of how you would
24 envision, both of you, addressing doing the appellate
25 work in a fair way, of course, but also in an expeditious

1 way. And are there ways in which you think we, or the VA
2 itself, or even under the current law, can help with
3 regard to addressing what is, I am sure you know, in
4 certain cases, years and years and years of delays with
5 regard to appeals that have built up? And I will just
6 ask that of both of you.

7 Go ahead, Mr. Laurer.

8 Mr. Laurer. Thank you, Senator. As you noted in
9 your question, the most important part is getting it
10 right.

11 Senator Sullivan. Yes.

12 Mr. Laurer. That is the fairness. But I recognize
13 clearly that there is also a need to do so expeditiously.

14 Senator Sullivan. You know the saying, justice
15 delayed is justice denied.

16 Mr. Laurer. Yes, Senator.

17 Senator Sullivan. So it is a combination.

18 Mr. Laurer. Yes, Senator. So there have been a
19 number of steps already taken to address that, for
20 example, the temporary expansion of the number of judges
21 that are on the court, that, for four years, increases
22 the size from seven to nine judges. That, of course,
23 will help, but at the same time, as was noted earlier in
24 the hearing, we have seen a significant increase in the
25 number of appeals coming before the court, up from

1 approximately 4,000 in 2017 to almost 7,000 in 2017.

2 So in addition there have been some other
3 significant developments, for example, with respect to
4 the court's ability to consider class actions and to
5 aggregate similarly situated claimants and appellants,
6 and that is, of course, the Monk case.

7 And so there are a number of things that are already
8 available. The legislature, of course, has the ability
9 to consider further ways to do this, everything from
10 expanding the court to any other number of measures that
11 are available.

12 And then also, frankly, if confirmed, my commitment
13 would be to doing everything within my power to, for
14 example, provide clear decisions that are helpful
15 throughout this process, and, of course, if you do so as
16 part of a panel or a banc, that has precedent. And so
17 those opinions and decisions have precedential value.
18 But also even with the single-judge decisions, it is
19 always best to have clarity, and that helps not only the
20 board but all the way down to the regional office and to
21 the individual veterans, because the clearer you can be
22 about the applicable law and regulations, the more
23 efficient the entire process becomes.

24 Senator Sullivan. I do not want to interrupt, Mr.
25 Laurer. Thank you.

1 Do you have a view on my question and the response?

2 Mr. Jaquith. I echo Mr. Laurer's hope that the
3 systemic changes, the Appeals Modernization Act and the
4 potential for aggregate case resolutions help. If
5 confirmed, I would strive to embody my common exhortation
6 to lawyers in the United States Attorney's Office more,
7 better, faster. I will work tirelessly to screen cases
8 quickly, and if they are properly resolved by a single
9 judge, do so expeditiously with a decision that is
10 correct in law and fact. And on cases referred to
11 panels, I will promote celerity and clear articulation of
12 the dispositive rule of law to achieve justice in the
13 case and maximize the likelihood that the precedent will
14 hasten the resolution of other cases.

15 Senator Sullivan. Let me ask, just real quick, I
16 think it is appropriate, and I do not know how the work
17 between the Committee and the court of appeals actually--
18 appeals court works. But I do think that it is
19 appropriate if, if confirmed, and during the course of
20 your time, you are seeing ways in which things that are
21 statutorily based and mandated are either helpful or
22 unhelpful, or ideas to make it more helpful. I think it
23 is certainly appropriate to make sure we get an update--
24 this Committee in particular, gets an update from you
25 when you see this in practice, if you have ideas and

1 thoughts for legislative reform.

2 So could I get a commitment from both of you to be
3 willing to do that and continue to work with this
4 Committee on these issues?

5 Mr. Laurer?

6 Mr. Laurer. Senator Sullivan, you have my personal
7 commitment. As you are aware, there is also the annual
8 reports that are required under statute. That is one
9 mechanism, but that is not all that can be done.

10 Senator Sullivan. Yeah, sometimes a report can be
11 kind of, you know, bureaucratized to such a degree it
12 doesn't say much. So if you have views, we certainly
13 would love to hear them.

14 Mr. Jaquith, can I get your commitment on that?

15 Mr. Jaquith. Yes, Senator, although I expect--I do
16 not know how the--what the inner working of the court is
17 like in this regard, and it may be that the proper way
18 for those--any input I might have, if confirmed, would be
19 to come through the Chief Judge.

20 Senator Sullivan. Yeah. No, we do not want any ex
21 parte communication or anything like that, but I think a
22 continued--you are going to be the experts. You are
23 going to be on the ground. You are going to see what
24 works and does not work, and I guarantee you it will be
25 things that are good, things that are not so good, and

1 some of which we will need to address, statutorily. I
2 think this Committee has very common approach, bipartisan
3 approach, to see these cases done in an expeditious but
4 fair manner. If you have ideas on that, we would welcome
5 it.

6 Thank you, Mr. Chairman.

7 Senator Moran. Senator from West Virginia, Senator
8 Manchin.

9 Senator Manchin. Thank you, Mr. Chairman. First of
10 all, I want to thank our nominees for the service, both
11 of you for your service to our country and for stepping
12 up to continue to serve our veterans as judges of the
13 U.S. Court of Appeals for Veterans Claims. I know both
14 of you are going to do an excellent job, and I plan on
15 voting and supporting you wholeheartedly.

16 I take these nomination hearings very seriously. I
17 enjoyed meeting with both of you all yesterday in my
18 office. However, I am going to apologize right now for
19 using my time here to address the horrible deaths--the
20 horrible deaths of veterans at the Clarksburg VA, where
21 last year up to 11 veterans were murdered by a VA
22 employee who used unauthorized insulin injections to kill
23 them.

24 For example, we know from reporting that the person
25 of interest was likely not certified to be treating

1 veterans, that the Clarksburg VA had a history of failing
2 to report sentinel events, that the number of deaths at
3 the hospital during the period in question was higher
4 than normal, and that insulin at the Clarksburg VA was
5 not secured. These are all examples of topics that we
6 could dive into on a policy level that would not harm the
7 investigation and would begin to hold the VA accountable
8 and prevent this from happening at any other VA facility.

9 The reason I am saying this is because Dr. Richard
10 Stone, the Executive Director, the executive in charge of
11 the Veterans Health Administration, recently wrote an op-
12 ed. Now I had not said a word, because they asked me not
13 to, not to get this an investigation as for veterans, an
14 investigation which I think we need, because they said it
15 would impede their own investigation, from a criminal
16 investigation.

17 But Dr. Richard Stone, the executive in charge of
18 the Veterans Health Administration, at the VA in
19 Clarksburg, wrote an op-ed in the Clarksburg-area
20 Exponent Telegram, and appeared on a West Virginia
21 television declaring--mind you, declaring that the VA has
22 already done--has already done what we should do for
23 accountability. I have been quiet, not wanting to impede
24 it. He is ahead of it when all of this happened, and now
25 he is saying everything is hunky-dory and fine, and

1 blamed negative press and headlines for bad perceptions
2 of Clarksburg VA.

3 Well, I am sorry, Dr. Stone. That is not the case,
4 and it is definitely not the facts in West Virginia. The
5 VA Inspector General and Department of Justice have been
6 leading an investigation into a person of interest for
7 nearly a year and a half, without making any arrest. I
8 have spoken many times to Inspector General Missal and
9 the U.S. Attorney for the Northern District of West
10 Virginia, Bill Powell, and understand that we have to be
11 careful not to interfere with an ongoing criminal
12 investigation.

13 But I want to know when our family members of
14 victims going to get answers, and when are we going to
15 have some accountability, other than just an op-ed by the
16 person in charge saying everything is fine.

17 Something is wrong. My office receives more than 20
18 calls per week from victims of family members of people
19 who do not even know if their family member's death at
20 Clarksburg was part of this string of homicides. Can you
21 imagine losing a loved one during this period of time,
22 that now that it has been reported that we had homicides
23 and no one has any answers at all?

24 So we cannot figure out, at the VA, and
25 investigators who refuse to answer for the sake of

1 protecting investigations. Veterans all across West
2 Virginia can contact our office, ask me how is the VA
3 going to be held accountable for many obvious systematic
4 VA issues that caused these murders to continue for at
5 least six months in 2018.

6 First of all, the insulin was not even secured. The
7 medicine was not even secured, how it was dispensed.
8 Just so many violations.

9 I have repeatedly called on my colleagues to
10 immediately hold a hearing. If it was in your state, if
11 this happened to any of your constituents, you would feel
12 the same way as I do. On the policies and procedures in
13 place at the VA, it led to 11 veterans being murdered--11
14 veterans being murdered at the hands of a VA employee.
15 What type of background check did they go through? How
16 do we basically vet these people where they should even
17 be in any hospital setting, let alone a veterans'
18 hospital? But we have been cautioned that we cannot hold
19 the VA accountable until the investigations are
20 completed.

21 Well, I respectfully disagree, and I will tell you
22 why. I ask my colleagues and the VA--if we cannot hold a
23 hearing until the investigation is completed, how can the
24 VA write op-eds, the head of the VA in Clarksburg write
25 an op-ed declaring that all is well and everyone and

1 everything has been held accountable at the VA?

2 If you were me, representing the people of West
3 Virginia, we have more veterans per capita than most any
4 state. We rank right at the top with Alaska and
5 everybody else. And our people are willing to go and
6 fight and die for our country, and all we are asking for
7 is a simple answer to families, "Did my dad get killed or
8 murdered, or was it natural causes? What happened?" I
9 have got all this going on now, a year and a half.

10 So I respectfully--I have been very respectful of
11 this Committee. I think it is a wonderful committee
12 under the leadership of both the Chairman, who is sitting
13 in for our Chairman Isakson right now, and the Ranking
14 Member and my dear friend, Jon. And I just--I feel so
15 strong about this that we can be seeing, have they made
16 any corrections?

17 Are we handling the medication differently? Are we
18 vetting basically people working there? Have we gone
19 back and looked at their background, their experience
20 level, if they had any type of psychotic problems or
21 psychiatry or mental illness that could have caused
22 something like this?

23 Something has happened. I am reading in the paper,
24 which I am not supposed to say anything or ask questions,
25 but I have to read in the paper every day in West

1 Virginia, the person of interest was a person that was
2 monitoring the insulin levels to make sure that it was
3 working. That means it was making sure that the
4 hypoglycemia was going to work and kill them. Can you
5 believe?

6 This is what we are dealing with. And I hate to use
7 this time, because I think you two are going to be
8 wonderful. I support both of you. We had a great
9 conversation. I think you understand where I am coming
10 from and my passion for this. But I have compassion for
11 the families and I cannot give them answers. Enough is
12 enough.

13 Senator Moran. Senator Manchin, thank you. I do
14 not think there is a question in there for either of the
15 witnesses but I appreciate you highlighting this issue,
16 and I look forward to working with you on a desired
17 outcome. I know that you are dealing with Chairman
18 Isakson and the Ranking Member, Mr. Tester.

19 If I talk any longer another Senator will arrive, so
20 I think I am going to conclude my remarks.

21 Again, I would suggest that there is a way to get
22 this issue of whether or not there is a closed or
23 classified hearing through written questions with
24 appropriate response as to why the answers cannot be--the
25 responses cannot be given.

1 And anything that either one of you want to say
2 before I conclude the hearing?

3 Mr. Jaquith. No. Thank you, Senator.

4 Mr. Laurer. Senator, I would just like to again
5 thank this Committee, as well as the staff, for all of
6 the tremendous work. I know it is a huge effort and I
7 really appreciate, with respect to my nomination, all of
8 the work. Thank you, sir.

9 Senator Moran. Surprisingly, Senator Tester did
10 accurately reflect the conversation that he and I had,
11 which was that you are both very impressive individuals
12 and it is a pleasure to hear what you have to say and to
13 know that people of your caliber are interested in
14 serving in these capacities.

15 The hearing record will remain open for five
16 business days and any question for the record should be
17 submitted to the Chief Clerk no later than the close of
18 business on Friday. That is a little bit different time
19 frame, but we need to see if we are going to do
20 confirmations, that this move expeditiously. We are
21 trying to follow your suggestions about how to get timely
22 results and have our business concluded in an appropriate
23 time frame. So close of business this Friday.

24 With that the hearing is adjourned.

25 [Whereupon, at 10:47 a.m., the Committee was

1 adjourned.]

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