

## WRITTEN QUESTIONS FROM SENATOR LEE

### “The Future of Drones in America: Law Enforcement and Privacy Considerations”

Wednesday, March 20, 2013

#### **Benjamin Miller (Unmanned Aircraft Program Manager, Mesa County Sheriff’s Office & Representative of the Airborne Law Enforcement Association)**

1. In your testimony, you state that you support the warrant requirement for situations in which persons have reasonable expectations of privacy, but that you would be opposed to restrictions on the use of UAS where such expectations of privacy are absent. This makes it very important that we properly define what constitutes a reasonable expectation of privacy. I know this term has been the subject of many Supreme Court decisions and much has been said in the law on the topic.
2. How you would go about determining when a person has a reasonable expectation of privacy? *Our process includes the assumption that the fourth amendment applies in every case. We then determine if an already recognized exemption is present. The U.S. Supreme court, throughout the course of this country's history, has established (13) exceptions to the warrant requirement for conducting searches. The exceptions are as follows:*

Exigent circumstances	Open fields
Stop and frisk	Abandoned property
Incident to arrest	Consent
Custodial searches	Administrative
Plain view	Probation search
Vehicle	Protective sweep
Border search	

3. In your testimony today, you have noted several legitimate uses of UAS. For example, you note that UAS were used to take pictures of a fire and to help find a missing woman.

Am I right in concluding that none of your examples implicate the types of privacy concerns that some of us are concerned about, namely the use of UAS to obtain evidence in a criminal proceeding, intrude upon personal privacy, or gather personal data on individuals?

*Not necessarily. In fact, in the church fire example, this was a suspected arson case. No charges have been brought against anyone at this time. But, had charges been filed, these*

*photos would have been deemed evidence and submitted as such. In this case, the flight was not a search and thus no warrant was necessary. It should be noted however, that in the four years that my agency has used unmanned aircraft, we've seen the predominance of use fall under non-criminal operations such as search and rescue.*

4. If the beneficial use of UAS you have mentioned do not implicate such concerns, would you support a strict requirement that warrants be obtained for those uses of UAS by law enforcement that implicate these concerns?

*As you know, the Fourth Amendment requires a warrant for a search or seizure. When the use of unmanned aircraft has been determined to be a search, under the fourth amendment, a warrant is already required. A duplicative piece of legislation may require further steps that hinder the use of unmanned aircraft for public safety users in operations that are not considered searches under the Fourth Amendment and could unnecessarily add obstacles to saving lives. We feel it would be much more constructive to pursue regulation that addresses how sensitive information can be stored, used and deleted.*