

Stenographic Transcript
Before the

COMMITTEE ON
ARMED SERVICES

UNITED STATES SENATE

NOMINATIONS – KURTA - MCPHERSON - MAGGS

Tuesday, November 14, 2017

Washington, D.C.

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1 HEARING TO CONSIDER THE NOMINATIONS OF:
2 ANTHONY M. KURTA TO BE PRINCIPAL DEPUTY
3 UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS;
4 JAMES E. McPHERSON TO BE GENERAL COUNSEL
5 OF THE DEPARTMENT OF THE ARMY; AND
6 GREGORY E. MAGGS TO BE A JUDGE OF THE
7 UNITED STATES COURT OF APPEALS FOR
8 THE ARMED FORCES

9
10 Tuesday, November 14, 2017

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12 U.S. Senate
13 Committee on Armed Services
14 Washington, D.C.
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16 The committee met, pursuant to notice, at 10:01 a.m. in
17 Room SD-G50, Dirksen Senate Office Building, Hon. John
18 McCain, chairman of the committee, presiding.

19 Committee Members Present: Senators McCain
20 [presiding], Inhofe, Wicker, Fischer, Rounds, Ernst, Tillis,
21 Sullivan, Strange, Reed, Nelson, Shaheen, Gillibrand,
22 Blumenthal, Donnelly, Hirono, King, Heinrich, Warren, and
23 Peters.

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1 OPENING STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR
2 FROM ARIZONA

3 Chairman McCain: Good morning. The Senate Armed
4 Services Committee meets today to consider the nominations
5 of Mr. Anthony M. Kurta to be Principal Deputy Under
6 Secretary of Defense for Personnel and Readiness; Mr. James
7 E. McPherson to be General Counsel of the Department of the
8 Army; and Mr. Gregory E. Maggs to be a judge of the United
9 States Court of Appeals for the Armed Forces.

10 We thank you all for joining us this morning. We also
11 welcome your family and friends here with us today. As is
12 our tradition, at the beginning of your testimony, we invite
13 you to introduce those who are joining you.

14 It is the standard for this committee to ask certain
15 questions in order to exercise its legislative and oversight
16 responsibilities. It is important that this committee and
17 other appropriate committees of the Congress be able to
18 receive testimony, briefings, and other communications of
19 information. I would ask that each of you provide responses
20 to the following questions.

21 Have you adhered to applicable laws and regulations
22 governing conflicts of interest?

23 Mr. Kurta: Yes, sir.

24 Mr. McPherson: Yes, sir.

25 Mr. Maggs: Yes, sir.

1 Chairman McCain: Will you ensure that your staff
2 complies with deadlines established for requested
3 communications, including questions for the record in
4 hearings?

5 Mr. Kurta: Yes, sir.

6 Mr. McPherson: Yes, sir.

7 Mr. Maggs: Yes, sir.

8 Chairman McCain: Will you cooperate in providing
9 witnesses and briefers in response to congressional
10 requests?

11 Mr. Kurta: Yes, sir.

12 Mr. McPherson: Yes, sir.

13 Mr. Maggs: Yes, sir.

14 Chairman McCain: Will those witnesses be protected
15 from reprisal for their testimony or briefings?

16 Mr. Kurta: Yes, sir.

17 Mr. McPherson: Yes, sir.

18 Mr. Maggs: Yes, sir.

19 Chairman McCain: Do you agree, if confirmed, to appear
20 and testify upon request before this committee?

21 Mr. Kurta: Yes, sir.

22 Mr. McPherson: Yes, sir.

23 Mr. Maggs: Yes, sir.

24 Chairman McCain: Do you agree to provide documents,
25 including copies of electronic forms of communications, in a

1 timely manner when requested by a duly constituted committee
2 or to consult with the committee regarding the basis for any
3 good faith delay or denial in providing such documents?

4 Mr. Kurta: Yes, sir.

5 Mr. McPherson: Yes, sir.

6 Mr. Maggs: Yes, sir.

7 Chairman McCain: Have you assumed any duties or
8 undertaken any actions which would appear to presume the
9 outcome of the confirmation process?

10 Mr. Kurta: No, sir.

11 Mr. McPherson: No, sir.

12 Mr. Maggs: No, sir.

13 Chairman McCain: I tell my colleagues, as soon as we
14 have a quorum, we will be moving the nominations when we
15 have a quorum.

16 Mr. Kurta, the military readiness crisis has impacted
17 every service from ship collisions, aircraft crashes, and
18 vehicle accidents to personnel shortages in critical roles
19 like aviation and cybersecurity. The Department is
20 struggling to make do with budgets that are too small,
21 unpredictable, and driven by politics rather than strategy.
22 Sadly, personnel and readiness are often hardest hit by the
23 tough choices made in this environment and the ones who lose
24 out are our men and women in uniform.

25 I am particularly concerned with the military's ability

1 to recruit and retain the high quality Americans required to
2 maintain an effective all volunteer force. Outdated
3 policies like the Defense Officer Personnel Management Act,
4 or DOPMA, mandate an overly rigid system that is
5 increasingly unable to cope with the demands of the modern
6 force.

7 One of today's most pressing personnel challenges is
8 the worsening pilot shortage. We have heard over and over
9 that flying time and career stability are crucial to solving
10 this crisis. Yet DOPMA-driven personnel policies require
11 pilots to assume numerous staff assignments, relocate every
12 2 to 3 years, and complete military education courses, all
13 in order to be promoted according to inflexible timelines.
14 All of this is done to turn every officer into the
15 military's next general or admiral.

16 Well, not every officer wants or needs to be a general
17 officer, and it is about time we figured out how to allow
18 for more variety of military careers. If confirmed, this
19 committee will look to you to help us modernize the
20 personnel system to make the military more effective and
21 efficient and more attractive to young Americans interested
22 in public service.

23 And, Mr. Kurta, I want to point out that the time I
24 spend with the young pilots who are making decisions as to
25 whether to go with the growing demand of the airlines and

1 staying in the military, their complaint is not money.
2 Their complaint is not money. They want to fly airplanes,
3 and that is what they are not able to do. 60 percent of our
4 F-18's are not flying. We do not have readiness. We do not
5 have training. And of course, the tragedies that have taken
6 place on like the USS McCain and others is frankly
7 unacceptable.

8 I look you in the eye and I tell you 100-hour workweeks
9 is too long for a young member of our armed forces, and they
10 are working 100-hour workweeks. It has to stop. Otherwise,
11 you are going to see more tragedies such as took place with
12 the recent collisions.

13 Admiral McPherson, if confirmed, you will serve as
14 legal officer to the Secretary of the Army and the chief
15 legal officer of the Department of the Army. As a former
16 Judge Advocate General of the Navy you have deserted, you
17 are well aware of the importance of the -- that was a joke.

18 [Laughter.]

19 Chairman McCain: You are well aware of the importance
20 of the relationship between the general counsel of a
21 military department and the top JAG for that service.

22 Our Army faces a number of challenges from the
23 readiness crisis to glaring gaps in capabilities and
24 modernization. Meanwhile, our soldiers face an operational
25 tempo that is not slowing down. If confirmed, this

1 committee expects that you will work closely with the
2 service's military and civilian leadership to ensure that
3 the Army has the requisite legal authorities required to
4 address these readiness modernization challenges.

5 I look forward to hearing your views on these issues,
6 as well as on the military justice challenges such as sexual
7 assault that continue to be a focus of this committee.

8 I want to point out again, Admiral, we will be pursuing
9 this issue of sexual assault. We expect your full
10 cooperation. The issue has not been resolved and,
11 unfortunately, it continues, as we know from all of the
12 coverage of this unacceptable behavior.

13 Mr. Maggs, if confirmed, you will be responsible for
14 reviewing the decisions of military courts of criminal
15 appeals. You will be expected to correct legal errors and
16 provide civilian oversight of the military justice system.
17 Given your record of military and civilian service in the
18 legal realm, you would bring a breadth and depth of
19 experience to this important position.

20 This committee has been at the forefront of recent
21 changes to the military justice system, including the
22 passage of the Military Justice Act of 2016, the most
23 significant military justice reform in years.

24 Neither I nor any of my colleagues would expect you as
25 a nominee to be a judge to comment on a matter that might

1 cause you to be disqualified on a future case before the
2 court. However, we look forward to hearing your views on
3 the state of military justice.

4 I thank our witnesses again for their willingness to
5 serve and look forward to their testimony.

6 Senator Reed?

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1 STATEMENT OF HON. JACK REED, U.S. SENATOR FROM RHODE
2 ISLAND

3 Senator Reed: Well, thank you very much, Mr. Chairman.

4 Let me join you in welcoming not only the nominees but
5 their families. We have three very well qualified nominees
6 before us with unique experiences that have prepared them
7 for the positions that they will assume. And again, let me
8 thank the families because their efforts over many years
9 have led to this day.

10 Mr. Kurta, you have been nominated to be the Principal
11 Deputy Under Secretary of Defense for Personnel and
12 Readiness. You are a retired Navy admiral and a member of
13 the Senior Executive Service, who since January 20th has
14 been the acting Under Secretary of Defense for Personnel and
15 Readiness. You will face numerous military and civilian
16 personnel challenges if you are confirmed as you are facing
17 them today. Among these challenges will be ensuring that
18 the services can recruit and retain adequate numbers of
19 ready and qualified service members to meet national defense
20 objectives, managing and reforming the civilian workforce
21 that is vital to the health of our military and our national
22 question. And I look forward to working with you to address
23 these challenges and many more.

24 Mr. McPherson, nominated to be the General Counsel of
25 the Department of the Army, is also a retired Navy admiral.

1 He had redeemed himself, though, by graduating from the
2 United States Army Judge Advocate General School in
3 Charlottesville, Virginia. And on that basis alone, we are
4 considering your nomination today.

5 [Laughter.]

6 Senator Reed: You will face many of the same
7 challenges as Mr. Kurta within the Army.

8 And I also want to note that in your tenure as the JAG
9 of the Navy, you did a superb job maintaining the highly
10 regarded Naval Justice School at Newport, Rhode Island,
11 which trains Navy JAGs. Thank you for that and for all of
12 your service.

13 Mr. Maggs, you have been nominated to be a judge on the
14 United States Court of Appeals for the Armed Forces. You
15 have been and continue to be a colonel in the United States
16 Army Reserve, the Judge Advocate General Corps. You served
17 both as a trial judge and appellate on the Army Court of
18 Criminal Appeals. You are the co-author of a leading
19 textbook on military justice.

20 In your civilian capacity, you served as a law clerk
21 for Judge Joseph Sneed of the U.S. Court of Appeals for the
22 Ninth Circuit, for Justice Anthony Kennedy and Justice
23 Clarence Thomas of the United States Supreme Court. You are
24 very well qualified for the role you are about to assume.

25 Mr. Chairman, all three of these nominees have

1 impressive credentials and make them highly qualified. I
2 look forward to this hearing and the insights and challenges
3 that they will face as they discuss the positions they have
4 been nominated to.

5 With that, let me thank you, Mr. Chairman.

6 Chairman McCain: Welcome to our witnesses. Mr. Kurta?

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1 STATEMENT OF ANTHONY M. KURTA TO BE PRINCIPAL DEPUTY
2 UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS

3 Mr. Kurta: Mr. Chairman, Senator Reed, distinguished
4 members of the Committee on Armed Services, I am honored to
5 appear before you today. I am humbled by the confidence
6 placed in me by the President and the Secretary of Defense.
7 I am energized by the opportunity to continue to serve,
8 which I have done in and out of uniform for just over 40
9 years.

10 I am buoyed by the presence of my wife Maria who also
11 serves as a Department of the Navy civilian working for the
12 CNO and who has also served as a military spouse. Her past
13 and present service is a continual reminder to me of the
14 importance of our families and the fact that we are a total
15 force comprised of those in uniform, their families, our
16 dedicated civilians, our retirees, and our contractors. All
17 of these contribute to the success of our all volunteer
18 force.

19 I would also like to thank my teammates, members of the
20 superb Personnel and Readiness team, who are able to be here
21 today.

22 Mr. Chairman, if confirmed, I will continue to be laser
23 focused on enhancing the readiness and the lethality of the
24 all volunteer force and our total force. The all volunteer
25 force is our strategic advantage over our competitors and

1 our foes, but its future success is not guaranteed. I
2 pledge to work with this committee, all of our partners in
3 the Department of Defense and the administration, our
4 military service organizations, our veteran service
5 organizations, and our communities across America to ensure
6 the all volunteer force is as strong 20 years from today as
7 it is now.

8 Mr. Chairman, it is all about the opportunity to serve.
9 I was truly honored to wear the uniform of the United States
10 Navy as a destroyerman for 36 years. I was proud to
11 continue to serve as a Navy and DOD career senior executive.
12 And, if confirmed, I relish the opportunity to continue my
13 service in this new role.

14 The opportunity wake up each morning and know that I
15 can make a difference, a real difference, in the lives of
16 our soldiers, sailors, airmen, marines, coast guardsmen and
17 their families is a singular honor and one I do not take
18 lightly. Mr. Chairman, I pledge to make every day count.

19 Thank you.

20 [The prepared statement of Mr. Kurta follows:]

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1 Chairman McCain: Thank you.

2 Mr. McPherson?

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1 STATEMENT OF JAMES E. MCPHERSON TO BE GENERAL COUNSEL
2 OF THE DEPARTMENT OF THE ARMY

3 Mr. McPherson: Mr. Chairman, Ranking Member Reed, and
4 members of the committee, thank you for the opportunity to
5 testify before you today and thank you to those members who
6 were able to meet with me prior to this hearing.

7 I would also like to thank President Trump for
8 nominating me and Secretary Mattis for his confidence in
9 recommending me for the opportunity to serve again in the
10 Department of Defense.

11 The lifestyle of service I inherited from my parents is
12 what motivated me to take the oath of enlistment in the
13 United States Army many years ago and the commissioning oath
14 in the United States Navy several years after that. My
15 father, who crawled ashore on Omaha Beach in northern France
16 on a Tuesday morning, 6 June 1944, instilled in his children
17 the dedication of public service. I also take inspiration
18 from my mother who on that same day was operating a drill
19 press at Douglas Aircraft in Los Angeles helping to make the
20 Dauntless Dive Bomber. They both passed away many years
21 ago, but I know they are here with us today.

22 My brother Scott also inherited that lifestyle of
23 service. He wears the uniform of a deputy sheriff in
24 Cheyenne, Wyoming.

25 Also with me are the three most important people in my

1 life: my wife Jennifer, who also served in the United
2 States Navy, and my two children, both of whom are in
3 education. Amanda teaches children with special needs in
4 Fairfax County Schools in Virginia, and Philip is a software
5 engineer for Pearson, an educational company. They give me
6 the strength, support, encouragement, and love to serve and
7 be the best husband and father that I can be.

8 I left the Department of Defense almost 10 years ago.
9 At that time, I was certainly more familiar with ongoing
10 naval operations, but I was also aware of the significant
11 contributions the United States Army was making to both the
12 joint force and our national security. If confirmed, I look
13 forward to returning to the Department of Defense and the
14 Army. I will have the privilege of leading an outstanding
15 legal team that supports an Army that continues to shoulder
16 over 60 percent of emergent combatant commander demands.

17 Not only does the Army perform a significant and
18 diverse range of missions supporting combatant commanders
19 around the world, but it also acts as executive agent for
20 critically important functions on behalf of the Department
21 of Defense such as contracting, detaining operations, and
22 the law of war program. I anticipate that the legal
23 questions arising from providing trained and ready forces to
24 meet combatant commander demands and addressing the Army's
25 executive agency responsibilities will be significant and

1 complex. If confirmed, I look forward to these legal
2 challenges.

3 The Acting Secretary of the Army and the Army Chief of
4 Staff have established three priorities: readiness of the
5 total Army, modernization of capabilities, and care of the
6 force.

7 Near-term readiness is the number one priority,
8 ensuring the Army is manned, trained, equipped, and ready to
9 fight tonight.

10 Second, the Army must also focus on modernizing,
11 setting the conditions for the future Army to be able to win
12 tomorrow's wars against increasingly capable and adaptive
13 adversaries, and near-peer competitors.

14 Third, the Army is fundamentally about the individual
15 soldier and his or her family. If confirmed, I will ensure
16 the Army's legal team is engaged with Army leadership in
17 addressing these priorities, enabling Army decision-makers
18 to make these hard choices and tirelessly supporting the men
19 and women of the Army, the total force, their families, and
20 the civilian workforce.

21 The Army today faces some very difficult legal issues
22 ranging from personnel programs such as gender integration
23 into the combat arms, the service of transgender soldiers,
24 and the accession of non-U.S. citizens to the need to
25 improve the efficiency and flexibility of the acquisition

1 process and to the scourge of sexual harassment, sexual
2 assault, and retribution against those that report such
3 offenses. While these issues and a myriad of others may at
4 times seem insurmountable, they are not. If confirmed, it
5 is my commitment that the Army's legal team, the Office of
6 the General Counsel, and the Judge Advocate General of the
7 Army, both civilian and uniformed attorneys and support
8 staff will attack those issues with renewed energy and
9 resolve to finding solutions.

10 In closing, I have served my country for over 32 years,
11 28 years in uniform and 4 years as a civilian, in peace and
12 during war, and for the past 9 years leading an association
13 that supports the attorneys general of this nation as they
14 serve the people of their States and territories. In all
15 this experience, the most important responsibilities I had
16 were in leading men and women who served their country. I
17 have seen and experienced directly that inspiring leadership
18 can result in solutions to seemingly impossible problems.
19 If confirmed, I look forward to again serving my country in
20 partnership with the Judge Advocate General of the Army
21 leading the Army's legal team supporting Army leadership and
22 our soldiers and their families who selflessly serve this
23 great nation.

24 Thank you for considering my nomination. I look
25 forward to your questions.

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[The prepared statement of Mr. McPherson follows:]

1 Chairman McCain: Thank you.

2 And I would like to extend my apologies to my friend,
3 Senator Strange, who will be here to recommend your
4 nomination, and I apologize for it being out of order.

5 Senator Strange?

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1 STATEMENT OF HON. LUTHER STRANGE, U.S. SENATOR FROM
2 ALABAMA

3 Senator Strange: Thank you, Mr. Chairman. I really
4 appreciate the courtesy to have the opportunity to say a
5 kind word about my friend, Admiral McPherson. And I will be
6 very brief in the interest of time.

7 Jim and I came to know each other through his role as
8 Director of the National Association of Attorneys General, a
9 bipartisan organization of all 50 AGs, and set an example of
10 integrity. Senator Reed already mentioned his commitment to
11 educating lawyers. He was even able through his team to
12 manage to prepare me to argue a case successfully at the
13 United States Supreme Court, and you can imagine what a
14 difficult task that was.

15 That is why I highly recommend Jim. He is a true
16 servant of this country, and I just want my colleagues to
17 know how strongly I support his nomination.

18 Thank you, Mr. Chairman.

19 Chairman McCain: I thank you, Senator Strange.

20 If you would allow me, I would like to thank you for
21 your active participation in this committee. You have been
22 a valued member. We appreciate all of the great work that
23 you have done, and all of us on both sides of the aisle
24 consider you a dear friend.

25 Senator Strange: Thank you, Mr. Chairman.

1 Chairman McCain: Mr. Maggs?
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1 STATEMENT OF GREGORY E. MAGGS TO BE A JUDGE OF THE
2 UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

3 Mr. Maggs: Chairman McCain, Ranking Member Reed,
4 members of the committee, thank you very much for
5 considering my nomination and for inviting me here today.

6 I am joined in this room by my wife of 24 years, Janice
7 Maggs. We regret that our son Douglas could not attend
8 because he is studying abroad in Scotland this year.

9 On June 11, 1775, the Continental Congress created the
10 Army. On that same day, Congress appointed a committee to
11 prepare rules and regulations for this newly established
12 force. Headed by George Washington and relying heavily on
13 work done by John Adams, this committee immediately drafted
14 and proposed a code that it called the Articles of War to
15 define the offenses triable by court-martial.

16 Congress quickly approved the draft, arguably making it
17 the first national law ever passed by Congress. Many parts
18 of the Articles of War persist to this day in the Uniform
19 Code of Military Justice.

20 Within 2 weeks, General Washington had appointed his
21 first judge advocate, William Tudor, a Harvard graduate and
22 a successful Boston lawyer. Soon afterward, a young officer
23 names John Marshall would become the deputy judge advocate
24 and would spend the winter with Washington at Valley Forge.

25 Why was it immediately necessary to have a military

1 justice system and to appoint military lawyers of the
2 highest quality to administer it? Washington and Congress
3 knew that without good order and discipline, the Army would
4 be dangerous and ineffective. And without tempering
5 discipline with justice, the Army would be unworthy of the
6 brave soldiers who fought for our country.

7 I have had a very fulfilling civilian legal career. As
8 you mentioned, I was fortunate to have three judicial
9 clerkships, two of them at the Supreme Court. I have been
10 involved in litigating some of the largest cases in the
11 United States. I have been lucky to reach more than 5,000
12 great students at the George Washington University and the
13 University of Texas, some of whom are here today.

14 But in addition to this civilian experience, I have had
15 the privilege to be a part of the military justice system
16 for the past 27 years as a reserve officer in the Army JAG
17 Corps. My experience includes 7 years as a reserve
18 appellate judge on the Army Court of Criminal Appeals and 3
19 years as a reserve military judge in the Army's 1st Judicial
20 Circuit. During this time, I was assigned to more than 250
21 trial or appellate cases. I am a graduate of many military
22 schools and courses, including the Military Judge Course.
23 But most of what I know I have learned through the patient
24 guidance of more senior judge advocates who in turn learned
25 from other judge advocates who came before them, extending

1 in an unbroken chain all the way back to John Marshall and
2 William Tudor.

3 I am truly grateful to the Secretary of Defense for
4 recommending me for the vacancy on the U.S. Court of Appeals
5 for the Armed Forces, to the President for nominating me,
6 and to this committee for considering my nomination.

7 As members of this committee know, the U.S. Court of
8 Appeals for the Armed Forces is the civilian court that
9 oversees the military justice system. Decisions of courts-
10 martial are reviewed first by the Courts of Criminal Appeals
11 of the Army, the Navy and the Marine Corps, the Air Force,
12 and the Coast Guard, and decisions of those courts can be
13 reviewed by the U.S. Court of Appeals for the Armed Forces.

14 If confirmed, I will faithfully apply the rules that
15 Congress has enacted in the Uniform Code of Military Justice
16 to govern the conduct of our service members. It is my
17 sincere hope and belief that my civilian and military legal
18 experience have prepared me for such an important
19 assignment.

20 Thank you.

21 [The prepared statement of Mr. Maggs follows:]

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1 Chairman McCain: Thank you, Mr. Maggs.

2 Since a quorum is now present, I ask the committee to
3 consider the nominations of Robert McMahon to be Assistant
4 Secretary of Defense for Logistics and Materiel Readiness;
5 R.D. James to be Assistant Secretary of the Army for Civil
6 Works; Bruce Jette to be Assistant Secretary of the Army for
7 Acquisition, Logistics, and Technology; and Shon Manasco to
8 be Assistant Secretary of the Air Force for Manpower and
9 Reserve Affairs.

10 Is there a motion to favorably report these four
11 nominations?

12 Senator Reed: So moved.

13 Chairman McCain: Is there a second?

14 Senator Inhofe: Second.

15 Chairman McCain: All in favor, say aye.

16 [Chorus of ayes.]

17 Chairman McCain: The motion carries.

18 Well, thank you for your comments and the witnesses'.

19 And obviously, Mr. McPherson, the recent news, quote --
20 this is from "USA Today." People with a history of, quote,
21 self-mutilation, bipolar disorder, depression and drug and
22 alcohol abuse can now seek waivers to join the Army under an
23 unannounced policy enacted in August according to documents
24 obtained by the USA Today.

25 Do you have a comment on that?

1 Mr. McPherson: Senator, thank you. That is a
2 troubling report. I believe that history has shown that
3 when you bring in individuals through a waiver process,
4 there is a risk involved in that, a risk that they might not
5 turn out to be exemplary soldiers.

6 If confirmed by this committee and the Senate, I intend
7 to make that one of my earlier questions as to why we are
8 doing that, is there a necessity for that, and has the risk
9 and benefit of that been appropriately weighed.

10 Chairman McCain: Well, it seems to me that according
11 to -- and this committee has not been briefed, by the way.
12 Small item. It says that the Army has a challenging goal of
13 recruiting 80,000 new soldiers through September 2018. To
14 meet last year's goal of 69,000, the Army accepted more
15 recruits who fared poorly on aptitude tests, increased the
16 number of waivers granted for marijuana use, and offered
17 hundreds of millions of dollars in bonuses.

18 Expanding the waivers for mental health is possible in
19 part because the Army now has access to more medical
20 information about each potential recruit. The Army issued a
21 ban on waivers in 2009 amid an epidemic of suicides among
22 troops.

23 Are we seeing the same movie over and over again, Mr.
24 McPherson?

25 Mr. McPherson: Senator, unfortunately, it would seem

1 that way.

2 But if I may address your preface to your question, if
3 confirmed, I commit to communicating with this committee and
4 the staff in a way that perhaps you have never enjoyed
5 before. I think it is all about relationships, and
6 relationships are built upon communication. And I intend to
7 communicate a lot with this committee and your staff.

8 Chairman McCain: Well, it is a problem, frankly, that
9 this committee is having with the administration. We should
10 have been told about this before it showed up in a "USA
11 Today" article. The Army did not respond to a question of
12 how many waivers, if any, have been issued since the policy
13 was changed. The United States Army will not respond to us
14 as to how many waivers have been issued since the policy was
15 changed.

16 What you do to us here is you face us with an
17 unacceptable option and that is to get the information,
18 which you just verbally told us you would give us, or we
19 stop confirming people for jobs. Those are two unacceptable
20 options.

21 I and Senator Reed and the rest of the committee expect
22 answers to these questions. Self-mutilation is something
23 that -- it comes home to roost. I go to the VA all the
24 time. There are people who show up there all the time.
25 PTSD, other mental health problems. Someone who self-

1 mutilates -- I do not quite understand the eligibility
2 there. So I hope that we can get answers to the questions.

3 I am just not sure that if you take someone in who is
4 doing these things, the cost over time is very, very, very
5 high. We all know that our VA is overburdened. We all know
6 that the treatment available is difficult. We know that
7 there are waiting lists. We have spent a lot of time on
8 this committee trying to fix the problem. But to just
9 announce that you are changing the criteria for acquiring
10 people to serve in the military is not something that this
11 committee will find acceptable.

12 So we may have to act legislatively to prevent you from
13 doing it. I do not know what the options are. But if you
14 took a poll of this committee right now, I doubt if you
15 would find a single one who would be approving of this
16 practice which now we find out by reading the daily
17 newspaper.

18 Jack, do you want to --

19 Senator Reed: I concur with the chairman. We cannot
20 sacrifice quality for quantity. It is that simple. And we
21 have to do both and we have to work together to get it done.

22 Thank you, Mr. Chairman.

23 Chairman McCain: And I want to make one more point. I
24 hope all three of you will go out and visit with these young
25 people who are serving in uniform. And on the issue of

1 pilots, it is not that they want \$50,000 more or \$500,000
2 more or \$5 million more. They want to fly airplanes. And
3 60 percent of our F-18's are not flying. They are flying
4 less hours per month than Russian and Chinese pilots are.

5 So rather than go visit the Air Force and the Army and
6 the Marine Corps and the Navy and say how much money do you
7 want, why do you not ask them, what is your job? What do
8 you want to do with your life? Do you want to go back and
9 have a cushy job in the Pentagon, or do you want to fly
10 airplanes? That is what this is all about. And frankly I
11 know enough of them to know that they joined the military to
12 be pilots to fly airplanes not because they want more money.
13 Money is an important factor, but the defining factor is
14 whether they are happy with their lifestyle and their
15 ability to fly airplanes and fly in combat.

16 So you guys are on the wrong track. Keep coming over
17 and saying give us \$50,000, give us \$100,000 so that we can
18 retain more pilots. We are in a bidding war with the
19 civilian airliners. You are not going to win it. The way
20 you are going to win it is for them to be proud to wear the
21 uniform of the military of the United States of America.

22 So I want a new look at this whole issue. We are what?
23 A thousand pilots short? 1,500 pilots short. That is going
24 to be a crisis here. So if I had a top priority for you, I
25 would address that first.

1 Mr. McPherson, if you are confirmed, how would you help
2 improve operational unit readiness?

3 Mr. McPherson: Senator, if confirmed, I think
4 readiness, which is one of the top priorities of the Acting
5 Secretary and the Chief of Staff, has a lot of different
6 factors involved. And one of those key factors involved are
7 the legal issues surrounding readiness and training the
8 force and equipping the force.

9 If confirmed, it is my intent to prioritize questions
10 in those areas, to work closely with the Army leadership in
11 ensuring that that priority is reached. I know that there
12 have been projections that the Army could achieve readiness
13 in 2020-2021. I echo Dr. Esper's testimony that it needs to
14 be done quicker than that. And if confirmed, I look forward
15 to working with Dr. Esper in achieving that goal.

16 Chairman McCain: Finally -- and I apologize to my
17 colleagues -- Mr. Kurta, you have been serving in senior
18 positions in the Personnel and Readiness Office for the last
19 3 years. In that time, we have seen military readiness
20 decline to nearly unprecedented levels, the crisis in pilot
21 and aircraft maintenance personnel retention, numerous cases
22 of senior officer misconduct, and DOD roadblocks to this
23 committee's attempt to streamline the military health care
24 system.

25 Why should this committee confirm you to continue

1 serving in this crucial position? And by the way, if you
2 disagree with my premise here, I would be glad to hear that.

3 Mr. Kurta: Well, Senator, I do not disagree with your
4 premise as to readiness. Readiness challenges are well
5 known to everybody in this committee, and certainly the
6 Secretary of Defense and all of our uniformed civilian
7 leaders have been over here and talked about readiness.

8 I would take some issue with the military health system
9 reform. For the past 8 months that I have been performing
10 the duties in Personnel and Readiness, the MHS reform was
11 new to me at the time and I have spent significant time in
12 discussions with this committee. And we have sent over two
13 reports that have talked about how the Department intends to
14 enact the military health system reform. We have four
15 separate systems, medical health systems today, the Army,
16 the Navy, the Air Force, and the Defense Health Agency, and
17 we simply cannot afford to continue to do business this way.

18 The Secretary of Defense has said that we have to both
19 rebuild our readiness and reform the Department. And one of
20 the areas in the Personnel and Readiness portfolio, the
21 biggest piece of that for reform, is the military health
22 system. And if confirmed, I will continue to work to
23 implement particularly section 702 but all of the elements
24 in last year's National Defense Authorization Act in
25 conjunction with the USDP&R.

1 Chairman McCain: Well, I went over last week to join
2 the families of the USS McCain, 10 of whom were killed. And
3 I can tell you that they believe that their young people
4 were not provided with what they needed to effectively
5 operate in defense of this country. For example, 100-hour
6 workweeks. Do you know anybody who works a 100-hour
7 workweek continuously, Mr. Kurta, efficiently?

8 Mr. Kurta: Not efficiently, no, Senator.

9 Chairman McCain: Well, we have got a lot of work to
10 do, and DOPMA we have not even talked about. So we will be
11 working with you.

12 But something has got to change. Something has got to
13 change around here. I do not like looking at those mothers
14 whose children's deaths could have been prevented. This is
15 a serious issue, and it is pretty obvious, according to the
16 Chief of Naval Operations, that it could have been
17 prevented. And by the way, the Congress is also complicit
18 in this almost criminal behavior.

19 Senator Reed?

20 Senator Reed: Well, thank you very much, Mr. Chairman.

21 Just as a footnote, Mr. McPherson, to your comments,
22 what unit was your father with on D-Day?

23 Mr. McPherson: He was a Seabee, sir. His role was to
24 go ashore in the morning. The plan was that the beach would
25 be secured by mid-morning, and they would begin building

1 that pontoon pier that you see in D plus 1 photos. They did
2 not get to it until the second day.

3 Senator Reed: Of course, the plan worked perfectly.

4 [Laughter.]

5 Senator Reed: Mr. Kurta, recently we were all shocked
6 by the horrific shootings in Texas, and the Air Force quite
7 clearly indicated that they had failed to report the data to
8 the FBI National Crime Information Center of the killer in
9 terms of his convictions, his mental condition, many things
10 which would disqualify him from purchasing a weapon.

11 What are you doing now -- what will you do to ensure
12 not just the Air Force because this is a service-wide
13 problem I would suspect or DOD-wide or making the reports
14 prospectively and actually going back retrospectively and
15 seeing if there are individuals who should be in the system?

16 Mr. Kurta: Senator, certainly that was a tragedy. And
17 as you mentioned, the Secretary of the Air Force has talked
18 about what they will do. The Secretary of Defense has
19 tasked the Inspector General to look at all of the services,
20 their criminal investigative organizations, to make sure not
21 only today that they are transmitting all of that
22 information but are going back and seeing where we may have
23 failed over the past number of years. And if confirmed, I
24 will work with the USDP&R and support the Secretary in those
25 efforts.

1 Senator Reed: Is there at least an approximate time
2 limit the Secretary has set in terms of conforming DOD to
3 the reporting requirements?

4 Mr. Kurta: Senator, I do not know if he has said
5 anything formally. Obviously, I know his expectation is
6 that we comply immediately. It is the law. And if
7 confirmed, with P&R we will support him to make sure that we
8 get into compliance as soon as possible.

9 Senator Reed: And let me address another question to
10 you, Mr. Kurta. Mr. McPherson, you might want to comment
11 also. We have extended the MAVNI program, which is Military
12 Accessions Vital to the National Interest, so that these
13 individuals who are not citizens yet can obtain entrance
14 into the military forces. And in a way, it tracks with some
15 of the comments that Senator McCain said. We are ironically
16 lowering our standards supposedly, according to the article,
17 to accept people with mental disabilities when we have
18 people waiting who are presumably fully qualified to come
19 into the service.

20 Can you give us a status report? And are you and the
21 Army committed to making this program work so that we can
22 get these young men and women in service?

23 Mr. Kurta: Senator, as this committee is aware, we
24 suspended the execution of the MAVNI program at the end of
25 2016 in the last administration while we took a pause to

1 ensure that we could account for all those that were brought
2 in and we conducted the proper background and
3 counterintelligence screening of everybody that was in the
4 pipeline before they enter service. So we are still in the
5 process of that, working with the Army, to work through the
6 backlog of that. We are making progress, and we will
7 continue until we are done.

8 The Secretary has given us explicit guidance that going
9 forth in the future, we know that there are skill sets that
10 we need in the military not resident in the U.S. citizen
11 population. So we have to look to the non-U.S. citizen
12 population for critical skills. So he has tasked us, once
13 we work through this backlog, to devise a program that
14 allows the entry of those with critical skills that we need,
15 as long as we can assure that, before they come in, we have
16 checked their background and done our requisite
17 counterintelligence work.

18 Senator Reed: Thank you.

19 Mr. McPherson?

20 Mr. McPherson: I would agree with the statements and
21 just add that I think the MAVNI program has provided
22 excellent soldiers in areas that the Army needed
23 desperately. And if confirmed, that is one of the things
24 that I intend to ask questions about of the recruiting
25 command and CID. Can we speed up this process and get these

1 folks out of recruit centers where they have been waiting
2 now and into their units into the field where they can
3 serve?

4 Senator Reed: Thank you.

5 Mr. Maggs, you have had an impressive legal career. In
6 fact, are you teaching now at West Point?

7 Mr. Maggs: My reserve assignment is to teach at West
8 Point. I taught summer school there last summer, and I
9 taught six substitute classes this fall.

10 Senator Reed: I hope you are repairing the damage that
11 I did when I taught there.

12 Mr. Maggs: There are very fine students in that
13 school, sir.

14 Senator Reed: Despite some of their teachers.

15 [Laughter.]

16 Senator Reed: Let me just say -- one quick question.
17 In your tenure you have had, I presume, the opportunity to
18 work with special victims counsels?

19 Mr. Maggs: I have.

20 Senator Reed: And we feel -- at least I feel -- they
21 are critical aspects of our military justice system. Could
22 you comment?

23 Mr. Maggs: As members of this committee know, Congress
24 has addressed the rights of victims of crimes in the
25 military justice system most significantly by adding article

1 6(b) to the Uniform Code of Military Justice, which lists a
2 large number of rights that victims formerly did not have
3 that they now do have: the right to participate in certain
4 proceedings such as evidentiary matters, rulings on whether
5 certain evidence will be admitted, the right to be informed
6 of the charges, the right to be informed of the outcome of
7 the case and so forth. I think many of these rights would
8 be very difficult for the victims to fully take advantage of
9 if they did not have trained and qualified counsel.

10 Military judges have an annual sexual assault training
11 conference at which we receive briefings regularly. The
12 satisfaction of the clients of the special victims counsel
13 is very high. I think that is a very good sign.
14 Anecdotally, I have seen special victims counsel in a number
15 of cases. They work quite well. They were trained. They
16 were prepared. The system work as it was intended to work.

17 Senator Reed: Thank you.

18 Just a final point, Mr. Chairman. Let me add my
19 commendation to Senator Strange for his contribution to this
20 committee. He just left, but I want that for the record.

21 Thank you, Mr. Chairman.

22 Chairman McCain: Mr. Kurta, if confirmed, would you
23 commit to me that the Department will conduct a pilot
24 program to test privatization of the commissary system?

25 Mr. Kurta: Yes, Senator.

1 Chairman McCain: Senator Inhofe?

2 Senator Inhofe: Thank you, Mr. Chairman.

3 Mr. Kurta, you have had a lot of experience in the job
4 that you are pursuing right now and a good background in it.
5 So I think that is going to be very helpful.

6 When you look at the defense cuts that we have
7 sustained over a period of time, people in the real world
8 like Oklahoma, when you tell them that up through the 1960s
9 we spent over 50 percent of all revenues coming in on
10 defending America, and it is down to around 16 percent
11 today, they are really shocked at that, and I am too. The
12 defense funding has dropped precipitously for a long period
13 of time. Each service chief, secretary, and combatant
14 commander has testified before this committee that no
15 service will be able to meet the wartime requirements under
16 the funding constraints.

17 How have the budget cuts, do you think, in the BCA
18 affected the military readiness? I am really concerned
19 about readiness. I chair that committee. We had the vice
20 chiefs in. They all talked about what the problems were.
21 They said that they were in a position where we are now
22 experiencing the same hollow force problems that we did back
23 in the 1970s. So what is your assessment right now in terms
24 of the BCA cuts and what we are faced with today?

25 Mr. Kurta: Well, Senator, absolutely we have to lift

1 sequestration as currently structured. It is having a
2 calamitous effect on our readiness as you note. Not only do
3 I think as the service chiefs and those in uniform have come
4 over here and said that we have trouble meeting our wartime
5 requirements, I think we are asking a lot of our current
6 soldiers, sailors, airmen, marines, and coast guardsmen just
7 meeting the day-to-day requirements.

8 Senator Inhofe: So you agree then that that is one of
9 the big problems we are facing right now.

10 Mr. Kurta: Absolutely.

11 Senator Inhofe: I was encouraged to see that you have
12 had a lot of experience in Africa during your career in the
13 Navy. I know that you spent some time in Djibouti and other
14 places.

15 But I can recall when AFRICOM was a part of three
16 different commands. You had the Pacific Command, the
17 European Command, and the Central Command, and it did not
18 have its own command. When AFRICOM came along, that was
19 fine. That was good. I encouraged it and I rejoiced. But
20 it did not come along with any resources. They have to
21 depend on other commands for their resources. When finally
22 the tragedy took place in Niger, I am wondering if we might
23 improve that situation. A lot of people complained. They
24 said we were not aware that we had 6,000 troops in Africa.
25 When you stop and think about it, 4,000 of those 6,000 were

1 in Djibouti and they have other missions there other than
2 just Africa. Then we have 750 just supporting our
3 embassies. So it is down to 1,300 uniformed troops, which
4 is not really very much.

5 So would you in your experience, particularly since you
6 were in Djibouti also, address the personnel, the resource
7 problem in AFRICOM?

8 Mr. Kurta: Well, Senator, as you note, it is a large
9 continent, a large expanse, and the mission for the United
10 States there is only growing. If confirmed, I do pledge to
11 work with P&R to look at those personnel requirements and
12 make sure that we are meeting them.

13 Senator Inhofe: I think we really need to have
14 something, and I encourage anyway to have a committee
15 hearing just on that continent.

16 Mr. McPherson, you made a statement in your advance
17 policy questions. You referenced the Army's, quote,
18 military and civilian personnel policies as the most
19 significant potential source for near-term legal issues.
20 And I am glad to have you talking about civilian personnel.
21 I know in my State of Oklahoma, we have Tinker Air Force
22 Base. It is almost entirely civilian personnel. We have
23 the depot at McAlester, which is an Army depot. We only
24 have one uniformed person there. All of the rest are
25 civilian personnel. And I am very much concerned about that

1 and that people understand how significant that is.

2 Can you elaborate a little bit, though, on the answer
3 when you mentioned for near-term legal issues? We are not
4 sure what you are talking about there. Would you kind of
5 explain that?

6 Mr. McPherson: Yes, sir, Senator. And I share your
7 concern with regard to our civilian workforce. I think
8 oftentimes, especially on the uniformed side, they are
9 neglected. They are taken for granted.

10 Senator Inhofe: Well, that is true. As a matter of
11 fact, when our new President came along, he was talking
12 about reducing without a recognition that they are
13 performing a military function even though they are
14 civilians. So I appreciate that.

15 Mr. McPherson: And serving their country equally with
16 their uniformed partners.

17 Senator Inhofe: Yes.

18 Mr. McPherson: One of the issues I think that, if
19 confirmed, I will take a look at is promotion and training
20 of our civilian workforce. Oftentimes the civilian
21 workforce finds themselves in a position where there is no
22 promotion opportunities, especially not like their
23 counterparts in uniform. The other one is training. We
24 need to ensure that we train our civilian workforce just as
25 much as we are training the uniformed side to accomplish

1 their job and yet train them for the next job as well.

2 Senator Inhofe: I appreciate that very much.

3 Thank you, Mr. Chairman.

4 Chairman McCain: Before I recognize Senator
5 Gillibrand, I would like to express my appreciation to her
6 and other members of this committee who have long ago taken
7 on the issue of sexual assault in the military. I
8 appreciate your leadership. I appreciate our debates. So I
9 want to thank you for your leadership on this issue.

10 Senator Gillibrand?

11 Senator Gillibrand: Thank you, Mr. Chairman, for your
12 extraordinary leadership. We are very grateful to have you
13 on this committee leading us.

14 Mr. McPherson, you have served as Judge Advocate
15 General of the Navy and have tried cases at court-martials.
16 Senator Ernst and I have been working on legislation to
17 professionalize the practice of criminal law within the
18 services, including requiring the services to institute a
19 litigation pilot program. It is my understanding that the
20 Army has traditionally favored a system that prioritizes
21 generalists over a specialization.

22 My question is will you commit to work with the Judge
23 Advocate General of the Army to carefully consider and
24 evaluate the litigation pilot program and not just assume
25 that the status quo works best?

1 Mr. McPherson: In a word, yes, but let me expand.

2 When I was the Judge Advocate General of the Navy, we
3 had a career litigation track that was in its infancy. It
4 actually came into being after I had left, but I had the
5 privilege of beginning that work and laying the foundation
6 for that. And it is my understanding, staying in contact
7 with my former colleagues, that it is working out very, very
8 well, that those that are in that career path gain
9 tremendous experience both through training and in courts
10 and when they reach a level of journeymen, they are rivaling
11 their civilian counterparts in the Department of Justice and
12 large DAs' offices. So I think the Navy has been successful
13 in doing that.

14 And one of the things I look forward to, having a
15 conversation with General Pede, the Judge Advocate General
16 of the Army, is can the Army do that? Can we learn lessons
17 from how the Navy did it, and would it be right for the Army
18 to do that?

19 Senator Gillibrand: Both Senator Ernst -- our
20 legislation wants to expand the work that the Navy has done
21 because, unfortunately, when you look at the data concerning
22 sexual violence in the military, the percentage of cases
23 that are going to trial is actually going down, and the
24 percentage of convictions is going down. So we are not
25 getting better at this. We are not convicting more serial

1 rapists. And so one of the ideas is to create that career
2 track so you do not have people with only 1 or 2 years of
3 criminal justice experience trying these very difficult
4 cases. They are some of the hardest cases in the world to
5 prove. And so you want more sophisticated prosecutors who
6 have been doing it or committed to criminal justice for
7 their career and have them not be penalized because they
8 have chosen that career path. So that is the goal.

9 Mr. McPherson: I would agree with that 100 percent.
10 As you noted, I had the privilege of both prosecuting and
11 defending rape cases, and they were the hardest cases --

12 Senator Gillibrand: Always the hardest.

13 Mr. McPherson: I oftentimes wish I had a background in
14 social work on either side to understand what was going on
15 in those cases. So, if confirmed, Senator, I intend to make
16 that one of my priorities to look into that.

17 Senator Gillibrand: Thank you.

18 With regard to the shooting in Texas last week by the
19 former Air Force member, obviously, our hearts and prayers
20 go to all the families who are suffering. But it is made
21 more devastated by the fact that despite years of federal
22 laws being on the books and the Department of Defense
23 regulations to ensure that notifications are made to
24 national criminal databases, in this case it was not done.
25 His crimes in the military were incredibly serious and

1 violent, and yet it appears someone did not think it was
2 worth his or her time to fill out the forms so crucial to
3 keeping dangerous weapons out of the hands of dangerous
4 people. Furthermore, it sounds like this has been a problem
5 for at least 20 years.

6 If confirmed, what cognizance will you have over the
7 Army Criminal Investigation Division and what will you do to
8 ensure that a mistake like this does not happen again?

9 Mr. McPherson: Senator, it is a tragedy upon a
10 tragedy. First was the tragedy of the shooting and then to
11 discover that it might have been preventable -- that is
12 speculation, but had somebody done their job, perhaps that
13 individual would not have had those weapons. That saddens
14 me a great deal especially when it was the Department of
15 Defense that created that negligence.

16 If confirmed, that is one of the first things I am
17 going to look at, and I am sure Dr. Esper intends to look at
18 that as well and I will too. How can we fix the system and
19 make it easier to report? But we also need to go back and
20 capture all those in the last 20 years that were not
21 reported because those people are out there and they are a
22 danger.

23 Senator Gillibrand: So also in his record was the
24 record of domestic violence and violence against a child.
25 One of the concerns we have -- when the Army does -- not

1 just the Army, but when the military does its survey every
2 other year, it creates an estimate of how much sexual
3 violence there is and they ask all service members to fill
4 out that form, to fill out the survey. We do not ask
5 spouses.

6 So would you please work with your counterparts to see
7 if it is feasible to add spouses? Because that is a
8 population we have access to. And one year when I did a
9 review of the four largest bases, I found that more than
10 half of the assaults that year were against spouses and
11 civilians. And so if you are not counting them in the
12 estimates, you are not going to have the full view of the
13 problem. And I just hope that you could give some attention
14 to that issue in your new role.

15 Mr. McPherson: Senator, if confirmed, I commit to do
16 that. We say in our rhetoric that we support our soldiers,
17 sailors, airmen, marines, and their families. And so we
18 need to commit to supporting their families as well.

19 Senator Gillibrand: Thank you.

20 Thank you, Mr. Chairman.

21 Chairman McCain: Senator Tillis?

22 Senator Tillis: Thank you, Mr. Chairman.

23 And gentlemen, congratulations on your nominations and
24 to you and your families and for your past and future
25 service.

1 Mr. Kurta, I want to talk a little bit. I serve on the
2 Personnel Subcommittee, and we expect to get feedback from a
3 number of people in DOD on things that we can do to
4 modernize our personnel system.

5 But before I go to a question specifically about DOPMA,
6 I want to echo some of the concerns I think that Senator
7 Inhofe and other members have expressed here. I think we
8 have to recognize as members of this committee and Members
9 of Congress that when you have a trend line on threats going
10 up at a pretty rapid pace and you have a trend line on
11 funding and capabilities going down, those are not things
12 that you alone can solve through your best efforts to reform
13 and make yourselves more efficient. So I think we need
14 feedback on what we need to do here to actually help you and
15 provide you with the enablers that you will need to get us
16 to the point where our men and women are as ready as they
17 can be. And we have got to recognize the nature of the
18 world today, the nature of the threats, the number of the
19 threats are a part of the problem and we are not providing
20 adequate resources, and every once in a while, we may put a
21 roadblock in to making those dollars that we do provide a
22 little bit less productive.

23 But on DOPMA, can you give me an idea of what we should
24 be looking at? First, start by talking a little bit maybe
25 based on your more recent experience or past experience on

1 the strengths and weaknesses of DOPMA, the things that we
2 should preserve, the things that we should look at as we
3 look to modernize a 40-year-old system and then maybe go a
4 little bit further into the approach that you would suggest
5 that this committee take that is instructive to provisions
6 that may be in next year's NDAA?

7 Mr. Kurta: Thank you, Senator.

8 We have spent a lot of time over the past number of
9 years looking very specifically at DOPMA. And if you ask as
10 to its strengths, I would say it has served our military
11 well for many years. It is the bedrock of the all volunteer
12 force, and generally speaking for a large majority of the
13 force, it works. It provides us a vital, relatively young
14 and fit force.

15 That said, I think it is clear as the nature of warfare
16 changes and we get into an area and a time where there are
17 more technical skills that are required, whether it is IT,
18 cyber, any number that you can pick, that sometimes DOPMA is
19 a little bit constraining. There is enormous flexibility
20 that Congress has given us in DOPMA, and I am the first to
21 say we do not always take advantage of all the flexibility
22 that is already there in the law. But it is constraining,
23 and I think in certain fields we need more flexibility in
24 order to bring in the talent that we need that we are not
25 just going to grow from day one when somebody comes in as a

1 E-1 or an O-1.

2 So we need greater, I think, lateral entry flexibility
3 much like we do in the medical system to bring people in
4 with specialized skills, and then we need to look further at
5 specialized career tracks that do not require everybody to
6 participate in the up or out system. I think those are two
7 limitations, and if confirmed, I would be happy to work with
8 this committee and the USDP&R for further changes to DOPMA.

9 Senator Tillis: Well, I hope, after you get through
10 your confirmation -- I intend to support all of you,
11 incidentally. But after you get through the confirmation
12 process, I would encourage you to get on a fast track to
13 provide us with things that will be instructive to the
14 recommendations we make next year. We are going to make
15 recommendations. I think the best ones that we collaborate
16 on versus the ones we give to you that could be
17 complicating.

18 And I think a part of that is really going back and
19 taking a look at how you all have institutionalized your own
20 processes that are founded on DOPMA that themselves need to
21 be rethought. If you go into any area of DOD or any area of
22 government, you will find that a lot of the things that you
23 are frustrated with are things that you decided to implement
24 as you fleshed out the process on your side post-enactment
25 that really to be rethought. But then very quickly provide

1 us with a good punch list of things that we should be
2 looking at and putting into language that can provide you
3 with a modernized system.

4 And I will submit some questions for the record for you
5 specifically around the right mix of military, civilian, and
6 contractor personnel, what sort of discipline are we going
7 to bring up so that you can come back before this committee
8 and say that you are right-sizing the mix, you have got the
9 ratios right, and you have the discipline to prove it. You
10 may think that they are right today, but I think that that
11 would be helpful because you will hear oftentimes in this
12 committee differing opinions about what that sweet spot is,
13 and I would like to get your thoughts on that. And we will
14 just submit questions for the record.

15 Thank you all for your service.

16 Chairman McCain: Senator Heinrich?

17 Senator Heinrich: Thank you, Chairman.

18 Mr. McPherson, as you know, part of the reason why the
19 shooter at the Texas church was able to obtain a firearm was
20 because individuals within the Air Force had failed to
21 report Mr. Kelley's domestic violence offense on a couple of
22 key junctures in the process where that should have been
23 flagged. It is my understanding that the Air Force is now
24 scrubbing their entire data nationwide to determine just how
25 big a problem, how pervasive this is.

1 As the Army's potential next top lawyer, what are your
2 plans to make sure that the Army does an equivalent analysis
3 and plugs the same gaps?

4 Mr. McPherson: Thank you, Senator. If confirmed, that
5 is going to be one of the first things I ask either the
6 Acting Secretary or the Secretary of the Army is to direct
7 the same sort of scrub take place. Not only have we
8 reported it correctly in the past, but how will the Army go
9 back and capture those that were not reported, and is there
10 some way to streamline that reporting process so it does not
11 go through a whole series of hands where you can have a
12 point of failure at any one of those. There needs to be
13 some way that it is made more automated and more reliable in
14 reporting.

15 Senator Heinrich: It appears that the Air Force may be
16 reporting different convictions to different databases. And
17 do you know the criteria that the Army currently uses to
18 determine which crimes to report to either the NCIS, the
19 NCIC, or the III databases?

20 Mr. McPherson: Senator, I am not aware of the criteria
21 that it is used, but if confirmed, I will become very aware
22 of it.

23 Senator Heinrich: One of the things I am getting at is
24 I am trying to determine whether there is a legitimate
25 reason for not reporting all eligible convictions to the

1 NICS database. And I am wondering, do you know how many
2 domestic violence convictions have been reported by the Army
3 to the NICS database or other databases?

4 Mr. McPherson: Senator, I do not know. But I do know
5 that one of the problems is terminology. And there seems to
6 be a fix for that. And one of the things I will do, if
7 confirmed, is find that fix. Although a conviction under an
8 article of the UCMJ may not fit to a conviction under 18
9 U.S. Code, just because it does not fit does not mean it
10 should not be reported.

11 Senator Heinrich: That is a procedural problem.
12 Right? If someone is convicted of assault but the assault
13 was actually an assault on a family member, that should meet
14 the requirement for --

15 Mr. McPherson: Yes, sir.

16 Senator Heinrich: Mr. Kurta, former Secretary of
17 Defense Robert Gates recently authored an op-ed in support
18 of the DACA program arguing that the Department of Defense
19 needs to be able to recruit immigrants with medical, foreign
20 language, and other specialized skills. Do you agree that
21 the Department needs these skills and that properly vetted
22 DACA recipients are able to help meet those needs?

23 Mr. Kurta: Sir, I concur that there are skills that
24 that population has that the Department of Defense needs
25 that are not resident in our U.S. citizen population.

1 Senator Heinrich: Should the Department be able to
2 recruit DACA recipients so long as they have those skills
3 and do not pose a security risk?

4 Mr. Kurta: Sir, the Secretary has tasked us, once we
5 work through the current backlog in the MAVNI program and
6 ensure that they are all suitably screened before they
7 enter, to devise a new program whereby the Department of
8 Defense has access to those skill sets that are not resident
9 in the U.S. citizen population. And some of those may be in
10 the DACA program. Some of those may be legal permanent
11 residents. But as soon as we work through this backlog, we
12 will devise that new program so that we have access to the
13 critical skills needed by the Department of Defense.

14 Senator Heinrich: So you see a future where the MAVNI
15 program is once again able to recruit from that population.

16 Mr. Kurta: Sir, I see a future where the Department of
17 Defense is able to recruit from that non-U.S. citizen
18 population.

19 Senator Heinrich: In addition, Mr. Kurta, I want to
20 ask you about a little different situation. I know you
21 touched on the pilot shortage facing the Air Force. In your
22 APQs, you talk about pilot retention. But the Air Force
23 shortage of maintainers and technicians is also a
24 developing, very serious issue. These are the men and women
25 who keep our aircraft safe, keep them flying.

1 As a long-term effort to get at this problem, what are
2 your thoughts on encouraging high schools and universities
3 to help initiate the teaching and training in this important
4 field through some sort of partnership?

5 Mr. Kurta: Senator, as you note, the Air Force has a
6 severe problem with maintainers and their technicians. It
7 goes back to part of what the chairman said at the
8 beginning. Part of that is the quality of their service.
9 We need more maintainers. We need more technicians. They
10 need parts. They need airplanes to work on. It goes back
11 to our civilian personnel policy because many of the
12 maintainers and the technicians particularly in our depots
13 are civilians. So any program, whether it is cooperation
14 with high schools, any program that helps us recruit and
15 maintain the vital skills that we need to rebuild the
16 readiness of our armed forces will have my support, if
17 confirmed.

18 Senator Heinrich: I look forward to working with you
19 on that.

20 Mr. Kurta: Thank you, Senator.

21 Chairman McCain: Senator Ernst, I would like to,
22 before I recognize you, also thank you for your active
23 participation especially on this whole issue of abuse in the
24 military. It has been heightened in its visibility
25 obviously because of other events outside the military, but

1 I am very grateful for the participation you and Senator
2 Gillibrand and the women on this committee who bring a
3 special insight into the issue. And I thank you for that,
4 and I hope that that comment is taken in the right context.
5 Without your participation and others, I do not think this
6 committee could function as effectively as we have on this
7 issue.

8 Senator Ernst: Thank you, Senator McCain, Admiral
9 McCain. We appreciate your service and thanks for
10 entrusting us with such an important topic as well.

11 Chairman McCain: Thank you.

12 Senator Ernst: So, gentlemen, thank you.

13 And that is a great segue for me into a matter that is
14 very important to all of us and that is the issue of
15 military sexual assault. And I did visit with Senator
16 Gillibrand on the way in, and she did state, Mr. McPherson,
17 that you have some experience with the Navy's program of
18 professionalizing a JAG litigation track and that is
19 something that we are advocates for -- Senator Gillibrand
20 and I -- for the other services as well.

21 But, Mr. McPherson, as I am sure you know, the military
22 has made progress in reducing the number of sexual assaults
23 from about 26,000 down to 14,900 over the past 4 years while
24 keeping adjudication of sexual assault cases in the chain of
25 command. We still need to see continued improvement. No

1 doubt about that. And given your many years in the
2 military, I am confident you understand the responsibility
3 and accountability that commanders assume on a daily basis.

4 And do you think further reductions in sexual assault
5 like that that we have seen over the past 4 years will be
6 possible without the ability to hold our military commanders
7 accountable for those under their command? And can you
8 outline how the commanders' role in the process has placed
9 them in a position to be held accountable?

10 Mr. McPherson: Senator, although the trend lines are
11 promising, one is one too many.

12 Senator Ernst: I agree.

13 Mr. McPherson: In my opinion, that needs to be the
14 goal is zero, zero tolerance.

15 When I came in the Army many years ago, drugs was a
16 tremendous problem. It remained a tremendous problem even
17 when I was a young naval officer. And the chain of command
18 starting with the senior leadership all the way down to
19 leading petty officers, leading sergeants focused on
20 bringing that number to zero. We are not there yet in
21 drugs, but we are really close.

22 I am convinced that the same sort of positive
23 leadership can bring that trend line down to near zero in
24 sexual harassment, sexual assault, and retribution. But I
25 am also convinced that the commander plays an essential role

1 in that.

2 Having had the opportunity as a staff judge advocate to
3 advise general court-martial convening authorities and being
4 a general court-martial convening authority myself, I can
5 tell you that that tool was very, very important to those
6 gentlemen and ladies and to me in ensuring the health and
7 welfare of my unit and ensuring the good order and
8 discipline of my unit.

9 And I believe that in the three-legged stool theory,
10 one, you give a commander the responsibility. You give them
11 the authority to execute that responsibility and you hold
12 them accountable for executing that authority that you gave
13 them. I think that there is a process that can be had to
14 ensure that accountability as well without interfering with
15 their discretions of convening authority, not raising the
16 specter of unlawful command influence. I think that can be
17 done, and if confirmed, I look forward to working with
18 General Pede, the Judge Advocate General of the Army, in
19 furthering that effort and forcing those numbers to zero.

20 Senator Ernst: Absolutely. Thank you very much. I
21 believe that our commanders must be responsible and held
22 responsible and accountable for fostering a command climate
23 of dignity and respect for all of their soldiers. So thank
24 you very much.

25 Mr. Kurta, as someone who has served in the Iowa Army

1 National Guard, I understand the essential role that our
2 Guard and Reserve forces play in completing the total force,
3 a concept that is understood and articulated quite well by
4 General Milley, our Army Chief of Staff, amongst others.

5 What is your plan to leverage Guard and Reserve forces
6 to help you with the talent pool issue, and what is your
7 plan to make sure these forces' resourcing and readiness
8 levels are the same as regular units, the same type of units
9 that they are expected to support, replace, and augment?

10 Mr. Kurta: Senator, over the past 16 years, as we have
11 called on all of our forces, the total force, to defend our
12 country since 9/11, I think that traditional distinction
13 between what people believe was the mission of the active
14 force versus the mission of the Reserves and the Guard --
15 all of those lines and distinctions are blurred. It is a
16 total force. None of our missions today can be performed
17 solely by our active force. Therefore, the readiness of our
18 Guard and Reserve is as essential as the readiness of our
19 active forces in order to carry out the national defense
20 strategy. And so, if confirmed, I pledge to continue to
21 ensure that the readiness of the Guard and the Reserve has
22 as much of our attention as the readiness of our active
23 forces.

24 Senator Ernst: Very good. I appreciate that. And
25 hopefully we can collaborate on creative ways to leverage

1 those forces to work with their active component
2 counterparts as well.

3 So thank you very much, gentlemen. My time has
4 expired.

5 Thank you, Mr. Chair.

6 Chairman McCain: Senator Warren. And Senator, may I
7 add my appreciation to your active participation on this
8 issue?

9 Senator Warren: Thank you. Thank you, Mr. Chairman.

10 And thank you to our witnesses for being here today.
11 Thank you to your families. I know all of you will be
12 serving and I appreciate that.

13 Mr. Kurta, I want to ask you about recruiting and
14 retention of highly skilled and specialized technology jobs,
15 which is absolutely crucial for our military services. I
16 think this is an area where we could improve. For example,
17 in Massachusetts, we have some of the best computer
18 scientists and engineers in the world, and some of them are
19 looking for ways to be able to better serve their country.
20 But they may not think they are interested in military
21 careers, and right now, the military may not think they are
22 interested in them. Right now, our military recruiting
23 system does not seem very well suited to recruiting and
24 retaining these people.

25 So can you discuss how we might change our personnel

1 system so that we are identifying and retaining the best
2 talent for jobs that are not traditional military
3 specialties?

4 Mr. Kurta: Thank you, Senator.

5 I do not know that the skill sets are unique
6 necessarily for high-tech individuals as they are for the
7 rest of the force. Certainly we have to do better at
8 attracting everybody that we need in the skill sets that are
9 both critical and in short supply. I am not sure that the
10 answer lies in our recruiters. We earlier talked about some
11 of the flexibilities that might be required in DOPMA and our
12 ability to more rapidly bring people into the service with
13 particularly high-tech skill sets that we do not have and
14 probably not bringing them in at the E-1 or the O-1 level
15 and starting at the bottom rung because they are people with
16 significant expertise that they have developed in the
17 outside world and we can take advantage of them at a level
18 beyond that more quickly. So I think more flexibility in
19 the system to bring them in at a mid-grade level is
20 certainly something we need to continue to look at.

21 Senator Warren: Well, I appreciate that. I agree with
22 Senator Tillis about the importance of reforming DOPMA and
23 getting procedures that work better in this area.

24 So let me just ask. Do you we have your commitment to
25 work on that, if you are confirmed to this job?

1 Mr. Kurta: Absolutely, Senator.

2 Senator Warren: Good. Our people are what make our
3 military great, and I think these roles are going to be
4 critically important for our military going forward. If we
5 do not get the right talent, then our security is going to
6 suffer.

7 I also want to ask you about the diversity of the
8 forces and particularly the geographic diversity. There is
9 a lot of data that shows that new recruits are either likely
10 to have a family member who served or to live near a
11 military installation.

12 Today, much of New England and parts of the upper
13 Midwest are underrepresented in the military. And as a
14 Senator from Massachusetts, I worry that this does not help
15 bridge the divide between civilians and our military. It
16 matters because when we make decisions to go to war, it
17 should be something we do as a whole nation, not something
18 that is a burden borne by only a small percentage of
19 Americans.

20 So let me ask you, Mr. Kurta. Do you agree that this
21 is important, and can you just say a word about something
22 that we might be doing to increase the geographic diversity
23 of our force?

24 Mr. Kurta: Senator, our connection to all of America
25 is absolutely vital to the sustaining and the lethality of

1 the all volunteer force. And we are geographically
2 concentrated. We call it the "southern smile" from
3 basically Virginia all the way down south through California
4 where we get the majority of our enlisted recruits. That is
5 not healthy long-term for the success of the all volunteer
6 force and our connection with our population.

7 So we have been continually working with the services
8 to ensure that we keep a recruiting presence all across the
9 nation and that we look at our ability to engage all
10 elements of society geographically to ensure that we keep
11 that connection in more areas than just those that are the
12 easiest to recruit.

13 Senator Warren: Well, I appreciate that, and I very
14 much hope that you will put some energy behind this and be a
15 little more creative. We need more recruiting. We need
16 more outreach up in New England. This cannot be a military
17 that only comes from other parts of the country. Thank you.

18 Mr. Kurta: Yes, Senator.

19 Chairman McCain: Senator Sullivan?

20 Senator Sullivan: Thank you, Mr. Chairman.

21 And I want to thank you gentlemen for your desire to
22 serve. All of you have very distinguished backgrounds. It
23 is very impressive.

24 Mr. Kurta, I wanted to kind of follow up on a line of
25 questioning that the chairman started. You were the DAS for

1 military personnel policy starting in September 2014. Right
2 around this time was when the Obama administration decided
3 that they were going to cut an additional 50,000 U.S.
4 soldiers, active duty soldiers, and then they went on and
5 pretty much did that in the face of enormous national
6 security threats that were growing.

7 Did you support this policy of cutting the Army by an
8 additional 50,000 active duty soldiers? Just as recently as
9 2015, they were doing it. And if so, how in the heck does
10 that relate to military personnel and readiness of our
11 nation's forces when cutting forces dramatically in the face
12 of increasing national security threats? I think everybody
13 recognizes now it was a really misguided decision
14 strategically, and we are digging out of that hole.

15 Mr. Kurta: Well, Senator, I have always supported --
16 and my background in the military I think --

17 Senator Sullivan: You supported cutting 50,000
18 soldiers in 2015?

19 Mr. Kurta: Sir, I support the rebuilding of our
20 military forces. I was a senior civilian, as you mentioned,
21 in military personnel policy. I was not asked my opinion on
22 that, and I did not support that cut. I support the
23 rebuilding and the readiness of our armed forces. And all
24 of the services today require more people to do our jobs.

25 Senator Sullivan: Good. So you had nothing to do with

1 that decision.

2 Mr. Kurta: No, sir.

3 Senator Sullivan: You thought it was strategically
4 misguided.

5 Mr. Kurta: That is correct, Senator.

6 Senator Sullivan: Great.

7 Chairman McCain: Did you voice that disagreement, Mr.
8 Kurta?

9 Mr. Kurta: Senator, I cannot point to a single time
10 that I can tell you that I recount a time when I said that.
11 In our policies, in our policy recommendations up to our
12 bosses at the time, yes, we did support an end strength
13 growth in all of the services.

14 Senator Sullivan: You know, North Korea is in the news
15 a lot, obviously. Have you read the book by T.R. Fehrenbach
16 called "This Kind of War"?

17 Mr. Kurta: Senator, no, I have not.

18 Senator Sullivan: I would highly recommend -- that is
19 something I recommend to all the senior Department of
20 Defense. If the other members of the panel have not read
21 that, it is about the Korean War. It is called a study in
22 unpreparedness.

23 Are you familiar with Task Force Smith in 1950 in the
24 U.S. Army?

25 Mr. Kurta: No, Senator, I am not.

1 Senator Sullivan: So you should get familiar with
2 that. It is really important history. All the senior
3 marines are very familiar with it. It is essentially what
4 happened during the Korean War in 1950 where our military
5 was not ready to fight. It went from the greatest military
6 in the history of the world in 1945. In 1950, we could not
7 stop a third world peasant army that summer.

8 So it is really important you take a look at that
9 because one of the things that I think you might get
10 pressure on from this committee and other Members of
11 Congress is to take your eye off the ball of a rigorous,
12 rigorous combat-focused training.

13 So can I get your commitment that if you are confirmed
14 that you will focus readiness on keeping the highest, most
15 rigorous standards that we have in the U.S. military?

16 Mr. Kurta: Senator, you have my commitment.
17 Absolutely.

18 Senator Sullivan: And will you commit to me to read
19 that book?

20 Mr. Kurta: Senator, I will read that book.

21 Senator Sullivan: Excellent.

22 Let me turn to Admiral McPherson, Colonel Maggs. You
23 both have distinguished careers as attorneys. Back to North
24 Korea, I have been very supportive of the administration's
25 policies right now, particularly their focus on diplomacy

1 and having credible military options that have helped back
2 up our diplomacy with regard to Korea. I think we are
3 making some significant progress.

4 However, if one of these military options was a
5 preemptive or preventative ground war launched by the United
6 States on the Korean Peninsula, I believe that would clearly
7 require the Article I powers of the Congress to authorize
8 that. What is your view on that issue?

9 Mr. McPherson: I agree with you, Senator.

10 Senator Sullivan: Colonel Maggs, I know that you will
11 be a judge, but you are also a distinguished lawyer. What
12 is your view?

13 Mr. Maggs: I would think a preemptive strike would
14 require authorization.

15 Senator Sullivan: Authorization under Article I.

16 Mr. Maggs: Under Article I.

17 Senator Sullivan: So, Admiral McPherson, if you are
18 confirmed, can I get your commitment to make sure you press
19 for that so it is an issue that there is no disagreement on
20 at least from your perspective?

21 Mr. McPherson: Yes, Senator, with a loud and clear
22 voice.

23 Senator Sullivan: Thank you.

24 Mr. Chairman, I just wanted for the record to make a
25 point on that vote that we just took with regard to the

1 Assistant Secretary of the Army for Civil Works, Mr. James.
2 I was supportive of that vote, but I want to make a
3 statement very quickly for the record and underscore that an
4 issue that needs to be addressed before I can vote for the
5 nomination of Mr. James on the Senate floor involves around
6 answers provided by Mr. James to me that I raised with
7 regard to an Arctic deep draft port project. While those
8 answers are encouraging, they diverge so significantly from
9 the message the Corps has recently provided my staff
10 following a meeting I had with General Semonite, the head of
11 the Corps, that I am going to have to work through these
12 issues with the Corps prior to moving Mr. James' vote on the
13 Senate floor. I just wanted that to be clear and not have
14 my vote today be misinterpreted.

15 Gentlemen, thank you for your willingness to serve.

16 Chairman McCain: Thank you, Senator Sullivan, and the
17 record will indicate your statement.

18 Senator Blumenthal?

19 Senator Blumenthal: Thank you, Mr. Chairman.

20 Thank you to all of you for your service to our nation
21 and the service that you will continue to provide.

22 I would like to direct this question I guess to Mr.
23 Kurta or Mr. McPherson. The latest experience with the
24 shooter in Texas involved someone who received a bad conduct
25 discharge, having committed very violent domestic assault.

1 He was prosecuted for assault. He was convicted of two
2 counts. He was confined, in effect, incarcerated for a
3 sentence of 1 year. He served 8 months. But his conviction
4 was never entered, as we now all know, in the database that
5 provides licensed sellers of firearms with the ability to
6 check whether or not someone is eligible to buy a gun. It
7 is the National Instant Criminal Background Check System.
8 In part, that failing was the result of no specific article
9 in the UCMJ for domestic violence or domestic assault.

10 I am proposing a bill and I think others on both sides
11 of the aisle -- I know my colleague, Senator Hirono, is
12 thinking about the same -- to define punishment under the
13 UCMJ so that there is a specific crime of domestic violence.
14 And it would not only provide clarity for reporting
15 purposes, but it would also recognize that this crime is a
16 separate offense that should be punished as a separate
17 egregious offense.

18 So let me ask you for your commitment that you would
19 support such a proposal for a specific article in the UCMJ
20 on domestic violence or domestic assault.

21 Mr. McPherson: Senator, you have my commitment. I
22 think that efforts by the Congress to amend the UCMJ to
23 address social problems as they are arising that maybe we
24 did not recognize in the past is helpful, and I think it
25 sends a tremendous message that these are important issues

1 that we are now addressing. I would applaud that.

2 Mr. Kurta: And, Senator, anything that helps us hold
3 people accountable for their crimes would have my support.

4 Senator Blumenthal: And you would agree that this kind
5 of proposal or provision would be one that holds people
6 accountable.

7 Mr. Kurta: Yes, Senator.

8 Senator Blumenthal: Thank you.

9 A few weeks ago, the United States District Court for
10 the District of Columbia, as you know, issued a preliminary
11 injunction against President Trump's discriminatory
12 executive order banning transgender military service. The
13 court order prevents the ban from being implemented until
14 the challenge to the executive order is decided. So the ban
15 is now, in effect, stayed.

16 Do you agree with I know a number of members of this
17 committee, including myself, that the military and our
18 country are made stronger with our ability to draw all
19 individuals who are able to meet the rigorous requirements
20 that our armed services demand, requirements for training,
21 for deployment, for fighting, for defending our country
22 without any discrimination?

23 Mr. McPherson: I would agree with that, Senator. We
24 are a standards-based organization, and anyone who meets
25 those standards mentally, physically should be able to serve

1 their country while wearing a uniform.

2 Senator Blumenthal: Mr. Kurta?

3 Mr. Kurta: Senator, I agree.

4 Senator Blumenthal: Thank you.

5 Thank you, Mr. Chairman. That concludes my questions.

6 Chairman McCain: Senator Hirono?

7 Senator Hirono: Thank you, Mr. Chairman.

8 I apologize for not having been here for the hearing,
9 but I know that others have asked about making an amendment
10 to the UCMJ, and I would like to ask Mr. Kurta that I too am
11 moving forward with a bill that would amend the UCMJ to
12 include the charge of domestic abuse under UCMJ to close a
13 reporting loophole that is obviously there. Would you agree
14 that there is a reporting loophole that we should close?

15 Mr. Kurta: Senator, I would agree.

16 Senator Hirono: Thank you.

17 Also for Mr. Kurta, I am concerned on the state of
18 readiness across the force and the impact that it is having
19 on our manpower. The Navy just released their closure
20 report for four collisions at sea which identified that
21 fatigue played a direct role as well in these incidents and
22 referred that some of these sailors are working 100-hour
23 weeks. While these incidents solely impacted the Navy, I
24 want to ensure that it is not plaguing the other services as
25 well. We need to ensure that training and readiness for our

1 soldiers, sailors, airmen, and marines is up to date and
2 sufficient to keep our troops ready and capable to fulfill
3 the missions they have.

4 How do you view this issue, and what steps can we take
5 to address it across all of the services?

6 Mr. Kurta: Well, Senator, as you noted, I do believe
7 that all of our soldiers, sailors, airmen, and marines are
8 being asked today to do more than we give them the capacity
9 to do. So certainly rebuilding our readiness so that they
10 have the training to be able to accomplish the missions that
11 we ask of them, that they have the best equipment in the
12 world so that they are overmatched against any of our
13 potential foes, and I think all of that will help also
14 address the capacity issue of people working 100-hour weeks.

15 Senator Hirono: We all agree with that. What is the
16 greatest barrier to our achieving the kind of training and
17 readiness, et cetera that you are talking about?

18 Mr. Kurta: I would say, Senator, a stable, predictable
19 funding over time.

20 Senator Hirono: So, therefore, sequester is a major
21 concern.

22 Mr. Kurta: Ma'am, we must lift sequestration as
23 currently structured. Absolutely.

24 Senator Hirono: Well, I would love to hear how we can
25 do that because I think this committee certainly recognizes

1 that. It is just a matter of -- I cannot say it is just a
2 matter of because we have not been able to address it
3 adequately.

4 Mr. McPherson, this committee under the leadership of
5 Chairman McCain has put forth provisions to improve the
6 acquisition system to make it more agile and responsive to
7 the needs of the services. Yet, we continue to hear
8 testimony from the service chiefs about delays and
9 inefficiencies, and oftentimes the role of an attorney is to
10 help their clients understand the left and right limits on
11 legal actions. As General Counsel of the Army, you will
12 train and supervise attorneys tasked with reviewing
13 contracts and providing advice to clients on this complex
14 subject.

15 How do you plan to ensure that the attorneys under your
16 charge have the appropriate training and knowledge to help
17 the Chief of Staff and other clients in the Army pick the
18 most efficient vehicle for acquisition? Because, you know,
19 I have been sitting on this committee. It is all very
20 complicated and the assets we purchase -- most of us -- you
21 have to be a Ph.D. in engineering, et cetera to even
22 understand. So how do you expect your attorneys to be able
23 to figure out how best to advise your clients?

24 Mr. McPherson: Thank you, Senator.

25 If confirmed, one of the things that I intend to look

1 at is just that, the training and experience of the
2 attorneys who are advising with regard to the contract and
3 acquisition area.

4 I do know that the Army team, both uniformed and
5 civilian, enjoys a very good reputation right now in that
6 area, but more can always be done.

7 It has always been my opinion that attorneys should
8 work to the answer yes when they are working with their
9 clients. No is too easy. Yes is sometimes very difficult.
10 But yes is what ensures efficiencies and effectiveness in
11 the products that you purchase.

12 The other aspect is risk aversion. Oftentimes
13 attorneys are too risk averse when advising their clients.
14 Sometimes they forget that it is the client that makes the
15 decision, not the attorney. The attorney is the advisor.
16 Those are some of the things that I would look at, if
17 confirmed, with the Office of General Counsel.

18 Senator Hirono: Risk aversion. I think that is a
19 really important comment to make because, yes, attorneys
20 tend to be very conservative in what they say to their
21 clients, but at the same time, we need to make sure, though,
22 that they understand the legal limits of what they are
23 advising their clients.

24 Mr. McPherson: Oh, absolutely. Yes, Senator, I agree
25 with that.

1 Senator Hirono: Thank you.

2 Thank you, Mr. Chairman.

3 Chairman McCain: I want to thank the witnesses. And
4 there will probably be additional questions submitted to you
5 for the record, and we intend to have those responses so we
6 can move forward with your nominations to the floor of the
7 Senate.

8 Senator Reed?

9 Senator Reed: Mr. Chairman, I too want to thank the
10 witnesses and clarify one point. In my discussion with Mr.
11 Maggs, I reflected upon the teaching ability at West Point.
12 That was truly a reflection on my skills as a professor
13 there, no one else's. And as evidenced by Mr. Maggs, it has
14 a superb faculty and I am proud that they let me hang around
15 for a while until they figured out my real skills and sent
16 me away. But thank you very much, Mr. Chairman.

17 Chairman McCain: Let the record show that Senator Reed
18 and I will be attending the Army-Navy game in which Navy
19 will prevail again.

20 [Laughter.]

21 Chairman McCain: This hearing is adjourned.

22 [Whereupon, at 11:35 a.m., the hearing was adjourned.]

23

24

25