

Advance Policy Questions for James McPherson
Nominee for General Counsel of the Department of the Army

Department of Defense Reforms

The National Defense Authorization Act for Fiscal Year 2017 included the most sweeping reforms since the Goldwater-Nichols Department of Defense Reorganization Act of 1986.

1. Do you support these reforms?

I am generally aware of the reforms contained in Titles VII and IX of the National Defense Authorization Act for Fiscal Year 2017, and I support the objectives of reducing redundancy, increasing efficiency, and improving coordination within the Department of Defense. The reforms in Title VII concern the Military Health System, and the reforms in Title IX concern Department of Defense organization and management. If confirmed, I will work closely with senior Army leaders to familiarize myself with the specific impacts of these reforms on the Department of the Army, and to ensure that any reforms for which the Army is responsible or are applicable to the Army are implemented in accordance with the law.

2. What other areas for defense reform do you believe might be appropriate for this Committee to address?

I am not aware of other specific reforms that are needed at this time. If confirmed, however, I will work collaboratively with senior leaders throughout the Army, and with members of this Committee, to determine whether the challenges posed by today's security environment require further defense reforms.

Duties

3. What is your understanding of the duties and functions of the General Counsel of the Department of the Army?

Section 3019 of Title 10 provides that the General Counsel of the Army shall perform such functions as the Secretary of the Army may prescribe. It is my understanding that the Secretary has prescribed the General Counsel's duties through various general orders, regulations, and memoranda. Under these authorities, the General Counsel serves as legal adviser to the Secretary of the Army and is the chief legal officer of the Department of the Army. As such, the General Counsel provides legal advice to the Secretary of the Army, the Under Secretary, the Assistant Secretaries, and other officials within the Army Secretariat; coordinates legal and policy advice for all other members of Army headquarters; and determines the controlling legal position of the Department. It is my understanding that the General Counsel's responsibilities extend to any matter of law, and to other matters as directed by the Secretary, to include (1) providing professional

guidance to the Army's legal community, (2) overseeing matters in which the Army is involved in litigation, (3) serving as the Designated Agency Ethics Official for the Department, (4) exercising the Secretary's oversight of intelligence and counterintelligence activities, (5) monitoring sensitive activities and investigations for legality and propriety, and (6) taking final action on certain claims filed against the Army.

4. If confirmed, what duties and functions do you expect that the Secretary of the Army would prescribe for you?

If confirmed, I will be ready to execute the responsibilities of the General Counsel as set forth in the applicable general orders. Separate and apart from these specifically enumerated responsibilities, however, I anticipate that the Secretary of the Army will expect me to lead and manage the Office of General Counsel efficiently and effectively, and to ensure that the office provides timely and accurate legal advice that assists the Army in complying with both the spirit and letter of the law. In addition, I anticipate that the Secretary will expect me to build strong, collaborative relationships with The Judge Advocate General and members of the Secretariat and Army staff, as well as the general counsels of the service branches and other federal agencies.

5. In your opinion, who is the client of the Army General Counsel?

The General Counsel's client is the Department of the Army, acting through its authorized officials, including, but not limited to, the Secretary, the Under Secretary, the Assistant Secretaries, and other principal officers within the Army Secretariat and the Army Staff.

6. In carrying out your duties if you are confirmed, how will you work with the General Counsel of the Department of Defense?

The General Counsel of the Department of Defense is the chief legal officer and final legal authority for the entire Department of Defense, including the Department of the Army. If confirmed, I anticipate having a close and professional relationship with the Acting General Counsel of the Department of Defense, as well as any future General Counsel. I commit wholeheartedly to working collaboratively on matters of mutual interest to further the best interests of the Department of the Army and the Department of Defense.

Qualifications

7. What background and experience do you possess that qualify you for this position?

The Army General Counsel must possess sound legal and analytical skills, good judgment, absolute integrity, and the ability to work collaboratively with individuals in

the Department of the Army, the Department of Defense, other agencies, and Congress. In addition, the Army General Counsel must be a proven leader able to inspire and motivate the entire Army Legal Community to provide the very best in legal services to Soldiers and their families. The knowledge, skills and experience I have gained as an enlisted Soldier, a Navy JAG, general counsel of a DoD activity, and Executive Director of the professional association of the state and territorial attorneys general have prepared me very well to meet the challenges of this very important position.

I began my professional life by enlisting in the U.S. Army in 1972, subsequently serving as a military policeman at The Presidio of San Francisco, in South Korea, and in the 1st Infantry Division, Ft. Riley, KS. In addition to providing me insights and perspective on life as an enlisted Soldier, those formative years taught me a great deal about sacrifice and service, and instilled within me a lifestyle of service that I have followed throughout my life.

That lifestyle of service motivated me to join the Navy JAG Corps, where I enjoyed a successful 24-year career, culminating as the Judge Advocate General of the Navy. During my Navy career, I served in a wide variety of assignments, including military justice as both a line prosecutor and defense counsel and supervising line attorneys in both roles. I have the distinction of both prosecuting and defending capital murder cases. I served as a staff judge advocate overseas and afloat at both shore station and senior staff levels. I had command at the field level and as a flag officer. Perhaps most importantly for this position, I gained invaluable experience in the Pentagon serving for over nine years in senior advisor, policy making, and leadership positions. I served as legal counsel to both the Vice Chief of Naval Operations and the Chief of Naval Operations, providing counsel on Navy-wide policies, ethics, and intelligence operations and assisting in the development of policy on a variety of matters, including personnel, procurement, budgetary, and operational issues. My initial flag officer assignment was as the Deputy Judge Advocate General of the Navy and Commander, Naval Legal Service Office Command, where I led an organization of over 700 men and women whose mission was to provide military justice, administrative representation, and legal assistance to Navy organizations, sailors, Marines, and their families. I was selected and served as the Judge Advocate General of the Navy, the senior uniformed attorney in the Department of the Navy responsible for providing legal counsel and strategic advice to the Chief of Naval Operations and the Secretary of the Navy. In that role, I led a professional, diverse organization of over 2,400 men and women (both military and civilian attorneys) with over 100 offices worldwide. I was responsible for the recruiting, training, professional development, and retention of the entire workforce, as well as the planning and execution of an annual budget of over \$140 million. As the Navy TJAG, I also served as the Department of Defense Representative for Ocean Policy Affairs, representing DoD in the inter-agency and to foreign governments on strategic maritime policy matters. I was also a member of the Navy Executive Steering Group, the Board of Directors of the Naval Criminal Investigative Service, and the Navy Intelligence Oversight Board. Upon retirement, I was awarded the Distinguished Service Medal.

Upon retirement from the Navy and at the request of the DoD General Counsel, I accepted the position of general counsel at the DoD Counterintelligence Field Activity (CIFA). In that position, I was responsible for providing legal and policy advice in areas of operational and policy matters, intelligence oversight, contract and fiscal law, ethics, and the full range of administrative law. I left CIFA after a year and a half as the agency was standing-down and the general counsel position was abolished.

For the past nine and a half years, I have led the National Association of Attorneys General (NAAG) as the Executive Director. NAAG is the professional association for the state, territorial, and District of Columbia attorneys general. NAAG has a staff of 45 attorneys and support staff, an annual budget of \$13 million, and investment portfolios of \$190 million. Along with an outstanding staff, we successfully built NAAG into the premier professional association representing state-wide elected officials. Focusing on programs that foster local, state, and federal engagement and cooperation, I found ways to bridge the partisan political divide between all attorneys general by creating a collaborative and cooperative platform where members come together as the chief law enforcement officers of their jurisdictions.

Over the course of my career, I have developed skills and expertise in a variety of areas relevant to this position, including leadership and management of diverse organizations which include both civilian and military staff; advising senior uniform and civilian leadership at the DoD department level on complex legal and policy issues; financial management, including budget development and execution; and perhaps most importantly, developing professional relationships that bridge the partisan political divides to achieve results all parties agree upon.

8. Do you believe that there are actions you need to take to enhance your ability to perform the duties of the Army General Counsel?

I am confident that I have the necessary legal, professional, and personal experience, analytical skills, judgment, and leadership abilities to successfully serve as the General Counsel of the Army. All attorneys, however, must continually educate themselves as new issues arise to serve their clients more effectively. If confirmed, I will endeavor to broaden my understanding and knowledge of the Army and the major legal challenges facing it. To do so, I will work with and rely on the many talented and dedicated military and civilian attorneys both in the Office of the General Counsel and the Army JAG Corps. I will also establish effective working relationships with Department of Defense senior leaders, Administration officials, members of this committee, and Members of Congress and their staffs.

Major Challenges and Priorities

9. In your view, what are the major challenges that will confront the next Army General Counsel?

In my opinion, the major challenge facing the General Counsel of the Army is to provide timely and accurate legal advice regarding the vast array of complex issues likely to arise in connection with the Army's mission to build and sustain a ready force capable of meeting current and future operational demands in a time of increasing global instability and limited resources. Although the current environment makes it difficult to anticipate specific legal questions, at a minimum, I expect to confront the following: (1) the Army's ongoing efforts to prevent and respond appropriately to incidents of sexual harassment and sexual assault, and to care for the victims of such incidents; (2) the continuing integration of women into previously closed combat positions and occupations; (3) the implementation of recent legislative reforms in military justice, acquisition, and health care; (4) compliance with environmental laws; (5) streamlining senior leader accountability procedures; and (6) oversight of Army intelligence activities.

10. If confirmed, what plans do you have for addressing these challenges?

If confirmed, I plan to prioritize these issues consistent with the Secretary of the Army's priorities; to work closely with the Secretary, the Chief of Staff, The Judge Advocate General, and the attorneys in the Office of the General Counsel to provide timely, accurate, and candid legal advice at all stages of the decision-making process; and to ensure that the Army legal community is adequately resourced both in numbers and skill levels.

11. What do you see as the most significant legal issues the Army will face in the coming year?

I anticipate that issues relating to the Army's military and civilian personnel policies and their impact on the Army's ability to build and sustain a ready force will involve some of the most significant legal issues facing the Army in the coming year. I would also expect legal issues associated with acquisition reform, financial management and auditability, and the implementation of other legislative reforms, including military justice reforms, to be significant in the year ahead. I would also expect the Army's continued efforts to address the prevention and response to sexual harassment and sexual assault will be significant in the coming year.

12. Does the Office of the Army General Counsel have the resources to deal with these problems?

I have no reason to think otherwise; however, if I am confirmed, I will be in a better position to assess whether additional resources will be required.

13. What broad priorities will you establish in terms of issues that must be addressed by the Office of the Army General Counsel?

If confirmed, my priority is to ensure that the Army legal community provides timely and accurate legal services to the Total Army. This requires knowledgeable members of the Army legal community to be fully integrated into the broader Army community, and to be involved at all stages of the decision-making process. I also intend to review programs for attorney recruitment and retention to ensure that the Office of General Counsel has attorneys with the skills necessary to provide sound legal advice, especially in emerging areas of the law, such as cyber security.

Relations with Congress

14. What are your views on the state of the Department of the Army's relationship with the Senate Armed Services Committee in particular, and with Congress in general?

I believe that the Army works well with the Senate Armed Services Committee and with Congress as a whole. From my interactions with senior Army leaders, both uniform and civilian, I believe that they understand the importance of maintaining a strong and collaborative relationship with Congress in general, and with the Army's primary oversight committees in particular. That said, there is always room for improvement and, if confirmed, I intend to make improved relationships a priority.

15. If confirmed, what actions would you take to sustain a productive and mutually beneficial relationship between Congress and the Department of the Army?

I firmly believe that it is all about relationships, and the key to good relationships is open and honest communication. If confirmed, I am committed to building and maintaining open lines of communication with Congress. I will work closely with Members of this Committee and Congress, as well as the professional staffs of the Army's oversight committees, to address the challenges and opportunities currently facing the Army, and to provide regular feedback on the implementation of recent legislative reforms.

Relationship with the Judge Advocate General of the Army

The allocation of responsibilities between the Judge Advocate General of the Army and the Army General Counsel is different than the allocation of these responsibilities in the Navy, where you previously served as the Navy Judge Advocate General.

16. In carrying out your duties if you are confirmed, how will you work with the Judge Advocate General of the Army?

I do not come to this subject as a novice. One of the key reasons for the success of the Navy JAG Corps during my tenure as the Judge Advocate General was my relationship with the Navy General Counsel. We viewed each other as partners in the Navy's Legal Team. If confirmed, I will develop a close, professional, and respectful relationship with the Army Judge Advocate General. Together, I am committed to building a culture in which our offices work together in a collaborative manner to deliver the best possible legal services and advice to all members of the Department.

17. How are the legal responsibilities of the Department of the Army allocated between the General Counsel and the Judge Advocate General?

Under existing general orders, the Army General Counsel is the chief legal officer of the Department of the Army and determines the Department's position on any legal question or procedure. As a component of the Army Secretariat, the Office of the Army General Counsel provides advice to the Secretary of the Army and other Secretariat officials. The Judge Advocate General, by contrast, is the chief legal adviser to the Chief of Staff of the Army, members of the Army Staff, and members of the Army generally. In coordination with the Army General Counsel, The Judge Advocate General serves as the military legal adviser to the Secretary of the Army. The law prohibits interference with the ability of The Judge Advocate General to give independent legal advice to the Secretary of the Army, which I fully supported at the time that legislation was first introduced and continue to support now. The Judge Advocate General also directs the members of The Judge Advocate General's Corps in the performance of their duties, and has primary responsibility for providing legal advice and services regarding the Uniform Code of Military Justice and the administration of military discipline. The Offices of the Army General Counsel and The Judge Advocate General have historically maintained a close, collaborative working relationship in the performance of their respective responsibilities. If confirmed, I will work to continue and build upon this productive partnership for the benefit of the Army.

18. If confirmed, will you seek to revise this allocation of responsibilities, based upon your Navy experience?

At this time, based on my understanding of the professional relationship that exists between the Office of the Army General Counsel and the Office of the Judge Advocate General of the Army, I have no intention of revising, modifying, or changing the allocation of their respective legal responsibilities. As the former Judge Advocate General of the Navy, I appreciate the importance of this relationship and if confirmed, I will continue to monitor it.

In response to attempts within the Department of Defense to subordinate legal functions and authorities of the Judge Advocates General to the General Counsels of the Department of Defense and the military services, Congress enacted legislation prohibiting any officer or employee of the Department of Defense from interfering with the ability of the Judge Advocates General of the military services and the legal advisor to the Chairman of the Joint Chiefs of Staff to provide independent legal advice to the Chairman, service secretaries, and service chiefs.

19. What is your view of the need for the Judge Advocate General of the Army to have the authority to provide independent legal advice to the Secretary of the Army and the Chief of Staff of the Army?

As I indicated, I am very familiar with the issues that gave rise to the necessity of that legislation. I supported that legislation when it was proposed and support it now. It is essential that The Judge Advocate General's expertise be available to the Secretary of the Army and the Chief of Staff of the Army, and I fully support both the spirit and the letter of the legislation that empowers The Judge Advocate General to provide independent legal advice to senior Army leaders. Uniformed attorneys, after all, bring a unique perspective to the practice of law, one shaped by years of service across the Army. This perspective should never be silenced or marginalized and, in fact, makes for a much stronger foundation for decision making.

20. What is your view of the responsibility of Army judge advocates to provide independent legal advice to military commanders?

Army commanders at every level are responsible for ensuring the proper functioning of their unit or organization; maintaining good order and discipline; and ensuring the lawful conduct of the forces under their control. To discharge these important responsibilities, it is critical that commanders have access to timely, accurate, and candid legal advice and counsel. Judge advocates should be empowered to provide independent legal advice and counsel to commanders and their staffs, supported by appropriate guidance from their supervising attorneys.

21. If confirmed, would you propose any changes to the current relationships between the uniformed judge advocates and the Army General Counsel?

It is my understanding that The Judge Advocate General, the Army General Counsel, and their respective offices have historically enjoyed an excellent working relationship. While I am not aware of the need for any changes at this time, if confirmed, I will endeavor to improve and strengthen the relationships between the uniformed judge advocates and the Office of the General Counsel.

22. Are legal opinions of the Office of the Army General Counsel binding on all Army lawyers?

Under existing general orders, the Army General Counsel is the chief legal officer for the Department of the Army and is empowered to determine the Department's position on any legal question or procedure. Accordingly, the legal opinions issued by the Office of the Army General Counsel are controlling throughout the Department. It is my understanding, however, that such opinions have historically been drafted in collaboration with The Judge Advocate General. If confirmed, I will continue to ensure that legal opinions are informed by the expertise of both the civilian and uniformed members of the Army's legal community.

23. If confirmed, how would you ensure that legal opinions of your office are available to Army attorneys, including judge advocates?

It is my understanding that written opinions authored by or coordinated with the Office of the General Counsel for the Department of the Army are generally distributed in the ordinary course of business, using normal departmental distribution processes. If confirmed, this practice will continue. In addition, I will ensure that the Office of the Army General Counsel makes its legal opinions appropriately available upon request to other Army attorneys, including judge advocates, who do not receive them through the normal departmental distribution processes.

24. If confirmed, are there specific categories of Army General Counsel legal opinions that you expect to reconsider and possibly revise? If so, what categories?

I am not currently aware of any specific categories of Army General Counsel legal opinions that require reconsideration or revision. If confirmed, however, I will ensure that attorneys in the Office of the Army General Counsel work collaboratively with their colleagues in the Office of The Judge Advocate General, as well as attorneys and subject matter experts within the Department of the Army and the Department of Defense, if appropriate, to review opinions that warrant reconsideration or revision based on changes to controlling law, policy, or precedent.

25. How do you view the responsibilities of the Army General Counsel in the performance of military justice matters with regard to the Judge Advocate General of the Army?

The Judge Advocate General's statutory responsibility to ensure the proper administration of the military justice system requires direct and independent advice to the Secretary of the Army and the Chief of Staff of the Army. If confirmed, I look forward to consulting with and assisting The Judge Advocate General, as needed, on matters of mutual interest or concern relating to military justice, recognizing that he has both express statutory duties and special expertise in this area.

26. In your view, is it essential to preserve the role of the military commander, including the joint force commander in deployed situations, for disposition of military justice matters?

Yes. Good order and discipline is essential to an effective fighting force. Military commanders, including joint force commanders in deployed situations, shoulder the responsibility to maintain good order and discipline in their command. To do so, they must have the authority to maintain that good order and discipline and be held accountable for the exercise of that authority. The administration of military justice should be swift and transparent to effectively maintain good order and discipline. This is especially important in combat and other contingency operations. Removal of the commander's authority to dispose of offenses, particularly in deployed environments, would undermine his or her ability to maintain good order and discipline, would delay justice for both the victim and the accused soldier, and would negatively impact the mission of their command.

Attorney Recruiting and Retention Issues

27. If confirmed, how do you assess your ability to hire and retain high quality attorneys and provide sufficient opportunity for advancement?

During my tenure as the Navy Judge Advocate General and in my current position, recruitment, retention, and professional development for the men and women who worked for me was, and is, a priority. If confirmed, I will work closely with The Judge Advocate General to ensure the Army allocates sufficient resources to attract, select, and retain the best qualified attorneys for military and civilian positions. Finite and prioritized budget resources, the shifting scope of Army operations, and the U.S. economy and labor sectors continuously pose challenges to attorney recruiting and retention efforts. Nevertheless, if confirmed as Army General Counsel, I will work in close cooperation with the Office of The Judge Advocate General to take full advantage of the federal hiring and Army accessions processes to bring superior attorneys into the Army legal community. I further commit to providing a meaningful and rewarding work environment, highlighting the critical work our legal professionals perform every day in support of our nation's security. The Army, its commanders, soldiers, and families deserve and can expect first-rate legal counsel and services.

28. In your view, does the Department of the Army have a sufficient number of civilian and military attorneys to perform its missions?

Major conflicts, significant changes in Army operations, budget constraints, and the health of the U.S. economy can immediately impact the sufficiency of resources the Army employs to ensure national security. Today, it is my understanding that the Office of the Army General Counsel and the Army Judge Advocate General's Corps both have sufficient military and civilian attorneys to meet current requirements. However, I am aware of potential changes, particularly expansions, to the Army's mission, including

cyber operations, which include complex and extraordinary legal issues, and the Military Justice Act of 2016, which was included in the Fiscal Year 2017 National Defense Authorization Act. These expansions may require additional legal resources to implement, particularly when combined with the recent special victim prosecution and counsel services of the Fiscal Years 2013 and 2014 National Defense Authorization Acts. Additionally, as the Army itself grows, the demand for legal services and support will correspondingly increase. If confirmed, I will closely monitor these emerging requirements and ensure that all of the Department's demands are resourced appropriately and we continue to provide the first-class legal services expected of us.

29. In your view, what incentives for successful recruiting and retention of attorneys, if any, need to be implemented or established?

I understand the legal labor market has been, and will be, increasingly more competitive over the next several years, with fewer students graduating from law school and a likely increase in hiring by private sector law firms. In my view, it is crucial that the Army renews our commitment to funding current recruiting and retention incentive programs, notwithstanding current or future fiscal challenges. It is also important to encourage innovative recruiting and retention strategies to develop tools to compete with the private sector and other federal employers. If confirmed, I will study the viability of additional incentives to attract and retain the highest quality attorneys because I believe these efforts and programs are needed to maintain the tradition of superior legal services within the Department.

Detainee Issues

30. What role do you expect to play, if confirmed, in addressing legal issues regarding detainees?

As I understand it, legal issues regarding detainees are most likely to arise at the tactical and operational levels of the Army and are broadly addressed at the combatant command level. If confirmed, I would remain ready, willing, and able to assist Army judge advocates serving at the combatant commands, and those at lower echelons, as legal issues regarding detainees arise to ensure compliance with applicable law and effective implementation of U.S. Government policy.

31. Do you support the standards for detainee treatment specified in the revised Army Field Manual on Interrogations, FM 2-22.3, issued in September 2006, and in DOD Directive 2310.01E, the Department of Defense Detainee Program, dated August 19, 2014, and required by section 1045 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92)?

Yes. I support the standards for detainee treatment specified in FM 2-22.3 and DoD Directive 2310.01E, which require that all detainees be treated humanely and with respect for their dignity. My support is premised on my belief that the standards of treatment

detailed in the field manual are in accordance with applicable U.S. law and policy, including section 1045 of the National Defense Authority for Fiscal Year 2016 (FY16 NDAA)(Public Law 114-92), as well as the law of war.

32. What role, if any, do you believe the Army General Counsel should play in the interpretation of this provision of law?

To ensure the field manual complies with U.S. legal obligations, the Army General Counsel must provide an independent voice regarding the interpretation of the legal standards created by section 1045 of the FY16 NDAA. If confirmed, I will provide that voice.

33. What role do you believe the Judge Advocate General of the Army should play in the interpretation of this provision of law?

In my opinion, as the most senior uniformed attorney, it is critical that The Judge Advocate General play a vital role in the interpretation of section 1045 of the FY16 NDAA and leverage his operational experience, perspective and insight, along with his team of attorneys. He should provide independent legal advice relating to the interpretation of this provision of law to the Secretary of the Army, the Chief of Staff of the Army, and the Army Staff.

34. In your view, does the United States have the legal authority to continue holding alleged members and supporters of Al Qaeda and the Taliban as enemy combatants?

Yes. I believe the United States has the legal authority to continue holding alleged members and supporters of Al Qaeda and the Taliban as enemy combatants under both domestic and international law. Domestic legal authority to detain flows from the 2001 Authorization for Use of Military Force (AUMF), and the international legal authority underpinning continued detention is grounded in Common Article 3 of the Geneva Convention.

35. Do you believe the United States has legal authority to hold U.S. citizens as enemy combatants? If so, please explain.

If confirmed as Army General Counsel, I have an obligation to follow the law. Our Supreme Court has held there is no bar to our country holding one of its own citizens as an enemy combatant.

36. In your view, should the U.S. Government continue the current Periodic Review Board Process and the process of transferring detainees to other countries, subject to the restrictions currently in law?

I believe in a transparent administrative review process to look at the continued detention of detainees. If confirmed, I would commit to recommending a different process if I

determined that the current Periodic Review Board Process was inadequate.

37. In your view, do the federal courts have the procedures and capabilities needed to fairly and appropriately review the detention of enemy combatants, pursuant to habeas corpus petitions, where necessary under current law?

Yes.

Section 2441 of title 18, United States Code, defines grave breaches of common Article 3 of the Geneva Conventions, including torture and cruel and inhuman treatment.

38. In your view, does section 2441 define these terms in a manner that provides appropriate protection from abusive treatment to U.S. detainees in foreign custody and to foreign detainees in U.S. custody?

The definitions of “torture” and “cruel and inhuman treatment,” as codified in section 2441 of Title 18, provide clear and appropriate guidance regarding the treatment of U.S. detainees in foreign custody and foreign detainees in U.S. custody. I believe the articulated standards provide safeguards to ensure appropriate protection from abusive treatment for both populations.

Authorization for the Use of Military Force

39. In your view, is there a sufficient national and international legal basis to authorize armed conflict against ISIS? Please explain.

Yes, I believe there is sufficient national and international legal basis to authorize armed conflict against ISIS. Domestically, authority can be found in the 2001 and 2002 AUMFs, along with the President’s Constitutional authority in Article II. Under international law, a State always has the inherent right to act in self-defense and may come to the defense of another State with its consent.

Military Commissions Act

40. In your view, do military commissions constituted pursuant to the Military Commissions Act of 2009 provide an effective forum for trying violations of the law of armed conflict?

Based on my knowledge and current understanding, I believe military commissions are an appropriate forum for trying law-of-war and other offenses committed by alien unprivileged enemy belligerents.

41. Are you concerned about the length of the pretrial procedures for the current military commission cases?

Yes. I am always concerned about the length of pretrial procedures for current cases, particularly when the delays adversely impact the disposition of a case on its merits. I believe that scrupulous adherence to the procedural and due process requirements of the Military Commissions Act of 2009 in the current cases will ensure they withstand judicial scrutiny.

42. In your view, what are the advantages of prosecuting alleged terrorists in military commissions?

In my opinion, the advantage of using military commissions to try alien unprivileged enemy belligerents is that they properly balance the need to adhere to domestic and international legal standards with the reality of gathering evidence in battlefield situations.

43. Do you see the need for any changes to the Military Commissions Act of 2009?

I am not currently aware of a need to change the Military Commissions Act of 2009.

Criminal Jurisdiction over Contractors on the Battlefield

The Military Extraterritorial Jurisdiction Act (MEJA) was enacted in 2000 to extend the criminal jurisdiction of U.S. courts to persons employed by or accompanying the U.S. armed forces outside the United States.

44. In your view, does MEJA provide appropriate jurisdiction for alleged criminal actions of contractor employees in Iraq, Afghanistan, and other areas of combat operations?

Yes. While such prosecutions are uncommon, the Military Extraterritorial Jurisdiction Act of 2000 (MEJA) provides ample and appropriate criminal jurisdiction over contractor employees in areas of combat operations.

45. What changes, if any, would you recommend to MEJA?

I am not currently aware of any need to change MEJA.

Section 552 of the National Defense Authorization Act for Fiscal Year 2007 extended criminal jurisdiction of the military courts under the Uniform Code of Military Justice (UCMJ) to persons serving with or accompanying an armed force in the field during time of declared war or a contingency operation, such as our current operations in Afghanistan.

46. In your view, does the UCMJ provide appropriate jurisdiction for alleged criminal actions of contractor employees in Afghanistan and other areas of combat operations?

Yes. Article 2 of the UCMJ provides a way to address the misconduct of civilians accompanying the force in areas of combat operations. It specifically provides appropriate jurisdiction for alleged criminal actions of contractor employees in Iraq, Afghanistan, and other areas of combat operations. Civilians serving with or accompanying our Armed Forces overseas who commit crimes can thereby be held appropriately accountable.

47. What is your view of the procedures agreed upon by the Department of Defense and the Department of Justice to reconcile jurisdictional responsibilities under MEJA and the UCMJ?

It is my understanding that the relationship between the Department of Defense, to include the Department of the Army, and the Department of Justice is sound and strong, especially relating to MEJA issues. If confirmed, I will certainly look at the current relationship between the Department of Justice and the Department of the Army and examine whether the Army's equities are appropriately represented.

48. What changes, if any, would you recommend to the UCMJ to ensure appropriate jurisdiction for alleged criminal actions of contractor employees?

I do not believe any changes are required. I understand that the UCMJ currently provides for appropriate jurisdiction over those contractors accompanying the force.

Identification of Potential Extremist Views

49. In your view, do current Army policies limit the ability to include information about extremist views in official records that may assist in the identification of potential threats?

No. To my knowledge, current Army policy does not limit the ability to file this type of information in official records.

50. In your view, do current Army procedures hinder the ability to share this type of information with other official agencies charged with identifying and monitoring potential extremist or terrorist activities?

No. My understanding is that the Army procedures do not prohibit sharing this type of information with other officials or agencies when there is a "need to know."

51. What is your understanding of how the Army balances the need to identify and respond to potentially harmful extremist views held by soldiers against individual privacy and respect for the right of soldiers to hold and express personal beliefs?

I understand that the Army gives commanders discretion and latitude in balancing the mission of safeguarding the security of the United States and preserving the constitutional right of expression. Commanders are responsible for building healthy and positive social climates based on dignity and respect in the treatment of one another and maintaining good order and discipline.

52. Do you see a need for a change in this balance?

From viewing the Army culture externally, I do not see an imbalance in this area. I understand that commanders have the authority to prohibit military personnel from engaging or participating in activities adversely affecting either good order and discipline or the morale within the command. This includes the authority to order removal of symbols, flags, posters, or other displays from barracks, to place certain areas or activities off-limits, and to prohibit participation in any activities that pose a threat to health, safety, and security of military personnel or the installation.

Religious Guidelines

53. In your view, do Department of Defense and Army policies concerning religious accommodation in the military appropriately accommodate the free exercise of religion and other beliefs, including individual expressions of belief, without impinging on those who have different beliefs, including no religious belief?

I believe Department of Defense and Department of the Army policies reflect the high value the military places on the rights of soldiers to observe their respective religions or no religion at all. If confirmed, I will ensure all Army policies are consistent with both the “free exercise” and “establishment” clauses of the First Amendment, as well as the Religious Freedom Restoration Act.

54. In your view, do existing policies and practices regarding public prayers offered by military chaplains in a variety of formal and informal settings strike the proper balance between a chaplain’s ability to pray in accordance with his or her religious beliefs and the rights of other service members with different beliefs, including no religious beliefs?

I understand that chaplains are never compelled to offer prayers or participate in events that would be inconsistent with their personal faith or the requirements of their endorsing religious organization. However, I also understand chaplains are trained to consider the diversity of religious views in the Army, and to offer prayers reflecting shared Army ideals and values when participating in unit events. If confirmed, I will take an active

interest in ensuring that the religious freedom rights of military chaplains and all soldiers are protected.

Section 533 of the National Defense Authorization Act for Fiscal Year 2013, as amended by section 532 of the National Defense Authorization Act for Fiscal Year 2014, protects individual expressions of religious belief, unless such expressions of belief could have an adverse impact on unit cohesion and good order and discipline.

55. In your view, may a member of the armed forces who has a sincerely held belief in opposition to same-sex marriage be subject to adverse personnel action or similar other adverse action, if he or she shares those personal views on the subject in a personal capacity? What if a member expresses his or her views in opposition to same-sex marriage in an official capacity?

Soldiers have the right to express their personal views on this issue in their personal capacity, so long as the totality of the circumstances make it clear that the soldier is expressing a personal belief in a manner that does not undermine dignity and respect for all soldiers. If confirmed, I will ensure that all Army policies protect expressions of belief that do not have an adverse impact on unit cohesion and good order and discipline.

I believe statements made in an official capacity should be consistent with Army policy; deviations from published policy would have to be carefully evaluated to determine if there could be an adverse impact on unit cohesion and good order and discipline.

The Religious Freedom Restoration Act provides very broad protections for religious liberty, and provides that the Government, which includes the military, may not substantially burden a person's exercise of religion unless it furthers a compelling government interest, and that any such burden must be the least restrictive means of furthering that interest.

56. Do you believe that uniformity of appearance in the military constitutes a compelling government interest?

I believe the Army has compelling government interests in all facets of mission accomplishment, including individual and unit readiness, unit cohesion, good order and discipline, and health and safety. I also believe that clear standards allow the Army to accomplish its mission while integrating soldiers from diverse backgrounds. In January 2017, the Secretary of the Army signed an Army Directive establishing uniform and appearance standards for the most commonly requested religious accommodations.

57. If so, do you believe that denying certain faith groups the ability to deviate from uniform and grooming standards, e.g., in maintaining an unshorn beard, in observation of their sincerely-held religious belief, is the least restrictive means of furthering that interest?

My understanding is that the Army conducted an in-depth review of religious accommodation policy last year, culminating in the publication of two Army Directives. I understand that religious accommodation requests for beards, turbans, and hijabs can now be approved at the brigade-level.

58. How does the practice of allowing waivers for tattoos, including for religious-themed tattoos, and medical shaving profiles for service members both home and deployed, affect your analysis?

The Army is a standards-based organization. It is my understanding that the current Army policy regarding religious accommodation is consistent with Army policies regarding tattoos and medical shaving profiles; all three policies are based on a foundation of mission accomplishment and soldier safety and welfare.

Role in the Officer Promotion and Confirmation Process

59. What is your understanding of the role of the Army General Counsel in ensuring the integrity and proper functioning of the officer promotion process?

Pursuant to Title 10, the Secretary of the Army is responsible for the proper functioning and integrity of the Department of the Army's promotion process. The Army General Counsel, however, plays a critical role in this process by conducting legal reviews of all board guidance, including memoranda of instruction, and all board reports to ensure they comply with statutory standards. In addition, the Army General Counsel ensures the board process conforms to all legal requirements and advises the Secretary if a board report or process fails to adhere to statutory standards, either generally or with regard to a particular officer being considered for promotion. The Army General Counsel advises the Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs) to ensure that Army promotion policies properly implement applicable laws and regulations and are fairly applied. In these matters, the Office of the Army General Counsel coordinates closely with the Office of The Judge Advocate General.

60. Do you see a need for change in this role?

My understanding is that the current process works well. I fully understand the importance of maintaining the integrity of this process. If confirmed, I will carefully monitor the Army's processes, and if I conclude changes are required, I will work closely with the Assistant Secretary of the Army (Manpower and Reserve Affairs), The Judge Advocate General, and the Deputy Chief of Staff, G-1, to implement any necessary

changes. It is imperative to maintain the integrity of the Army's promotion process and the trust of the Army Officer Corps, the Congress, and the American people.

General Officer Nominations

Under DOD Instruction 1320.04, adverse and alleged adverse information pertaining to general and flag officers must be evaluated by senior leaders in the military services and in the Office of the Secretary of Defense prior to nomination for promotion and certain assignments.

61. If confirmed, what role, if any, would you play in the officer promotion system, particularly in reviewing general officer nominations?

I understand that the Office of the Army General Counsel works closely with the Office of The Judge Advocate General to review the instructions for all promotion boards and all board reports.

I have been advised that the Office of the Army General Counsel participates in a comprehensive screening process designed to ensure that any adverse information is properly identified for presentation to promotion selection boards considering officers for promotion to general officer grades. The screening process ensures that a fully informed decision is made as to whether the officers recommended for promotion to general officer grades meet the exemplary conduct standard and are qualified for appointment to the next higher grade.

62. What is your understanding of the role of the Army General Counsel in ensuring the legal sufficiency of statutory selection board processes?

Under Title 10, the Secretary of the Army is responsible for the Department of the Army's promotion selection process. I understand that, under longstanding practice, the Office of the Army General Counsel and the Office of The Judge Advocate General review the instructions for boards to ensure that they reflect the Secretary's guidance and comply with the law. The Office of the Army General Counsel then reviews each board report before the Secretary takes final action.

The Army General Counsel must advise the Secretary of the Army of any board report that fails to adhere to the statutory standards, either generally or with regard to a particular officer being considered for promotion. By advising the Secretary of the Army and the Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs), the Army General Counsel helps ensure that Army promotion policies properly implement applicable laws and regulations and are fairly applied.

63. What is the role, if any, of the Army General Counsel in reviewing and providing potentially adverse information pertaining to a nomination to the Senate Armed Services Committee?

I have been informed that the Office of the Army General Counsel reviews each board report, as well as all Departmental communications to this committee, the President, and the Secretary of Defense, to ensure compliance with law, regulation, and applicable directives. I understand that the Office of the Army General Counsel pays special attention to ensuring that the Army provides this committee with all reportable information pertaining to a nomination in a timely, accurate, and clear manner.

64. What is your understanding of the sufficiency of the Army's process for ensuring that the Army considers adverse or potentially adverse information prior to forwarding an officer's nomination to the Senate for confirmation?

I understand the importance of this issue to the Congress and, if confirmed, will commit to ensuring the integrity of the confirmation process. If confirmed, I will review the existing process to ensure that it is, indeed, sufficient and followed.

Military Personnel Policy and Cases

65. In your view, what role, if any, should the Army General Counsel and civilian attorneys assigned to the Office of the Army General Counsel play in military personnel policy and individual cases, including cases before the Board for Correction of Military Records?

The Office of General Counsel provides legal advice on a wide range of issues, including advice on policy issues related to military personnel. In this role, the Office of General Counsel works closely with the Assistant Secretary of the Army (Manpower and Reserve Affairs). The Office of General Counsel conducts a pre-publication legal sufficiency review of every Army policy issuance pertaining to military personnel. It also provides legal advice on the proper application of existing policies to individual military personnel cases. With regard to the Army Board for Correction of Military Records, the Office of General Counsel assists the attorneys assigned to support that Board under section 1555 of Title 10 upon request.

66. In your view, do Army commanding officers have the requisite authorities to reduce the number of non-deployable soldiers assigned to units in order to improve unit readiness?

I understand the Army has implemented several policy and information technology changes to help commanding officers manage their non-deployable personnel. These expand visibility, accuracy, and management of non-deployable Soldiers. If confirmed, I will review the current authorities and, if necessary, will work to ensure that commanders continue to have the appropriate and requisite legal authorities to perform their mission.

Selective Service Act

Some have suggested that the success of the All-Volunteer Force has reduced the need for our Nation to have a continuing authority and capability to conduct a draft. Further, a future national emergency may require that the military have the ability to identify citizens with unique and specialized skills to fill critical combat support requirements, both within the military and in the civilian sector. Currently, the Selective Service System does not identify individuals with such skills.

67. Do you believe the Selective Service Act should be repealed?

The Selective Service in its current form is important to the All-Volunteer Force (AVF) because it serves as a combat multiplier in the unlikely event that the Army or its Sister Services is unable to sustain itself during times of war. If the Selective Service system is reviewed and revised, all the requirements of national security should be fully considered.

68. If the Selective Service Act is not repealed, do you believe Congress should amend the Selective Service Act to require the registration of women?

Yes.

69. Do you believe the Selective Service system, with its focus on supplying large numbers of replacement combat soldiers, meets the needs of today's military and the type of personnel that would likely need to be drafted in a future conflict, including skilled personnel in the medical, linguistic, cyber, and other specialist fields?

The Army continues to support the AVF, with the Selective Service System as a means of meeting manpower needs during a crisis, as the right path to man the Force. The AVF has successfully manned the Army for over 44 years, including the most recent 15 years of war. The Army, fully manned by volunteers, has accomplished all the missions the Nation has called upon it to perform. This AVF is of a much higher quality and professionalism than what was ever seen during conscription.

70. Do you believe the United States should have a national public service requirement?

I do not believe that it is necessary for the United States to have a national public service requirement. By broadly combining community outreach and marketing, I believe the Army can promote the awareness and interest in military service necessary to sustain the AVF in the future.

Via the Selective Service Alternative Service Program for would-be draftees who profess to be conscientious objectors to any form of military service, the Selective Service system currently provides for alternate service doing non-military work that benefits the nation in the civilian sector, including in the areas of conservation, caring for the very young or old, education, and health care.

71. Do you believe this provides a model for re-thinking Selective Service in this country to include addressing national security needs that reside outside of military service per se, and how we might best leverage the skills and abilities of the civilian population to address all national security needs (not just military) and other national goals?

Meeting the national security needs of the Nation is paramount. If the Selective Service System (SSS) is reviewed and revised, all the requirements of national security should be fully considered. I believe the focus of any revision to the SSS should be to ensure the Army (and other Services) is capable of maintaining a force sufficient to fight and win the Nation's wars. I also believe the Army should continue to cooperate with Congress on any other ways the Army can contribute to achieving the President's National Security Strategy.

Sexual Assault Prevention and Response

72. What is your understanding of the role of the Army General Counsel in addressing the problem of sexual assault in the Army?

I understand that the Army has made the prevention of sexual assault a top priority, as it should given the gravity of the crime. If confirmed, I will be an ardent supporter of military and civilian leaders at all levels in their efforts to prevent both sexual assault and sexual harassment in the Army. I will work with and support the U.S. Army Criminal Investigation Command in its vital work investigating allegations of sexual assault. I will also fully support the Army JAG Corps' efforts in this critical area, to include implementing military justice reforms mandated by Congress and fostering the legal expertise necessary to support commanders' initiatives, protect victims' rights, and successfully prosecute offenders.

73. What is your assessment of the Army's sexual assault prevention and response program?

I am aware that the Army has made progress in this area, but recognize that more progress needs to be made. I have been told that the prevalence of sexual assault, measured through surveys, has trended downward since 2012. I am committed to a viable and comprehensive SHARP program. If confirmed, I will ensure the SHARP program remains a priority for the Army, and that its positive momentum is sustained.

74. What is your view of the provision for restricted and unrestricted reporting of sexual assaults?

I have been told that the Army's process of receiving both restricted and unrestricted reports is effective. I understand that restricted reporting, which was implemented in 2005, is an option for those who desire only victim care and are not seeking a law enforcement investigation. I have also been told that conversion from restricted to unrestricted reporting has increased over the years, and that this is a sign of confidence in the Army Response System and chain of command. If confirmed, I will ensure the Army continues to enhance its response system, victim services, and victim care.

75. What is your view about the role of the chain of command in providing necessary support to the victims of sexual assault?

I share the Army's view that commanders are responsible for the readiness of their units and are key to resolving the issue of sexual assault and sexual harassment. Commanders are charged with the leadership responsibilities of training and caring for soldiers. As such, they must establish a prevention-focused climate based on dignity and respect where acts of sexual violence are not condoned and are appropriately addressed. They must also provide comprehensive, compassionate care to those who are victimized by sexual assault, intimidation, or retaliation.

76. What is your understanding of the adequacy of Army resources and programs to provide victims of sexual assault the medical, psychological, and legal help they need?

It is my understanding that the Army remains committed to delivering comprehensive medical, psychological, and legal support services to soldiers and eligible civilians and family members who are the victims of sexual assault. The Army Sexual Assault Prevention and Response Program authorizes the services of a Sexual Assault Response Coordinator and a Victim Advocate to support victims of sexual assault. The medical needs of sexual assault victims are addressed by a multidisciplinary sexual assault medical management team that is overseen by a medical director at the treating Army medical treatment facility. This team of experts comprises medical forensic examiners, clinical and behavioral healthcare providers, and a care coordinator who work together to ensure the patient's individualized treatment plan is coordinated and facilitated in a timely manner and for as long as the patient requires care.

Victims of sexual assault are also entitled to the services of a Special Victims' Counsel. The Army Special Victims' Counsel Program is staffed, resourced, and supported by the Department of the Army Judge Advocate General's Corps. My understanding is that there is a sufficient number of Special Victims' Counsel to meet current demand. Given the possibility of Army growth and related issues, if confirmed, I will work with The Judge Advocate General to carefully examine the number of Special Victims' Counsel to ensure victims are provided the best and fullest representation possible.

77. What is your view of the steps the Army has taken to prevent additional sexual assaults both at home station and deployed locations?

I believe that the Army has made strides to understand and address this problem. It is my understanding that the Army has committed significant efforts and resources to foster a culture of dignity and respect. I understand that, in FY17, as directed by the Chief of Staff of the Army, prevention efforts focused on the responsible use of alcohol, command presence and safety in the barracks, and engaged mentorship and sponsorship programs. In addition to those efforts, I also understand that recent prevention initiatives include studies on alcohol climate and avatar-based interactive training products. The grass-roots empowerment of junior leaders through the Army initiative of “Not In My Squad” applies both at home station and in deployed locations. If confirmed, I will be committed to helping the Army continue, and increase, its efforts to combat and eventually eradicate this problem.

78. What is your view of the adequacy of the training and resources the Army has in place to investigate and prosecute allegations of sexual assault?

My understanding is that the Army has dedicated substantial resources and training toward the investigation of and response to allegations of sexual assault. I am aware that, in 2009, the Army implemented teams of specially-trained and selected investigators, prosecutors, and victim witness assistance personnel who focus exclusively on sexual assault, child abuse, and domestic abuse offenses. These teams have continued to grow over the past eight years and have achieved measurable success in the investigation and prosecution of these offenses. If confirmed, I would support the Secretary of the Army and Chief of Staff, who have made the prevention of sexual assault a top priority. I would also collaborate with The Judge Advocate General to assess the sufficiency of the resources committed to this effort.

79. What is your view on the value of the Army’s Special Victims’ Counsel Program? Has this program had an impact on the reporting and prosecution of allegations of sexual assault in the Army? If so, what is that impact?

The Army’s Special Victims’ Counsel Program has been successful thus far in empowering victims who file reports notifying the relevant authorities of sexual assault allegations. These specially trained judge advocates have provided zealous advocacy for thousands of victims of sexual assault. I have been told that Special Victims’ Counsel also have been helpful in resolving allegations of retaliation against victims. That said, concerns about retaliation in the ranks persist and, if confirmed, I look forward to working with the Army leadership to tackle this problem.

80. What is your view about the role of the chain of command in changing the military culture in which these sexual assaults occur?

I believe that the chain of command, beginning with senior leaders, is responsible for ensuring that sexual assault is not tolerated. Commanders are responsible for everything

their command does or fails to do, which includes training soldiers on how to prevent sexual assault and holding all leaders accountable for creating a healthy culture that does not tolerate sexual assault.

81. In your view, what would be the impact of requiring a judge advocate outside the chain of command, rather than commanders, to determine whether allegations of sexual assault should be prosecuted by the military?

Requiring a judge advocate outside the chain of command to determine whether allegations of sexual assault should be prosecuted would, in effect, create a separate justice system for sexual assault cases, with uncertain and potentially harmful consequences. I believe that the military justice system exists to promote justice and maintain good order and discipline in the Armed Forces and the Uniform Code of Military Justice (UCMJ) is its foundation. I believe that removing the commander from sexual assault cases could create an inefficient and ineffective system. Commanders must be empowered to prevent sexual assaults in their ranks, not disempower them by stripping them of charging authority under the UCMJ. I believe that commanders and judge advocates working closely with one another within the military justice system is a more effective framework.

Annual reports on sexual assault in the military and annual reports on sexual harassment and violence at the military service academies consistently document the direct correlation of incidents of sexual harassment and incidents of sexual assault.

82. What is your view of the Army's program to prevent and respond to sexual harassment?

It is my understanding that the Army's Sexual Harassment/Assault Response and Prevention Program is a comprehensive program that addresses preventing and responding to both sexual harassment and sexual assault. The Army treats sexual harassment as misconduct, and commanders have the tools they need to provide a coordinated response that involves individual and systemic advocacy, a professional investigation, and an adjudication process.

83. What additional steps would you take, if confirmed, to address the problem of sexual assaults in the Army?

If confirmed, I will support the Army Leadership and their continued focus on Sexual Harassment / Assault Response and Prevention as a priority. I will provide appropriate legal counsel to the Secretary of the Army to ensure optimal execution of the SHARP Program.

Abusive Online Conduct

Recently, this Committee considered testimony on reports that certain members of Marines United, an unofficial Marine Corps Facebook group, were found to be posting degrading comments and sharing nude photos of female service members. Members of the group included a number of active-duty service members, former military members, and military retirees.

84. What is the current Army policy for use of social media by soldiers?

I am aware that the Army Command Policy regulation covers the social media policy. It has punitive authority and states that hazing, bullying, and other actions that undermine dignity and respect are fundamentally in opposition to the Army Values and are prohibited. It also makes clear that this prohibition applies at all times and extends to all forms of virtual and electronic media.

85. In your view, is this policy adequate to address abuses such as what occurred in the Marines United incident?

The current regulation and policies are adequate to combat social media abuse and online misconduct. In addition to the Army Command Policy regulation, the Army has published an Army wide message to further define online conduct and what is and is not acceptable behavior. If confirmed, I will work closely with the Secretary to ensure that the policies are adequate to address this issue.

86. If confirmed, what action would you take to ensure that members of the Army are not subjected to abusive online conduct?

“Respect” is one of the core Army Values and, according to the Army website, it means the following: “Treat people as they should be treated. In the Soldier’s Code, we pledge to ‘treat others with dignity and respect while expecting others to do the same.’ Respect is what allows us to appreciate the best in other people.” Online hazing, bullying, and other behaviors that undermine dignity and respect are a direct affront to the Army Values and, as I understand it, are prohibited by Army policy. If confirmed, I will ensure that the Office of the Army General Counsel works collaboratively with the Office of The Judge Advocate General to assist senior Army leaders as they consider further refinements to Army policies to address the problem of abusive online conduct.

87. In your view, does the Army have sufficient legal authority to hold offenders accountable for such misconduct?

I believe commanders have a range of options available to them when dealing with online misconduct, depending upon its nature, scope, and other factors. When the online misconduct is serious, commanders may resort to appropriate punitive disciplinary action under the UCMJ.

If confirmed, I will review the current laws, regulations, and policies in this area and advise you if I find that commanders lack the tools and authority necessary to effectively police the unauthorized disclosure of intimate images.

88. What legislative authorities, if any, do you believe are necessary to address this problem?

While the Army has many ways to hold personnel accountable for online misconduct, if confirmed, I will certainly work with Congress in fashioning specific legislation on the issue as appropriate.

Whistleblower Protection

Section 1034 of title 10, United States Code, prohibits taking retaliatory personnel action against a member of the armed forces as reprisal for making a protected communication. By definition, protected communications include communications to certain individuals and organizations outside of the chain of command. Moreover, Congress recently amended this law to remove the ability of a service secretary to make a contrary factual finding that reprisal did not occur after an inspector general found that it did.

89. If confirmed, what actions will you take to ensure that senior military leaders understand the need to protect service members who report misconduct to appropriate authorities within or outside the chain of command?

I am fully committed to protecting service members who report misconduct to appropriate authorities. It is my understanding that the General Counsel plays a critical role in advising the Secretary of the Army and other senior Army leaders regarding their responsibilities under the Military Whistleblower Protection Act. If confirmed, I will ensure that senior Army leaders understand the full scope of their statutory and regulatory responsibilities in this important area, to include both their responsibility to protect whistleblowers and their responsibility to take appropriate action when reprisal occurs.

90. What role does or should the Army General Counsel play in ensuring consistency of application and interpretation of whistleblower protections across the Department of the Army?

It is my understanding that the General Counsel plays a critical role in advising the Secretary of the Army and other senior Army leaders on the standards that govern the treatment of service members who make a protected communication, the procedures that govern the investigation of reprisal allegations, and the Secretary's obligation to ensure that appropriate action is taken to correct the record of those who have been subjected to reprisal and appropriate disciplinary action is taken against those who have engaged in reprisal. If confirmed, I will work closely and collaboratively with The Judge Advocate

General and the Department of the Army Inspector General to ensure the consistent application and interpretation of whistleblower protections across the Army.

Support to the Army Inspector General

91. What role, if any, do you think the Army General Counsel should have in reviewing the investigations and recommendations of the Army Inspector General?

It is my understanding that attorneys from the Office of the Army General Counsel and the Office of The Judge Advocate General meet routinely with attorneys and investigators from the Office of The Inspector General to discuss ongoing investigations. It is also my understanding that attorneys from the Office of the Army General Counsel review all substantiated allegations against senior officials, as well as all substantiated reprisal allegations. If confirmed, I intend to establish a close, professional relationship with The Inspector General, and I will communicate with him directly and candidly. In coordination with The Judge Advocate General, I will also ensure that the Office of The Inspector General continues to receive appropriate legal advice and guidance as it conducts investigations and makes recommendations.

Civilian Attorneys

Judge advocates in the armed forces benefit from an established career progression, substantial mentoring and training opportunities, and exposure to a broad spectrum of legal areas and leadership responsibilities. By contrast, civilian attorneys in the military departments normally do not have established career programs and may do the same work for many years, with promotion based solely upon longevity and vacancies.

92. What is your understanding of the personnel management and career development system for civilian attorneys in the Army?

All Army civilian employees, to include the Army's civilian attorneys and paraprofessionals, belong to a career program. Career programs promote and enable the recruitment, training, development, advancement, and retention of employees, including the Army's legal professionals. I have been informed that the Army's legal career program office publishes governing documents that serve as guides for our civilian attorneys, paraprofessionals, and their managers. They focus primarily on formal training and developmental assignments and are tailored to each career field.

Additionally, I have been informed that the Army, and all of the Department of Defense, is transitioning to a new performance management system, called the Department of Defense Performance Management and Appraisal Program. I am told this new program fosters a cultural change from the legacy system. If confirmed, I look forward to learning more and leading the Army's legal professionals through this transition.

93. In your view does that system need revision? If so, what do you see as the major problems and what changes would you suggest?

The legal career program is a relatively new one, and its governing document is currently undergoing its first update and revision. If confirmed, I will serve as the legal career program's Functional Chief and will closely evaluate its effectiveness and lead its growth.

Acquisition Issues

94. What role should the Army General Counsel play in ensuring that Army procurement programs are executed in accordance with the law and Defense Department acquisition policy?

If confirmed, I will work closely with the Secretary of the Army, the Under Secretary of the Army in that official's capacity as the Chief Management Officer, the Assistant Secretary of the Army for Acquisition, Logistics and Technology, the Chief Information Officer, the Director of Small Business Programs, and other senior leaders to ensure that Army acquisition and procurement programs comply with the law and Department of Defense acquisition regulations and policies, including implementation of recently enacted reforms. The Army's acquisition leadership must accomplish its mission of acquiring equipment and services for the warfighter, while complying with a comprehensive framework of legal and policy requirements intended to foster sound decision-making and stewardship of public resources. Army lawyers best support this mission through proactive involvement in identifying issues and shaping effective, legally-supportable business strategies.

95. What role should the Army General Counsel play in ensuring that Army acquisition officials understand flexibilities provided by Congress in the acquisition and financial statutes and can take advantage of those flexibilities to act in the best interests of the Army?

I believe the Army General Counsel has an important role in assisting Army acquisition officials in understanding how they may apply laws to improve the acquisition process. If confirmed, I will work closely with the Department's senior leaders not only to ensure Army acquisition programs and financial operations comply with laws, regulations, and policies, but also to challenge business approaches that reflect an inaccurate or unduly restrictive interpretation of applicable authorities.

96. What role should the Army General Counsel play in ensuring that ethics provisions on conflicts of interest are followed both by Army personnel and by Army contractors?

Structuring Departmental business practices to avoid personal and organizational conflicts of interest should be one of the Army's highest priorities as it is essential to

maintaining public trust. If confirmed, I will work closely with senior Departmental officials to promote an organizational climate that is sensitive to the need to avoid conflicts of interest and reacts appropriately when specific issues arise. I believe that Army lawyers can make a significant contribution in this area through the provision of acquisition ethics training and early and sustained involvement in the Department's acquisition programs and contracting activities.

Allegations of fraud and abuse during contingency contracting in Iraq and Afghanistan have been wide-spread.

97. What role should the Army General Counsel play in ensuring that Army personnel are properly trained in contingency contracting and are supervised in the performance of their duties?

I understand the Army instituted contingency contracting reforms designed to curb fraud and abuse based on recommendations of the 2007 "Gansler Commission Report." If confirmed, I will work closely with the Secretary of the Army, the Assistant Secretary of the Army for Acquisition, Logistics and Technology, and other senior leaders to ensure the Army legal community continues to support these initiatives, particularly the training of the contingency contracting workforce. I also will work closely with The Judge Advocate General of the Army to ensure that legal support to the contingency contracting mission is adequately resourced.

Detecting Conflicts of Interest

Personal and organizational conflicts of interest have become a major concern. The Department of Defense's expanded use of private contractors being tasked to perform key functions that the services had formerly performed in-house and the new requirement to fill thousands of Defense Department civilian positions with experienced, qualified individuals present challenges in preventing conflicts of interest and the appearance of conflicts of interest.

98. What do you think the Army should do, and what should be the Army General Counsel's role, in ensuring that the Army identifies personal and organizational conflicts of interest and takes the appropriate steps to avoid or mitigate them?

If confirmed, I will closely examine the Army's procedures for reviewing and preventing both personal and organizational conflicts of interest. Because of their potential not only to result in an unfair competitive advantage, but also to damage the credibility of the institution, conflicts of interest are unacceptable. I believe that ethics awareness and instruction for all personnel are vitally important, and, if confirmed, I would ensure that ethics training is a priority at all levels throughout the Army. I would also work closely with senior Army officials and ethics counselors to foster a high level of organizational

sensitivity to concerns regarding conflicts of interest and assist them in the appropriate resolution and mitigation of individual situations as they may arise.

99. What is your understanding of the steps the Army takes to identify and address potential conflicts of interest during the hiring process?

I understand that financial disclosure reporting is a primary source of information to identify and prevent conflicts of interest. If confirmed, I would emphasize the importance of properly identifying positions requiring financial disclosure reporting and ensure that rigorous and timely review of the reports is accomplished by both ethics counselors and supervisors. If confirmed, I would also emphasize education in conflicts of interest in the Army's ethics training program.

Legal Ethics

100. What is your understanding of the action a Department of the Army attorney or an Army judge advocate should take if the attorney becomes aware of improper activities by a Department of the Army official who has sought the attorney's legal advice and the official is unwilling to follow the attorney's advice?

Army attorneys have an obligation to report improper activities by an Army official. If an attorney believes that an Army official will act contrary to his or her advice and this behavior will violate or has violated law or regulation, the attorney must take appropriate action. If the allegation is against a senior official, this must be reported to the DoD Inspector General within five working days, in accordance with DoD Directive 5505.06, "Investigations of Allegations Against Senior Officials of the Department of Defense" and applicable Army regulations. If an allegation involves any other Army official (non-senior), the attorney should immediately report up through his or her attorney supervisory chain, including a supervising attorney, General Counsel, or Staff Judge Advocate for appropriate action.

101. Do you believe that the present limits on pro bono activities of government attorneys are generally correct as a matter of policy or does the policy need to be reviewed and revised?

There are many opportunities for government attorneys to participate in *pro bono* activities in their private, non-official capacity in such areas as family law, consumer law, landlord-tenant disputes, and other civil and criminal law matters. My understanding is that government attorneys may participate in such *pro bono* activities so long as the representation is consistent with general governmental ethical rules and with the rules of professional responsibility applicable to attorneys. For instance, I understand that Army civilian attorneys are permitted to perform *pro bono* work with supervisory approval so long as the representation does not occur on Government time or at its expense, does not interfere with official duties, and does not create a conflict of interest or the appearance of a conflict of interest. If confirmed, I would review current *pro bono* policies in coordination with The Judge Advocate General to determine if any changes are appropriate.

102. In your view, do the laws, regulations, and guidelines that establish the rules of professional responsibility for attorneys in the Department of the Army provide adequate guidance?

I have no reason to think otherwise. The Army's ethical rules governing conduct of Army lawyers, both military and civilian, are based on the American Bar Association Model Rules of Professional Conduct. In accordance with these rules, all Army attorneys must, at all times, be in good standing with the licensing authority of at least one state, territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. While this regulatory system appears to provide adequate guidance, if confirmed, I would review this area and, in consultation with The Judge Advocate General, seek revisions and improvements if appropriate.

Litigation Involving the Department of the Army

103. What is your understanding of the relationship between the Department of the Army and the Department of Justice with respect to litigation involving the Department of Defense?

It is my understanding that the Department of Justice represents the Department of the Army and the Department of Defense in civil litigation, and that the Department of the Army and the Department of Defense both have an excellent relationship with the Department of Justice. It is also my understanding that the Department of the Army and Department of Justice attorneys work closely on all aspects of civil litigation involving the Army. If confirmed, I will work collaboratively with The Judge Advocate General and the General Counsel of the Department of Defense to ensure that the Army's interests are fully understood and appropriately pursued in litigation in which the Army is involved.

104. In your view, does the Department of the Army need more independence and resources to conduct its own litigation or to improve upon its current supporting role?

I believe that the Department of Justice effectively protects and defends the Army's interests in civil litigation. If confirmed, I will work closely with The Judge Advocate General to ensure that the Army has adequate resources to support the Department of Justice and protect the Army's interests and equities in litigation in which the Army is involved.

Congressional Oversight

In order to exercise its legislative and oversight responsibilities, it is important that this Committee and other appropriate committees of Congress are able to receive testimony, briefings, and other communications of information.

105. Do you agree, if confirmed, to appear before this Committee and other appropriate committees of Congress?

Yes.

106. Do you agree, if confirmed, to appear before this Committee, or designated members of this Committee, and provide information, subject to appropriate and necessary security protection, with respect to your responsibilities as the Army General Counsel?

Yes.

107. Do you agree to ensure that testimony, briefings, and other communications of information are provided to this Committee and its staff and other appropriate committees in a timely manner?

Yes.

108. Do you agree to provide documents, including copies of electronic forms of communication, in a timely manner when requested by a duly constituted committee, or to consult with the Committee regarding the basis for any good faith delay or denial in providing such documents?

Yes.

109. Do you agree to answer letters and requests for information from individual Senators who are members of this Committee?

Yes.

110. If confirmed, do you agree to advise the Army to provide to this Committee relevant information within the jurisdictional oversight of the Committee when requested by the Committee, even in the absence of the formality of a letter from the Chairman?

I believe congressional oversight is essential to our system of government and that the Department of the Army has a duty to be responsive to Committee requests for information. Accordingly, I will work with senior Army leaders to ensure that the Army provides the Committee with requested information in a timely manner or consults with the Committee regarding the basis for any good faith delay or denial in providing that information.