

Senate Armed Services Committee
Advance Policy Questions for Ms. Carrie Ricci
Nominee to be General Counsel of the Department of the Army

Duties and Responsibilities

Section 7019 of title 10, U.S. Code, establishes the position of the Army General Counsel and provides that the General Counsel shall perform such functions as the Secretary of the Army may prescribe.

1. What is your understanding of the current duties and functions of the Army General Counsel?

Answer: Section 7019 of Title 10 provides that the General Counsel of the Army shall perform such functions as the Secretary of the Army may prescribe. Pursuant to this section of Title 10, 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. The General Counsel's responsibilities extend to any matter of law, and to other matters as directed by the Secretary, including: (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; (6) taking final action on certain claims filed against the Army; and (7) working with The Judge Advocate General to oversee criminal and administrative investigations.

2. If confirmed, what additional duties and functions would you expect the Secretary of the Army to prescribe for you, particularly in light of the lines of effort comprising the 2018 National Defense Strategy (NDS)?

Answer: If confirmed, I anticipate that the Secretary of the Army will expect me to lead and manage the Office of General Counsel efficiently and effectively to ensure that the office provides timely and accurate legal advice that assists the Army to comply with both the spirit and letter of the law while it executes the National Defense Strategy. I am prepared to advise Army leadership and assist in their efforts to modernize the force to ensure a resilient and rapidly innovating force that will compete, deter, and win in the current operating environment. 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 Department of Defense, the service branches, and other federal agencies.

3. If confirmed, specifically what would you do to ensure that your tenure as Army General Counsel epitomizes the fundamental requirement for civilian control of the

Armed Forces embedded in the U.S. Constitution and other laws?

Answer: If confirmed, I would ensure that the final decision on all questions of law and policy are made by members of the civilian Secretariat after close cooperation and consultation with the uniformed Department of the Army staff. Also, I would work to ensure that Headquarters, Army Senior Leaders know that Office of General Counsel advises the Secretary of the Army and the Secretariat. I would likewise ensure that no confusion exists regarding the chains of command between the attorneys working for the Office of the General Counsel versus those working for The Judge Advocate General of the Army.

4. In your opinion, who is the “client” of the Army General Counsel?

Answer: 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 officials within the Army Secretariat and the Army Staff.

5. What is your view of the responsibility and authority associated with the Army General Counsel’s designation as the Chief Legal Officer of the Department of the Army?

Answer: In my view, the General Counsel and Office of General Counsel attorneys serve as legal counsel for the Department of the Army, the Secretary, and other Secretariat officials. As a team, the Office of General Counsel coordinates legal and policy advice for Headquarters, Department of the Army; determines the Army’s position on all legal questions and procedures; provides legal advice on Army acquisition, logistics, and technology programs; gives final Army legal clearance on all legislative proposals and comments thereon of interest to the Department; establishes and administers the Army’s policies concerning legal services; exercises technical supervision over, and professional guidance to, all Department of the Army attorneys and legal offices; oversees compliance with the Freedom of Information Act and the Privacy Act within the Department; oversees the Army Ethics Program and exercise final authority within the Army for all ethics matters; exercises the Secretary of the Army’s oversight of intelligence activities and monitor those activities for legality and propriety; serves as the point of contact for legal matters between the Department of the Army and other departments and agencies; and takes final action on claims filed against the Army.

6. If confirmed, how would you view your role as the Army General Counsel with respect to the General Counsel of the Department of Defense (DOD) in her role as the DOD Chief Legal Officer?

Answer: The General Counsel of the Department of Defense is the chief legal officer and final legal authority for all legal issues facing the Department of Defense, to include the Department of the Army. If confirmed, I look forward to continuing to cultivate the strong working relationships that I am accustomed to from my time as a Judge Advocate in the Army, in DODEA, and the Department of Agriculture. I am committed to working collaboratively on matters of mutual interest to the Department of the Army and the Department of Defense.

Qualifications

7. What background and experience do you possess that qualify you to serve as the General Counsel of the Department of the Army?

Answer: I served as an Army officer for just short of 22 years, first as a personnel officer, then as a Judge Advocate, retiring at the rank of Lieutenant Colonel. Every day, I had the immense privilege of watching Soldiers put their team, mission, and country first, taking great risks and making personal sacrifices to achieve our shared goals. Should I be confirmed, my experiences in the Army have prepared me well to assume the duties of General Counsel and to do right by our Soldiers, civilians, and family members. As a Judge Advocate, I worked on a broad spectrum of legal issues including military justice, equal opportunity, fiscal law, and operational and administrative law. I deployed to the Middle East twice, first to OPERATION DESERT STORM in 1992 and then in support of OPERATIONS IRAQI FREEDOM and ENDURING FREEDOM in 2004. I have served in operational and intelligence units, service and combatant command staffs, and in the Office of the Judge Advocate General and the Office of the General Counsel. I understand the importance of the collaborative relationship that must exist between these offices and have been fortunate to work with many of the lawyers presently serving in both offices, including the current Judge Advocate General of the Army, an extraordinary leader with whom I served at Fort Hood. Since retiring from the Army, I have worked as a federal civilian lawyer, and I am currently leading a dynamic team of attorneys in the Office of the General Counsel at the Department of Agriculture. In this role I have further honed the leadership skills instilled in me daily during my Army service, and I am committed more than ever to exceed expectations as a servant leader for our country. Last year, I was privileged to serve the Army as a civilian member of the Fort Hood Independent Review Committee, where our five-member team completed a comprehensive review of the Fort Hood command climate and culture that has been the impetus for great change at Fort Hood and across the Army and DoD. I am well qualified and honored to be considered for this position.

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

Answer: Based on my background and experience, I am confident I have the requisite knowledge, skills, abilities, and temperament to serve as the Army General Counsel. If confirmed, I will work closely with the talented attorneys in the Office of the General Counsel, as well as in the Office of the Judge Advocate General to further my understanding of the legal challenges facing the Army. I will work with Army leadership to assess and prioritize their legal needs and quickly calibrate how I can be most effective in the position.

Major Challenges and Priorities

9. If confirmed, what would be your vision for the OGC of today? For the OGC of the future?

Answer: If confirmed, my current vision for OGC is to continue to provide well-coordinated, timely, and accurate legal and policy advice within the HQDA and to clearly articulate the Army's position on all legal matters. OGC lawyers will continue to carry out the responsibilities of OGC as enumerated in HQDA General Orders No. 2020-01, as well as play a key role in supporting Secretary Wormuth's culture of innovation and experimentation, particularly in implementing acquisition reforms to streamline processes and promote

efficiency within the parameters of the law. Finally, Army lawyers will be instrumental in the implementation of both the DoD and the Fort Hood Independent Review Committee's recommendations, particularly those regarding the prevention of and response to sexual assault and sexual harassment within the Army.

For the OGC of the future, I envision that Army lawyers will add to their already diverse portfolios with well-developed expertise in cybersecurity, intellectual property, artificial intelligence, public-private partnerships, and the law of modern warfare that reflects the transformation on which the Army is embarking today.

10. In your view, what are the most significant legal issues facing the Army today?

Answer: The Secretary of the Army has established the Army's significant priorities, with the focus on People, Readiness, and Modernization. If confirmed, I look forward to supporting these Army priorities by addressing the legal issues that currently exist, and may arise, as those national security priorities are achieved. I have shared nine of the most significant legal issues that I am aware of in the answer that follows.

11. What do you consider to be the most significant challenges you will face if confirmed as Army General Counsel?

Answer: To confront the significant challenges ahead, the Office of General Counsel must have the training and expertise required to provide timely and expert legal advice regarding modernization and acquisition reforms, while ensuring the vital focus on its people and military readiness. The Army will require attorneys knowledgeable in cybersecurity, intellectual property, and the challenges posed by artificial intelligence. If confirmed, the legal and policy issues and challenges that I expect to confront, at a minimum, are: (1) the Army's ongoing efforts to ensure diversity and promote fairness for all who serve the nation in the United States Army; (2) prevent and respond appropriately to incidents of domestic violence, sexual harassment, and sexual assault; (3) suicide prevention; (4) the continuing integration of women into previously closed combat positions and occupations; (5) the implementation of recent legislative reforms in military justice and health care; (6) compliance with environmental laws; (7) continued focus on senior leader accountability; (8) oversight of Army intelligence activities; and (9) acquisition and modernization efforts.

12. What plans do you have for addressing each of these challenges, if confirmed?

Answer: If confirmed, I intend to work closely with the Secretary of the Army, the Army Secretariat, the Chief of Staff of the Army, the Army Staff, and the Office of The Judge Advocate General to provide legal support and advice to confront the challenges facing our Army. I will ensure the attorneys in the Office of General Counsel (OGC) have access to training and development opportunities necessary to gain any additional expertise required to confront these challenges. I will also work with The Judge Advocate General and other Army attorney qualifying authorities to identify resources as well as training and development opportunities for attorneys throughout the Army to develop the skills necessary to confront these challenges. Regarding the legal and policy challenges I have identified, I will ensure OGC attorneys—always standing point—are fully engaged with our clients, ready to provide legal advice and find the legal solutions necessary to facilitate mission success.

13. If confirmed, what broad parameters would you establish as to the types of legal and policy issues on which you and the OGC must be consulted?

Answer: If confirmed, I intend to support the Secretary, Under Secretary, and the Assistant Secretaries on all material and substantive matters being worked by the Army Secretariat. I believe that attorneys who are problem solvers are essential to shaping the legal and policy landscape. As an organization, I believe that the attorneys who comprise OGC must be participants in all stages of decision making. It would be my duty to ensure that OGC attorneys have the training and professional skills necessary to provide sound legal advice and are fully integrated into the Army's decision making process.

14. If confirmed, are there specific matters on which your predecessor Army General Counsels have issued legal opinions that you would expect to reconsider and possibly revise? If so, which opinions, in which practice areas, do you believe might merit reconsideration?

Answer: There are no legal opinions that I am aware of at this time that need to be reconsidered or revised.

15. If confirmed, what innovative ideas would you consider providing to the Secretary of the Army to improve the organization and operations of Army OGC? To improve the delivery of legal services Army-wide?

Answer: If confirmed, I would undertake a review of the legal support to Army modernization efforts. In particular, I would review legal support related to cyber security, information law, and intellectual property. If confirmed, I would also evaluate the applicability of the Defense Legal Services Agency structure at the Military Department level, and consider the opportunities that could be realized with a new Department of Army Legal Services Organization.

16. If confirmed, how would you use organizational climate surveys to enhance your leadership and management of the OGC?

Answer: I would read every word of the organizational climate surveys and take note of any recommendations for improvements, as well as positive feedback, to inform my decisions and ensure continued success. Should there be any negative feedback, I would seek to immediately analyze and identify the root cause and work to address the issue immediately and transparently.

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

Answer: The Army cannot expect to succeed without the support of Congress, and particularly this Committee. It would be my goal to maintain transparent and continuing communication with the Congress to facilitate oversight. If confirmed, I will maintain a productive relationship through my words and actions, proceeding with complete integrity and positive collaboration.

Relationship with the Judge Advocate General of the Army and other Army Senior Counsels

18. How are the responsibilities and authorities for providing legal services to the Department of the Army allocated between the General Counsel of the Army; The Judge Advocate General of the Army; the Command Counsel, U.S. Army Materiel Command; and the Chief Counsel, U.S. Army Corps of Engineers?

Answer: It is my understanding that the Judge Advocate General of the Army (TJAG), the Command Counsel for U.S. Materiel Command, and the Chief Counsel for the U.S Army Corps of Engineers provide legal counsel to the Commanding General of their organization, or in the case of the TJAG, to the Chief of Staff of the Army and the members of the Department of the Army Staff. The General Counsel (GC) of the Army is the final legal authority for the Department of the Army and has overall responsibility for providing legal counsel to the Secretary of the Army, the Under Secretary of the Army, the Assistant Secretaries of the Army, and all other members of the Army Secretariat. The GC's legal opinions are controlling within the Department of the Army. The GC also serves as the overall qualifying authority for all lawyers in the Department of the Army, although I understand that qualifying authority has been delegated to the TJAG, Command Counsel for AMC and the Chief Counsel for the COE. However, I also understand that under Title 10 section 7037, the TJAG is also a legal advisor to the Secretary on issues where his or her expertise is crucial to the success of the mission—such as military justice, international or operational law, and other uniquely “military” areas of the law.

19. What is the role of the Army General Counsel and other Army Senior Counsels in ensuring that attorneys under their supervision adhere to the Attorney Rules of Professional Conduct? If confirmed, how would you approach this critical supervisory duty with regard to Army OGC?

Answer: The Army General Counsel is the senior qualifying authority for all attorneys in the Department of the Army. While The Judge Advocate General, the Army Materiel Command Chief Counsel, and the U.S. Army Corps of Engineers Chief Counsel are all qualifying authorities for the attorneys that practice under their supervision, the Army GC has overall responsibility for the ethical practice of law and the adherence to the Attorney Rules of Professional Conduct for all attorneys in the Department of the Army. If confirmed, I would review current Professional Conduct training for all Army attorneys, as well as current oversight protocols within the Army to ensure the Army attorneys are employing sound ethical practices.

20. If confirmed, how would you employ the forum provided by the Department of the Army Professional Conduct Council?

Answer: If confirmed, I would use the forum to ensure that my responsibilities as the Qualifying Authority for all attorneys in the Department of the Army are thoroughly and professionally executed. As I understand, along with the Standards of Conduct Office at OSD OGC, the Professional Conduct Council is another resource to ensure that the Department of the Army legal community maintains the highest professional standards for the practice of law. I am completely committed to not only the ethical practice of law, but to the education of counsel on the necessity of always choosing the harder right instead of the easier wrong.

21. What role, if any, does the Army General Counsel play in evaluating the performance of other Army Senior Counsel?

Answer: I believe the Army General Counsel provides input to the rater of every Army Senior Counsel on their annual performance evaluation.

22. What is your understanding of the unique role and authority of The Judge Advocate General of the Army vis-a-vis the General Counsel of the Army?

Answer: The Judge Advocate General (TJAG) and the General Counsel of the Army are partners, both dedicated to the advancement of the Army mission and to the legal support of their respective clients—the Chief of Staff of the Army for TJAG and the Secretary of the Army for the General Counsel. I also understand that under Title 10 section 7037, the TJAG is authorized to give independent legal advice to the Secretary or the Chief of Staff of the Army.

23. What is your view of the authority of The Judge Advocate General of the Army, particularly as regards the provision of independent legal advice to the Secretary of the Army and the Chief of Staff, Army?

Answer: Under Title 10 section 7037, the TJAG is authorized to give independent legal advice to the Secretary and the Chief of Staff. This is particularly important where his or her expertise is crucial to the success of the mission—such as military justice, international or operational law, and other uniquely “military” areas of the law.

24. What is your view of the responsibility of Army judge advocates to provide independent legal advice to military commanders and other Army officials and employees?

Answer: Under Title 10 section 7037, Army Judge Advocates are entitled to give independent legal advice to military commanders. The statute prohibits any officer or employee of the Department of Defense from interfering with these duties. In my view, Judge Advocates must be empowered to provide independent legal advice to commanders and their staff, supported by appropriate guidance from their supervising attorneys. It is critical that commanders have access to timely, accurate, and candid legal advice and counsel as they execute their missions.

25. How do you view the role and responsibility of the Army General Counsel in the supervision and oversight of military justice matters vis-à-vis The Judge Advocate General of the Army?

Answer: I view the Army General Counsel’s role as complementary to that of The Judge Advocate General, who is charged statutorily with supervision and oversight of military justice. While providing independent views and advice to the Secretary of the Army and Army Senior Leaders, the Army General Counsel and The Judge Advocate General must work together to ensure appropriate policies are in place; those working within the military justice system have the requisite training, experience, and resources; victims receive the support they deserve; and the military justice system is fair and properly holds military personnel accountable for their actions.

26. If confirmed, would you propose any changes in the current relationships between the Army General Counsel and The Judge Advocate General of the Army?

Answer: I am not aware of any changes that are currently needed. It is my understanding, that the Army General Counsel and The Judge Advocate General have a close and collaborative relationship. If confirmed, I would seek to build upon and strengthen that relationship to ensure that the civilian and military lawyers leverage their expertise and perspectives to provide informed and comprehensive legal and policy advice to Army Senior Leaders.

27. If confirmed, would you propose any changes to the current relationships and/or allocation of responsibilities between attorneys in the OGC and uniformed Army judge advocates?

Answer: I am not aware that any changes are currently needed. I understand that the Army Office of the General Counsel and the Office of The Judge Advocate General have a close and collaborative relationship. If confirmed, however, I will take a careful look at this relationship and assess if any adjustments are necessary.

28. Are the legal opinions of the Army General Counsel binding on all Army attorneys?

Answer: Yes. It is my understanding that 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. Legal opinions issued by the Army General Counsel are, therefore, controlling throughout the Department of the Army. It is my understanding, partially informed by my experience as an active duty judge advocate in Office of the Army General Counsel, that there is a close and collaborative relationship with the Office of the Judge Advocate General in formulating those opinions. 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.

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

Answer: 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 and I will be sure to evaluate its effectiveness. 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.

Section 548 of the National Defense Authorization Act required the Secretary of Defense shall carry out a program to provide legal counsel to victims of domestic violence offenses who are otherwise eligible for military legal assistance.

30. In your view, how do the needs of victims of domestic violence offenses differ from the needs of victims of sexual assault? How should any such differences affect the parameters of a legal counsel program established for domestic violence victims?

Answer: In my view, due to the nature of the relationship a victim of domestic violence has with the offender, victims may need legal support to help them leave an unsafe domestic situation. A primary goal of any legal program intended to support these victims should focus first on providing the victim with the legal tools necessary to safely leave a dangerous relationship. This assistance likely requires a legal subject matter expert in family law—a case area covered by the Army’s Legal Assistance program. In addition to family law advocacy, victims of domestic violence deserve the victim advocacy that Army Special Victims’ Counsel (SVC) attorneys can provide. Because these victims have these two unique legal needs, my view is that any program that seeks to support and protect victims of domestic violence must provide both types of support—victim advocacy and family law advocacy.

31. If confirmed, what role would you establish for yourself in assisting the Secretary of Army conducting the program required by section 548?

Answer: If confirmed, I would assist in evaluating the effectiveness of the Army’s recent efforts to meet this challenge. As this is a new program, training, resourcing, or focus may require adjustments as the program matures.

32. In your view, how do the needs of military child victims of sexual abuse differ from the needs of adult victims of sexual assault and from those of domestic violence victims? How would any such differences affect the parameters of a legal counsel of guardian *ad litem* program established for military child victims of sexual abuse?

Answer: I am aware that Special Victims’ Counsel, Special Victim Prosecutors, and Trial Defense Services attorneys all receive training on how different traumas and different stages of development impact the support needed by victims. I understand that Special Victims’ Counsel can only represent those victims capable of understanding the process and of making independent decisions. In cases where victims, due to their young age, are not competent to make those legal decisions, I understand that a guardian ad litem may be assigned. In these instances, the guardian ad litem makes decisions on behalf of the victim that are in the victim’s best interests.

Information Law and Practice

The Army General Counsel serves as the Army’s appellate authority for appeals of denials of the release of information requested under the Freedom of Information Act (FOIA).

33. What is the current backlog of FOIA appeals in Army OGC?

Answer: I am informed that, as of October 1, 2021, when the Army Office of General Counsel compiled its annual report, the appeal backlog was 57.

34. If confirmed, what actions would you take to address this backlog?

Answer: If confirmed, I would devote an appropriate number of personnel to addressing and reducing the backlog, including the use of Army Reserve Judge Advocates assigned to Army OGC.

35. If confirmed, what factors would you consider in determining whether or not to recommend the invocation of Executive Privilege in regard to a request from the Senate Armed Services Committee for information under the cognizance of the Department of the Army?

Answer: If confirmed, my recommendation about whether to invoke Executive Privilege would be made in close coordination with the Department of Defense Office of the General Counsel and would be based on applicable law and established Executive Branch policy regarding accommodation of Congressional oversight requests.

36. How does the Army address or mitigate privacy concerns associated with the Commander's Risk Reduction Dashboard? Given the sensitivity of the personal information aggregated in the Dashboard, should the Army's approach to compliance with privacy laws and regulations be adjusted in any way, in your view?

Answer: I am informed the Army mitigates privacy concerns by imposing extensive administrative and technical safeguards to protect the information on the Commander's Risk Reduction Dashboard. In addition, Dashboard users receive privacy training to ensure they are good stewards of the information and understand applicable law and policy. I do not know, at this time, if adjustments are necessary.

37. How does the Army navigate the requirements of the Health Information Portability and Accountability Act and a Soldier's desire for confidentiality in determining what information about a Soldier's mental or behavioral health—including treatment for a mental or behavioral health condition—can and should be provided to the chain of command? Should the Army's approach to this matter be revised in any way, in your view?

Answer: In my judgment, the Army must ensure the safety and confidentiality of all Soldiers' medical conditions and treatment in accordance with the Health Information Portability and Accountability Act. It is important that Soldiers continue to seek care and, as such, it is appropriate to limit the amount of information conveyed to the chain of command to only that necessary to convey the risk to the Soldier and to the mission. If confirmed, I will provide the Secretary my best advice, in coordination with the Surgeon General, on the right balance between confidentiality and ensuring the command is informed in order to effectively assess risk, maintaining full compliance with the law and Department of Defense policy.

Criminal and Administrative Investigations and Intelligence Oversight

Per Army General Order 2020-01, *Assignment of Functions and Responsibilities Within Headquarters, Department of the Army*, the Army General Counsel is responsible for overseeing criminal and administrative investigations, in coordination with The Judge Advocate General.

38. If confirmed, what role would you establish for yourself in providing advice to the U.S. Army Criminal Investigation Command (CID), including acting on requests for consensual or nonconsensual interceptions of wire, electronic, and oral communications, and pen register operations?

Answer: My understanding is the Army General Counsel (GC) coordinates with the Judge Advocate General to provide advice to CID on the development and execution of criminal investigation policy and has delegated approval authority to the Director of CID for consensual interceptions of wire, electronic, and oral communications and pen register operations. The GC oversees the use of these sensitive investigative techniques and is the approval authority for any exceptions to the policy for conducting them. The GC also approves or denies CID requests to seek Attorney General or judicial authorization for nonconsensual interception of wire, electronic, oral communications, and pen register operations. If confirmed, I would ensure that the use of consensual or nonconsensual communications intercepts are not only consistent with the law, but also necessary to the conduct of law enforcement activities.

39. In light of the holding in *U.S. v. Dreyer*, what legal standard does Army CID apply in determining whether to authorize its special agents to participate in investigations of Internet Crimes Against Children (ICAC) in which the suspected perpetrator’s military affiliation has not yet been established with certainty? If confirmed, would you recommend any changes to this standard?

Answer: I understand that the Army applies a reasonable basis standard, considering information related to the military location, the military persona, or the connection to the individual’s DOD duties, when determining the investigative authority of the Army’s criminal investigators. If confirmed, I will work with the new CID Director to ensure Army investigators continue to be involved in ICAC investigations and work closely with their civilian counterparts to ensure these crimes are thoroughly investigated while not running afoul of *U.S. v. Dreyer*.

40. In your view, do Army CID special agents have adequate authority and resourcing to participate in multi-jurisdictional law enforcement task forces related to the investigation of ICAC offenses?

Answer: My general understanding is that CID agents currently have the appropriate authorities, and with the transformation of CID, will have the proper resourcing to participate more effectively in multi-jurisdictional task forces. If confirmed, however, I will assist the Department in assessing CID’s resourcing and authorities.

Recent reports by the Government Accountability Office and by private organizations have raised significant questions about racial disparity in the military justice system—most notably at the investigation stage.

41. If confirmed, what steps would you take to address potential racial disparity in in the context of Army investigations—whether such investigations are criminal or administrative in nature?

Answer: If confirmed, I am committed to assisting Army leadership in addressing racial disparities identified by the GAO in military investigations. I understand that, in June 2020, the Secretary of the Army directed The Judge Advocate General and The Provost Marshal General to conduct a holistic evaluation of racial disparities in the military justice system. If confirmed, I will look forward to working with these two Army leaders to evaluate, identify and advise the

Secretary as to how best to address, the causes of racial disparities throughout our system, from the accessions process, to investigations, prosecutions, sentencing, and clemency and parole.

42. What progress have DOD and the Army made in developing and implementing the process and policy required by section 545 of the NDAA for FY 2021?

Answer: Personally, I am unaware of the progress DOD or the Army has made in developing and implementing a policy and process through which any covered person may request that the person's name, personally identifying information, and other information pertaining to the person be expunged from law enforcement records. If confirmed, I will ascertain DOD and the Army's progress in developing and implementing these policies and processes and ensure the Office of General Counsel is supporting this effort.

43. When can the Committees on Armed Services expect to receive the report required by section 545(e) of the NDAA for FY 2021?

Answer: Personally, I am unaware of the status of the Secretary of the Army's report on the actions taken to carry out the requirements of section 545 of the NDAA for FY 2021. However, if confirmed, I would ascertain the status of the report and work to ensure its submission to the Committees on Armed Services as rapidly as possible.

Army General Order 2020-01 further provides that in coordination with The Judge Advocate General and the Deputy Chief of Staff, G-2, the Army General Counsel is responsible for developing and overseeing policies and programs for Army intelligence and counterintelligence. Further, together with The Judge Advocate General, the General Counsel is charged to oversee sensitive activities and counterintelligence investigations.

44. What is the role of the Army General Counsel in ensuring that Army sensitive activities—at all levels of classification—are consistently conducted in accordance with standards of legality and propriety?

Answer: I understand the Army General Counsel, together with the Judge Advocate General and the Director of the Army Special Programs Directorate, identifies sensitive Army intelligence and other activities based on the potential for limited organizational oversight, and negative impacts to public confidence should the activities not be conducted consistent with law and policy. The Secretary of the Army has established specific enhanced oversight requirements for these activities, especially those that are highly classified. I also understand the Army General Counsel is provided unfettered access to all sensitive activities and conducts in-depth reviews of them either prior to approval, or after approval and then quarterly or annually to ensure they are conducted consistent with law and policy. The Army General Counsel is also directed by the Secretary of the Army to bring any sensitive activity to her attention if there is any doubt about the propriety of conducting it.

45. In your view, what limiting practices should guide Army intelligence organizations in determining the types and amount of information that can be collected about U.S. citizens?

Answer: Army intelligence organizations may only collect U.S. person information (USPI) if the information sought is reasonably believed to be necessary for the performance of an authorized intelligence mission or function assigned to the component. I am informed that Executive Order 12333, DoD Manual 5240.01, and Army Regulation 381-10 place limits on USPI that Army intelligence organizations may collect. These policies forbid the collection of USPI solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights guaranteed by the Constitution and laws of the United States. These policies balance civil liberties and privacy interests with the need to conduct lawfully authorized intelligence missions. If confirmed, I would expect that attorneys at all levels of Army intelligence organizations review the collection of USPI to ensure it is consistent with law and policy.

46. If confirmed, what would be your approach to ensuring that senior Army leaders, including the Secretary of the Army, are fully informed of, and personally engaged in critical decisions associated with Army sensitive activities?

Answer: If confirmed, it is my intention to continue to promote the Army's long-standing policy of having the Secretary of the Army review and approve the most sensitive activities and to withhold approval of other sensitive activities to the Under Secretary of the Army, or Deputy Chief of Staff for Intelligence. I also will continue to collaborate with The Judge Advocate General to exercise broad discretion in elevating the review or approval of any sensitive activity that I believe should have the attention of the Secretary of the Army to ensure that she and other Army senior leaders remain engaged in the command and control of these activities.

47. How does OGC fit into the established Army Intelligence Oversight structure, and how does OGC engage with the President's Intelligence Oversight Board?

Answer: I understand that the Secretary of the Army has directed that the Army General Counsel exercise day-to-day oversight of Army intelligence activities on her behalf. A senior-level attorney in Army OGC office performs this mission in coordination with The Judge Advocate General and the Army Inspector General. One level of intelligence oversight at HQDA involves the requirement to report Questionable Intelligence Activities and Significant or Highly Sensitive Matters through the chain of command to the Army Inspector General. I believe the Army General Counsel provides the final review of these reports prior to them being forwarded to the DoD Senior Intelligence Oversight Officer (SIOO). I am informed the DoD SIOO is responsible for reporting relevant Questionable Intelligence Activities and Significant or Highly Sensitive Matters through the Secretary of Defense to the President's Intelligence Oversight Board (PIOB). Army OGC engages with the PIOB through the DoD General Counsel and the DoD SIOO.

48. What is the role of Army OGC in reviewing requests for the provision of DOD physical protection and personal security services to retired DOD officials and the family members of certain DOD personnel, as contemplated by section 1074(b) of the NDAA for FY 2008? If confirmed, would you concur in the provision of DOD protective services to such persons in the absence of an imminent and credible threat to their safety?

Answer: Army OGC conducts a legal review of nominations involving current or former DoD officials or their family members for the provision of physical protection and personal security

services to ensure the requests address the criteria in law and policy required to justify providing such support. If confirmed, I would continue to oversee the conduct of these legal reviews to provide the Secretary of the Army the legal input she needs to determine whether to forward a nomination to the Deputy Secretary of Defense for approval.

49. If confirmed, what would be your approach to ensuring that Army counterintelligence investigations—including investigations of cyber intrusions—properly take into account both law enforcement and national security interests?

Answer: I understand that all Army Counterintelligence (CI) investigations are conducted jointly with the FBI. The Army CI organizations and the FBI work together to balance law enforcement and national security interests. Army CI investigations seek relevant information to develop national security criminal cases including potential cyber intrusions by foreign actors that could be prosecuted by the Army under the Uniform Code of Military Justice, or the Department of Justice in Federal court. In CI investigations, I believe the Army develops national security cases to protect DoD personnel, resources, and critical information as well as to protect individual constitutional, privacy, and civil rights. There may be times when a CI investigation does not result in a judicial prosecution due to insufficient evidence or to protect CI sources and methods. In these and all other cases, Army CI provides intelligence obtained from the investigations to appropriate DoD Components to address national security threats to DoD personnel, facilities, and information technology networks.

Comprehensive Review of Department of the Navy Uniformed Military Legal Communities

On January 10, 2020, the Department of the Navy released its *Comprehensive Review of the Navy and Marine Corps Uniformed Legal Communities*. In commenting on the importance of the review, the Vice Chief of Naval Operations stated, “[i]t is precisely because our legal communities provide vital services [that] are necessary to promote the readiness of the force and successful mission accomplishment, that a review of this nature was warranted. . . . This comprehensive review was an opportunity for us . . . to reflect on how we conduct ourselves and do business, in terms of military justice and legal support to our Sailors, Marines, and their families.”

50. Have you reviewed the report of the Navy’s *Comprehensive Review*?

Answer: Yes. I am familiar with it.

51. Did the Navy’s *Comprehensive Review* yield any findings or recommendations that you believe may be applicable and/or useful to the Army legal community? Please explain your answer.

Answer: The review found that the Navy JAG Corps’ organizational structure and processes did not foster a culture of continuous self-assessment focused on professional performance and accountability. The review recommended the Navy JAG Corps implement changes to refocus its culture and put in places self-assessment mechanisms, rapid feedback of lessons learned, and accountability. These recommendations are a good reminder for the Army legal community to ensure it emphasizes the importance of maintaining a learning culture throughout the Army legal community. If confirmed, I will work with The Judge Advocate General to ensure we do so.

COVID-19 Response

52. What is your view of the legality of the Secretary of Defense's directive that requires all service members, including members of the National Guard and Reserves, to be vaccinated for the coronavirus?

Answer: Commanders at all levels are responsible and accountable for the health of their commands, which includes maintaining medical readiness. As part of this responsibility, commanders ensure the immunization of their personnel as required by Army Regulation 40-562 or other legal directives. With full FDA approval of the vaccine, I support the Secretary of Defense's actions in this matter, which ensure military readiness.

53. What guidance has the Army given to commanders regarding precautions to limit the spread of COVID-19, and what role has the Office of the Army General Counsel played in generating and reviewing such guidance?

Answer: My understanding is that the Army has provided commanders with extensive guidance throughout the COVID-19 pandemic to promote the safety, health, and welfare of their commands. Since the beginning of the pandemic response, I believe the Army has fully implemented all DoD directives and guidance for mitigating the risk posed by COVID-19, while empowering Army commanders to implement additional safeguards based on mission requirements, community transmission data, or other unique factors. I am informed that these measures have included the use of personal protective equipment, social distancing, and increased telework flexibility. The Office of the Army General Counsel has reviewed all such guidance and will continue to play an important role in advising the Department on COVID-19 related matters.

Civilian Attorney Recruiting and Retention

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

Answer: I am not currently in a position to judge the adequacy of attorney manning levels. If confirmed, in coordination with The Judge Advocate General, I will evaluate and make any appropriate recommendation on what manning levels need to be adjusted for the Army to perform its many missions with proper legal review. I believe the increased complexity and pace of multi-domain operations has expanded the role of both civilian and uniformed attorneys in areas such as cyber law, intelligence law, space law, international law, and acquisitions. Furthermore, recent legislation requiring additional legal services for domestic violence victims and expected legislation reforming military justice requires additional military attorneys to ensure the fair and expeditious adjudication of misconduct critical to maintaining good order and discipline, readiness levels that supports the warfighting mission, and Soldier and Family wellbeing. I am also informed that civilian attorneys have, on occasion, been forced to surge expertise to address emerging needs. When those requirements become enduring, I believe an assessment must be made on whether current civilian end strength is appropriate.

Army judge advocates benefit from an established career progression format, substantial mentoring and training opportunities, and exposure to a broad spectrum of legal practice areas and leadership responsibilities. By contrast, Army civilian attorneys normally do not have established career programs and may do the same type of legal work for many years, with promotions based solely upon longevity and vacancies that may arise.

55. If confirmed, what specific actions would you take to recruit, hire, and retain high quality civilian attorneys, and provide sufficient opportunities for their development and advancement through positions of increasing responsibility and leadership in the career civilian component of the Army legal community?

Answer: If confirmed, I would make recruitment, hiring, and retention of highly qualified attorneys a top priority. In order to remain competitive in the legal labor market, it is crucial that the Army renew its commitment to funding current recruiting and retention incentive programs. 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, as I am convinced these efforts and programs are needed to maintain the tradition of superior legal services within the Department of the Army. In addition, I will seek to establish a formal professional development program in the Office of General Counsel and consider reestablishing the Army General Counsel Honors Program intended to recruit a rich demographic of young legal talent.

56. Do you foresee that in the coming years, the Department of the Army's demand for civilian attorneys with certain technical-legal expertise (e.g., cyber, space, and intellectual property law) will increase, commensurate with the Department's evolving missions and the 2018 NDS? If so, in what technical-legal specialties would you expect the Army's requirements to increase, and why?

Answer: Yes, I think it is highly likely that demands for technical-legal expertise will increase in the coming years. If confirmed, I intend to become more fully informed of potential deficiencies in these legal practice areas and would work diligently to ensure the Army's legal capabilities match the Department's mission requirements.

57. Do you believe the Army, including Army OGC, needs additional incentives and talent management tools to recruit, develop, sustain, and retain a 21st century career civilian attorney workforce? If so, what sort of incentives and tools do you perceive would be helpful?

Answer: If confirmed, sustaining the career civilian attorney workforce would be one of my highest priorities. It is my current understanding there are several options already in place that the Army can leverage for recruiting and retention of the career civilian attorney workforce, such as telework/remote work, the ability to hire using excepted service authorities, and the student loan repayment program. If confirmed, I would look for additional ways to improve the Army's ability to recruit, develop, sustain, and retain talent such as developing a Scholarship-for-Service program similar to the Cyber Corps Scholarship-for-Service and considering whether to reestablish the Army General Counsel Honors Program.

58. How is “Qualifying Authority” allocated among Army Senior Counsels?

Answer: The Army General Counsel has the authority to approve the qualifications of all civilian Army attorneys but has delegated the qualifying authority for GS-15 level civilian attorneys and below to the Chief Counsel of the U.S. Army Corps of Engineers; the Command Counsel for Army Material Command, and The Judge Advocate General. The General Counsel retains qualifying authority for all SES and SL attorney positions Army-wide. While the authority is delegated to these senior attorney officials, the General Counsel maintains oversight responsibility.

59. If confirmed, would you make any adjustments to Army legal community Qualifying Authority designations or processes? Please explain your answer.

Answer: No. I am not aware of any need for changes or adjustments to qualifying authorities at this time, but if confirmed, I would remain receptive and listen to reasons that might suggest otherwise.

The Army General Counsel serves as the qualifying authority for all Army civilian Senior Executive Service (SES) attorney positions.

60. What factors would you consider in determining whether to qualify a candidate for appointment to an attorney’s position in the career SES?

Answer: I understand that when the Army seeks to hire an attorney for a career SES position, the Executive Resources Board (ERB) appoints a panel to review qualifications and interview qualified candidates. Important factors in this process include professional education, training, and work experience. If confirmed, I would also look at temperament and character for these top legal leadership positions.

61. What do you view as the most important executive competencies of an SES attorney and how would you assess these in deciding whether to recommend a particular candidate for selection and appointment to an attorney’s position in the career SES?

Answer: I understand that the General Counsel, as the principal legal advisor to the Executive Resources Board (ERB), is not a voting member, and therefore, I am informed, is not in a position to recommend particular candidates for selection or appointment. I understand, however, the Office of General Counsel ensures that ERB members recommend candidates who are best qualified for the civilian senior executive position because: 1) they have demonstrated the ability to lead change; 2) they have demonstrated the ability to lead people; 3) they have demonstrated an ability to deliver results; 4) they have a history of sound business acumen; and 5) they have successfully built coalitions.

62. If confirmed, how would you hold Army SES attorneys accountable for both organizational performance and the rigorous performance management of their subordinates?

Answer: Every year, Army senior leadership convenes a performance review board (PRB) focused on holding each SES, to include attorneys, accountable for their work. Instructed by

the Secretary of the Army, the PRB ensures each SES meets performance objectives. If confirmed, I would take appropriate corrective action in cases where individual SES attorneys fail to meet performance objectives and standards.

63. What role does the Army General Counsel play in the Department of the Army Executive Resources Board (ERB)? Would you recommend any changes to the Charter of the ERB, if confirmed?

Answer: The Army GC provides independent legal advice and support to the ERB as a non-voting member. At this time, and based on my current understanding of the ERB, I am unaware of any changes that need to be made to the ERB Charter.

64. What role does the Army General Counsel play in the Department of the Army SES Talent and Succession Management process? Would you recommend any changes to the process, if confirmed?

Answer: The Office of the Army General Counsel serves as an advisor to the ERB and the Talent and Succession Management Boards (TSMB). Based on my current understanding of the ERB, I am unaware of any changes that need to be made to the SES Talent and Succession Management process.

65. What role do mobility and the objective of joint experience play in the Army SES program, including with regard to SES attorneys?

Answer: I believe the Senior Executive Service is a national asset. Mobility is typically required of all SES employees. Mobility involves using a full range of assignment authorities to leverage the skills of executives to enable greater mission accomplishment and to prepare them for higher levels of service, whether within the agency, or elsewhere in Government. I believe our nation is best served when agencies and executives work together strategically to field the strongest and most agile executive corps possible. Mobility encompasses both temporary and permanent job assignments involving changes from previous assignment patterns (for example, to different business lines, disciplines, program areas, components, regions, headquarters, or other divergent environments). I understand that joint experience is also a component of the Army SES program, as the Army participates inside the DoD Enterprise allowing SES employees to maneuver into different environments within DoD, enabling SES employees to gain broader experience and perspective within the Department of Defense.

The American Bar Association's *Standing Committee on Pro Bono and Public Service* asserts that “[w]hen society confers the privilege to practice law on an individual, he or she accepts the responsibility to promote justice and to make justice equally accessible to all people. Thus, all lawyers should aspire to render some legal services without fee or expectation of fee for the good of the public.”

66. If confirmed, would you favor the creation of a program to permit civilian attorneys in Army OGC to engage in *pro bono* work? If not, why not? If so, what would be the parameters of such a program?

Answer: Yes. I fully support the principles articulated by the ABA regarding pro bono services

and, if confirmed, I will explore the feasibility of such a program within the Army Office of General Counsel. However, I think caution is advisable because many attorneys' state bars have guidelines regarding pro bono work, as well as rules governing the practice of law outside of the jurisdiction in which an attorney may be licensed.

Former Secretary of Defense Esper and Army Chief of Staff, General McConville, prioritized initiatives to employ military spouses in Army civilian jobs. In 2014, the Army Judge Advocate General's Corps created the Military Spouse Attorney Hiring Program.

67. What role can the Army General Counsel play in expanding the Military Spouse Attorney Hiring Program across the Army legal community?

Answer: I understand that the Army Judge Advocate General's Corps' Military Spouse Attorney Hiring Program has been very successful, with well over 200 appointments of spouse attorneys since its inception in 2014—with most appointments being within the Judge Advocate General's Corps. Since that time, the Air Force has implemented its own program, patterned after the Army's. If confirmed as General Counsel, I would intend to broadcast the quality of the attorneys recruited through this program and emphasize the overall value of the program amongst each of the Qualifying Authorities and the rest of the Army and DoD legal community leaders.

68. In your view, can the tenets of the Military Spouse Attorney Hiring Program be expanded to military spouses in other professions?

Answer: Yes. In my assessment, many of the tenets that make the Army's Military Spouse Attorney Hiring Program so successful would apply to any profession. While I understand this particular program benefits from excepted service hiring flexibilities, the success of the program is fundamentally based on the ready, able, and extremely motivated pool of high quality talent that exist in the Services' military spouses.

Detention and Interrogation

69. 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*?

Answer: Yes. I firmly believe that all detainees must be treated humanely.

70. If confirmed, what role will Army OGC play in the ongoing triennial review and revision of FM 2-22.3 mandated by the NDAA for FY 2016?

Answer: I understand that Section 1045 places primary responsibility for reviewing FM 2-22.3 with the Secretary of Defense, in consultation with the Attorney General, the Director of the Federal Bureau of Investigation, and the Director of National Intelligence. To ensure the field manual complies with U.S. legal obligations, however, the Army General Counsel should provide an independent voice regarding any proposed revision to the interrogation standards contained in FM 2-22.3 and the interpretation of those specified in Section 1045 of the FY2016 NDAA. If confirmed, I would provide that independent voice, and would work with the DoD General

Counsel, and The Judge Advocate General of the Army to ensure that the standards of treatment in the manual are in accordance with applicable law and policy.

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

71. In your view, does section 2441 define these terms in a way that provides U.S. detainees in the custody of other nations, as well as foreign detainees in U.S. custody, appropriate protections from abusive treatment?

Answer: In my view, the definitions of “torture” and “cruel and inhuman treatment” as contained in United State Code, Title 18, Section 2441, provide clear and appropriate guidance regarding the treatment of U.S. detainees in foreign custody and foreign detainees in U.S. custody. The articulated standards criminalize specific “war crimes,” regardless of whether the offense is committed by or against a member of the Armed Forces or a national of the United States, and serve as safeguards to ensure appropriate protection from abusive treatment.

Military Commissions Act

72. In your view, have military commissions constituted pursuant to the Military Commissions Act of 2009 provided an effective forum for trying violations of the law of armed conflict in the context of the global war on terrorism? Please explain your answer.

Answer: In my view, yes. The military commissions constituted pursuant to the Military Commissions Act of 2009 have provided an effective forum designed to address the unique nature of offenses committed in violation of the law of armed conflict.

73. Does the extensive duration of pretrial procedures in ongoing commission cases give you any cause for concern that the commission system may not be effective? Please explain your answer.

Answer: Based on my present understanding, no they do not. Pretrial procedures are a critical part of the commissions—or any criminal judicial—process, and are required by the Military Commissions Act of 2009, the Rules for Military Commission, the Regulation for Trial by Military Commission, and the Military Commissions Rules of Court. I understand that the length of time that the pretrial process takes is specific to the factual issues of each case, many of which bear directly on due process and national security considerations.

74. What changes to the Military Commissions Act of 2009 would you propose, if confirmed, to improve the efficiency and effectiveness of the military commission system and process?

Answer: At this time, I do not have any recommended changes to the military commission system and process. However, if confirmed, I will continue to assess the efficiency and effectiveness of this system and its processes.

75. In your view, could the Article III court system serve as a suitable, if not preferable alternative for the trial of persons charged with violations of the law of armed conflict in

the context of the global war on terrorism? Please explain your answer.

Answer: Although the federal court system has successfully tried many terrorists, my current view is that some cases are more appropriate for trial by military commission. Military commissions, as established by the Military Commissions Act of 2009 and governed by the associated rules and regulations, provide a just process for trying offenses against the law of war and other offenses triable by a military commission consistent with U.S. and international law.

Ethics

76. If confirmed, what actions would you take to effectuate your duties as the Designated Agency Ethics Official for the Department of the Army?

Answer: If confirmed, as the Army's Designated Agency Ethics Official (DAEO), I would have the primary responsibility for developing and overseeing the policies and programs for the Army's ethics program, and for ensuring effective and open communication with the Office of Government Ethics. I would coordinate with subject matter experts in the Office of the General Counsel and with officials in relevant agency components to ensure the Army had established effective communication relationships regarding matters related to the agency's ethics program. I would also perform all duties required of me under Federal and DOD regulations, which include providing accurate and timely ethics advice and counseling and ensuring the appropriate resolution of conflicts of interest and the appearance of conflicts of interest.

77. What do you see as the role of the Army General Counsel in setting an "ethical tone" for all Army personnel, military and civilian?

Answer: In my view, the strength of the Army's ethical culture should come from leadership at every level. I share President Biden's, Secretary Austin's, and Secretary Wormuth's commitment to restoring and maintaining public trust in government, and in the Army in particular. If confirmed as the senior legal official in the Army, I would play an important role in not only advising the Army's most senior leaders, but also in providing training and legal practice resources to all Army legal professionals. By ensuring all Army leaders get prompt and accurate legal advice as well as continual ethics training, I would provide them the skills and tools to be ethical leaders and ensure they are able to personally set the highest ethical standards. I will also take steps to ensure the Army's financial and operational processes, reporting, systems, and data are accurate, reliable, and secure, further enhancing public trust in the Army.

78. How is responsibility for providing ethics advice to senior officials allocated among Army Senior Counsel?

Answer: If confirmed, I would personally provide ethics advice, and also delegate responsibility for providing certain advice to an Alternate Designated Agency Ethics Official, to several Deputy Designated Agency Ethics Officials, and to Ethics Counselors throughout the Army.

79. What actions has the Army taken over time to ensure that its military officers and other Army personnel are trained—throughout their careers—on objective ethics and the Army’s core values?

Answer: I am informed that all new Army members—Soldier and civilian alike—must receive ethics training within three months of appointment. Interactive or in-person annual ethics training is mandatory for all senior Army officials and members whose duties involve the exercise of significant independent judgment over matters that will have a substantial impact on the integrity of Army operations and relationships with non-Federal parties. Army members also receive ethics training at their command preparation courses and their professional advancement courses, and many commands offer ethics training aimed specifically at post-government employment restrictions to departing officials. Additionally, The Judge Advocate General Legal Center and School (TJAGLCS) provides government ethics training to both legal and non-legal personnel. The Army also provides government ethics training materials that are used throughout the Army for initial entry training, command courses, and other training courses throughout Soldiers’ careers in the Army.

80. What role does the Army General Counsel play in ensuring that Department of the Army personnel—military and civilian—timely identify and disclose potential personal and organizational conflicts of interest and take all appropriate steps to avoid or mitigate them?

Answer: The General Counsel, as the Designated Agency Ethics Official, is responsible for the Army’s ethics program to prevent conflicts of interest in order to maintain the public trust. Timely submission of the appropriate financial disclosure report for both new and annual filers is the first step towards minimizing these conflicts. It is my understanding that the Army General Counsel and subordinate ethics offices work closely with human resource officials so that when new employees in-process, they are provided with notices of filing requirements. The cognizant ethics official provides advice and counsel to both the employee and his/her supervisor to navigate and/or remedy any actual or potential conflicts of interest. If confirmed, I will also ensure that the Department’s business practices are designed to prevent personal and organizational conflicts of interest and that this effort is one of the Army’s highest priorities. If confirmed, I will work closely with senior Departmental officials to promote an organizational climate that is vigilant about preventing conflicts of interest and reacts appropriately when specific issues arise.

81. What training do Army lawyers receive to ensure they are competent to provide effective, accurate, and timely guidance to Army personnel in need of such counsel?

Answer: All Army uniformed lawyers receive specific instruction on government ethics throughout their career progression, starting with the basic Judge Advocate Officer Basic Course, and progression to refresher ethics training, including at the Judge Advocate Graduate Course and the Reserve Component Judge Advocate Officer Advanced Course. Those lawyers designated, in writing, as ethics counselors receive an additional multi-day comprehensive course on ethics and standards of conduct. My understanding is that the Office of the General Counsel provides in-person and web-based presentations on recent developments in ethics and legal practice to the Army legal community. Furthermore, Army uniformed and civilian attorneys regularly participate in multi-day ethics courses and conferences offered by the

Army, other services, and the Department of Defense Office of General Counsel. If confirmed, I will work closely and collaboratively with The Judge Advocate General of the Army and other senior legal officials to address training needs for all uniformed and civilian attorneys and legal support personnel within the Department and continue to strengthen the Army's ethical climate and culture.

82. What resources has the Army made available to provide its GOs and SESs the legal advice, and assistance they need to adhere to ethical and legal standards in complying with travel regulations, and ensuring that government resources, including the official time of their military and civilian subordinates—are used only for official purposes? Please explain your answer.

Answer: It is my understanding that the Army provides multiple resources to GOs and SESs to ensure they have access to legal advice regarding government ethics issues. I am informed that The Judge Advocate General's Legal Center and School (TJAGLCS) provides training directly to GOs, and that new Army GOs are required to attend Army Strategic Education Program (ASEP) courses that include ethics training. Additionally, the TJAGLCS has a General Officer Legal Orientation Course (GOLO) that is optional for GOs (O-7 and O-8s), which includes a mandatory one-hour block of instruction on government ethics issues to include conflicts of interest, use of resources (e.g., the use of subordinates' time), gifts, travel regulations, post-government employment restrictions, and relations with non-federal entities. In addition to these training requirements, I understand that GOs and SESs have access to trained ethics counselors who have been delegated the authority to advise on ethics issues from the General Counsel of the Army, the Army Designated Agency Ethics Official, through The Judge Advocate General of the Army. These ethics counselors provide direct support to GOs and SESs to assist them with identifying ethics issues and addressing them in accordance with all statutory and regulatory requirements. Finally, because all Army GOs and SESs are mandatory filers of Public Financial Disclosure reports as required by the Office of Government Ethics, these individuals are required by Federal regulations to receive annual ethics training. Topics covered in the annual training include financial conflicts of interest, impartiality, misuse of position, gifts, and any other agency regulations determined to be relevant by the Designated Agency Ethics Official. I understand that the agency regulations included in this training are the Joint Travel Regulation and the use of government resources in accordance with the Joint Ethics Regulation.

83. What is your understanding of the actions required of a Department of the Army civilian attorney or Judge Advocate who becomes aware of improper activities by a Department of the Army officer or official who has sought, but failed to follow that attorney's legal advice?

Answer: My understanding is that, except when representing an individual client, an Army lawyer represents the Department of the Army. If a lawyer for the Army knows that any person associated with the Army is engaged in action that is a violation of a legal obligation they owe to the Army that is adverse to the legal interests or obligations of the Army, or that is a violation of law that reasonably might be imputed to the Army, then that lawyer must take appropriate action for the best interests of the Army. This would include asking that person to reconsider or elevating the matter to a higher authority. If, despite the lawyer's efforts, the highest authority that can act concerning the matter insists upon or fails to address, in a timely

and appropriate manner, the violation, the lawyer, in my view should consult with senior Army lawyers at the same or higher levels of command, advise them of the lawyer's concerns, and discuss available alternatives to address the situation.

84. In your view, is Army OGC adequately resourced—in people, money, technology, and expertise—to execute its FDM-related duties on behalf of the Secretary of the Army?

Answer: I have no knowledge at this time if the Army Office of General Counsel is appropriately resourced to execute its Financial Disclosure Management responsibilities, but will look into the Army Office of the General Counsel's resourcing, if confirmed, to ensure the Army can meet this key requirement.

In March 2016, the DOD Inspector General issued its report, *Section 847 Requirements for Senior Defense Officials Seeking Employment with Defense Contractors*. The report concluded that the After Government Employment Advice Repository (AGEAR), administered by Army OGC, was “unreliable.”

85. Have all of the AGEAR-related deficiencies identified in the DOD Inspector General's report—including deficiencies under the purview of Army OGC, and those for which other DOD Components were responsible—been corrected? Please explain your answer.

Answer: My understanding is that all AGEAR-related deficiencies have been corrected, as evidenced by the DoD Inspector General's 2019 report conclusions. The DoD Inspector General found no deficiencies and made no recommendations in the 2019 report.

Environmental Contaminants

GAO advises that as of August 2017, the Army had identified known or suspected releases of perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA) in drinking water at or near 61 of its installations.

86. What “lessons learned” will OGC incorporate—going forward—in its practice relating to environmental remediation in support of the redevelopment of *military bases closed under BRAC*—including as regards the remediation of PFOS and PFOA?

Answer: I believe, the Defense Environmental Restoration Program is a mature effort throughout the Army for both active and BRAC sites, and most installations closed under BRAC have been remediated. However, I think the Office of General Counsel needs to be proactive and responsive to Army leaders regarding the potential for emerging contaminants to impact property disposal of BRAC sites due to the risk to redevelopment by local communities. If confirmed, I will ensure the Office of General Counsel educates Army leaders and stakeholders about existing or proposed legal requirements for PFOS/PFOA, and other emerging contaminants, and will ensure that the Army remains cognizant and flexible as both the law and science related to contaminants continue to develop.

87. To date, what has been the role of OGC in the Army's efforts to address environmental and Soldier and family health concerns associated with PFOS, PFOA, and

other potentially harmful contaminants at active Army installations? If confirmed, what role would you establish for yourself in ongoing efforts in this regard?

Answer: If confirmed, I will work closely with the DoD Office of General Counsel in supporting the DoD's per- and poly-fluoroalkyl substances (PFAS) Task Force. I will also assist the Army Secretariat in their efforts to address novel issues that are raised through the Army's PFAS Working Group to ensure the protection of human and environmental health. The Army is fully engaged with the other services to proactively and conscientiously address PFAS concerns and develop a coordinated and holistic DoD approach.

88. What factors would you consider in providing legal advice to Army officials regarding the role the Army should take in funding and overseeing PFOS and PFOA-related environmental cleanup and restoration activities at Reserve locations and in communities adjacent to or near military bases, installations, and operational platforms?

Answer: If confirmed, I would consider recent NDAA provisions that have focused on PFAS-containing materials at DoD installations and operational platforms as well as considering existing law including the Defense Environmental Restoration Program to provide accurate and proactive legal advice to Army officials regarding the Army's role with respect to PFOS and PFOA-related environmental cleanup and restoration activities. I am aware of the challenges posed in conducting investigations and remediation related to PFOS and PFOA releases. If confirmed, I am committed to working transparently with all stakeholders to develop mutually acceptable solutions.

Energy Security and Resilience

The range of threats against which Army installations must maintain resiliency is ever-growing.

89. In your view, how can OGC assist the Army in better integrating energy security and resilience as standard components of its Military Construction (MILCON) programs?

Answer: If I am confirmed, I would ensure the Office of the General Counsel assists the Assistant Secretary of the Army for Installations, Energy and Environment in determining how best to integrate recently enacted and amended energy resilience authorities—to include the Energy Resilience and Conservation Investment Program (ERCIP)—with existing MILCON authorities as the Army builds its Future Year Development Plans (FYDPs). The Office of the General Counsel can also help identify gaps in statutory authority that may benefit from additional legislation to enable the Army's MILCON program to appropriately prioritize energy resilience measures in the construction design and project authorization process. Further, as General Counsel, I would advocate for additional MILCON funding in the budget process to fully support Army priorities, Army facilities investment strategies, and the National Defense Strategy, to include those aspects dealing with energy security and resilience.

A number of unique authorities enable the Army's pursuit of distributed energy projects that improve installation resilience, increase readiness and mission assurance, and offer long-term cost savings. These authorities include: Inter Governmental Support Agreements, Other Transaction Authority, Utility Privatization, Energy Savings Performance Contracts, Utility

Energy Service Contracts, Enhanced Use Leases, and the Defense Community Infrastructure Program.

90. What is the role of the OGC in advising on the use of these authorities? Has the Army's use of one or more of these authorities yielded outcomes of particular promise?

Answer: I believe the Office of General Counsel advises the Army Secretariat on legal issues associated with policy formulation and implementation, including those related to distributed energy projects to improve installation resilience. With regard to the use of 10 U.S.C. 2679 to enter into Inter-Governmental Support Agreements (IGSAs), for example, I am informed that Army Installation Management Command (IMCOM) reported the Army saved approximately \$25.3M by obtaining installation support services through IGSAs compared to obtaining those same services through Federal Acquisition Regulation (FAR)-based contracts.

Encroachment on Military Installations

Encroachment on military installations by commercial and residential development can negatively impact ongoing operations and significantly delay or halt the construction of new testing and training facilities vital to generating readiness.

91. What would be your role, if confirmed, in engaging with communities surrounding Active Army and Reserve Component training ranges, to address and resolve community concerns, while ensuring the resilience of range capabilities?

Answer: It is my understanding the Army, in conjunction with the Office of Local Defense Community Cooperation, conducts compatible use studies at installations. These studies are co-sponsored by the community and include input from surrounding county and state officials to ensure all future plans are known and incorporated into the study. If confirmed, I will ensure the Office of the General Counsel is fully engaged in the process of obtaining compatible use buffers to protect Army training missions.

Environmental Stewardship and Conservation

92. If confirmed to be the Army General Counsel, how would you educate Army leaders and the force at large about the imperative of complying with environmental protection laws and regulations, as well as with guidance from the Environmental Protection Agency

Answer: I am aware of some of the environmental challenges that DoD and the Army face. If confirmed, I will work with the Army's subject matter experts to address these challenges in order to protect human health and the environment, and to ensure support of the Army's warfighters.

93. If confirmed, how would you work with the Department of the Interior and the U.S. Fish and Wildlife Service to promote environmental stewardship and conservation on and around Army installations, while ensuring military readiness?

Answer: If confirmed, I will ensure the Army continues to work closely and cooperatively with the Department of the Interior and the U.S. Fish and Wildlife Service to remain good

stewards of our nation's most valuable natural resources, while maintaining sufficient land to train for the Army's warfighting mission.

94. What are your ideas as to how the process associated with generating an Environmental Impact Statement (EIS) could be streamlined, with a view to completing any future EIS in two years or less, from start to finish?

Answer: If confirmed, I will work with the Army's subject matter experts and with other stakeholder federal agencies to explore ways to update and refine the Army's National Environmental Policy Act (NEPA) regulation and procedures in an effort to streamline NEPA requirements Army-wide.

Military Housing Privatization Initiative (MHPI)

95. If confirmed as Army General Counsel, what would be your role in establishing accountability inside the Army for sustaining the high quality housing that Soldiers and their families deserve?

Answer: If confirmed, I would ensure Army leadership is kept fully aware of all legal mechanisms available to hold the Army's housing privatization partners to their legal obligation to provide high-quality housing to Soldiers and their families. If Army leadership deems it appropriate to take action to hold a partner accountable, I will ensure the Office of the General Counsel provides the necessary legal advice and support to effectively implement the available accountability measures.

96. If confirmed, specifically what would you do to improve business operation constructs and vest accountability in MHPI "contractors" for strict compliance with the terms of their public-private partnership agreements with the Army?

Answer: Ensuring that Soldiers and their families have high quality housing is exceptionally important. I believe it is critical that the Army set defined metrics and enforce performance standards with the MHPI partners. I understand the Army established common performance metrics for MHPI project company incentive fees. If confirmed, I will support the refinement of existing tools to allow leaders to assess project company performance and hold them accountable by enforcing contractual obligations, including any penalty provisions when appropriate. As stated above, if confirmed and if Army leadership deems it appropriate to take action to hold a partner accountable, I will ensure the Office of the General Counsel provides the necessary legal advice and support to effectively implement the available accountability measures.

97. What progress has the Army made in creating a "Tenant Bill of Rights" and enumerating "Tenant Responsibilities" applicable to Soldier and military families who reside in privatized housing?

Answer: I understand the Army recently implemented all 18 tenant rights at all 44 privatized housing locations and issued a complementary document of tenant responsibilities. If confirmed, I will provide Army leadership the necessary legal support to protect Soldiers and their Families across a wide range of privatization initiatives, including implementation of the

Tenant Bill of Rights.

The installation or regional commander in charge of the oversight of privatized housing units will serve as the “deciding authority” in the dispute resolution and payment-withholding processes established pursuant to section 2894 of the NDAA for FY 2020.

98. What role will OGC play in training commanders, their legal counsel, and other participants in the dispute resolution and payment withholding processes?

Answer: My understanding is the dispute resolution and payment withholding process is being implemented by Army Installation Management Command (IMCOM). If I am confirmed, the Office of the General Counsel will continue to advise the Army Secretariat on policy and legal issues resulting from implementation of the Army’s dispute resolution and payment withholding processes, including issues indicating a need for additional training of process participants.

Recently, the Air Force Inspector General undertook an assessment of actual progress in implementing MHPI reforms at a sampling of installations across the Department of the Air Force.

99. Has the Department of the Army implemented any like objective assessment? If so, what did that assessment find? If not, would you recommend that the Secretary of the Army direct such an assessment? In your view, are there other ways in which the Secretary can assess effectively whether the reports of progress he receives from Army officials responsible for MHPI are congruent with improvements on the ground?

Answer: I have been told that the Department of the Army Inspector General is in the process of conducting a similar assessment, as is the Department of Defense Inspector General and the Government Accountability Office. If confirmed, I will review the assessments, once they are completed, and make recommendations to Army leadership as to how best to correct any outstanding deficiencies. I will also ensure that the Office of the General Counsel provides legal support to aid the MHPI program in making improvements in compliance with all applicable laws and policies.

Acquisition

In successive NDAs beginning in FY 2013, Congress enacted sweeping reforms of the defense acquisition system and organizational structure. These reforms expanded the acquisition-related functions of the Service Chiefs and incorporated measures designed to reduce the cost and development timelines of major systems.

100. What is your understanding of the role of the Army General Counsel in ensuring that Army acquisition programs are executed in accordance with the law and DOD and Army acquisition policy?

Answer: The Army General Counsel is responsible for advising both the Secretary of the Army and the Assistant Secretary of the Army for Acquisition, Logistics and Technology (ASA(ALT)) to ensure Army acquisition programs are executed in accordance with law and

policy. If confirmed, I would stay directly involved in this area and would ensure the Office of the General Counsel continues to provide sound legal and business advice to help Army acquisition programs achieve their cost, schedule, and performance objectives consistent with the principles of acquisition reform.

101. How does the Army General Counsel ensure that the acquisition-related responsibilities of the Chief of Staff of the Army are synchronized with those of the Secretary of the Army and the Assistant Secretary of the Army for Acquisition, Logistics and Technology (ASA(ALT))?

Answer: The Secretary of the Army and the Chief of Staff of the Army are the customers of the Army acquisition system, which is responsible for balancing resources against priorities on acquisition programs. The Army's acquisition system must ensure that appropriate trade-offs are made among cost, schedule, technical feasibility, and performance objectives on a continuing basis throughout the life-cycle of the program. The Army General Counsel advises Army leaders on the legal aspects of acquisition matters to help ensure their involvement with individual programs remains synchronized and fully support the Secretary's responsibility to equip the Army.

102. What are your views on the overall effects on the Army of defense acquisition reform to date?

Answer: The objective of the defense acquisition system is to deliver decisive capabilities to Soldiers in a timely manner while ensuring that taxpayer resources are utilized appropriately and efficiently. My understanding is that the Army has implemented a series of acquisition reforms directed by Congress in recent years, which provide greater flexibility in the development of new capabilities and that reduce timelines to field them to Soldiers. These reforms appear to be benefiting the Army's efforts to modernize its weapon systems. If confirmed, I would support the Secretary of the Army and the Assistant Secretary of the Army (Acquisition, Logistics, and Technology) in ensuring the Army continues to implement recent reforms expeditiously, in accordance with law and policy, and in a manner consistent with Congressional intent.

103. If confirmed, how would you ensure that Army acquisition officials understand and leverage the flexibilities provided by Congress in the context of acquisition reform?

Answer: Given the rapid pace of technological change and evolving threats in an increasingly complex security environment, it is critical that the Army leverages all of the flexibility and authority provided in law. If confirmed, I would work to ensure that Army acquisition officials understand the full range of these authorities and how they can be implemented in specific acquisition programs. I would also work closely with Army acquisition leaders to ensure that these authorities are exercised in a manner consistent with Congressional intent and promote public confidence and trust in the acquisition process.

104. Do you perceive benefit to the Army in establishing major acquisition programs under Section 804 authority? What are the risks of doing so? Please explain your answer.

Answer: My understanding is that Section 804 authority enables the Army to rapidly prototype and field new capabilities to respond to rapidly changing technology and evolving threats outside of the formal defense acquisition system. These authorities enable the Army to inform requirements and incorporate Soldier feedback throughout the process, thereby increasing successful program outcomes. As I understand it, there are potential risks associated with the use of this authority, particularly when transitioning new technologies and prototypes into production. If confirmed, I would work with the Assistant Secretary of the Army (Acquisition, Logistics and Technology) to ensure that Section 804 programs appropriately address these considerations while effectuating Congressional intent in this area within applicable law and policy.

105. Do you believe the Army should exploit non-developmental or commercial off-the-shelf solutions to meet Army requirements? Would this put capabilities into the hands of Soldiers more quickly, in your view?

Answer: Yes, my view is that the Army should leverage existing commercial and non-developmental technologies where appropriate. In doing so, the Army can more effectively invest resources in developing unique capabilities and encourage investment by a broader cross-section of the industrial base. If confirmed, I commit to working with the Assistant Secretary of the Army (Acquisition, Logistics and Technology) to support such efforts.

106. What is your assessment of the legal issues attendant on the identification, evaluation, and management of risk in the Army's organic and commercial defense industrial base, including the munitions industrial base?

Answer: I understand that the organic and commercial defense industrial base, including the munitions industrial base, is vital to the Army's success, however, I am not currently aware of specific legal issues related to the industrial base. If confirmed, I would become fully informed in this area and would advise the Secretary the Army and the Assistant Secretary of the Army for Acquisition, Logistics and Technology on the associated legal and business considerations.

Army Futures Command

The Secretary of the Army indicated to the committee that a holistic review of Army Directive 2020-15, relating to Army Futures Command authorities and relationships, would be conducted.

107. What is the status of the holistic review and what are the findings and outcomes of the review to date?

Answer: I am not familiar with the details of the Army's internal discussions on this matter. If confirmed, however, I will make it a priority to ensure that any deliberations are fully informed by thorough legal analysis of related statutes and policy.

108. Will you commit that, if confirmed, you would ensure that any way forward on this Directive comports with the principles of civilian control and with governing laws?

Answer: Yes. If confirmed, I commit to ensuring that any actions taken following the

authorities derived from Army Directive 2020-15 comport with the principles of civilian control of the military and with governing law.

Security Assistance

The U.S. Army Security Assistance Command is the one-stop focal point for Army Foreign Military Sales, providing materiel, training, education, and other services to more than 140 allies and friendly countries and multinational organizations—all designed to improve security cooperation and foster interoperability and preparedness.

109. In your view, is the current structure for the provision of legal services to U.S. Army Security Assistance Command, sufficiently expert, efficient, and effective? Please explain your answer.

Answer: I am informed that the U.S. Army Security Assistance Command legal services are sufficiently expert, efficient, and effective. I understand that the attorneys whose practice involves Foreign Military Sales (FMS) possess significant experience in procurement law and litigation, are appropriately resourced, and are exceeding the standard for delivery of routine opinions. If confirmed, however, I commit to evaluating the provision of legal services to this command, and all commands for that matter, and I will make recommendations for improvement where necessary.

110. What progress has the Army made in standardizing security assistance reporting so as to leverage comparisons of security cooperation spending across countries, regions, and programs to enable informed future prioritization and resourcing decisions?

Answer: I understand that the Army has developed a database that tracks and measures statistics for all Army FMS cases, which allows for the sorting of data by country, region, status, and type of case. I also understand that this database, combined with other existing Army financial management tools, provides the Army with a holistic overview of all FMS cases and is transferable into systems developed for the Secretary of Defense. These improvements ensure that Army FMS cases are properly prioritized and aligned with U.S. strategic interests.

111. What progress has the Army made in developing an expert and effective security cooperation workforce? What skill and competency gaps remain, in your view?

Answer: I understand that the Army implemented the DoD Security Cooperation Workforce Certification Program into all training, personnel, and force management policies and procedures, and this program ensures that the security cooperation workforce has the necessary knowledge and skills to be effective in executing security missions and functions. I also understand that the Army Security Assistance Enterprise Training Initiative is being implemented to address skill and competency gaps in Army FMS development, implementation, and closure actions. If confirmed, I commit to assessing the expertise and effectiveness of the security cooperation workforce, to include identification of any skill or competency gaps, and seeking improvements where necessary

Role in the Army Officer Promotion and Confirmation Process

112. What is your understanding of the role of the Army General Counsel in ensuring the integrity and propriety of the statutory officer promotion selection board process?

Answer: My understanding is that the Office of General Counsel, in conjunction with the Office of The Judge Advocate General, reviews all promotion board memoranda of instruction, promotion board results, and documentation for officer promotions to ensure that they are properly convened and conducted, any potentially adverse or reportable information is properly considered, and the Secretary is able to certify the exemplary conduct required for promotion.

113. Do you perceive any need for change in this role? Please explain your answer.

Answer: I am unaware of any specific changes needed at this time, but if confirmed I will take a careful look at the Army's policies and procedures and make any necessary adjustments.

114. In your view, are the current policies and procedures governing review of the records of Army officers whose selection for promotion or assignment requires Presidential or Secretary of Defense approval or Senate confirmation sufficient to enable informed decisions by the Secretary of the Army, the Secretary of Defense, the President, and the Senate? Please explain your answer.

Answer: Yes. In my view, it is essential that the Army promote only the most qualified and exemplary officers. I understand current statutes and policy require a thorough review of each officer's record, including an examination of any potential adverse or reportable information that might make their promotion inappropriate.

115. In your view, are these policies and procedures fair to the individual Army officers proceeding through the promotion or assignment processes?

Answer: Yes. My understanding is that officers with potentially adverse information or reportable information are given an opportunity to rebut that information and have that rebuttal fully considered so that the information can be explained or put into proper context.

116. What is the role, if any, of the General Counsel of the Department of the Army in advising senior Army and DOD officials on the implications of adverse or reportable information pertaining to a military officer nominated for promotion to General Officer grades or for appointment to a position of "importance and responsibility."

Answer: My understanding is the Army General Counsel, in conjunction with The Judge Advocate General, provides advice to the Secretary of the Army and other senior Army leaders on nominations with potentially adverse or reportable information to ensure that the information is properly evaluated, considered, and reported to the Office of the Secretary of Defense and the Senate Armed Services Committee.

117. If confirmed, what will be your role in ensuring the Army's strict compliance with section 502 of the NDAA for FY 2020 and section 505 of the NDAA for FY 2021, as regards the conduct of boards for the selection of officers for promotion to General

Officer grades?

Answer: If confirmed, I would work with The Judge Advocate General to ensure strict compliance with these statutory requirements. As discussed above, I would also ensure that the Office of General Counsel, in conjunction with the Office of The Judge Advocate General, reviews all memoranda of instruction, promotion and advisory board results, and documentation to ensure that they are properly convened and conducted, and any potentially adverse or reportable information is properly considered.

118. What is your level of confidence that adverse information derived from Army administrative investigations, including those conducted pursuant to Army Regulation 15-6, *Procedures for Administrative Investigations and Boards of Officers*, is recorded and tracked across an individual Soldier's career, and properly considered by promotion selection boards?

Answer: Based on my current understanding, adverse information derived from Army administrative investigations is recorded in accordance with Army Regulation 15-6, tracked across an individual officer's career, and properly considered by promotion selection boards, as required by 10 U.S.C. 615 and 14107. I understand that the Army Adverse Information Program (AIP) database was created to record adverse findings against Regular Army field grade officers and higher ranks to comply with the general officer screening requirements in 10 U.S.C. 615. Understanding statutory changes and Congress' intent to provide adverse information to all Senate confirmed promotion boards, I am aware that the Army is in the process of updating and expanding AIP to record adverse administrative investigation findings on all commissioned officers, regardless of rank or component, in the database. If confirmed, I would review this matter carefully in coordination with The Judge Advocate General.

Officer Personnel Management System Reforms

The John S. McCain NDAA for FY 2019 contained several provisions to modernize the officer personnel management system. These reforms were designed to align officer career management with the priorities outlined in the 2018 NDS.

119. How is the Army implementing these authorities today and to what effect?

Answer: The modernization of the Army's personnel system is a necessary priority in order to recruit and retain the best talent in the Army. I understand that the Army People Strategy communicates this emphasis, and the Army Talent Management Task Force is implementing needed reforms in officer commissioning, promotion, and retention. If confirmed, I commit to reviewing the efforts underway to ensure they are fully informed by thorough legal analysis of related statutes and policy.

120. If confirmed, what would be your role in advising and assisting the Army in further leveraging these new authorities?

Answer: If confirmed, I will advise the Department's leadership regarding any issues related to these authorities provided in the FY2019 NDAA and ensure that application of the authorities

is consistent with Title 10, United States Code, and relevant Department of Defense and Department of Army Regulations.

121. Are there other authorities that the Army needs in order to modernize the management of its officer personnel?

Answer: If confirmed, I commit to reviewing the authorities concerning officer management and providing my legal assessment to the Secretary of the Army. My view is that modernization of the officer personnel system is an important component of readiness, and, if confirmed, I commit to working closely with Army leaders and this Committee to ensure that authorities are in place to maximize talent-based promotions throughout all components—Active, National Guard, and the Army Reserve.

Non-Deployable Service members

In July 2018, DOD published Department of Defense Instruction (DODI) 1332.45, *Retention Determinations for Non-Deployable Service members*. DODI 1332.45 provides that the Secretaries of the Military Departments may “retain . . . those service members whose period of non-deployability exceeds the 12 consecutive month limit . . . if determined to be in the best interest of the Military Service.”

122. What factors would you consider in advising the Secretary of the Army that the retention of a Soldier who has been non-deployable for more than 12 months is “in the best interest of the Service”?

Answer: If confirmed, I will ensure that each Soldier’s case is evaluated based on its individual merits, while remaining mindful of the Army’s vital mission and the service’s demanding requirements. Unique skill sets, the ability to perform critical duties in a non-deployed environment, medical recovery timelines, and personal circumstances are all factors that I would consider in advising the Secretary. I understand that this case-by-case approach ensures that the best interests of the Soldier and the Army are appropriately considered in the waiver determination process.

123. In your view, what legal and legal policy parameters govern how this policy should be applied to Soldiers with HIV and to Soldiers who identify as transgender?

Answer: As a standards-based organization, I believe that all Soldiers must be treated with dignity and respect. If confirmed, I commit to following all law and DoD policy concerning the deployability of HIV-positive and transgender Soldiers. I further commit to evaluating such cases according to the same factors pertinent to any other Soldier. If confirmed, I will always provide the Secretary a legal analysis informed by a Soldier’s individual circumstances and guided by Army equities.

Suicide Prevention

124. Mindful of the U.S. Constitution, Amendment II, and related statutes, what ideas would you offer to the Secretary of the Army for preventing suicides by curtailing the

misuse of lethal means by Soldiers and their families?

Answer: I believe that in many cases suicide is a preventable tragedy that harms not only the Soldier, but also families, communities, and teams. If confirmed, I would fully support the Secretary's initiatives concerning suicide awareness and intervention, to include training on the importance of limiting access to lethal means. Above all, if confirmed, I would support efforts that increase leader involvement, community engagement, and enable rapid access to critical services.

Sexual Assault and Sexual Harassment Prevention and Response

You recently served as a member of the Fort Hood Independent Review Committee that found that the Army's Sexual Harassment/Assault Response and Prevention (SHARP) program at Fort Hood "appeared to be compliant on the surface, but was hollow and lacking in leadership attention, day-to-day implementation, broad acceptance by the enlisted Soldiers, and full inculcation into the culture and character of the Fort Hood Community."

125. What is your view of the adequacy of Department of Army-level oversight of the implementation of policies for the prevention of and response to sexual assaults and sexual harassment in the Army?

Answer: It is my understanding that there are adequate oversight procedures established for the Army's Sexual Harassment/Assault Response and Prevention (SHARP) program. However, I understand and appreciate that the Army continues working to enhance its programs and policies. For example, I am aware that the Army recently conducted an assessment of organizational compliance with sexual harassment, sexual assault, and integrated violence prevention policies. If confirmed, I commit to assisting the Secretary and the Army leadership in assessing the adequacy of HQDA-level oversight of the implementation of the law and policy governing the prevention of, and response to, sexual assault and sexual harassment.

126. In your view, what can the Army General Counsel do ensure improvements in such oversight?

Answer: It is my understanding that the Army is undertaking a transformational change in its approach on prevention of and response to sexual assault and sexual harassment. The Army's redesigned SHARP program will look out for the best interest of our Soldiers and civilians by focusing on prevention, survivor support, and holding leaders at all echelons accountable. If confirmed, I will work with the Army's leadership to ensure appropriate oversight of these new programs by emphasizing that sexual assault/harassment prevention and response is a high priority and by monitoring the implementation of prevention and cultural reforms proposed by the Independent Review Commission and accepted by Secretary Austin. Sexual harassment and assault do not have any place in the Army.

127. The Army has recently made changes to the structure and operations of the Army Criminal Investigation Command. In light of these changes, what is your view of the adequacy of the human resources the Army has in place to investigate and prosecute

allegations of sexual assault and of the training provided to such investigators and prosecutors?

Answer: As I understand the ongoing transformation of CID, the Army is working to ensure that it has the appropriate level of trained and experienced agents to investigate and support the prosecution of reports of sexual assault and other serious crimes. If confirmed, I would assist in the Army's efforts to transform CID.

128. What is your view of the value of the Army's Special Victims' Counsel program? In your view, has this programs had any effect on the reporting and prosecution of allegations of sexual assault in the armed forces?

Answer: In my view, the greatest value of the Army's Special Victims' Counsel Program is that it has helped numerous victims over the last five years to be heard. When victims understand the justice process, they are empowered to describe what justice looks like for them and their case. The SVC program helps ensure this critical information is known by prosecutors and commanders before they make important decisions about each case. While I am not in a position to assess directly the effect on reporting and prosecutions, I understand that the overwhelming feedback from victims is that the SVC program increased their confidence in the military justice system.

DOD reports on sexual assault and sexual harassment in the military generally, and at the Military Service Academies more specifically, consistently document the correlation of incidents of sexual harassment and incidents of sexual assault.

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

Answer: In my view, sexual harassment, sexual assault, and associated retaliation have no place in the Army. I believe, these harmful behaviors are contrary to the Army values, harm Soldiers, destroy teams, and negatively impact the readiness of the force. I understand that the Army is continually working to enhance its programs and policies in this critical area. If confirmed, I will support the Secretary and the Chief of Staff of the Army as they implement the approved recommendations from the Fort Hood Independent Review Committee and the DoD Independent Review Commission

130. If confirmed, what role would you establish for yourself, in addressing the problem of sexual assault and sexual harassment in the force?

Answer: Having served on the Fort Hood Independent Review Committee (FHIRC), I am intimately familiar with its recommendations to improve sexual assault/harassment prevention and response, and I will utilize this insight to provide my best legal advice in support of Secretary Wormuth's efforts to implement the FHIRC recommendations, as well as Secretary Austin's efforts to effectuate the DoD-level Independent Review Commission recommendations across the Department of the Army.

131. In your view, does the Army's method for tracking the submission and monitoring the resolution of informal Equal Employment Opportunity complaints of harassment or

discrimination provide Army leaders, supervisors, and managers, with an accurate picture of the systemic prevalence of these adverse behaviors in the civilian workforce?

Answer: It is my understanding that the Army's methods for tracking these complaints provides an accurate picture, which is necessary for understanding adverse behavioral trends. I am informed that EEO Officials are responsible for reviewing, monitoring, and assessing EEO complaint activity and informing supervisors of trends. The Army Complaints Tracking System, I am told, has the capability to query by a variety of data fields and specific information. If confirmed, I will review the Army's tracking of harassment and discrimination complaints to see if any gaps exist.

132. Does the Army's method for recording the outcomes of informal Equal Employment Opportunity complaints of harassment or discrimination provide Army leaders, supervisors, and managers with a means of identifying repeat perpetrators in the civilian workforce?

Answer: Yes, I understand that the Army's method for recording outcomes of informal EEO complaints provides a means of identifying repeat offenders and to track the disposition of any discrimination complaints against them. Further, I understand the Army is establishing a separate anti-harassment program for civilians, which similarly will identify repeat perpetrators. If confirmed, I would support the establishment of the separate Anti-Harassment Program for Civilians and the exploration of additional ways to prevent harmful behaviors in the workplace.

133. Does the Army's method for responding to complaints of harassment or discrimination in the civilian workforce provide appropriate care and services for victims?

Answer: Counseling, advice, and referrals are an essential part of any complaint process including within the Army workforce. As I understand, the Army has a history of compliance with law, regulation, and policy that ensures commitment to providing care and full due process for victims alleging EEO harassment and/or discrimination. If confirmed, I would work to ensure continued accountability for offenders, compliance with law and policy, and that reports of harassment are kept confidential to the fullest extent possible without impeding fact-finding into such allegations. I would ensure that Army management officials investigate allegations and take appropriate corrective or disciplinary action, if warranted.

134. If confirmed, what role would you play in shaping policies and processes for the prevention of harassment and discrimination in the Army's civilian workforce?

Answer: I am familiar with the Government-wide equal employment opportunity processes available to the civilian workforce as well as the existence of civilian employee assistance programs. I also understand that the Department of the Army recently implemented a new SHARP policy that grants additional SHARP victim services to Army civilian employees. If confirmed, I will assist Army leadership in supporting these EEO processes and victim services, and will emphasize the high priority to ensure support of all victims, including those within our civilian workforce.

Identification of Potential Extremist Views

Press reports document the involvement of a small number of active duty military personnel, retired military officers, members of the National Guard, and military veterans in events at the U.S. Capitol on January 6.

135. In your view, are the Department's policies adequate to address, document, and track extremism in the Army, including in the Army civilian workforce?

Answer: In my view, the Department's policies are adequate to address, document, and track extremist activities in the Army, but they can always be refined, particularly with respect to Civilian and Contractor employees. In my experience, the Army takes reports and indicators of extremism very seriously and has been proactive in reviewing its policies to counter extremism. I understand the Army takes an enterprise approach to counter extremism and other unwanted behaviors, including accessions screening, insider threat monitoring, suitability screening, and law enforcement programs. I am told that the Army also benefits from Department of Defense security clearance background investigations, expedited screening, and continuous evaluation process to detect and counter extremism in its ranks. If confirmed, I would review the current policies to identify any potential mechanisms to better enable the tracking of extremism activity within the Department.

136. What is your understanding of how the Army balances the need to identify and respond to potentially harmful extremist views held by Soldiers and civilian employees against individual privacy and respect for the rights of Soldiers and civilians to hold and express personal beliefs?

Answer: In my view, public service as a uniformed or civilian member of the Army is a privilege. It begins by taking an Oath of Office, and comes with the responsibility to maintain public trust, safeguard sensitive information, and maintain good order and discipline within the ranks. While Soldiers and civilian employees have a right to express personal beliefs and maintain individual privacy, these rights must be balanced against the special trust that public service demands. Extremist or dissident behaviors within the ranks are an existential threat to that trust and pose an unacceptable risk to military readiness. I believe the Army must balance individual rights against the need to maintain readiness and discipline by ensuring diligence and due process in investigations, conducting disciplinary processes that consider the unique facts of each case and focus on activities and behavior, and maintaining workplaces free of harassment, retaliation and reprisal.

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

Answer: No. My understanding is that the Army focuses on participation in extremist activities and not on beliefs. As such, I think the Army is properly striking the balance between Soldier's and civilian's First Amendment rights, and the need to protect the morale, good order, and discipline of the force.

138. In your view, do current DOD and Army policies limit the ability to include information about an individual's extremist views in official records that may assist in the identification of potential insider threats? Please explain your answer.

Answer: I am not aware of any specific DoD and Army policies that limit the documentation of information related to extremist views in official records when obtained in the conduct of a criminal investigation related to extremist activity, or in an administrative investigation for a violation of Army policy or regulations. However, if confirmed, I will determine if there are any such limitations and seek to address them as appropriate.

139. In your view, do current DOD and Army procedures hinder the ability to share this same type of information with other federal and state agencies charged with identifying and monitoring potential extremist activities? Please explain your answer.

Answer: I am not aware that any current DoD or Army procedures hinder the Army's ability to share information about criminal investigations of extremist activities with outside law enforcement agencies. The Army Criminal Investigation Division has assigned personnel to the National Joint Terrorism Task Force, the FBI Domestic Terrorism Operations Unit and the National Gang Intelligence Center to ensure information is rapidly shared among these law enforcement organizations. I understand that this system reinforces and enables the information sharing that occurs locally through the conduct of joint investigations between Army law enforcement and civilian law enforcement partners. However, if confirmed, I would assess whether there are barriers to information sharing related to extremist activity and if so, address how those might be overcome.

Medical Malpractice Claims

Section 731 of the NDAA for FY 2020 authorizes the Secretary of Defense to consider, settle, and pay claims against the United States for personal injury or death incident to the service of a member of the uniformed services that was the result of medical malpractice caused by a DOD health care provider.

140. In your view, what should be the role of the Army General Counsel in adjudicating and approving claims under section 731?

Answer: If confirmed, I will ensure that Army attorneys, both uniformed and civilian, are properly resourced and trained to support the implementation of the rules promulgated by the DOD. In my view, the Army General Counsel's role in adjudicating claims under section 731 should be to ensure that Army attorneys making the initial determinations are trained and resourced to apply uniform standards of law and render sound decisions.

District of Columbia National Guard (DCNG)

141. What is the role of the Secretary of the Army with respect to the DCNG?

Answer: I understand that, since 1969, the President, through the Secretary of Defense, has delegated to the Secretary of the Army the authority to "supervise, administer, and control" the DCNG. The Secretary of the Army exercises command, through the Commanding General of the DCNG, over DCNG operations when it is operating in a militia status to aid civil authorities. When in a militia status (under Title 32, U.S. Code), the Secretary of the Army is third in the chain of command of the DCNG after the President and the Secretary of Defense.

The Secretary of the Army has broad authorities under Title 32, U.S. Code, over the DCNG including organization (32 U.S.C. § 104b), inspections (32 U.S.C. § 105), Federal recognition (32 U.S.C. § 301 and § 307), enlistments (32 U.S.C. § 302), and training (32 U.S.C. § 501).

142. How does the Army General Counsel assist the Secretary of the Army in executing this role, particularly as regards activating members of the DCNG in response to severe weather events, in support of National Security Special Events, and to address civil disturbances?

Answer: It is my understanding that a request from the civil authorities of the District of Columbia, normally from the District of Columbia Homeland Security Emergency Management Agency (DCHSEMA), is transmitted directly to the DOD Executive Secretary who then transmits that request to the Army and the DC National Guard (DCNG). The DCNG is responsible for conducting a mission analysis to determine whether it can provide the requested support. If DCNG determines they can support the request, the Commanding General of the DCNG asks the Secretary of the Army to approve the support. I understand that attorneys in the Army's Office of the General Counsel work closely with DCNG legal advisors to determine the legality and parameters of the support requested. Army Office of General Counsel attorneys also coordinate with DoD General Counsel attorneys and the office of the Deputy Attorney General (DAG) in the Department of Justice for the support requested, because the DAG must concur with any request for civil support. For National Special Security Events or other federal requests for support, it is my understanding that these are treated differently and typically are communicated from the federal agency requesting support directly to the Department of Defense and not the Secretary of the Army and there is also no DAG coordination requirement for federal requests for support.

143. What is the role of the Secretary of the Army with respect to National Guard from other States in a Title 32 status who are called in to augment the DCNG?

Answer: I understand that the Secretary of the Army does not have direct authority with respect to out-of-state National Guard forces who are mobilized to augment the DCNG, however, she may exercise tasking authority through the DCNG Commanding General. I further understand that the Secretary of Defense may designate the Secretary of the Army to oversee and coordinate the mission performed by these augmenting National Guard forces.

144. How does the Army General Counsel assist the Secretary of the Army in executing this role?

Answer: The Army General Counsel provides legal advice to the Secretary of the Army, working closely with attorneys from the Joint Chiefs of Staff, the DOD Office of the General Counsel, the National Guard Bureau Office of the General Counsel and the Department of Justice.

Juvenile Problematic Sexual Behavior

A 2018 media expose asserted that the U.S. military frequently fails to “protect or provide justice to” the children of service members who are sexually assaulted by other children on a military installation.

145. What actions has the Army taken to regularize policies and programs for responding to, investigating, adjudicating, and documenting allegations of juvenile problematic sexual behavior on Army installations?

Answer: I am generally aware that the Army recently published an Army directive that requires Installation Commanders to ensure the investigation of major juvenile misconduct. I understand the directive also requires the referral of allegations of problematic sexual behavior of children and youth to Family Advocacy for assessment, treatment, and victim assistance. The most serious cases may be referred to civilian authorities for further investigation or appropriate disposition. I am also aware that CID has updated its policy to require that all investigative personnel properly document CID's notifications to installation commanders and civilian legal authorities. If confirmed, I intend to gain a more thorough understanding of the Army's policies and programs in this important area.

146. How does the Army ensure that the victims of juvenile problematic sexual behavior receive the care, treatment, support, and advocacy services they need?

Answer: I understand that the Army has recently published a new policy on problematic sexual behavior in children and youth. The policy requires Army installations to respond to each report of such behavior and establish multi-disciplinary teams to address safety, medical, and behavioral health of the children, youth, and families involved. I understand that the policy also requires the Army to provide trauma-informed assessment, care, support, rehabilitation, and treatment to eligible beneficiaries impacted by this behavior. The policy also requires the Army to provide appropriate resource and referral information to persons who are not eligible beneficiaries, but who are affected by these incidents reported to the Army.

147. In your view, does the Army have a mechanism to hold accountable, as appropriate, and provide treatment to juveniles who engage in problematic sexual behavior?

Answer: Yes. My understanding is that Army policy requires the investigation of each case of major juvenile misconduct and provides mechanisms to hold those juveniles who engage in problematic sexual behavior accountable. The most serious cases may warrant referral to the appropriate civilian authority for further investigation or appropriate disposition.

Regarding treatment, I understand that Army policy requires that the Army provide trauma-informed assessment, care, support, rehabilitation, and treatment to eligible beneficiaries who are affected by this behavior. I also understand the policy requires the Army to provide appropriate resource and referral information to persons who are not eligible beneficiaries, but who are affected by these incidents. If confirmed, I intend to review these mechanisms for accountability and treatment.

148. In your view, is retrocession of jurisdiction over juvenile offenses committed on Army installations, to the State or territory in which that installation is located, the most effective way to ensure the accountability of juveniles who engage in acts of delinquency, including problematic sexual behavior? Please explain your answer.

Answer: I understand that retrocession is a lengthy process and a state may decline it or, after obtaining jurisdiction, decline to accept a referral. In my view, the most effective way to ensure the accountability of juveniles who engage in acts of delinquency, which may include problematic sexual behavior, is to ensure that each allegation of misconduct is investigated, reviewed by the command for appropriate action, and if appropriate, referred to the controlling civilian authority to determine disposition.

149. Does the Army require any additional authorities to establish and maintain the centralized database on child and youth problematic sexual behavior required by section 1089 of the John S. McCain NDAA for FY 2019?

Answer: At this time, I am not aware that additional authorities are required and I understand that the Army is working closely with the Department of Defense to implement this data system, which will aid in tracking this important information. If confirmed, I would want to ensure that the Office of General Counsel assists key stakeholders in the implementation of this legal requirement.

Whistleblower Protection

Section 1034 of title 10, U.S. Code, prohibits taking or threatening to take an unfavorable personnel action against a member of the armed forces in retaliation for making a protected communication. Section 2302 of title 5, U.S. Code, provides similar protections to Federal civilian employees.

150. If confirmed, what role would you perform in ensuring that Soldiers and civilian employees of the Department of the Army who report fraud, waste, and abuse, or gross mismanagement are protected from reprisal and retaliation, including from the very highest levels of the Army, DOD, and the Executive Branch?

Answer: The law prohibits taking or threatening to take an unfavorable personnel action against an individual in retaliation for making a protected disclosure. I understand that for reprisal allegations from military personnel, the Department of Defense (DoD) Inspector General investigates or oversees such investigations undertaken by DoD Component IG offices, and forwards to the Service Secretary investigation outcomes for appropriate action. If confirmed, I would be responsible for advising the Secretary of the Army on such investigations.

Regarding civilian employee allegations of whistleblower reprisal, if confirmed, I would monitor the Army's program and investigation processes. These processes include referrals from the Office of Special Counsel and the Office of the Inspector General, as well as non-referral allegations such as an employee raising the matter within his or her management chain. If confirmed, I would ensure that the Army has in place effective programs and processes to protect our military and civilian personnel from reprisal and provides for avenues of relief. I would support taking appropriate corrective action in substantiated cases.

151. What role does the Army General Counsel play in ensuring compliance with Office of Special Counsel requests to the Army for investigations, and in ensuring the legal sufficiency of any such investigation the Army conducts?

Answer: It is my understanding that the Army General Counsel is responsible for providing overall guidance on all issues concerning the Army's cooperation with the Office of Special Counsel (OSC). This primarily relates to investigation of alleged prohibited personnel practices and allegations of improper or illegal conduct. If confirmed, I would ensure that the Office of the General Counsel has a robust program in place to facilitate this mission. This includes: rapid relay of referrals to commanders in the field and their servicing legal advisors; informal Office of the General Counsel coordination with both servicing legal advisors and OSC attorneys throughout the process of a given investigation; and prioritized Office of the General Counsel review of such investigations prior to final action.

Support to the Army Inspector General

152. What is the relationship between the Army General Counsel and the Army Inspector General?

Answer: I believe that as members of the Army Secretariat, the General Counsel and the Inspector General should have a strong working relationship to help the Secretary of the Army identify, investigate, and resolve important matters impacting the service. These include individual misconduct by senior officials, systemic non-compliance with law and regulation, or any other matter of sufficient magnitude. The Inspector General furthers this mission by being the eyes, ears, and voice of the Secretary through inspections, assistance, investigations, and teaching and training functions. I believe the Army General Counsel facilitates this mission by ensuring that the Office of the General Counsel stands ready to provide legal advice regarding these processes.

153. In your view, what role, if any, should the Army General Counsel have in reviewing and rendering opinions on the legal sufficiency of the investigations and recommendations of the Army Inspector General?

Answer: In my view, the role of the Office of the General Counsel in reviewing and rendering opinions on the legal sufficiency of investigations and recommendations of the Army Inspector General is appropriately limited to cases with substantiated findings regarding senior officials or otherwise brought to the attention of the General Counsel. I am told attorneys assigned to the Office of the Army Inspector General provide legal sufficiency reviews for all investigations that the Inspector General conducts involving senior officials, both military and civilian. As these investigations can have significant impacts on senior members of the Army, the Army General Counsel has an interest, on behalf of the Secretary, to ensure the sufficiency of the investigations.

Litigation Involving the Department of the Army

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

Answer: I understand that the Department of Justice (DOJ), under the direction of the Attorney General, has the responsibility to represent the Department of the Army and its officers in civil litigation. However, I understand that DOJ requires the assistance of Army attorneys to defend

litigation involving the Army, and throughout the course of the litigation Army attorneys work with DOJ attorneys to ensure the Army's interests are represented by collaborating on litigation strategy and defenses. If confirmed, I would continue to work collaboratively with The Judge Advocate General and the Department of Justice to protect the Army's interests in litigation.

155. In your view, should the Department of the Army have the independence and resources to conduct its own litigation?

Answer: I understand that the Judge Advocate General's Litigation Division has a strong, longstanding, and collaborative relationship with the Department of Justice. If confirmed, I will work with The Judge Advocate General to ensure this working relationship endures, and that the Army has the litigation resources necessary to properly protect the Army's equities and interests.

156. If confirmed, what factors would you consider in determining whether official Department of the Army information should be released in litigation? How would your analysis of *Touhy* requests differ in cases in which the United States or the Army is a party as compared to cases in which the United States or the Army is not a party?

Answer: I understand that when the Department of the Army is a party to litigation, it complies with the Federal Rules of Civil Procedure and provides information in discovery, as would any other party. I further understand that the Department of the Army regulation that implements *Touhy* applies only to litigation in which the Army is not a party and where official information is requested. When the Army is not a party and does have an interest in the litigation, I understand that the Army's policy is to make official information reasonably available in litigation in an impartial manner by providing equal access to official information and fact witnesses (but not expert or opinion witnesses) to litigants. If confirmed, I would collaborate with The Judge Advocate General, in coordination with the Department of Defense General Counsel and the Department of Justice, to ensure the Army's approach is consistent with other agencies' approaches to this issue.

157. How is the authority to waive attorney/client privilege allocated within the Department of the Army? If confirmed, would you make any changes to this allocation of authority or to policies governing the release of information potentially subject to the privilege?

Answer: I understand that by Army regulation, the authority to waive attorney/client privilege belongs to the responsible official acting for the Army on a given matter. For example, when the Office of General Counsel provides legal advice to an Assistant Secretary of the Army on a matter within his or her purview, waiver of the privilege on this matter belongs to that Assistant Secretary. A more senior authority may overrule a subordinate official's decision on waiving or invoking the privilege. The Secretary of the Army is the ultimate responsible official for invoking and waiving the privilege.

If confirmed, I do not anticipate changing the current allocation of authority for this privilege. Army regulations currently scope the privilege authority properly so that decision-making occurs at a reasonable level. I would, however, keep an open mind if circumstances warrant a potential modification to the current structure.

158. If confirmed, what factors would you consider in approving a request for the representation of an Army official or employee by Department of Justice attorneys or by private counsel furnished by the Department, in civil, criminal, or congressional proceedings in which an Army employee is sued, subpoenaed, or charged in their individual capacity?

Answer: I am aware that the Attorney General has the authority to approve representation by the Department of Justice, or by private counsel furnished by the Department of Justice. It is my understanding that Army attorneys use the factors outlined in applicable implementing regulation as the framework to analyze whether individual representation is appropriate and warranted when making a recommendation to the Department of Justice. Specifically, those factors are: (1) whether the official or employee was acting within the scope of employment at the time of the incident, and (2) whether representation is in the best interest of the Army. If confirmed, I intend to follow the current policy in coordination with the Department of Defense and the Department of Justice.

The Army Civilian Workforce

159. In your judgment, what is the biggest challenge facing the Army in effectively and efficiently managing its civilian workforce?

Answer: I am informed, the biggest challenge facing the Army in managing its civilian workforce is ensuring sustained access to high-demand talent such as engineers, scientists, software coders, cybersecurity analysts, data scientists, and other technical positions. I believe the Army, now more than ever, has a significant demand for these skills to meet current and future mission and readiness requirements. If confirmed, I would support policies that allow the Department to quickly and efficiently acquire, develop, employ, and retain a sustainable bench of top talent possessing current and emerging high demand skill sets.

160. Would there be value, in your view, to establishing a unified DOD civilian workforce, as opposed to separate civilian workforces segregated by DOD Component? Please explain your answer.

Answer: It is my understanding the DOD civilian workforce is diverse across a number of mission sets that are specific to each DOD Component. In my view, there is value in recognizing both the unique mission of the Army and how Army civilians support that mission and Army readiness.

However, it is also my understanding that there are multiple civilian personnel systems and authorities that are applied across the DOD civilian workforce, which create complexities in each Component being managed. If confirmed, I would support further review and analysis of the benefits of establishing a unified civilian personnel system, with streamlined authorities.

It is not uncommon for contractor employees—particularly those contracted to provide knowledge-based or administrative services—to work in the same offices, serve on the same projects and task forces, and perform many of the same functions as Department of the Army military personnel and civilian employees.

161. In your view, does the Department of the Army have in place adequate processes to ensure that contractor employees do not perform inherently governmental functions and that contractor performance of “closely associated” and critical government functions is minimized? Please explain your answer.

Answer: Yes, my understanding is that there is an adequate process in place for ensuring that the Army does not contract for inherently governmental functions. I understand that functions currently performed by contractors are reviewed at every iteration or logical inflection point of a contract to ensure that requiring activities are not entering into inappropriate or unauthorized personal services contracts or those involving inherently governmental functions.

Congressional Oversight

In order to exercise legislative and oversight responsibilities, it is important that this committee, its subcommittees, and other appropriate committees of Congress receive timely testimony, briefings, reports, records—including documents and electronic communications, and other information from the executive branch.

162. Do you agree, without qualification, if confirmed, and on request, to appear and testify before this committee, its subcommittees, and other appropriate committees of Congress? Please answer yes or no.

Answer: Yes.

163. Do you agree, without qualification, if confirmed, to provide this committee, its subcommittees, other appropriate committees of Congress, and their respective staffs such witnesses and briefers, briefings, reports, records—including documents and electronic communications, and other information, as may be requested of you, and to do so in a timely manner? Please answer yes or no.

Answer: Yes.

164. Do you agree, without qualification, if confirmed, to consult with this committee, its subcommittees, other appropriate committees of Congress, and their respective staffs, regarding your basis for any delay or denial in providing testimony, briefings, reports, records—including documents and electronic communications, and other information requested of you? Please answer yes or no.

Answer: Yes.

165. Do you agree, without qualification, if confirmed, to keep this committee, its subcommittees, other appropriate committees of Congress, and their respective staffs apprised of new information that materially impacts the accuracy of testimony, briefings, reports, records—including documents and electronic communications, and other information you or your organization previously provided? Please answer yes or no.

Answer: Yes.

166. Do you agree, without qualification, if confirmed, and on request, to provide this committee and its subcommittees with records and other information within their oversight jurisdiction, even absent a formal Committee request? Please answer yes or no.

Answer: Yes.

167. Do you agree, without qualification, if confirmed, to respond timely to letters to, and/or inquiries and other requests of you or your organization from individual Senators who are members of this committee? Please answer yes or no.

Answer: Yes.

168. Do you agree, without qualification, if confirmed, to ensure that you and other members of your organization protect from retaliation any military member, federal employee, or contractor employee who testifies before, or communicates with this committee, its subcommittees, and any other appropriate committee of Congress? Please answer yes or no.

Answer: Yes.