

**Advance Policy Questions for Solomon B. Watson IV**  
**Nominee for the Position of General Counsel**  
**of the Department of the Army**

**Defense Reforms**

**The Goldwater-Nichols Department of Defense Reorganization Act of 1986 and the Special Operations reforms have strengthened the warfighting readiness of our Armed Forces. They have enhanced civilian control and clearly delineated the operational chain of command and the responsibilities and authorities of the combatant commanders, and the role of the Chairman of the Joint Chiefs of Staff. They have also clarified the responsibility of the Military Departments to recruit, organize, train, equip, and maintain forces for assignment to the combatant commanders.**

- 1. Do you see the need for modifications of any Goldwater-Nichols Act provisions?**

This milestone legislation is now more than 20 years old and has served our nation well. Although I believe that the framework established by Goldwater-Nichols has significantly improved inter-service and joint relationships and promoted the effective execution of responsibilities, the Department, working with the Congress, should continually assess the law in light of improving capabilities, evolving threats, and changing organizational dynamics. Although I am currently unaware of any reason to amend Goldwater-Nichols, if confirmed, I hope to have an opportunity to assess whether the challenges posed by today's security environment require amendments to the legislation.

- 2. If so, what areas do you believe might be appropriate to address in these modifications?**

As noted above, I have no specific proposals to modify Goldwater-Nichols. As with any legislation of this magnitude, however, I believe it may be appropriate to review past experience with the legislation with a view to identifying any areas in which it can be improved upon, and then to consider with the Congress whether the Act should be revised.

**Duties**

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

Title 10, United States Code, section 3019 provides that the General Counsel of the Army shall perform such functions as the Secretary of the Army may prescribe. The Secretary

has done so through general orders, regulations, and memoranda. The General Counsel provides legal advice to the Secretary of the Army, the Under Secretary, the Assistant Secretaries, and other offices within the Army Secretariat. As the chief legal officer of the Department of the Army, the General Counsel determines the controlling legal positions of the Department of the Army. The General Counsel's responsibilities extend to any matter of law and to other matters as directed by the Secretary. I understand that examples of specific responsibilities currently assigned to the General Counsel include providing professional guidance to the Army's legal community, overseeing matters in which the Army is involved in litigation, serving as the Designated Agency Ethics Official, exercising the Secretary's oversight of intelligence and other sensitive activities and investigations, providing legal advice to the Army Acquisition Executive, and taking final action on certain claims filed against the Army.

**4. What background and experience do you possess that you believe qualifies you to perform these duties?**

The duties and responsibilities of the General Counsel of the Department of the Army are broad and far-reaching. Consequently, the General Counsel must possess sound legal and analytical skills along with absolute integrity and mature judgment. As the diversity and complexity of the legal and policy issues confronting the Army are such that no one lawyer can have in-depth experience in all of them, the General Counsel must have strong interpersonal and leadership abilities and a willingness to work collaboratively with experts in numerous areas. I believe that, if confirmed, my background and diverse legal and executive experiences have well prepared me to execute the duties of General Counsel of the Department of the Army.

I received my undergraduate degree in 1966 from Howard University where I was in Advanced Army ROTC and, after graduation, was commissioned a Second Lieutenant in the Military Police Corps. I served with the 9th Infantry Division MP Company for almost one year in Vietnam and received the Bronze Star and Army Commendation Medals for my service. After completing my military service in 1968, I entered Harvard Law School and received a JD degree in 1971. I have been a practicing lawyer for more than 35 years.

I was an associate at a large Boston law firm for three years before joining the legal department of The New York Times Company (a public company) in 1974. I have held various legal and executive positions during 32 years of service at the company, including 12 years as Corporate Secretary and, more recently, 16 years as General Counsel. In the latter role I was responsible for the legal affairs of The Times Company and its operating units. I have practiced law in such areas as antitrust, employee benefits, corporate acquisitions, and public company reporting and disclosure, and have adapted to changing legal, regulatory and economic environments throughout my career.

As General Counsel, I have regularly advised the board of directors and the senior management of The Times Company on a broad range of issues including compliance, legal and enterprise risk, governance, conflicts of interest and human resources. Additionally, as a member of the company's senior management team, I have participated in strategic planning, management development, organizational design and acquisitions/dispositions.

I believe that my military, legal and executive experiences have helped prepare me for the extraordinary challenge of serving as General Counsel of the Department of the Army and overseeing the delivery of quality legal services. I recognize the legal and policy issues that face the Department of the Army in this time of war and transformation. If confirmed, I commit to diligently and effectively perform the duties of General Counsel of the Department of the Army.

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

I am confident that I have the requisite legal experience, analytic abilities and leadership skills to serve as the General Counsel of the Department of the Army. If confirmed, I will work to broaden my expertise and further my understanding and knowledge of the major legal challenges facing the Army, including its personnel and its organizations. Additionally, if confirmed, I will undertake to establish and maintain collaborative and productive professional working relationships with the career civil servants in the Office of the General Counsel as well as with the Judge Advocate General of the Army and with other related offices dealing with matters of mutual interest. If confirmed, I would expect to benefit from their knowledge as we work collaboratively to provide the best possible legal services to all members of the Department of the Army.

**6. Assuming you are confirmed, what duties and functions do you expect that the Secretary of the Army would prescribe for you?**

Although the Secretary of the Army has not discussed with me the duties and functions he will expect of me, I anticipate that he will rely on me to provide accurate and timely legal advice to help ensure that the Army complies with both the letter and spirit of the law. I would expect the current enumeration of General Counsel responsibilities set forth in the General Order prescribing the duties of each principal official of Headquarters, Department of the Army, generally to remain in effect. Apart from such formally prescribed duties, I believe the Secretary of the Army would expect me to continue a collegial and professional relationship with the General Counsels of the Department of Defense, the other Military Departments, and the Defense Agencies and the legal staffs of other federal agencies. I anticipate that the Secretary of the Army will expect me to continue the extraordinarily effective and professional working relationship that exists

between the Office of the General Counsel and The Judge Advocate General and his staff. Finally, I anticipate that the Secretary of the Army will expect me to manage the General Counsel's office efficiently and effectively, and to ensure that the Army legal community is adequately resourced to perform its important mission.

**7. In carrying out your duties, how will you work with the General Counsel of the Department of Defense?**

The General Counsel of the Department of Defense is the Chief Legal Officer and final legal authority for the Department of Defense. The General Counsel of the Department of Defense, Mr. Jeh Johnson, has made clear in his testimony before this Committee and in his actions in the Department, that he intends to work closely with the Service General Counsels. If confirmed, I anticipate having a close and professional relationship with Mr. Johnson, characterized by continuing consultation, communication, and cooperation on matters of mutual interest, in furtherance of the best interests of the Department of Defense.

**Major Challenges**

**8. In your view, what are the major challenges that will confront the General Counsel of the Department of the Army?**

In my opinion, one major challenge will be to consistently provide responsive, accurate legal advice on the broad array of complex issues likely to arise in connection with the Army's role in the prosecution of contingency operations while simultaneously transforming our business operations. Although the current environment makes it difficult to anticipate specific legal questions, I expect to confront issues relating to operational matters, acquisition reform, privatization initiatives, military and civilian personnel policies, compliance with environmental laws, and oversight of Department of the Army intelligence activities. I am not aware of any problems in the current delivery of legal services. However, if confirmed, I will work hard to ensure that the Army legal community is adequately staffed and resourced to provide the responsive, accurate, and timely legal advice necessary to ensure success in all of the Army's endeavors.

**9. Assuming you are confirmed, what plans do you have for addressing these challenges?**

If confirmed, I will prioritize legal issues in the manner that best serves the Department of the Army. I will also ensure that the talented and dedicated lawyers comprising the Army legal community continue to provide timely, value-added legal and policy advice of the highest possible quality, executing the department's recurring legal responsibilities and anticipating and responding to the numerous issues that the Army confronts every day. I will endeavor to keep Army lawyers involved at all stages of the decision making process, because I believe that preventive law, practiced early in the formulation of

Departmental policies, will undoubtedly facilitate the Department's adaptation to the changing operational environment. Additionally, if confirmed I will work diligently to resource adequately and staff expertly the Army legal community, in order to guarantee decision makers at all levels access to the best possible legal advice.

**10. What broad priorities will you establish in terms of issues which must be addressed by the Office of the General Counsel of the Department of the Army?**

If confirmed, I will focus foremost on the issues that directly impact Soldiers, their families, readiness, and the support of military operations. I anticipate that the other legal issues of highest priority will arise from the Army's operational readiness to meet the challenges posed by today's dynamic security environment while simultaneously transforming the business operations of the institutional Army. I will ensure that expert advice is provided to those engaged in the Army's efforts to improve the acquisition process and to eliminate fraud, waste, and abuse. I will also ensure that the Army legal community continues to provide timely legal advice of the highest possible quality, executing the Department's recurring legal responsibilities and anticipating and responding to the numerous issues the Army confronts every day.

**Relationship with the Judge Advocate General**

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

I believe that close, professional cooperation between the civilian and uniformed members of the Army's legal community is absolutely essential to the effective delivery of legal services to the Department of the Army. If confirmed, I will seek to ensure that the Office of the General Counsel and The Judge Advocate General and his staff, as well as The Judge Advocate General and I, work closely together to deliver the best possible legal services to the Department of the Army.

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

The Army General Counsel is the chief legal officer of the Department of the Army. The Office of the Army General Counsel is a component of the Army Secretariat, and provides legal advice to the Secretary of the Army and other Secretariat officials on all legal matters. The Judge Advocate General is the legal adviser of the Chief of Staff of the Army, members of the Army Staff, and members of the Army generally. In coordination with the Army General Counsel, The Judge Advocate General serves as military legal adviser to the Secretary of the Army. The law expressly prohibits interference with the ability of The Judge Advocate General to give independent legal advice to the Secretary of the Army. Even in the absence of that statutory requirement, I

would always welcome the expression of independent views about any legal matter under consideration. The Judge Advocate General also directs the members of the Judge Advocate General's Corps in the performance of their duties. By law, he is primarily responsible for providing legal advice and services regarding the Uniform Code of Military Justice and the administration of military discipline. The Office of the Army General Counsel and the Office of The Judge Advocate General have developed and maintain a close and effective working relationship in performing their respective responsibilities. If confirmed, I will work to continue this synergistic partnership.

**13. If confirmed, how would you ensure that legal opinions of your office will be available to Army attorneys, including judge advocates?**

It is my understanding that the majority of legal opinions provided to Army attorneys and judge advocates are issued by the Office of The Judge Advocate General, and that many of these opinions are coordinated with the Office of the Army General Counsel. The close, professional cooperation between the civilian and uniformed members of the Army's legal community is absolutely essential to ensure that legal opinions issued by the Office of the Army General Counsel will be available to all Army attorneys and Judge Advocates and vice versa. If confirmed, I will seek to ensure that the Office of the General Counsel appropriately makes available any legal opinions that it issues.

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

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

The Judge Advocate General's statutory responsibility and authority to provide independent legal advice, set forth in Title 10, United States Code, section 3037 has repeatedly been recognized as essential to the effective delivery of legal services. Uniformed attorneys bring another perspective to the practice of law, providing insight and advice shaped by years of service across the Army. In today's environment, our senior leaders both demand and deserve independent advice from their counsel.

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

I believe that Army Judge Advocates in the field are vested with a critical responsibility: to provide quality, candid, legal advice to military commanders. Army commanders need and deserve the best legal advice and judgment available--that is in part made possible when Judge Advocates operate independently, with appropriate advice and guidance from supervising attorneys in their technical chain.

**16. If confirmed, would you propose any changes to the current relationships between the Judge Advocate General of the Army and the Army General Counsel?**

Based upon my knowledge and understanding to date, I believe that The Judge Advocate General and the Army General Counsel have an excellent working relationship. If confirmed, I will continue to foster this professional and collaborative relationship with The Judge Advocate General and his staff to ensure the effective delivery of legal services to the Department of the Army.

**Article 6 of the Uniform Code of Military Justice gives primary jurisdiction over military justice to the Judge Advocates General of the Army, Navy, and Air Force.**

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

The Judge Advocate General's responsibilities to ensure the proper administration of the military justice system require his direct and independent advice to the Secretary of the Army on military justice matters. I look forward to providing The Judge Advocate General with whatever support and coordination I can in this respect. I will, if confirmed, consult with The Judge Advocate General on matters of mutual interest or concern relating to military justice, recognizing his statutory duties and special expertise in this area. I will also work with The Judge Advocate General in safeguarding the integrity of the military justice system.

**Attorney Recruiting and Retention Issues**

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

I understand that the Army continues to recruit and retain top quality military and civilian attorneys and provide them opportunities for advancement. If confirmed, I will continue to monitor and assess recruitment, retention, and advancement programs for our military and civilian attorneys.

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

I understand that new and enhanced mission requirements in recent years have fueled growth in the Army's legal community. If confirmed, I will evaluate whether the number of attorneys in the Department of the Army is sufficient to accomplish the Army's missions.

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

In my view, retention of top military and civilian attorneys is essential to the current and future success Army legal services. Although I am unfamiliar with the full scope of attorney retention programs available in the Army, if confirmed, I intend to review these programs carefully and support those incentives and initiatives that affect the retention of the best attorneys to support the Army mission.

**Detainee Issues**

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

Properly addressing legal and policy issues associated with detainees and detention operations is of vital importance to the Department of Defense and the nation as a whole. I understand that the Office of the General Counsel and the Office of The Judge Advocate General support the DoD General Counsel in executing elements of the President's Executive Orders related to detainee operations. Additionally, if confirmed, and in coordination with The Judge Advocate General, I will provide advice to the Secretary of the Army in his role as the Department of Defense Executive Agent for the administration of detainee operations policy, with particular focus on our obligation to treat all detainees humanely.

**Section 1403 of the National Defense Authorization Act for Fiscal Year 2006 provides that no individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.**

**22. In your view, is the foregoing prohibition in the best interest of the United States? Why or why not?**

Yes, I firmly believe that this prohibition is in the best interest of the United States. This prohibition is consistent with the long-standing military tradition of applying the humanitarian provisions of the Law of War to those individuals who, for whatever reason, are no longer actively participating in hostilities and find themselves in custody. Moreover, this prohibition is consistent with international standards to which the United States is a party. As President Obama recently noted, “[a] democracy as resilient as ours must reject the false choice between our security and our ideals.” Prohibiting the cruel, inhumane, or degrading treatment or punishment of individuals in our custody or under our physical control upholds our ideals and reinforces our moral authority around the world.

**23. Do you believe that the phrase “cruel, inhuman, or degrading treatment or punishment” has been adequately and appropriately defined for the purpose of this provision?**

Although the phrase “cruel, inhuman, or degrading treatment” is, on its face, susceptible to broad interpretation, the proscriptions on such conduct contained in the Department’s implementing directives, as well as the provisions of the Geneva Conventions that are embodied in those directives, make it clear to Soldiers what conduct is prohibited. If confirmed, I will ensure the Army’s implementation of this policy in doctrine, to include training manuals, is clearly understood.

**24. What role do you believe the General Counsel of the Army should play in the interpretation of this standard?**

The appropriate role of the General Counsel is to provide advice to the Secretary of the Army and his staff on detention and interrogation policies that implement this standard. If confirmed, I will ensure Army implementation is consistent with the law, the intent of the Administration, and the guidance issued by the Secretary of Defense.

**25. What role do you believe the Judge Advocate General of the Army should play in the interpretation of this standard?**

The appropriate role of The Judge Advocate General is to provide advice to the Chief of Staff of the Army and the Army staff on detention and interrogation policies that implement this standard. The Judge Advocate General should also continue to train and supervise the Judge Advocates in the field, who are so instrumental in attaining and maintaining this standard.

**26. If confirmed, will you take steps to ensure that all relevant Army directives, regulations, policies, practices, and procedures fully comply with**

**the requirements of section 1403 and with Common Article 3 of the Geneva Conventions?**

I will. I believe the requirements of section 1403 and Common Article 3 of the Geneva Conventions are essential to maintaining a disciplined Army, whose actions are grounded in the rule of law.

**27. Do you support the standards for detainee treatment specified in the revised Army Field Manual on Interrogations, FM 2-22.3, issued in September 2006, and in DOD Directive 2310.01E, the Department of Defense Detainee Program, dated September 5, 2006?**

I do. These standards have been instrumental in restoring the confidence of the American people in the Army and have been and will continue to be important in guiding our Soldiers' actions in contingency operations.

**Section 2441 of title 18, United States Code, as amended by the Military Commissions Act of 2006, defines grave breaches of common Article 3 of the Geneva Conventions, including torture and cruel and inhuman treatment.**

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

These sections of the War Crimes Act were necessary to define the "serious crimes," or "grave breaches," of Common Article 3 to the Geneva Conventions. Defining these felony-level offenses in our domestic law manifested our international law obligations to define, with specificity, the grave breaches which must be prosecuted under the law of war. In addition, I believe that we must continue to enforce these standards through the promulgation of doctrine, training, and oversight, and that we must hold Soldiers accountable for violations of these standards.

**Contractors on the Battlefield**

**U.S. military operations in Iraq have relied on contractor support to a greater degree than any previous U.S. military operations. The extensive involvement of contractor employees in a broad array of activities – including security functions – has raised questions about the legal accountability of contractor employees for their actions.**

**29. Do you believe that current Department of Defense and Department of the Army regulations appropriately define and limit the scope of security**

**functions that may be performed by contractors in an area of combat operations?**

It is my understanding that Department of Defense Instructions 1100.22 and 3020.41 currently define the limit and scope of security functions that may be performed by contractors in an area of combat operations; however, I have been advised that these instructions are presently under review. Accordingly, it would be premature for me to offer an opinion at this time regarding whether current Department of Defense and Department of the Army regulations on this subject are adequate. If confirmed, however, I will support this review, as appropriate. Additionally, Section 321 of the National Defense Authorization Act for Fiscal Year 2009 directed the Office of Management and Budget (OMB) to review whether the definition of the term “inherently governmental” is “sufficiently focused to ensure that only officers or employees of the Federal Government or members of the Armed Forces perform inherently governmental functions or other critical functions necessary for the mission of a Federal department or agency.” I understand that the Office of the Assistant Secretary of the Army for Manpower and Reserve Affairs is participating in this review, which I too will support, if confirmed.

**30. What changes, if any, would you recommend to such regulations?**

It would be premature for me to recommend any changes to Department of Defense or Department of the Army regulations. If confirmed, I will consider the findings and recommendations of the reviews of this subject matter and make appropriate recommendations to the Secretary of the Army.

**31. Do you believe that current Department of Defense and Department of the Army regulations appropriately define and limit the scope of contractor participation in the interrogation of detainees?**

I understand that the current Department of Defense and Department of the Army regulations define and, as properly implemented, limit the scope of contractor participation in the interrogation of detainees. However, the National Defense Authorization Act for Fiscal Year 2010 significantly limits DoD's authority to use contractors in an interrogation role. DoD and Army policies must be reviewed and amended to comply with the new law. If confirmed, I will support this review process.

**32. What changes, if any, would you recommend to such regulations?**

Although I have no basis of knowledge on which to propose changes at this time, I will, if confirmed, review applicable Department of Defense and Department of the Army regulations to determine what, if any, changes may be necessary and appropriate.

**OMB Circular A-76 defines “inherently governmental functions” to include “discretionary functions” that could “significantly affect the life, liberty, or property of private persons.”**

- 33. In your view, is the performance of security functions that may reasonably be expected to require the use of deadly force in highly hazardous public areas in an area of combat operations an inherently governmental function?**

I understand that support services that require the exercise of substantial discretion or prudent judgment are inherently governmental. That said, there are many factors that must be considered in assessing whether a particular mission or set of duties is inherently governmental. If I am confirmed, I intend to examine this issue in greater depth.

- 34. In your view, is the interrogation of enemy prisoners of war and other detainees during and in the aftermath of hostilities an inherently governmental function?**

Currently, DoD policy allows properly trained and cleared contractors to conduct government-approved interrogations, provided they are supervised and closely monitored throughout the process by properly trained DoD military or civilian personnel. However, the National Defense Authorization Act for Fiscal Year 2010 significantly limits DoD's authority to use contractors in an interrogation role. DoD and Army policies must be reviewed and amended to comply with the new law. If confirmed, I will support this review process.

- 35. What role do you expect to play, if confirmed, in addressing the issue of what functions may appropriately be performed by contractors on the battlefield?**

If confirmed, I will provide advice to the Secretary of the Army and the Assistant Secretaries regarding the functions that contractors may legally perform on the battlefield. I will assist them in implementing policies regarding the use of contractors that are consistent with applicable statutory and regulatory constraints.

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

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

I understand that MEJA was intended to address a jurisdictional gap in U.S. criminal law as applied to civilians employed by or accompanying the Armed Forces outside the United States, members of the Armed Forces, and former members of the Armed Forces, including their dependents. In my opinion, MEJA provides an effective means of exercising extraterritorial criminal jurisdiction over contractor employees in Iraq, Afghanistan, and other areas of operation, who engage in conduct that would constitute a felony-level Federal crime in the United States.

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

I understand that legislation has been proposed in the past that would expand MEJA to cover individuals employed under a contract (or subcontract at any tier) awarded by any department or agency of the United States, where the work under such contract is carried out in an area, or in close proximity to an area (as designated by the Department of Defense), where the Armed Forces are conducting contingency operations. If confirmed, I will assess whether this or any other change to MEJA may be appropriate.

**38. What role would you expect to play, if confirmed, in developing Administration recommendations for changes to MEJA?**

If confirmed, I would play an active role in the development of any proposals to change MEJA. I would also coordinate closely with The Judge Advocate General in the development of any such proposals given the complementary and sometimes competing availability of criminal jurisdiction under the Uniform Code of Military Justice.

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

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

The UCMJ provides commanders the tools necessary to maintain good order and discipline and the morale, welfare and safety of all those under their jurisdiction during military operations. Because misconduct by contractors may undermine good order and discipline, Congress extended UCMJ jurisdiction to cover such individuals. The Secretary of Defense, in turn, published guidance on the prudent exercise of such jurisdiction. This guidance ensures that the Department of Justice and the Department of Defense each play an appropriate role in resolving whether, and under which system, jurisdiction might be better exercised in each potential case.

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

I have not had an opportunity to review the procedures agreed upon by the Department of Defense and the Department of Justice to reconcile jurisdictional responsibilities under MEJA and the UCMJ. If confirmed, in coordination with The Judge Advocate General, I will monitor cases in which MEJA and the UCMJ are employed to assess the effectiveness of the procedures and whether further refinements of these procedures may be necessary.

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

At this time, I am not aware of any specific provisions in the UCMJ that need change in this area.

**42. What are your views on the impact of Article 12 of the Status of Forces Agreement between the United States and Iraq on U.S. jurisdiction over contractor personnel pursuant to either MEJA or the UCMJ?**

As I understand it, Article 12, paragraph 2 of the “Agreement Between the United States of America and the Republic of Iraq On the Withdrawal of United States Forces from Iraq and the Organization of Their Activities during Their Temporary Presence in Iraq” provides that Iraq shall have the primary right to exercise jurisdiction over U.S. contractors and U.S. contractor employees. This will not preclude the U.S. from exercising jurisdiction over such a person pursuant to MEJA or the UCMJ in the event that Iraq agrees to waive its primary right of jurisdiction in a particular case.

**43. How are jurisdictional matters arising out of Article 12 being addressed?**

I have been informed that the United States will cooperate with Iraq to address jurisdictional matters on a case-by-case basis when such issues arise.

**Attacks at Fort Hood**

**The recent attack that resulted in the deaths of 12 soldiers and one civilian employee and the wounding of many more at Fort Hood was allegedly carried out by a Muslim Army medical officer. Media reports indicate that warning signs of the Major’s extremist views were observed but not documented in official personnel records that were shared with the FBI.**

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

At this time, I am not sufficiently familiar with current Army policies regarding the filing of information in official records to permit me to express an opinion on this important question. I am informed, however, that the issues associated with the identification of potential threats are being addressed in the course of the reviews currently underway within the Army and the Department of Defense. If confirmed, I will look closely at this issue, in coordination with the Assistant Secretary of the Army for Manpower and Personnel; the Deputy Chief of Staff, G-1; and the Deputy Chief of Staff, G-2.

**45. Do current Army procedures hinder the ability to share this type of information with other official agencies charged with identifying and monitoring potential extremist or terrorist activities?**

I am not aware of any problems in this area at the present time. However, if confirmed, I will ensure that this matter is included in the Army's review of its procedures for sharing potential threat and other force protection-related information both internally (*e.g.*, with the Army Criminal Investigation Command), and with other Department of Defense or Federal law enforcement or intelligence agencies, as appropriate.

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

It is my understanding that the Army currently has a robust policy that proscribes participation in extremist organizations and activities. Commanders have been empowered to maintain good order and discipline in their units, and enforcement of this policy is a function of command; I further understand that the Army mandates reporting of suspected or possible international or domestic terrorist activity, espionage, compromises of security or classified information, and similar activities. I have been informed that the Army regulation addressing counterintelligence awareness and reporting is currently under revision, and that in the interim, the Army has published guidance to commanders that includes a list of indicators of potential terrorist-associated threats that may arise inside the Army. If confirmed, I will work closely with the proponents of force protection policies to ensure that Army programs addressing potential threats maintain the proper balance between the need for commanders to maintain good order and discipline and protect the force, and soldiers' rights to privacy and to hold and express personal beliefs.

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

At this time, I have no basis of knowledge on which to formulate an opinion on this important issue. As noted above, however, it is my understanding that the ongoing reviews within Army and Department of Defense will attempt to determine whether existing policy in this area may have contributed to the circumstances surrounding the incident at Ft. Hood. If confirmed, I would examine the review panel's report in detail, and participate in the Army's efforts to address the report's findings and recommendations.

**Religious Guidelines**

**48. What is your understanding of current policies and programs of the Department of Defense and the Department of the Army regarding religious practices in the military?**

It is my understanding that the Army's policies support religious tolerance and mutual respect. If confirmed, I would continue the Army's firm commitment to upholding the Constitutional tenets of the "free exercise" and "establishment" clauses and review policies as necessary to assure continued compliance with the First Amendment.

**49. In your view, do these policies accommodate the free exercise of religion and other beliefs without impinging on those who have different beliefs, including no religious belief?**

I have been informed that current Army policies require chaplains to support all unit personnel, regardless of their beliefs. It is my view that these Army policies do accommodate free exercise of religion. If confirmed, I am willing to study this issue further to determine if changes in policy are necessary and appropriate.

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

I understand that during mandatory official functions, chaplains are not compelled to offer prayers that are inconsistent with their faith, but are expected to remain sensitive to the pluralistic Army and society they serve. In my opinion, these policies strike an appropriate balance, given the diversity of religious views in the Army. If confirmed, I would be willing to study this issue further to determine if changes in policy are necessary and appropriate.

## **Role in the Officer Promotion and Confirmation Process**

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

I have been informed that under Title 10, United States Code, Chapter 36, the Secretary of the Army is responsible for the proper functioning of the Department of the Army's promotion selection process. In addition to the legal review of memoranda of instruction and selection board reports to ensure they comport with statutory standards, the Army General Counsel must also ensure the conduct of the board process conforms to all legal requirements. The diligent execution of this function requires advising the Secretary of the Army of any case in which a selection board report or selection board process fails to adhere to the statutory standards, either generally or with regard to a particular officer being considered for promotion. In advising the Secretary of the Army and the Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs), the General Counsel helps to ensure that Army promotion policies properly implement applicable laws and regulations and are fairly applied. In these matters, the Office of the Army General Counsel coordinates closely with The Office of the Judge Advocate General.

### **52. Do you see a need for change in this role?**

It is my understanding that the current process is working well; however, if I am confirmed and determine that a change is necessary, I would work closely with the Assistant Secretary of the Army (Manpower and Reserve Affairs), The Judge Advocate General, and the Assistant Chief of Staff, G-1, to effect such change, while maintaining both the integrity of the Army's promotion process and the trust of the officer corps, the Congress, and the American people.

## **General and Flag Officer Nominations**

**Under DOD Instruction 1320.4, adverse and alleged adverse information pertaining to general and flag officers must be evaluated by senior leaders in the Services and in the Office of the Secretary of Defense prior to nomination for promotion and certain assignments.**

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

I have been informed that for all officer promotions, including general officer promotions, the Office of the Army General Counsel, in coordination with the Office of The Judge Advocate General, reviews the following:

- a. Memoranda of Instruction that govern the conduct of promotion selection boards and subsequent promotion selection board reports.
- b. Adverse information that is not in an officer's official military personnel file that may be presented to the promotion selection board. I have been advised that this information is reviewed to ensure it is accurate and comports with the requirements of Title 10 in that it is "substantiated, relevant information that could reasonably affect the deliberations of the selection board."
- c. Adverse information related to general officers. In general officer cases, the standard for adverse information that must be presented to a promotion selection board is "any credible information of an adverse nature." I have been advised that the Office of the Army General Counsel participates in a detailed screening process in which a panel of senior officials reviews all credible information related to officers whose records will be reviewed by a promotion selection board for promotion to a general officer grade. The panel ensures that all adverse information is properly identified for presentation to the promotion selection board.
- d. Adverse information that becomes available after a promotion selection board makes its recommendations. I have been advised that the Office of the Army General Counsel and the Office of The Judge Advocate General coordinate in providing legal advice to the Secretary of the Army so that he may determine whether a promotion review board should be convened to consider whether to continue to support the promotion of the considered officer or take steps to remove the officer from the promotion list.

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

I understand that under Title 10, the Secretary of the Army is responsible for the proper functioning of the Department of the Army's promotion selection process. Prior to approval by the Secretary of the Army, all Memoranda of Instruction for officer promotion selection boards are reviewed by the Office of the Army General Counsel, in coordination with the Office of The Judge Advocate General, to ensure the Secretary's instructions conform to statutes and accurately reflect his guidance regarding attributes necessary for service in the next grade. All reports of promotion selection boards are processed through the Office of the Army General Counsel prior to final action on the report by the Secretary. The Army General Counsel must satisfy himself or herself that the Army has met applicable statutory standards and that individual selection board reports conform to the law. The Army General Counsel must advise the Secretary of the Army of any case in which a selection board report fails to adhere to the statutory standards, either generally or with regard to a particular officer being considered for promotion. In advising the Secretary of the Army and the Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs), the General Counsel helps to ensure that Army promotion policies properly implement applicable laws and regulations and are fairly applied.

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

It is my understanding that under current Department of the Army practice, the Office of the Army General Counsel reviews each selection board report, as well as Departmental communications to the Committee, the President, and the Secretary of Defense, to ensure that the reports and communications comply in form and substance with law and regulation. The Office of the Army General Counsel gives special attention to cases of nominees with substantiated or potentially adverse information and cases with reportable information in order to ensure that such information is reported to the Senate Armed Services Committee in a timely, accurate, and comprehensible manner.

**Military Personnel Policy and Cases**

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

If confirmed, I will work with the Secretary of the Army, the Assistant Secretary of the Army (Manpower and Reserve Affairs), and other senior leaders to ensure that the Army properly develops and fairly applies military personnel policies. Were I to become aware that the Department did not fairly and lawfully apply military personnel policies, I would take appropriate action to ensure that the Army properly resolves the issue. If confirmed, I would coordinate with the Assistant Secretary of the Army (Manpower and Reserve Affairs), who provides oversight for the Army Review Boards Agency, regarding the legal sufficiency of Army Board for the Correction of Military Records recommendations to the Secretary of the Army. In addition, I am aware of and fully respect the independent role that the Army Board for the Correction of Military Records plays in the correction of military records.

**Sexual Assault Prevention and Response Policy**

**Numerous cases of sexual misconduct involving soldiers have been reported from Iraq, Kuwait, and Afghanistan over the last several years. Many victims and their advocates contend that they were victimized twice: first by attackers in their own ranks and then by unresponsive or inadequate military treatment. They asserted that the military failed to respond appropriately by providing basic services, including medical attention and criminal investigations of their charges.**

**57. What is your understanding of the resources and programs the Army has in place in deployed locations to offer victims of serious sexual assaults the medical, psychological, and legal help they need?**

This is an extremely important issue for the Army and, if confirmed, I will focus significant attention on it. Although I am not fully aware of all Army initiatives or resources to help sexual assault victims, I understand that the Army has taken significant steps to improve the assistance to all victims of sexual assaults, with specific attention to victims in a deployed environment. If confirmed, I will study this matter in greater depth with a view to ensuring the Army continues to take appropriate steps to provide medical, psychological, and legal help to soldiers who are victims of sexual assault, both in garrison and in deployed locations.

**58. What is your view of the steps the Army has taken to prevent sexual assaults on female soldiers at their home stations and when they are deployed?**

It is my view that the Army has taken several extremely important steps in its campaign to prevent sexual assaults on female soldiers at their home stations and when deployed. I am aware that the Army launched a new comprehensive sexual assault prevention campaign in 2008. If confirmed, I will ensure that the legal community fully supports this initiative.

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

At this time I am not familiar with all of the Army's training and resources to investigate and respond to allegations of sexual assault. If confirmed, I will assess whether additional steps should be taken to support victims and hold offenders accountable.

**60. Do you consider the Army's current sexual assault policies and procedures, particularly those on confidential reporting, to be effective?**

I have been advised that the Army has focused both on eliminating sexual assault from its ranks and on victim support—both key elements of an effective program to address sexual assault. I have been advised that part of the focus on victim response was the implementation of confidential reporting (also called “restricted” reporting), which I understand allows sexual assault victims to disclose confidentially the details of their assault to specified individuals and receive medical treatment and counseling, without triggering the official investigative process. If confirmed, I will work with knowledgeable professionals to assess and ensure the continuation of effective Army programs.

**61. Specifically, do you think that Sexual Assault Response Coordinators should be attended a confidentiality privilege in order to help them perform their duties more effectively?**

I am advised that the Army is currently considering whether a confidentiality privilege should be extended to communications with Sexual Assault Response Coordinators. If confirmed, I will work with knowledgeable professionals to determine whether extending a confidentiality privilege to Sexual Assault Response Coordinators would allow them to perform their duties more effectively.

**Homosexual Conduct Policy**

**The current Homosexual Conduct Policy, commonly referred to as “Don’t Ask, Don’t Tell,” went into effect in February 1994 after months of congressional hearings and debate resulting in the enactment of a Federal statute (10 U.S.C. section 654). Although there have been some changes in how this policy has been implemented, the basic policy has not changed. President Obama has made it clear that he intends to work with the military and with Congress to repeal the policy.**

**62. What is your view of the current policy, as stated in section 654?**

I recognize the effort that went into the enactment of Title 10, United States Code, section 654, and I respect the decisions of the Congress and the President on this issue. I have been informed that, as implemented within the Department of Defense, the policy has met the general intent of Congress.

**63. What is your view on the merits of repealing or changing this policy?**

I understand that a review of the policy has been initiated by the President and, if I am confirmed, I would work closely with my counterparts in the other Services, The Judge Advocate General, and the General Counsel of the Department of Defense to assess the

current policy and to make recommendations for appropriate changes that are consistent with law and promote good order and discipline in the armed forces.

**64. In your view, would changing this policy have an adverse impact on good order and discipline in the military?**

It is my understanding that good order and discipline are fundamental to the success of our nation's military. Consequently, if I am confirmed, and were changes to the policy to be approved, I would work diligently to ensure that the implementation of any new law or policy did not adversely impact the good order and discipline of the Army.

**65. If confirmed, what role would you play in efforts to repeal or change this policy?**

As noted above, if confirmed, and as directed by the President, I would work closely with my counterparts in the other Services, The Judge Advocate General, and the General Counsel of the Department of Defense to assess the current policy and to make recommendations for appropriate changes.

**66. If the policy is changed by Congress, would you recommend a phase-in period for implementation of the new policy?**

If the Congress and the President were to amend current policy, the incremental implementation of the new policy should be carefully considered. The potential impact on good order and discipline, military necessity, and the intent of the Congress are important factors to be considered in the analysis of whether a phase-in of any new policy is appropriate.

**67. If confirmed, what role will you play in implementing a new policy?**

If confirmed, and were a new policy approved, I would work closely with The Judge Advocate General and our counterparts to ensure that its implementation within the Army accorded with all applicable laws, regulations, and directives.

**Whistleblower Protection**

**Section 1034 of Title 10, United States Code, prohibits taking retaliatory personnel action against a member of the armed forces as reprisal for making a protected communication. By definition, protected communications include**

**communications to certain individuals and organizations outside of the chain of command.**

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

Whistleblower protections for military personnel affirm that members of the Armed Forces must be free from reprisal for making or preparing a protected communication to a Member of Congress; an Inspector General; a member of a DoD audit, inspection, investigation, or law enforcement organization; or any other person or organization (within or outside the chain of command) designated under regulations or established procedures to receive such communications. I believe that these protections are essential. If confirmed, I will work with The Judge Advocate General to ensure that senior military leaders are fully and accurately advised of the whistleblower protections accorded by law and regulation to all soldiers, and that they understand their legal responsibilities in this important area. In addition, I will ensure that any individual cases involving allegations of illegal reprisal that may come to my attention are fully addressed in accordance with the law.

### **Support to Army Inspector General**

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

If confirmed as the chief legal officer of the Department of the Army and counsel to the Secretary and other Secretariat officials, I will establish and maintain a close, professional relationship with The Inspector General, and will communicate with him directly and candidly. I will provide independent and objective legal advice to the Inspector General and the Secretary with regard to all matters that relate to Inspector General programs, duties, functions, and responsibilities. In coordination with The Judge Advocate General, I will oversee the provision effective legal guidance to the Office of the Inspector General in conducting investigations and making recommendations. Further, as part of my responsibility to review legal and policy issues arising from the Army's intelligence and counterintelligence activities, I will advise The Inspector General concerning proper reporting of the Army's intelligence oversight activities.

### **Women in Combat**

**Current DOD policies regarding the combat role of women in uniform have been in effect since 1994.**

**70. What is your understanding of the conclusions and lessons that have been learned from Operation Iraqi Freedom and Operation Enduring Freedom about the feasibility of current policies regarding women in combat?**

At this time, I do not have enough information to make an informed assessment of the conclusions and lessons learned from OIF or OEF in regard to women in combat. It is my understanding that the Army is in compliance with the DoD policy relating to the assignment of women.

**71. What is your assessment of the Army's compliance with the requirements of law relating to women in combat?**

It is my understanding that the Army is in compliance with the requirements of the DoD policy relating to women in combat. Women have and will continue to be an integral part of the Army team, performing exceptionally well in all specialties and positions open to them.

**72. In your view, should the current policy regarding assignment of women in combat be revised to reflect the realities of the modern battlefield, effective counter-insurgency requirements, and changing societal expectations regarding roles for female soldiers?**

At this time, I do not have enough information to make an informed judgment about whether the policy should be changed. If confirmed, and if after careful study and deliberation, the Army determines that a change to the policy is appropriate in the current operating environment, I will provide the Secretary with cogent legal advice on this matter and work closely with Department of Defense officials to implement any approved changes.

**Civilian Attorneys**

**Judge advocates in the armed forces benefit from an established career progression, substantial mentoring and training opportunities, and exposure to a broad spectrum of legal areas and leadership responsibilities. By contrast, civilian attorneys in the military departments normally do not have established career**

**programs and may do the same work for many years, with promotion based solely upon longevity and vacancies.**

**73. What is your understanding of the personnel management and career development system for civilian attorneys?**

It is my view that robust attorney career development programs result in excellence in client service, the recruitment and retention of high-performing professionals, and building the bench for the future. If confirmed, I will be in a position to examine this issue closely to ensure comprehensive and effective personnel management and career development programs for civilian attorneys.

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

I understand that there is a Working Group in the Army for the purpose of assessing and recommending programs for the professional development of civilian attorneys. If confirmed, I will assess the current situation and the Working Group's recommendations.

**Client**

**75. In your opinion, who is the client of the General Counsel of the Department of the Army?**

The client of the General Counsel of the Department of the Army is the Department of the Army, acting through its authorized officials.

**Acquisition Issues**

**76. What role should the General Counsel play in ensuring that Army procurement programs are executed in accordance with the law and DOD acquisition policy?**

If confirmed, I will work closely with the Secretary of the Army, the Assistant Secretary of the Army (Acquisition, Logistics and Technology), and other senior Department of the Army leaders to ensure that the Department of the Army's acquisition and procurement programs are executed in accordance with applicable provisions of the United States Code, as well as controlling regulations and policies. Today's acquisition professionals face the challenge of managing their programs' cost, schedule, and performance while remaining in compliance with a myriad of legal and policy requirements. I believe it is

the responsibility of Army lawyers to proactively assist their acquisition clients in meeting that challenge. From the earliest stages of program development, counsel should be involved in identifying potential issues and, where appropriate, legally-compliant alternative courses of action. In those rare situations where an issue cannot be satisfactorily resolved, it is incumbent on counsel to promptly elevate their concerns in order to protect the Department's overarching interests.

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

Structuring Departmental business practices to avoid both personal and organizational conflicts of interest should be one of the Army's highest priorities. If confirmed, I will work closely with the Secretary of the Army, the Assistant Secretary (Acquisition, Logistics and Technology) and other senior Departmental officials to promote an organizational climate that is sensitive to the need to avoid conflicts of interest and that reacts appropriately when specific issues arise. I believe that Army lawyers can make a significant contribution to this endeavor through the provision of acquisition ethics training and through early and sustained involvement in the Department's acquisition programs and procurement activities.

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

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

I understand that during his tenure as the Secretary of the Army, Pete Geren created a commission, led by Dr. Jack Gansler, to assess the current state of the Army's acquisition and contracting system in support of expeditionary operations and to provide long-term strategic-level recommendations for improvement. If confirmed, I will work closely with the Secretary of the Army, the Assistant Secretary of the Army (Acquisition, Logistics and Technology), and other senior Department of the Army personnel to ensure that the legal community continues to fully support the initiatives recommended and currently being implemented as a result of the Gansler Commission's assessment. I would also work closely with the Army Judge Advocate General and the other Army legal qualifying authorities to ensure that adequate legal resources are available to support the contingency contracting mission.

**Detecting Conflicts of Interest**

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

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

If confirmed, I would closely examine the Army's process for reviewing and preventing both personal and organizational conflicts of interest. I believe that ethics awareness and instruction for all personnel is vitally important, and I would ensure that ethics training is a priority at all echelons. Bringing functions back "in-house" must be closely monitored with respect to former contractor employees and their relationships to their former employers. If confirmed, I would place special emphasis on review of these employment actions to prevent conflicts of interest at the inception.

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

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

**Recent reports have raised concerns about potential personal conflicts of interest by contractor employees, including retired general and flag officers ("senior mentors") who advise senior government officials.**

**81. What is your understanding of existing statutes and regulations pertaining to personal conflicts of interest by contractor employees who advise senior government officials?**

I understand that concerns have been raised in media reports about the Services' "senior mentor" programs. I have been told that there are a variety of ways such mentors may be obtained through contracts or Government employment arrangements. The laws and regulations applicable to such arrangements are different for contracts and Government employment. If confirmed, I would place a high priority on examining the various ways that the Army might tap this wealth of experience and expertise for the ultimate benefit of

the war-fighter. I would also emphasize the importance of finding acceptable employment or contract arrangements that would minimize conflicts of interest or any appearance thereof that could undermine the public's confidence in the integrity of this program.

**82. Do you see any need for changes to these statutes and regulations?**

At the present time, I believe that the statutes and regulations on personal and organizational conflicts of interest adequately protect the public interest. If confirmed, I would monitor this issue and, if I concluded that any changes were warranted, I would proceed through the Department's procedures for proposing legislative and regulatory changes.

**83. What role do you see for the General Counsel in identifying and addressing potential conflicts of interest by employees of Army contractors?**

In my opinion, the General Counsel should work closely with the Assistant Secretary of the Army for Acquisition, Logistics and Technology to ensure compliance with restrictions imposed by the Federal Acquisition Regulation pertaining to organizational conflicts of interest. I also would ensure that Army lawyers emphasize this area as part of the Department's program for annual ethics training.

**Legal Ethics**

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

Army attorneys generally provide legal advice to Army officials in their capacity as representatives of the Department of the Army. The Department of the Army is the attorney's client, and no attorney-client privilege is established between the attorney and the Army official. When an Army attorney advises an Army official, the official may use that advice to exercise official functions and duties. If an Army attorney suspects that the individual Army official, either in exercising such functions or in failing to do so, violates a law or standard of conduct, I believe the attorney has an obligation to report the potential violation. Potential violations of the conflict of interest laws may be reported to Army criminal investigators; potential violations of provisions of the Federal Acquisition Regulation may be reported to the appropriate contracting officer; and potential violations of ethics standards may be reported to an Army ethics counselor, the head of the Army command or organization, the individual's or attorney's supervisor, or the Army Inspector General, as appropriate. At all times, Army personnel and attorneys may

report any allegation of misconduct to the Inspector General or to criminal investigators, either in person or anonymously.

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

I understand that government attorneys may participate in pro bono activities so long as the representation is consistent with general governmental ethical rules and with the rules of professional responsibility applicable to attorneys. I understand that Army civilian attorneys may, for instance, perform pro bono work with supervisory approval so long as the representation does not occur on Government time or at its expense, does not interfere with official duties, and does not create a conflict of interest or the appearance of a conflict of interest. I understand the Army also operates a legal assistance program for soldiers and families, providing free services in areas such as family law, wills and estate planning, tax law, landlord/tenant matters, contract disputes, consumer law, and assistance during the disability evaluation system. If confirmed, I would review the current policies in coordination with The Judge Advocate General and recommend revisions, if appropriate.

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

The Army has comprehensive regulations, based upon the American Bar Association Model Rules of Professional Conduct, that govern the ethical conduct of Army lawyers, both military and civilian. All Army attorneys must, at all times, be in good standing with the licensing authority of at least one state, territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. This regulatory system would appear to provide adequate guidance; however, if confirmed, I would review the current policy in coordination with The Judge Advocate General and, as appropriate, recommend revisions.

**Litigation Involving the Department of the Army**

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

The Department of Justice represents the Department of the Army in civil litigation. In general, it is my understanding that coordination between the Justice Department and the Army is timely and consistent on every level. If confirmed, I will work with The Judge

Advocate General to ensure the continuation of a collaborative relationship with the Department of Justice with respect to litigation involving the Department of the Army.

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

The Army's interests in civil litigation are effectively protected and defended by the Department of Justice. If confirmed, I will work with The Judge Advocate General to ensure that adequate resources are available to ensure that the Army is able to provide the appropriate level of support to the Department of Justice and to protect the Army's interests and equities in civil litigation in which the Army is involved.

**Congressional Oversight**

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

- 89. Do you agree, if confirmed for this high position, to appear before this Committee and other appropriate committees of the Congress? Yes.**
- 90. Do you agree, if confirmed, to appear before this Committee, or designated members of this Committee, and provide information, subject to appropriate and necessary security protection, with respect to your responsibilities as the General Counsel of the Department of the Army? Yes.**
- 91. Do you agree to ensure that testimony, briefings and other communications of information are provided to this Committee and its staff and other appropriate Committees? Yes.**
- 92. Do you agree to provide documents, including copies of electronic forms of communication, in a timely manner when requested by a duly constituted Committee, or to consult with the Committee regarding the basis for any good faith delay or denial in providing such documents? Yes.**