

Advance Questions for Brad Carson
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 25 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 prescribed the General Counsel's duties 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, together 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 the General Counsel of the Department of the Army. A summary of my experience follows:

Currently, I am a professor in the College of Business and College of Law at the University of Tulsa. I attended Baylor University, where I graduated with highest honors, was inducted into Phi Beta Kappa, and selected as a Rhodes Scholar. Studying at Trinity College, Oxford, I earned a B.A./M.A. in Politics, Philosophy, and Economics. I graduated from the University of Oklahoma College of Law, where I served on the law review, received the award for Outstanding Note in the Oklahoma Law Review, and was recognized as the Outstanding Graduate. In 1994, I entered the practice of law at Crowe & Dunlevy, the largest firm in the state of Oklahoma. During my early years of legal work, I focused on commercial litigation, with a particular emphasis on antitrust law. From 1997 through 1998, I was a White House Fellow, serving in the Department of Defense. After completing the White House Fellowship, I returned to practicing commercial litigation at Crowe & Dunlevy. In 2000, I was elected to represent the 2nd

District of Oklahoma in the United States House of Representatives. In 2005, after leaving politics, I was a fellow at the Kennedy School of Government at Harvard University. From 2005 to 2008, I was a director and then Chief Executive Officer of CNB, LLC, where I oversaw all legal matters and a large team of in-house lawyers. From 2009 to 2010, as an officer in the U.S. Navy, I served in Iraq on active military duty with the 84th Explosive Ordnance Battalion of the U.S. Army, where I was officer-in-charge of Weapons Intelligence Teams in Multi-National Division-South. I was awarded the Bronze Star and Army Achievement Medal.

I believe that my extensive experience in law, business, education, politics, and the military have all helped prepare me for the extraordinary challenge of serving as General Counsel of the Department of the Army. I recognize the legal and policy issues facing the Department of the Army in this time of war and transformation. I have extensive experience in compliance, human resources management, corporate governance and strategy, and understanding legal and enterprise risk. If confirmed, I commit to using my skills and experience to diligently and effectively perform the duties of General Counsel.

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 component 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 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. As I understand it, 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, a major challenge will be consistently to provide responsive, accurate legal advice on the broad array of complex issues that will arise in conjunction with the Army's execution of its mission to provide trained and ready forces to combatant commanders while shaping its structure and operations in an environment of declining resources. Although it is difficult to anticipate specific legal questions, I expect to confront issues relating to operational matters, acquisition reform, privatization initiatives, military and civilian personnel policies, and compliance with environmental laws. 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 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 execution of its mission to provide trained and ready forces to combatant commanders while shaping its structure and operations in an environment of declining resources. 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 quality, executing the Department's recurring legal responsibilities and anticipating and responding to the numerous issues the Army confronts every day.

Relationships

11. What is your understanding of the formal and informal relationship between the General Counsel of the Army and the following offices?

A. The General Counsel of the Department of Defense.

As noted above, I am advised that the General Counsel of the Department of Defense, Mr. Jeh Johnson, has made clear his intent to work closely with the General Counsels of the Military Departments. If confirmed, I anticipate developing 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 the Army and the Department of Defense.

B. The Secretary of the Army.

The Secretary of the Army is the head of the Department of the Army and is responsible for, and has the authority to conduct, all affairs of the Department. If confirmed, my primary responsibility will be to provide the Secretary with competent legal advice and counsel and to perform the duties and functions he prescribes for me. My goal will be to execute these responsibilities by establishing a close and professional relationship with the Secretary of the Army that will ensure my ability to communicate with him directly and candidly on matters of significance to the Army.

C. The Chief of Staff of the Army.

The Chief of Staff, Army, is the senior military officer of the Department of the Army and a member of the Joint Chiefs of Staff. The Chief of Staff is directly responsible to the Secretary of the Army. If confirmed, I will endeavor to continue what I understand to be an excellent relationship between the Army General Counsel and the Chief of Staff and the Army Staff and will work closely with The Judge Advocate General to provide the Chief of Staff with appropriate legal advice and support in the performance of his assigned duties and responsibilities.

D. The Assistant Secretaries of the Army.

The five Assistant Secretaries of the Army perform such duties and exercise such authorities as are provided by statute or prescribed by the Secretary. Generally, the Assistant Secretaries are charged to formulate and oversee policies and programs within their functional areas of responsibility. As the chief legal officer of the Department of the Army, the General Counsel provides legal advice, counsel, and guidance to the Assistant Secretaries and their staffs. If confirmed, I will establish a close and professional relationship with the Assistant Secretaries and provide candid and objective advice regarding the matters entrusted to them.

E. The Judge Advocate General of the Army.

The Judge Advocate General is the legal adviser to the Chief of Staff of the Army, members of the Army Staff, and members of the Army generally. In coordination with the Army General Counsel, The Judge Advocate General serves as military legal adviser to the Secretary of the Army. By law, The Judge Advocate General is primarily responsible for providing legal advice and services regarding the Uniform Code of Military Justice (UCMJ) and the administration of military discipline. 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. If confirmed, I will work closely and collaboratively with The Judge Advocate General to ensure that the legal services and legal advice provided to the Army are of the highest possible quality.

F. The Inspector General of the Department of Defense.

The Inspector General of the Department of Defense is the principal adviser to the Secretary of Defense on all audit and criminal investigative matters and for matters relating to the prevention and detection of fraud, waste, and abuse in the programs and operations of the Department of Defense. The Office of the Inspector General is an independent and objective organization within the Department of Defense. If confirmed, I will work with the Inspector General of the Department of Defense on matters related to the Department of the Army, to ensure that Army interests are fully and fairly represented and that Army actions taken as a result of Department of Defense Inspector General recommendations are executed in compliance with applicable law, directives, and regulations.

G. The Inspector General of the Army.

I understand that the The Inspector General of the Army reports directly to the Secretary of the Army regarding the discipline, efficiency, and economy of the Army, and on other matters as required. If confirmed, I anticipate maintaining a close and professional relationship with The Inspector General to ensure he has the legal advice and support required to accomplish his assigned duties and responsibilities.

H. The General Counsels of the other Military Departments.

The General Counsels of the other Military Departments serve and act under the authority, direction, and control of the Secretaries of their respective Departments. If confirmed, I would expect to consult closely and collegially with them on matters of mutual interest or concern. I understand that the General Counsel of the Department of Defense acts to foster coordination of effort among all of the General Counsels so that the Department of Defense, as a whole, can make the best use of the legal services at its disposal. I look forward to participating in that effort, if I am confirmed.

I. The Attorney General and the Department of Justice.

I am aware that the Attorney General and the Department of Justice represent the Department of the Army in civil litigation. Further, I have been advised that the Department of Defense and the Department of Justice have signed a Memorandum of Understanding delineating the areas of responsibility for the investigation and prosecution of offenses over which the two departments have concurrent jurisdiction. In view of the importance of the Army's relationship with the Attorney General and the Department of Justice, our communications must be clear, consistent, and timely on every level. If confirmed, I will work in conjunction with The Judge Advocate General and the General Counsel of the Department of Defense to ensure the continuation of a collaborative relationship with the Attorney General and the Department of Justice.

Relationship with the Judge Advocate General

12. 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. If confirmed, I will seek to ensure that the Offices of the General Counsel and The Judge Advocate General, 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.

13. 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 advice to the Secretary of the Army and other Secretariat officials on any subject of law and on other matters, as directed by the Secretary of the Army. The Judge Advocate General is the legal adviser to the Chief of Staff of the Army, members of the Army Staff, and members of the Army generally. In coordination with the Army General Counsel, The Judge Advocate General serves as 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, The Judge Advocate General is primarily responsible for providing legal advice and services regarding the UCMJ and the administration of military discipline. The Offices of the Army General Counsel and 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.

14. 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 Army 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 adviser to the Chairman of the Joint Chiefs of Staff to provide independent legal advice to the Chairman, service secretaries, and service chiefs.

15. 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 have 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.

16. 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 are empowered to provide commanders with independent legal advice, with appropriate guidance from supervising attorneys in their technical chain.

17. 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.

18. 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

19. 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.

20. 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 the Army's enhanced mission requirements in recent years have fueled appropriate 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 support the successful accomplishment of all the Army's assigned missions.

21. 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 notch military and civilian attorneys is essential to the current and future success of 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

22. 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 Army 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.

23. 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. 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.

24. 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.

25. 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.

26. 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. I believe that The Judge Advocate General should continue the training programs that have been developed for Judge Advocates in the field. I understand that these programs have proven to be instrumental in attaining and maintaining adherence to this standard.

27. 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.

28. 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 promoting 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.

29. 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. Identifying these felony-level offenses in our domestic law implemented our international law obligations to define, with specificity, the grave breaches that 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 and Afghanistan 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.

30. 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 the Department of Defense regulation concerning workforce mix was updated in 2010 to better define and limit the scope of security functions that may be performed by contractors in an area of combat operations. It is also my understanding that the Department of Defense regulation on contractor personnel authorized to accompany the U.S. armed forces is presently under review. If confirmed, I will support this review, as appropriate. Additionally, the Office of Federal Procurement Policy (OFPP) recently redefined the term “inherently governmental” in OFPP Policy 11-01, effective on October 12, 2011. This new policy added to the list of inherently governmental functions: (i) security functions performed in combat and (ii) security operations in certain situations connected with combat or potential combat. I am advised that this means that each and every one of these situations should be evaluated on a case-by-case basis to determine which security functions and activities are inherently governmental and which can be performed by contractors with appropriate management and oversight. If confirmed, I will support this process.

31. 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 carefully consider the current Departmental regulations and the results of ongoing reviews and make appropriate recommendations to the Secretary of the Army.

32. 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 (NDAA) for Fiscal Year 2010 significantly limits Departmental authority to use contractors in an interrogation role. It is my understanding that DoDD 3115.09, *DoD Intelligence Interrogations, Detainee Briefings, and Tactical Questioning*, is under revision, and that the draft addresses the limitations on contract interrogators prescribed in the Fiscal Year 2010 NDAA.

33. 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.” OMB recently issued guidance clarifying the applicability of these terms to the performance of security functions.

34. 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?

In the recently revised Office of Federal Procurement Policy (OFPP) policy addressing inherently governmental functions, security operations are listed as inherently governmental when they are performed in actual combat situations. For situations where security will be performed in any hostile situation other than actual combat, the circumstances should be evaluated on a case-by-case basis to determine which security functions and activities are inherently governmental and which can be performed by contractors with appropriate management and oversight. If I am confirmed, I intend to examine this issue in greater depth.

35. 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 (NDAA) for Fiscal Year 2010 significantly limits Departmental authority to use contractors in an interrogation role. It is my understanding that DoDD 3115.09, *DoD Intelligence Interrogations, Detainee Briefings, and Tactical Questioning*, is under revision, and that the draft addresses the limitations on contract interrogators prescribed in the Fiscal Year 2010 NDAA.

36. 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 other senior Departmental officials 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.

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

Under the MEJA, federal jurisdiction covers felony offenses committed overseas by members of the Armed Forces who leave military service prior to prosecution or who conspire with non-service members covered by MEJA; civilian employees of the Department of Defense; contractors (including subcontractors at any tier) of the Department of Defense; dependents of the above; and civilian employees and contractors (including subcontractors at any tier) of any other federal agency, but only to the extent their "employment relates to supporting the mission of the Department of Defense." I understand that the goal of MEJA is to ensure that U.S. federal employees and contractors supporting Department of Defense missions overseas, who commit serious crimes, are not be able to escape federal prosecution for serious offenses such as murder and rape simply because of a potential jurisdictional gap in the law. There is no analogue to MEJA for felony offenses committed by non-Defense personnel overseas who are not supporting the mission of the Department of Defense. Rather, civilian employees and

contractors who cannot be shown to be supporting the mission of the Department of Defense may be prosecuted only under certain specific statutes of extraterritorial scope. I understand, however, that this gap would be addressed by the enactment of the Civilian Extraterritorial Jurisdiction Act (CEJA) of 2011, currently pending before the Senate.

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

In my opinion, CEJA would provide an effective means for the United States to exercise extraterritorial criminal jurisdiction over non-Department of Defense federal employees and contractors in Iraq, Afghanistan, and other areas of operation, who engage in conduct that would constitute a felony-level federal crime in the United States. If confirmed, I will assess whether any change or supplement to MEJA may be appropriate.

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

If confirmed, I would seek to offer my views and assist in developing proposals to change or supplement MEJA. I would also coordinate closely with The Judge Advocate General and the Department of Defense Office of General Counsel in the development of any such proposals, given the complementary and sometimes competing availability of criminal jurisdiction under the UCMJ.

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.

40. 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?

I am aware that Article 2 of the UCMJ was amended in 2006 to extend UCMJ jurisdiction over persons serving with or accompanying U.S. Armed Forces in the field in times of declared war or in a contingency operation. This amendment authorized a commander's exercise of UCMJ disciplinary authority over certain civilians—for example, a contractor employee whose criminal conduct jeopardized good order and discipline or discredited the Armed Forces and thereby had a potential adverse effect on military operation. The Secretary of Defense, in turn, published guidance on the prudent exercise of this unique authority. I understand that this guidance enumerated the command and law enforcement authorities available when a crime is committed within a commander's geographic area of responsibility outside the United States. This guidance further ensures that the Department of Justice and the Department of Defense each play an appropriate role in resolving whether jurisdiction over the civilian is most appropriately exercised in a military court under Article 2 of the UCMJ, or in a Federal District Court under MEJA or other federal laws.

41. 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 understand that current policy requires the Department of Defense to notify the Department of Justice when offenses alleged to have been committed by civilians violate U.S. federal criminal laws and to afford the Department of Justice the opportunity to pursue prosecution of the case in Federal Court. As stated above, such notification provides the Department of Defense and the Department of Justice the opportunity to determine whether jurisdiction is more appropriately exercised under the UCMJ or pursuant to MEJA or other federal laws. If confirmed, in coordination with The Judge Advocate General and subject to consultation with the General Counsel of the Department of Defense, I will monitor cases in which the UCMJ or MEJA are employed to assess the effectiveness of the current procedures and evaluate whether further refinements of these procedures may be necessary.

42. 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.

Attacks at Fort Hood

43. 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 Army has made progress in addressing the issues associated with the identification of potential threats. If confirmed, I will look closely at this issue, in coordination with the Assistant Secretary of the Army (Manpower and Reserve Affairs); the Deputy Chief of Staff, G-1; and the Deputy Chief of Staff, G-2.

44. 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 specific procedures that hinder the ability to share information between agencies. However, if confirmed, I will review this matter to ensure that the Army's 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 are effective and in compliance with all applicable laws, directives, and regulations, as appropriate.

45. 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. It is my understanding that the Army regulation addressing counterintelligence and other threat awareness and reporting was updated in November 2010. 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.

46. 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. I do, however, recognize that this is a Department wide issue that extends beyond the Army. If confirmed, I would support any and all Department of Defense initiatives in this area.

Religious Guidelines

47. 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.

48. 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.

49. 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

50. 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.

51. 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 Deputy 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 Army 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.

52. 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, plays an active role in the officer promotion system, to include: Reviewing Memoranda of Instruction that govern the conduct of promotion selection boards and subsequent promotion selection board reports.
- As to officers being considered for promotion to a grade below general officer, I have been advised that adverse information that is not in an officer's official military personnel file that may be presented to the promotion selection board is reviewed to ensure it is accurate and comports with the requirements of Title 10 (i.e., that it is "substantiated, relevant information that could reasonably affect the deliberations of the selection board").

- 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 robust screening process designed to ensure that all adverse information is properly identified for presentation to the promotion selection board.
- I have been advised that when adverse information about an officer becomes available after a promotion selection board makes its recommendations, 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. This advice enables the Secretary’s determination as to 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.

53. 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 be satisfied 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 Army General Counsel helps to ensure that Army promotion policies properly implement applicable laws and regulations and are fairly applied.

54. 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 applicable directives 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

55. 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. In addition, I am aware of and fully respect the independent role that the Army Board for the Correction of Military Records (ABCMR) plays in the correction of military records, and if confirmed, I would coordinate with the Assistant Secretary of the Army (Manpower and Reserve Affairs), who exercises overall responsibility for the Army Review Boards Agency, regarding the legal sufficiency of ABCMR recommendations to the Secretary of the Army.

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.

56. 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.

57. 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 in 2008, the Army launched a comprehensive new sexual assault prevention and response campaign that has continued to grow through the present day. If confirmed, I will ensure that the legal community fully supports this initiative.

58. 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.

59. 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 increasing victim support—both key elements of an effective program to address sexual assault. I have been advised that part of the focus on victim support involves an option for 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 to 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 in this regard.

60. 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?

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.

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.

61. 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 Department of Defense 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 reprisal that may come to my attention are fully addressed in accordance with the law.

Support to Army Inspector General

62. 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 of the Army 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 of 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.

63. What is your understanding of the conclusions and lessons that have been learned from operations in Iraq and Afghanistan about the feasibility of current policies regarding the assignment of women?

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

64. What is your assessment of the Army's compliance with the requirements of law relating to the assignment of women?

It is my understanding that the Army is in compliance with the requirements of the Department of Defense 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.

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.

65. 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.

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

As discussed above, robust attorney career development programs result in excellence in client service, the recruitment and retention of high-performing professionals, and build the bench for the future. However, it may be appropriate to review past experience with a view toward identifying any areas that can be approved. 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.

Client

67. 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 thorough its authorized officials.

Acquisition Issues

68. 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 elevate their concerns promptly in order to protect the Department's overarching interests.

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

If confirmed, I would work closely with the Assistant Secretary of the Army (Acquisition, Logistics and Technology) and the Assistant Secretary of the Army (Financial Management and Comptroller) to ensure that the Army's acquisition programs and financial operations are executed in a manner that is consistent with their governing legal framework and to challenge program strategies that may be premised on an unduly restrictive interpretation of the applicable authorities.

70. 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.

71. 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?

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 support fully the initiatives currently being implemented to improve contingency contracting and to enhance the contracting workforce overall. I would also work closely with The Judge Advocate General of the Army and the other legal offices 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.

72. 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 work closely with senior Army officials to foster a high level of organizational sensitivity to these concerns and to assist in the appropriate resolution of individual situations that may arise.

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

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

74. 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 military Services' "senior mentor" programs. In the past, the Army's "senior mentors" often were contractor employees, but I understand the Secretary of Defense and Secretary of the Army have issued policies that mandate employment of "senior mentors" as Highly-Qualified Experts (HQEs). This means they are Federal Government employees and not contractor employees. Further, I understand that in this capacity, "senior mentors" file public financial disclosure reports, which are reviewed by their supervisors and Army ethics counselors for financial conflicts of interest. Thus, all the normal statutes and regulations pertaining to employee conflicts of interest now apply to "senior mentors." With respect to other contractor employees who might advise senior government officials, if confirmed, I would 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.

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

At the present time, with the Secretary of Defense and Secretary of the Army policies pertaining to "senior mentors" in place, I believe that the statutes and regulations on personal 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.

76. 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 Army General Counsel should work closely with the Assistant Secretary of the Army (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 of the Army's program for annual ethics training.

Legal Ethics

77. 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 to the appropriate higher authority.

78. 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 their 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.

79. 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

80. 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 Department of Justice and the Department of the Army is timely and consistent on every level. If confirmed, I will work with The Judge Advocate General and the General Counsel of the Department of Defense to ensure the continuation of a collaborative relationship with the Department of Justice with respect to litigation involving the Department of the Army.

81. 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 Department of 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 it 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.

82. Do you agree, if confirmed for this high position, to appear before this Committee and other appropriate committees of the Congress?

Yes.

83. 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.

84. 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.

85. 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.