

**Advance Policy Questions for Thomas Ayres**  
**Nominee for General Counsel of the Department of the Air Force**

**Department of Defense Reforms**

**The National Defense Authorization Acts for Fiscal Year 2017 and 2018 included the most sweeping reforms since the Goldwater-Nichols Department of Defense Reorganization Act of 1986.**

**Do you support these reforms?**

Yes.

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

I have no recommendations for further reform efforts at this time. If confirmed, I will work with Air Force senior leaders to determine how implementation of the reforms are proceeding. If I perceive issues of concern, I will be sure to make recommendations to the Secretary of the Air Force and this Committee as appropriate.

**Duties**

**What is your understanding of the duties and functions of the General Counsel of the Department of the Air Force?**

The duties and functions of the General Counsel are determined and assigned by the Secretary of the Air Force pursuant to 10 U.S.C. §§ 8013 and 8014. The General Counsel provides legal advice and guidance to the Secretary, the Under Secretary, the Assistant Secretaries, their staffs, and other offices within the Office of the Secretary, as well as to the Chief of Staff and the rest of the Air Staff. The General Counsel also provides legal services throughout the entire Department in a variety of disciplines including fiscal law, ethics, dispute resolution, contract law, environmental law, international law, intellectual property law, real property law, personnel law, labor law, and litigation. The General Counsel determines the controlling legal positions of the Department of the Air Force. The General Counsel also serves as the Designated Agency Ethics Official, the Suspension and Debarring Official for the Department of the Air Force, and the Dispute Resolution Specialist. In addition, the General Counsel exercises oversight of intelligence and other sensitive activities and investigations.

**If confirmed, what duties and functions do you expect that the Secretary of the Air Force would prescribe for you?**

I know Secretary Wilson expects much of a legal advisor: she expects thorough, hard work to determine both the full scope of authorities available and the legal limitations, and that she expects her legal advisor to give her candid, correct and sage advice. Therefore, if confirmed, I

anticipate Secretary Wilson will expect me to provide timely, accurate legal advice and counsel with complete candor, on a wide range of issues, to ensure she fully understands the law and the policies of the Department. The Secretary will expect me to manage the General Counsel's Office efficiently and effectively. Additionally, I anticipate the Secretary will expect me to foster an atmosphere of professionalism and responsiveness regarding all legal matters and services and will fully expect me to work collaboratively with the Office of The Judge Advocate General, the General Counsels of the Department of Defense (DOD) and the other military departments, as well as the legal staffs of other government agencies.

**In your opinion, who is the client of the Air Force General Counsel?**

The answer to this question is the primary reason that I am so enthusiastic, humbled and honored to have been nominated for this position: The client of the General Counsel of the Department of the Air Force is not an individual but is the Department of the Air Force, acting through its authorized officials.

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

The General Counsel of DOD is the Chief Legal Officer and final legal authority for DOD. If confirmed, I anticipate having a close and professional relationship with Mr. Ney characterized by continuing consultation, communication, and cooperation on matters of mutual interest. I also look forward to building strong working relationships with the General Counsels of the Army and Navy.

**Qualifications**

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

The Air Force General Counsel must possess moral courage, integrity, good judgment and sound legal and analytical skills. Further, the General Counsel must be able to work collaboratively leading a team, the Office of the Air Force General Counsel, within a team of teams, that includes The Judge Advocate General of the Air Force, the Air Staff, Commands, the Department of Defense, other agencies and Congress. This is all done to provide the Secretary of the Air Force the most principled and best possible legal advice to ensure the United States Air Force is poised to Fly, Fight and Win against any adversary. I believe I have the proven character and legal and leadership skills, gained over a career of military service, to have prepared me to fulfill this obligation.

Throughout my Judge Advocate career, I gained extensive experience leading teams of attorneys and providing candid, accurate and timely legal advice. Though not originally aspiring to become a legal advisor, my early career served as an excellent foundation to advise senior military and civilian leaders. As a Lieutenant in the Infantry, I sat as a member of a court-martial panel. The desire to ensure justice after that experience inspired me to attend law school and that earnest initial desire has not deserted me. As a Judge Advocate, I first prosecuted cases in courts-martial and as a Special Assistant United States Attorney. I gained further litigation

experience representing the United States in environmental matters, in collaboration with the Department of Justice, in Federal and State Courts. Following these formative assignments, I gained years of experience as the principle legal advisor to senior military leaders and commanders dealing with complex legal issues in diverse environments. This included advice as a Staff Judge Advocate while deployed in Afghanistan, during the invasion of Iraq, and later at Multi-National Corps-Iraq as the senior operational attorney in Iraq. Significant for this position, I gained invaluable experience serving over ten years in senior advisor, policy making, and leadership positions, seven of those ten years serving within the Pentagon itself. First, I served as Deputy Legal Counsel for the Chairman of the Joint Chiefs of Staff, working directly for an Air Force Judge Advocate for two years, providing legal advice to General Peter Pace, the Chairman, and the entire Joint Staff. Later as a flag officer, I maintained oversight of Army litigation consisting of over 1,200 open cases with critical personnel programs and billions of dollars at stake. I also served as the Chief Judge of the Army Court of Criminal Appeals and later as the Commandant of the Judge Advocate General's Legal Center and School in Charlottesville, VA. Ultimately, I was honored to serve as the Deputy Judge Advocate General, assisting Lieutenant General Flora Darpino to advise the Army Staff and supervise, recruit, train and lead the nearly 5,000 Active, Reserve, Guard and civilian attorneys of the Army Judge Advocate General's Corps providing legal services in 600 offices in 22 countries delivering full spectrum legal support to the million Soldiers and 200,000 civilian employees of the United States Army.

My experiences providing legal advice to senior leaders in the Department of Defense impresses me foremost that the job of the General Counsel would not be a job for the faint of heart. It's not for the faint of heart for two primary reasons. First, valiant young American Airmen's lives are at stake whether they are in training or in actual combat. They are in a dangerous business that would be made only more dangerous by poor or inexact legal advice. Second, militarily leaders, and that includes our civilian Secretaries and Assistant Secretaries, are not normally shrinking violets. I believe the Secretary of the Air Force and her staff have been chosen to lead because they are innovative and aggressive, and this is the approach they are rightfully taking as they oversee the efforts to man, equip, train, and prepare to fly, fight and win our Nation's wars, in the Air, in Space and in the Cyber domain. It takes a collaborative legal advisor of dedication and commitment to work with the entire team to decide upon and then provide the best possible legal advice, and it takes a legal advisor of candor and moral courage to communicate the advice clearly even when that advice is not welcome. If confirmed, I vow to do my absolute best to fulfill that dual challenge of providing accurate, principled legal advice and providing it with courage and candor.

**Do you believe that there are actions you need to take to enhance your ability to perform the duties of the Air Force General Counsel?**

While having significant experience in the Pentagon, I know that I have much to learn about the organization, structure, culture and functions of the United States Air Force. If confirmed, I look forward to educating myself fully in these areas and becoming integrated with the staff in order to provide that best possible legal advice.

## **Major Challenges and Priorities**

### **In your view, what are the major challenges that will confront the next Air Force General Counsel?**

The challenges facing the Air Force as a whole, as well as DOD, will largely determine the challenges that will confront the General Counsel of the Air Force. Secretary Mattis has established three lines of effort for the Department: 1) to restore military readiness as we build a more lethal force; 2) to strengthen alliances and attract new partners; and 3) to bring business reforms to the Department. Supporting Secretary Wilson in executing these lines of effort within the Air Force will be my priority. While it is difficult to anticipate specific legal challenges that might arise, I recognize the stakes at hand and I will strive to ensure that timely and accurate legal advice is provided to Air Force senior leaders as they face these challenges head on.

### **If confirmed, what plans do you have for addressing these challenges?**

I believe that these challenges are so complex, and in many cases they are so novel, that overcoming them will require close coordination with this committee to ensure that the Air Force has all of the authorities it needs to fly, fight and win our Nation's current and potential future conflicts. If confirmed, I plan to work closely with the Secretary, the Chief of Staff, The Judge Advocate General, and the talented and dedicated military and civilian attorneys in the Department of the Air Force to candidly evaluate the challenges, to ensure responsive and accurate legal advice and services, and compliance with the law, and to bring issues of concern and recommendations for changes of law to this committee.

### **What do you see as the most significant legal issues the Air Force will face in the coming year?**

At times, the most pressing issue becomes the most significant issue. The constraints imposed by the Budget Control Act and the uncertainty of Continuing Resolutions continue to require the Air Force to make hard decisions that necessitate a careful reading of the law and consultation with Congress. If confirmed, I will ensure the Office of the General Counsel facilitates proactive communication with Congress. I expect a host of significant legal issues, and I will ensure that the Office of the General Counsel provides timely, accurate, and candid legal advice, ensuring compliance with the law in the full range of possible issues.

### **Does the Office of the Air Force General Counsel have the resources to deal with these problems?**

I have no indication to the contrary; however, if confirmed I plan to examine the current structure and resources to determine if they are adequate.

### **What broad priorities will you establish in terms of issues that must be addressed by the Office of the Air Force General Counsel?**

My first priority will be to ensure that the Office of the General Counsel understands that I expect every member of the Office to be a person of moral character and to comply fully with all applicable rules of professional responsibility. With that understanding, I will examine the current Strategic Plan for the Office of General Counsel which I have been informed includes four goals: 1) Achieving Excellence – Ensure the highest quality, most effective legal advice and program execution for Air Force mission accomplishment; 2) Customer Service – Provide candid and independent legal and policy advice in a timely manner; 3) Talent Management – Attract, retain, and develop the highest quality, ethical, and diverse professional staff; and 4) Knowledge Management – Leverage knowledge, technology, and process improvements to make our legal team more effective and efficient. If confirmed, I will review the strategic plan, and refine the plan if necessary.

### **Relations with Congress**

**What are your views on the state of the Department of the Air Force’s relationship with the Senate Armed Services Committee in particular, and with Congress in general?**

Being more knowledgeable of the Army’s relationship, in order to better answer this question, if confirmed, I would first hope to understand the Committee’s views of the relationship. And certainly, in all matters, I will strive to ensure the Department of the Air Force maintains a partnership with the Senate Armed Services Committee and Congress. If confirmed, I look forward to supporting the Secretary of the Air Force and ensuring these relationships are as collaborative and professional as my past experiences.

**If confirmed, what actions would you take to sustain a productive and mutually beneficial relationship between Congress and the Department of the Air Force?**

If confirmed, I will work with the Secretary of the Air Force to ensure that the Air Force works in close partnership with the Congress and is transparent, proactive, and responsive to all Congressional matters of importance.

### **Statutory Interpretation**

**NOTE: These questions were not posed to DoD, Navy, or Army GCs.**

**A primary responsibility of a Department General Counsel is to interpret laws passed by Congress.**

**In your view, what role should legislative history, including committee and conference reports, play in the interpretation of statutes?**

When I was on the Joint Staff, we were dealing with an issue where allied fighter aircraft that landed from time to time on U.S. bases in Afghanistan needed to be re-armed with chaff or flares for self-defense. Our regulations on Acquisition Cross Service Agreements did not allow this and were based not on clear law but an interpretation of a few lines of House Armed Services Committee legislative history. We brought the issue to that Committee’s attention and they

inserted new legislative history in the following NDAA to resolve the problem. Therefore, I appreciate that legislative history is helpful in understanding the background of statutes, the perspectives of the respective committees, and Congressional intent when enacting legislation, to include expectations for implementation. Legislative history does not overcome the plain reading of a statute. However, studying the history of legislation, to include review of committee and conference reports is particularly useful in guiding legal interpretation where there is ambiguity in the words of the statute.

**Do you commit to reading the Joint Explanatory Statement of the Committee of Conference if the meaning of a provision in a National Defense Authorization Act is ambiguous to you?**

Yes.

**Do you commit to discussing with the Senate Armed Services Committee any questions or concerns you may have with statutes within the jurisdiction of the Committee?**

Yes.

### **Relationship with the Judge Advocate General of the Air Force**

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

As a former Judge Advocate, this is an issue of great importance to me. If confirmed, I intend to fully respect the purview of The Judge Advocate General and I fully intend to maintain a very close, collaborative and collegial professional relationship with The Judge Advocate General. I will set the expectation that personnel within the Office of the General Counsel maintain similar professional working relationships with members of the JAG Corps to ensure consultation on matters of mutual interest and ensure the provision of the highest quality legal support to the Air Force.

**How are the legal responsibilities of the Department of the Air Force allocated between the General Counsel and the Judge Advocate General?**

Subject to the direction and control of the Secretary of the Air Force, the General Counsel serves as the chief legal officer of the Air Force. The Judge Advocate General is established as part of the Air Staff and is the senior uniformed legal adviser to the Secretary and all officers and agencies of the Air Force. In recognition of the unique expertise and experiences provided by the Office of the General Counsel and The Judge Advocate General, both offices provide legal advice to the Secretary and other Department officials. The Judge Advocate General is responsible for the activities of The Judge Advocate General's Corps and is primarily responsible for providing legal advice and services regarding the Uniform Code of Military Justice. A General Counsel – Judge Advocate General Mission Directive delineates respective responsibilities for providing legal services, including delegations, consistent with statutory

authorities and limitations. The law expressly prohibits interference with the ability of The Judge Advocate General to give independent legal advice to the Secretary of the Air Force. Even in the absence of that statutory requirement, I would welcome the expression of independent views on legal issues by The Judge Advocate General.

**If confirmed, will you seek to revise this allocation of responsibilities?**

My expectation is for a close, productive and professional relationship between the Office of the General Counsel and The Judge Advocate General. This is the relationship I intend to cultivate and monitor. I am under the impression that the relationship is working well now and I do not intend to revise the current allocation of responsibilities. As the former Deputy Judge Advocate General of the Army, I appreciate the authorities and expertise that reside with The Judge Advocate General and the importance of maintaining a strong working relationship across both organizations.

**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.**

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

The Judge Advocate General's ability to provide independent legal advice has been statutorily recognized as essential to the effective delivery of legal services. I share that view. Having spent my career in uniform, I appreciate that military attorneys provide an important perspective and insight shaped by their close connection to the uniformed Air Force and their clients and by years of service supporting commanders and Airmen throughout the Air Force.

**What is your view of the responsibility of Air Force judge advocates to provide independent legal advice to military commanders?**

Air Force Judge Advocates have a critical responsibility to provide independent legal advice to commanders, given the missions they perform. I think this is well stated by The Judge Advocate General's Corps mission statement, which emphasizes the importance of professional, candid and independent legal advice.

**If confirmed, would you propose any changes to the current relationships between the uniformed judge advocates and the Air Force General Counsel?**

If confirmed, I will make sustaining the collegial and effective relationship that currently exists between the General Counsel and The Judge Advocate General a top priority. I am unaware of

the need for any changes at this time.

**Are legal opinions of the Office of the Air Force General Counsel binding on all Air Force lawyers?**

Within the areas of responsibility and functions assigned to me, if confirmed, by the Secretary of the Air Force under 10 U.S.C. § 8019, the opinions rendered by the General Counsel are equally binding on all members of the Air Force legal team. If confirmed, I will endeavor to engage the full breadth of professional expertise and experience of Air Force legal professionals, both civilian and judge advocates, to ensure that sound professional inputs are considered in the development of opinions the Office of the General Counsel. I expect differing legal opinions between uniformed and civilian attorneys to be an extremely rare occurrence. However, if such an instance arises, I expect a one-on-one conversation between the General Counsel and The Judge Advocate General would resolve the issue. And in the even more rare occurrence when that does not suffice, since the General Counsel and The Judge Advocate General both act under the authority of the Secretary, I would welcome and expect The Judge Advocate General to have the ability to offer independent advice to the Secretary as we seek resolution of the disagreement.

**If confirmed, how would you ensure that legal opinions of your office are available to Air Force attorneys, including judge advocates?**

If confirmed, I will ensure close cooperation between the Office of the General Counsel and Judge Advocate General to ensure that legal opinions are appropriately distributed using routine processes and captured in our respective knowledge management systems to ensure access for all Air Force attorneys.

**If confirmed, are there specific categories of Air Force General Counsel legal opinions that you expect to reconsider and possibly revise? If so, what categories?**

No. I am not currently aware of any specific categories that require revision.

**How do you view the responsibilities of the Air Force General Counsel in the performance of military justice matters with regard to the Judge Advocate General of the Air Force?**

The Judge Advocate General has the primary responsibility for providing legal advice and services regarding the Uniform Code of Military Justice and the administration of military discipline. Article 6 of the Uniform Code of Military Justice requires The Judge Advocate General or senior members of his staff to make “frequent inspections in the field” in furtherance of his responsibility to supervise the administration of military justice. If confirmed as the General Counsel, I will 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, and will provide advice to the Secretary of the Air Force as needed.

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

The three-legged stool, of commanders with the responsibility to maintain good order and discipline, the authority to instill good order and discipline, and then the ability to hold commanders accountable if they do not, is the best combination to providing a lethal and disciplined fighting force. Therefore, it is also my view, that the commander-based disciplinary system we now have, as it has evolved to include direct and candid legal advice and safeguards, is optimal to maintaining a disciplined, lethal force. The military justice system has evolved and must operate within a careful balance between the interests of the government, the rights of the accused, and the respect for the dignity of those who are victims of crime. Commanders serve a critical role in maintaining this balance. A Congressionally-formed and independent panel studied the role of the commander in the military justice system and concluded that commanders, advised by judge advocates, are best positioned to handle disposition decisions in military justice actions.

**Attorney Recruiting and Retention Issues**

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

If confirmed, I would examine the talent management within the Office of the General Counsel and determine if the Strategic Plan, which sets laudable goals of recruiting from a diverse pool, ensuring professional development opportunities are available commensurate with attorney career objectives, and recognition of high performers, is in fact being executed. If confirmed, I expect an improving economy will stress the ability to recruit and maintain high quality personnel. However, knowing that the professionals who are attracted to public service are attracted by patriotism, by the importance of the work and by the opportunity to serve rather than for commercial gain, I do not expect significant challenges as long as we provide them opportunities to meaningfully contribute and as long as we provide them the means to meet their family's needs.

**In your view, does the Department of the Air Force have a sufficient number of civilian and military attorneys to perform its missions?**

I am unaware of any current area of concern. However, I recognize that nearly everything the Air Force does in the accomplishment of its mission is becoming increasingly more complex and legally intensive. If confirmed, I will work closely with The Judge Advocate General to evaluate the adequacy of the number of uniformed and civilian attorneys to ensure the ability to provide expert legal advice in support of Air Force missions. We must ensure that we continue to develop and maintain the appropriate balance of legal skill sets while properly developing future leaders needed to provide full-spectrum legal support, including in contingency environments. I recognize that the practice of law is not static and as mission requirements develop, such as the evolution of operational law into the cyber and space domains and the addition of Special Victims' Counsel to the military justice practice area, and I believe that this is an area worth

considering in coordination with The Judge Advocate General if I am confirmed.

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

I expect the private sector labor market to continue to be competitive in terms of not only salary and benefits, but innovations in workplace flexibilities and career development. If confirmed, in consultation with The Judge Advocate General, I intend to discuss and study the viability of additional incentives to attract and retain the highest quality attorneys.

**Detainee Issues**

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

In my experience, legal issues regarding detainees are most likely to arise at the tactical and operational levels and are broadly addressed at the combatant command level. If confirmed, and to the extent requested or necessary to assist the legal advisors serving with the combatant commands, or those at lower echelons, I would work with the Judge Advocate General of the Air Force and through our staffs to provide advice on this critical issue. I expect that any advice on this issue would also be made in consultation with the Department of Defense Office of the General Counsel. In all advice I would ensure that the Department of the Air Force adheres to all of its legal obligations under the Constitution, treaties, and laws of the United States.

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

Yes. Fully. The standards of treatment detailed in the field manual are in accordance with the law of war and applicable U.S. law and policy, to include section 1045 of the National Defense Authorization for Fiscal Year 2016.

**What role, if any, do you believe the Air Force General Counsel should play in the interpretation of this provision of law?**

I believe that the responsibility of the Air Force General Counsel is to ensure that Air Force members fully comply with U.S. legal obligations and I intend to provide such advice to the Secretary of the Air Force.

**What role do you believe the Judge Advocate General of the Air Force should play in the interpretation of this provision of law?**

As the most senior uniformed attorney in the Air Force, it is critical that the Judge Advocate General play a vital role in the interpretation of these critical legal obligations. The Judge Advocate General should not only bring his personal experience and expertise, but can also leverage his Corps' operational experience, perspective and insight. He should provide independent legal advice relating to the interpretation of this provision of the law to the Chief of Staff and the Secretary of the Air Force.

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

Yes. I believe the United States has the legal authority to continue holding alleged members and supporters of Al Qaeda and the Taliban as enemy combatants under both domestic and international law.

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

Yes. If a U.S. citizen takes up arms against the United States on a battlefield in a foreign nation, citizenship alone does not immunize them from detention under the laws of war.

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

I believe in a transparent administrative review process to look at the continued detention of detainees. I further believe Executive Order 13567 and the November 2017 Deputy Secretary of Defense Policy Memorandum updating the procedures applicable to the Periodic Review Board Process provides that transparent administrative review process.

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

Yes.

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

**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?**

Yes.

## **Authorization for the Use of Military Force**

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

Yes, I believe there is sufficient international and domestic legal authority to conduct combat operations against ISIS. Under international law, a State always has the inherent right to act in self-defense and may come to the defense of another State with its consent. Sufficient domestic legal authorities for the use of force against ISIS also exist by way of the 2001 Authorization for the Use of Military Force (AUMF) relating to Al-Qaeda and associated forces as well as the 2002 Iraq AUMF.

**In your view, what elements or restrictions should a new AUMF contain? What elements should not be included?**

If confirmed, and if requested to provide input, I would first seek to meet with The Air Force Judge Advocate General and his international legal experts with current knowledge of on-going and planned operations, in order to fully understand elements or restrictions for inclusion in a new authorization for the use of force. Any such input would also be undertaken in coordination and consultation with the General Counsel of the Department of Defense.

## **Military Commissions Act**

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

Yes. I believe military commissions are an effective forum for trying law of war and other offenses traditionally triable by military commissions when committed by alien unprivileged enemy belligerents.

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

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

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

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

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

No.

### **Criminal Jurisdiction over Contractors on the Battlefield**

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

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

Yes. Additionally, Article 2 of the Uniform Code of Military Justice provides a way to address the misconduct of civilians accompanying the force in areas of combat operations. It specifically provides appropriate jurisdiction for alleged criminal actions of contractor employees in Iraq, Afghanistan, and other areas of combat operations. Having served in a combat zone where my commander, upon my advice, used both MEJA and Article 2, I can attest that civilians serving with or accompanying our Armed Forces overseas who commit crimes can be held appropriately accountable.

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

I do not believe any changes are required. The cooperation of the Department of Justice, so essential to applying MEJA to contractors, in my experience has been commendable.

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

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

Yes. Having recommended the referral of the first case in 2008, I know firsthand Article 2 of the Uniform Code of Military Justice provides a way to address the misconduct of civilians accompanying the force in areas of combat operations. It specifically provides appropriate jurisdiction for alleged criminal actions of contractor employees in Iraq, Afghanistan, and other areas of combat operations. Civilians serving with or accompanying our Armed Forces overseas who commit crimes can thereby be held appropriately accountable. The use of Article 2 with respect to a contractor, in the case mentioned was upheld by the United States Court of Appeals for the Armed Forces in 2012.

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

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

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

Consistent with my experiences, I do not believe any changes are required. I believe that the Uniform Code of Military Justice currently provides for appropriate jurisdiction over contractors accompanying the force.

**Identification of Potential Extremist Views**

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

No. To my knowledge, current Air Force policy does not limit the ability to file this type of information in official records. If confirmed, I look forward to examining this question on a continuing basis given its importance, including addressing this issue with respect to Department of the Air Force civilian employees.

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

No. My understanding is that Air Force policy does not prohibit sharing this type of information with other officials or agencies when there is a "need to know."

**What is your understanding of how the Air Force balances the need to identify and respond to potentially harmful extremist views held by service members against individual privacy and respect for the right of service members to hold and express personal beliefs?**

Commanders are responsible for building healthy and positive organizations where Airmen treat each other with dignity and respect. Air Force policy balances the need to preserve an Airman's constitutional right of expression to the maximum extent possible, consistent with good order, discipline, and national security. Commanders must retain the authority, consistent with existing law and policy, to address conduct, that, if allowed to proceed unchecked, would impair the effectiveness of his or her unit.

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

I am currently unaware of any need for change.

### **Religious Accommodation**

**NOTE: Questions below without a draft DoD GC response were not posed to the DoD GC, Navy, or Army GC nominees.**

**U.S. military personnel routinely deploy to locations around the world where they must engage and work effectively with allies and with host-country nationals whose faiths and beliefs may be different than their own. For many other cultures, religious faith is not a purely personal and private matter; it is the foundation of their culture and society. Learning to respect the different faiths and beliefs of others, and to understand how accommodating different views can contribute to a diverse force is, some would argue, an essential skill to operational effectiveness.**

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

It is my view that the Department of Defense policies strive to accommodate the free exercise of religion by all Service members, and that the Department and the Services rightly respect and place a high value on the rights of individuals to express their own religious beliefs, including the right to hold no beliefs.

**Under current law and policy, are individual expressions of belief accommodated so long as they do not impact unit cohesion and good order and discipline?**

It is my understanding that Department of Defense and Air Force policy reflect the requirements of the Religious Freedom Restoration Act (RFRA) and that all requests for accommodation are assessed on a case-by-case basis, based on the unique facts involved. I am unable to comment

on any specific individual's request for an accommodation. If I am confirmed, I will carefully review Air Force policies in this area to ensure they are legally sufficient and I will provide my best legal advice to the Secretary of Air Force on such matters that are presented to me.

**In your view, does a military climate that welcomes and respects open and candid discussions about personal religious faith and beliefs in a garrison environment contribute in a positive way to preparing U.S. forces to be effective in overseas assignments?**

Air Force policy promotes mutual respect in our culture for those who choose to express religious views and those who do not. Ultimately, the Air Force cultivates an environment which helps nurture spiritual freedom and growth of all Airmen no matter where they are assigned in the world.

**Do you believe that allowing service members of certain faiths, such as Sikh, Orthodox Judaism, or Islam, to maintain beards or wear turbans or other religious headwear, while in uniform, would strengthen or weaken the U.S. military's standing in areas of the world where such religions predominate? Would such allowance help or hurt our coordination and engagement with such foreign nations?**

Tolerance of religious views is one of the great strengths of American society. My service in combat zones impressed upon me that a critical source of strife in many cultures is the failure to allow for the free exercise of religion. Therefore, outward and visible signs that show our respect for religious freedom could be a positive influence in cultures where we have a military presence. This desire to fully accommodate religious freedom and our punctilious and entirely justified respect for religious freedom must however be balanced by the obligation to ensure the safety of every Airman and the need for them to be worldwide deployable and able to avail themselves of protective equipment in order to contribute to the accomplishment of the mission.

**Would a policy that discourages open discussions about personal faith and beliefs be more or less effective at preparing service members to work and operate in a pluralistic environment?**

As far as I know, Air Force policy promotes mutual respect in our culture for those who choose to express religious views and those who do not. Ultimately, I am hopeful that the Air Force like the Army I recently left cultivates an environment which helps nurture spiritual freedom and growth of all Airmen.

**In your view, when performing official military duties outside a worship service, should military chaplains be encouraged to express their personal religious beliefs and tenets of their faith freely, or must they avoid making statements based on their religious beliefs?**

Military chaplains are an integral part of the fabric of the armed forces and play an important role in furthering the well-being and readiness of our service members and their families. Chaplains play an important role to pluralistically meet the needs of every faith group within the

units to which they minister. Additionally, Chaplains may express their personal religious beliefs when they are ministering specifically to members who have identified with their own faith. I understand that Department of Defense and Air Force policies allow Military Chaplains to perform their duties in accordance with the tenets of their respective religions, and provide adequate guidance to chaplains concerning the respectful incorporation of religious beliefs in both pluralistic and non-pluralistic settings.

**Do you believe chaplains should be tasked with conducting non-religious training in front of mandatory formations, even if they may be uniquely qualified to speak on the particular topic, such as suicide prevention or substance abuse? If so, do you believe guidance provided to those chaplains on what they should and should not say with respect to their faith is adequate?**

Military officers are often assigned additional duties. I am not aware of a policy restriction that would, per se, prohibit a chaplain from providing specific training, if the chaplain was otherwise authorized to conduct it, and they are not mandated to violate existing policies and regulations. If I am confirmed, I will carefully review Air Force policies in this area to ensure the legal and proper balance is maintained.

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

**What is your understanding of the role of the Air Force General Counsel in ensuring the integrity and proper functioning of the officer promotion process?**

I understand that, under Title 10 of the United States Code, the Secretary of the Air Force is responsible for the proper functioning of the Department of the Air Force promotion selection process. In addition to the legal review of memoranda of instruction and selection board reports to ensure they comport with statutory standards, DOD policy and Secretary of the Air Force guidance, the Air Force General Counsel must also ensure the conduct of the board process conforms to all legal requirements. Additionally, the General Counsel must advise the Secretary 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 and the Office of the Assistant Secretary of the Air Force (Manpower and Reserve Affairs), the General Counsel helps to ensure that Air Force promotion policies properly implement applicable laws and regulations and are fairly applied.

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

Not at this time. If I am confirmed, I will assess whether any change in this role would be appropriate.

### **General Officer Nominations**

**Under DOD Instruction 1320.04, adverse and alleged adverse information pertaining to general and flag officers must be evaluated by senior leaders in the**

**military services and in the Office of the Secretary of Defense prior to nomination for promotion and certain assignments.**

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

I understand that the Office of the General Counsel works closely with the personnel community to review the instructions and procedures for all officer promotion selection boards to ensure compliance with law and policy. It is also my understanding that the General Counsel personally reviews all general officer nominations to insure compliance with law and DOD directives. If confirmed, I intend to continue this practice.

**What is your understanding of the role of the Air Force General Counsel in ensuring the legal sufficiency of statutory selection board processes?**

The Office of the General Counsel has the primary responsibility to ensure that the Air Force promotion selection process for both regular and reserve officers complies with law and Department of Defense policy. This includes reviewing all selection board convening packages to ensure they reflect the Secretary's guidance and comply with the law, as well as all reports of promotion selection boards before approval by the Secretary of Air Force.

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

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

The Office of the Air Force General Counsel should review each board report, as well as all Departmental communications to this committee, the President, and the Secretary of Defense, to ensure compliance with law, regulation, and applicable directives. I understand that the Office of the Air Force General Counsel pays special attention to ensuring that the Air Force provides this committee with all reportable information pertaining to a nomination in a timely, accurate, and clear manner. In addition, if confirmed, as the General Counsel I would provide advice to the Secretary of the Air Force on difficult or unusual cases, and ensure reporting of potentially adverse information to this committee.

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

I would expect that the Air Force Inspector General's Office has a robust system in place whereby all available Air Force records are screened to determine whether any adverse or

potentially adverse information exists on an officer being nominated for a general officer grade. It is my understanding that the Air Force Inspector General's Office is acquiring additional manpower to enable it to screen all Air Force records to determine whether any adverse or potentially adverse information exists on an officer being nominated for the grades of major through colonel. All such information should be reviewed by the Office of the General Counsel before being presented to the Secretary of the Air Force for certification of exemplary conduct and before the officer's nomination is forwarded to the Senate for confirmation. If confirmed, and I determine that procedures are inadequate to ensure that this committee is made aware of all adverse or potentially adverse information, I will inform the Secretary and this committee.

### **Military Personnel Policy and Cases**

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

**NOTE: Generally the Air Force General Counsel provides opinions on jurisdiction and authorities as required – but rarely provides advisories in individual cases. In Air Force practice, individual legal case advisories are normally provided by the Office of the Judge Advocate General, Administrative Law Directorate**

The Air Force General Counsel should provide, and to my understanding, does provide, legal and policy advice on a broad range of military personnel issues, as needed, on individual cases. In this role, the Air Force General Counsel works closely with the with the Secretary of the Air Force, the Assistant Secretary of the Air Force, (Manpower and Reserve Affairs), and the Deputy Chief of Staff of the Air Force, Manpower, Personnel and Services (AF/A1). If confirmed, I will work with each office to ensure that military personnel policies are applied and individual cases adjudicated consistent with law and regulations in a fair and consistent manner. With regard to the Air Force Board for Correction of Military Records, the Air Force General Counsel assists the attorney assigned to support that Board under section 10 U.S.C. § 1555, upon request.

**In your view, do Air Force commanding officers have the requisite authorities to reduce the number of non-deployable service members assigned to units in order to improve unit readiness?**

I am unaware of specific concerns; however, it is my understanding that the Department of Defense has been reviewing this issue as a means to enhance the readiness and lethality of the force. If I am confirmed, I hope to review the findings and recommendations of that review and given the importance of the topic, I expect the results will be fully considered by the Secretary of the Air Force and her staff.

## **Selective Service Act**

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

Yes. None of us would welcome such an emergency that would require other than voluntary service by any American; however, in light of the developments in recent years opening all military positions and units to women, such a step seems appropriate. I understand that the Military Commission on National Commission on Military, National and Public Service is studying this issue. I look forward to reviewing their findings and recommendations as I believe the details of such an amendment would be critically important.

## **Sexual Assault Prevention and Response**

**What is your understanding of the role of the Air Force General Counsel in addressing the problem of sexual assault in the Air Force?**

If confirmed, my role will be to advise on sexual assault policy in close coordination with The Judge Advocate General, to ensure victims are cared for, to ensure allegations are investigated properly, to ensure the military justice system is fair and impartial, to ensure perpetrators of sexual assault are appropriately punished, and to ensure that retaliation against victims who report sexual assault is not tolerated.

**What is your assessment of the Air Force's sexual assault prevention and response program?**

I believe that each of the Services have been leaders in achieving climate change on this critically important issue, but this is no time to lose focus on sexual assault prevention or response. As far as I know, the Air Force in particular has taken significant strides in their programs. It is my understanding that the current program has resulted in increased reporting by victims, a thriving Special Victims' Counsel Program, a Special Victim Investigation and Prosecution capability, and renewed focus on sexual assault prevention. Even one sexual assault is one too many, and if confirmed, ensuring that these programs have the legal support to evolve and capitalize on best practices will be a top priority.

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

I believe that we should be doing everything possible to encourage reporting and to prosecute every allegation of sexual assault when the evidence supports such military justice action. During my time in the Army, I saw the merit of both reporting options for victims. Unrestricted reports of sexual assault must be referred to military criminal investigative organizations for investigation and commanders are notified of the allegations. In contrast, a restricted report allows a victim to disclose the details of the assault to specific individuals and receive medical

treatment and counseling without triggering an automatic investigation or command notification. The goal of restricted reporting is primarily to give the victim immediate support and medical care, but it also sometimes leads to healing to such an extent that the victim decides to change the restricted report to an unrestricted report. Individuals who file an unrestricted report or restricted report are also both entitled to the services of a Special Victims' Counsel. Significantly, the relationship with a Special Victims' Counsel in particular has resulted in some of those restricted reports becoming unrestricted reports with consequent military justice action.

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

Commander support of victims is critical. The chain of command has a responsibility to ensure all airmen understand and know what services and resources are available to them in times of crisis. Commanders are responsible for and should be held accountable for their command climate – or culture. They are responsible for the good order and discipline of their units and are indispensable in creating a zero-tolerance climate for sexual assaults as well as a zero-tolerance climate for those who retaliate against victims and witnesses. I believe trust between the leaders and the led is also essential. Commanders have come to know that failure to fully support even one victim can lead to a failure of confidence and trust between the leaders and their command. Therefore, on the whole, commanders have moved beyond having to be coached to support victims, to being champions for their support. Ultimately, the chain of command is instrumental in maintaining a fit and ready force and helping a service member recover and receive the necessary support during the recovery process furthers that goal.

**What is your understanding of the adequacy of Air Force resources and programs to provide victims of sexual assault the medical, psychological, and legal help they need?**

This is an important topic because when the very tight bonds of trust between service members is broken the results can be particularly traumatic. This committee's assistance to bring focus to this issue has been helpful – particularly with respect to the authorizations for Special Victims' Counsel. Currently, I believe the Air Force has an active support network to assist service members who report sexual assault allegations (whether those reports are restricted or unrestricted). It is my understanding that there is a 24/7 response capability provided by helping agencies. I have been made aware of the Air Force's robust Special Victims' Counsel Program that provides legal representation to victims of sexual assault because much of that program's training is done in conjunction with or coordination with the Army.

The Air Force also has a Special Victim Investigation and Prosecution capability to ensure that investigations comply with best practices and victims get needed support. The Special Victim Investigation and Prosecution capability is made up of specially trained Air Force Office of Special Investigation agents, judge advocates (including trial counsel), paralegals, and victim liaisons. Air Force personnel in these positions are specially trained and qualified individuals assigned on a case-by-case basis. It is my understanding that in the Air Force the medical and psychological help for victims has recently been consolidated under the Office of the Surgeon General. The Air Force consolidated violence response, recovery, and care under the Surgeon

General in order to provide Airmen and commanders comprehensive clinical and non-clinical response support. If confirmed, I intend to seek views on the effectiveness of this consolidation.

**What is your view of the steps the Air Force has taken to prevent additional sexual assaults both at home station and deployed locations?**

I believe that the Services, led by commanders and leaders at every level, have been achieving significant cultural change. The culture change achieved has been touted as a model for other institutions. In that same vein, it is my understanding that the Air Force is seeking to get beyond response or even “awareness” to implement prevention strategies that have proven results, like bystander intervention training. Programs like bystander training and focusing on leadership excellence at the squadron level is intended to accelerate culture change, set the proper climate and focus on prevention.

**What is your view of the adequacy of the training and resources the Air Force has in place to investigate and prosecute allegations of sexual assault?**

I have every reason to believe the Air Force has a robust training program. I know that the Army and Air Force have implemented a similar approach to form Special Victims Investigation and Prosecution teams which are formed to respond to sexual assault cases. These units receive comprehensive training to investigate and respond to allegations of sexual assault. The Special Victim Investigation and Prosecution capability is made up of specially trained Air Force Office of Special Investigation agents, judge advocates (including trial counsel), paralegals, and victim liaisons. Air Force personnel in these positions are specially trained and qualified individuals assigned on a case-by-case basis.

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

The Air Force began the Special Victims’ Counsel Program as a pilot in 2013 and I know from my time in the Army that this program has been very helpful to build trust in the military justice process. The Special Victims’ Counsel gives victims more meaningful input on the disposition and resolution of their cases and provides greater understanding of reporting options and services.

Since 2013, over 2,800 clients, of which 83 have been children, have been represented by special victims’ counsel. It is my understanding based on survey results at the end of cases, that 99% of respondents would recommend a special victims’ counsel to others who have reported a sexual assault and 99% were satisfied with the representation that they received from their counsel.

**What is your view on the role of the chain of command in changing the military culture in which these sexual assaults occur?**

Even one sexual assault is one too many and the chain of command plays a critical role reducing the incidences of sexual assault. Young men and women join the military with very diverse views on acceptable conduct. The chain of command is vital to creating, maintaining, and instilling military values and a culture of respect. Commanders are responsible for the good order and discipline of their units and are indispensable in creating a zero-tolerance climate for sexual assaults as well as a zero-tolerance climate for those who retaliate against victims and witnesses. Commanders who fail to achieve the proper culture through negligence or lack of focus on this issue, fail the Airmen they are charged to lead, and should be held accountable.

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

I do not believe such an arrangement would be as effective, nor do I believe that it would result in the prosecution of more cases. Commanders are responsible for the maintenance of good order and discipline in their units and have an indispensable role in the effective operation of the military justice system. The foundation of military discipline is the commander's authority to set standards, to require Airmen to meet those standards, and to hold Airmen appropriately accountable when they fail to meet standards. Removing commanders' disposition authority undermines the effectiveness of the military justice system, and it would divorce them from the responsibility and accountability for instilling the proper climate and culture on this issue.

Commanders do not and should not make their decisions in a legal vacuum. Instead, every commander is informed and advised by his or her staff judge advocate throughout the life of a case, from report and investigation through disposition and adjudication. This system best ensures fairness, justice, and discipline and keeps the commander responsible and accountable for the climate, training, prevention and response to infractions in the unit.

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

**What is your view of the Air Force's program to prevent and respond to sexual harassment?**

I agree that failure to address sexual harassment can result in increased levels of sexual assault. Training, including importantly the tenor and tone of that training, and by necessity command involvement is vital to preventing and responding to sexual harassment. It is my understanding that the Air Force has an effective program to prevent and respond to sexual harassment. Commanders use climate surveys to assess a unit's climate and perceptions, allowing the commander to take corrective action if a climate needs to be adjusted.

**What additional steps would you take, if confirmed, to address the problem of sexual assaults in the Air Force?**

If I am confirmed, I would work with my colleagues in the Judge Advocate General's Corps to continue to provide legal advice on new prevention and response strategies being developed by the Air Force's Sexual Assault Prevention and Response Office.

**Abusive Online Conduct**

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

**What is the current Air Force policy for use of social media by service members?**

I understand the policy to be: All Airmen shall treat others with dignity, fairness, and respect at all times. It is clear that social media, and the use of electronic communication, encourages informal, sometimes intimate, and at times adversarial interactions. As a rule, Airmen should be professional, at all times, and actions prohibited in person should not be condoned or tolerated through social media or electronic communication. Airmen should be accountable for their words and actions, including those conveyed by means of electronic communication.

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

As I was stepping down from my duties, the Services appeared to be reviewing their policies in the wake of the Marines United incident. I am unaware of the results of those reviews. If I am confirmed, I will study what reviews have been accomplished and consider whether the current policies regarding social media use by Airmen are adequate.

**If confirmed, what action would you take to ensure that members of the Air Force are not subjected to abusive online conduct?**

If confirmed, I will work to ensure that the policy and standards are adequate, and I will work to ensure all Airmen understand them. I will also work to ensure commanders are equipped with the necessary authorities to protect Airmen from abusive online conduct and to hold Airmen, who violate the Air Force standards, accountable for their actions.

**In your view, does the Air Force have sufficient legal authority to hold offenders accountable for such misconduct?**

Yes. Congress recently enacted a new punitive article of the Uniform Code of Military Justice, Article 117a, to expressly criminalize the wrongful distribution of intimate visual images or visual images of sexually explicit conduct. Additionally, Air Force policy also makes it clear that failure to obey the online conduct policy is a violation of Article 92 of the Uniform Code of Military Justice.

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

I'm not aware of any new legislative authorities needed, but if confirmed I will evaluate that issue to determine if additional authorities were needed.

**Do you believe there is also a need for a strong policy addressing abusive online conduct for Air Force civilian and contractor employees?**

**NOTE: This question was not asked in DoD, Army, or Navy GC APQs**

I understand the Air Force recently reviewed its policy relating to civilian and contractor employees and determined the current policies adequately addressed the issue. If confirmed, I will evaluate the recent review and determine if current policies need to be strengthened.

**Whistleblower Protection**

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

**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?**

If confirmed, I will work with The Inspector General and The Judge Advocate General to ensure that military leaders are fully and accurately advised of the whistleblower protections accorded by law and regulation, and that they understand their legal responsibilities in this important area. In addition, if I become aware of any particular cases involving reprisals, I will ensure that they

are addressed in accordance with the law. Whistleblower protections for military personnel are essential to the integrity of the Air Force, and merit serious attention by the General Counsel.

**What role does or should the Air Force General Counsel play in ensuring consistency of application and interpretation of whistleblower protections across the Department of the Air Force?**

In my opinion, the Air Force General Counsel's role is vital. If confirmed, I will establish and maintain a close, professional relationship with the Inspector General, and will provide candid, independent, and objective legal advice to ensure every Airman has confidence that whistleblower protections are consistently applied throughout the Air Force.

**Support to the Air Force Inspector General**

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

If confirmed, I will establish and maintain a close, professional relationship with the Inspector General, and will provide candid, independent, and objective legal advice. Given the Inspector General's mandate for independence and candor in advising the Secretary as to his investigative findings and recommendations, the Inspector General has final authority over matters within his functional purview.

**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.**

**What is your understanding of the personnel management and career development system for civilian attorneys in the Air Force?**

Only by providing our civilian attorneys every opportunity to succeed will we attract and retain the best possible professionals. While some civilian attorneys seek stability or a desire to practice in only one location or specialty, every civilian attorney should be actively mentored, developed and engaged with an eye toward capitalizing on opportunities to improve and progress. It is my understanding that all Air Force civilian employees participate in a career program that enables their professional development and advancement to that end. If confirmed, I will ensure that goal is attained.

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

If confirmed, I will emphasize the importance of an organized and comprehensive approach to the management, training, and development of civilian attorneys. I have no indication that the system needs revision now.

**Acquisition Issues**

**What role should the Air Force General Counsel play in ensuring that Air Force procurement programs are executed in accordance with the law and Defense Department acquisition policy?**

As the chief legal officer of the Air Force, the General Counsel has an essential role in ensuring that the Air Force's procurement programs comply with law and Department of Defense and Air Force acquisition policy. If confirmed, I will work closely with the Secretary, Assistant Secretary for Acquisition, and other senior leaders to ensure the Air Force acquisition enterprise fosters sound decision-making in meeting the needs of the warfighter.

**What role should the Air Force General Counsel play in ensuring that Air Force 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 Air Force?**

The Air Force General Counsel should be proactive in providing legal counsel to acquisition officials regarding legal authorities and flexibilities to meet the needs of the warfighter. If confirmed, I intend to support the Secretary's priority of seeking to bring business-minded reforms to the Air Force to acquire high quality capabilities at the best price for the taxpayer.

Additionally, I believe that the current pace of technological advancements in the private sector results in the Department of Defense now frequently being at the trail edge rather than leading edge of acquisitions. This is particularly true on the cyber realm. Yet for all domains, it implies that our potential adversaries can acquire many potentially harmful technologies previously reserved and proprietary to the Department. Consequently, the Department must be able to quickly acquire off the shelf systems as they evolve and only develop capabilities designed to meet unique needs within the Department. If confirmed, I intend to work closely with the Acquisition community to determine if existing authorities are adequate and appropriate and I welcome the opportunity to consult with the committee on this important issue.

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

The Air Force General Counsel is both the Designated Agency Ethics Official and the Suspending and Debaring Official for the Air Force. If confirmed, I will commit to ensuring that all Air Force personnel understand ethics laws and regulations pertaining to conflicts of interest and I will work with senior leaders to promote an ethical organizational climate.

**Allegations of fraud and abuse during contingency contracting in Iraq and Afghanistan have been widespread.**

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

I am aware of these allegations. If confirmed, I intend to address this issue in lockstep with The Judge Advocate General and ensure that all Air Force contingency contracting personnel are well trained, with an appropriate level of supervision, particularly with respect to their legal and ethical responsibilities.

### **Detecting Conflicts of Interest**

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

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

If confirmed to serve as the General Counsel, I will work with Air Force senior leadership to educate our personnel to understand the circumstances that can lead to an organizational conflict of interest and to identify those circumstances at the earliest opportunity. I will help ensure that all circumstances of potential organizational conflicts are promptly addressed in a manner consistent with appropriate guidance.

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

I understand that the Office of Government Ethics requires each agency to notify prospective employees, as well as new supervisors, that they will be subject to the conflict of interest statutes

and regulations. I am not currently familiar with the Air Force's processes for identifying and addressing potential conflicts of interest in the hiring process. However, if confirmed, I will review current practices and, if necessary, make recommendations to ensure potential conflicts are effectively identified and addressed.

## **Legal Ethics**

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

As stated previously, my first priority will be to ensure that the Office of the General Counsel understands that I expect every member of the Office to be a person of moral character and to comply fully with all applicable rules of professional responsibility. Under those rules, the attorney should immediately bring the matter to the attention of the attorney's supervisor and, if not satisfactorily resolved, to higher-level supervisory lawyers or authorities in the chain of supervision or command. If confirmed, I will serve as the Designated Agency Ethics Official. I fully support Secretary Mattis' direction that every member "play the ethical midfield," doing what is right at all times, regardless of the circumstances or whether anyone is watching. This is the tone I intend to set in the Office of the General Counsel.

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

I am not currently aware of any modifications that are needed to the current policy that permits government attorneys to participate in pro bono activities outside of work hours, while adhering to restrictions to avoid conflict with their responsibilities as federal officials. I intend to support attorneys who desire to perform pro bono work in their communities. I will review with an eye toward revising any policies that unnecessarily inhibit performance of pro bono activities.

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

I understand that all DOD lawyers are required to be members in good standing of a State Bar and are therefore subject to the rules of professional responsibility of their particular jurisdiction. Lawyers engaged in litigation must also comply with the rules of the court in which they appear. All military and civilian lawyers in The Judge Advocate General's Corps must comply with the specific rules applicable to them. I have no reason to question the adequacy of the current Air Force rules; if confirmed, I will review them to assess if changes or guidance is required.

## **Litigation Involving the Department of the Air Force**

**What is your understanding of the relationship between the Department of the Air Force and the Department of Justice with respect to litigation involving the Department of Defense?**

The Department of Justice represents the Air Force through its statutory responsibility to represent all agencies, officers, and employees in civil litigation. If confirmed, I will work with The Judge Advocate General to ensure the continuation of the current strong collaborative relationship with the Department of Justice with respect to litigation involving the Air Force.

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

It is my understanding that the Air Force has an effective working relationship with the Department of Justice and is currently satisfied that Air Force interests are effectively protected in civil litigation. If confirmed, I will work with counterparts at the Department of Justice and The Judge Advocate General to ensure that adequate resources are available to ensure that the Air Force is able to continue to provide the appropriate level of support to the Department of Justice and protect the Air Force's interests in civil litigation in which the department is involved.

**What is your view on whether the Department of the Air Force should enforce orders by the Equal Employment Opportunity Commission for all cases, to include those that involve judgements in favor of technicians (dual status) who are federal civilian employees supporting the National Guard in the 54 states and territories?**

**NOTE: This question was not asked in DoD, Army, or Navy GC APQs**

The Air Force should enforce all orders by the Equal Employment Opportunity Commission. Congress has made clear, in section 512 of the National Defense Authorization Act for Fiscal Year 2017, that military technicians, when in civilian status, may appeal adverse employment actions to the Equal Employment Opportunity Commission.

**If a state were not to comply with an order, what action would you advise taking to ensure the enforcement of the order?**

In light of the statutory change made by Congress, the law is now clear and settled. I would expect that a state would comply with a lawful order by a Federal Administrative body of lawful jurisdiction. The Air Force would take appropriate steps to ensure that such an order was enforced.

## Congressional Oversight

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

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

Yes.

**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 Air Force General Counsel?**

Yes.

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

Yes.

**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.

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

I agree to respond appropriately to letters and requests for information from members of this Committee.

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

I agree to respond appropriately to letters and requests for information from members of this Committee.