

Senate Armed Services Committee
Advance Policy Questions for Earl Matthews
Nominee to be General Counsel of the Department of Defense

Duties and Qualifications

Section 140 of title 10, U.S. Code, provides that the General Counsel of the Department of Defense (DOD General Counsel) is the chief legal officer of the Department.

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

I received my Juris Doctor degree from Harvard University in June 1998, took and passed both the Pennsylvania and New Jersey bar examinations in the summer of 1998 and have been a licensed attorney continually since October 1998. I additionally hold a Master of Laws degree in National Security Law from the Georgetown University Law Center, which I received in May 2013. Currently, I am a member in good standing only of the District of Columbia bar. I have served as an attorney within the Department of Defense in various capacities for over 25 years. I have served continuously as an Army Judge Advocate, either on active duty orders or in a part-time status, in the United States or in overseas operational environments. I have served as a uniformed lawyer in Bosnia-Herzegovina, Iraq during two separate tours, in Afghanistan and in the Horn of Africa. I have extensive Pentagon experience having served within the Office of the Judge Advocate General of the Army and the Office of Legal Counsel to the Chairman of the Joint Chiefs of Staff. I have been both a career civilian attorney within the Defense Intelligence Agency, where I advised on sensitive intelligence matters, and I have served as the Principal Deputy General Counsel and Acting General Counsel of the Department of the Army. In the latter role I was the Chief Legal Officer of the largest single component of the Department of Defense. Throughout my career, I have provided advice and counsel to Department of Defense personnel as disparate as staff non-commissioned officers and platoon leaders to the Chairman of the Joint Chiefs of Staff and the Secretary of the Army.

What leadership and management experience do you possess that you would apply to your service as DOD General Counsel, if confirmed?

My most significant legal leadership role was as Principal Deputy General Counsel and Acting General Counsel of the Department of the Army from June 2017-July 2018 where I lead a 50-attorney office charged with advising the civilian and uniformed leadership of the Department of the Army. The Office of the General Counsel of the Army also provided legal oversight and guidance to the entire Army legal enterprise, to include over 5,000 attorneys, both uniformed and civilian. As an Army Judge Advocate, I have been privileged to serve on and lead legal teams at home and abroad, including serving as Staff Judge Advocate to the District of Columbia National Guard during significant periods of civil unrest. If confirmed, I will draw upon my leadership and management experiences to make me a better leader of the DoD legal enterprise.

What is your understanding of the breadth and scope of the DOD General Counsel's duties and responsibilities?

It is my understanding that the General Counsel is the chief legal officer of the Department of Defense and the advisor to the Secretary of Defense for all legal matters and legal services performed within or involving the DoD Components. The breadth and scope of these duties and responsibilities are vast, aligned to the global mission of the Department of Defense to achieve Peace through Strength, deter war and if necessary, defeat our enemies. If I am confirmed, I expect that I will be responsible for overseeing the provision of timely and accurate legal advice on myriad DoD activities. This encompasses the full spectrum of legal issues, from international law, environmental law, contracting, and personnel matter. Most importantly, the General Counsel supports and empowers the legal professionals across the Department, in and out of uniform, to ensure we all provide sound legal advice and counsel to our clients and commanders in support of the mission.

If confirmed, what additional duties and functions might you recommend the Secretary of the Defense prescribe for you?

The Department carries out unique military and national security functions, as well as a wide variety of activities ranging from providing health care to its military personnel and their families to working with and training important allies and partners, and all the activities required to support the Total Force, protect the nation and project power across the globe. If I am confirmed, I eagerly anticipate the challenge of providing legal advice on a broad portfolio of subject areas essential to the combat readiness, lethality and effectiveness of our armed forces. If confirmed, I would have the opportunity to work with senior leaders in the Department and would have a better sense of what the Department's needs would be and what additional duties and functions the Secretary of Defense may prescribe, but I anticipate they would be aligned to ensuring we build and maintain an effective fighting force.

If confirmed, specifically what would you do to ensure that your tenure as DOD General Counsel epitomizes the fundamental requirement for civilian control of the Armed Forces embedded in the U.S. Constitution and other laws?

The American principle of civilian control of the military is foundational to our democracy, and I am committed to it. Having served in the Army, both in and out of uniform, I am acutely aware of the need to ensure civilian control of the military, and the legal structure established by our Constitution and the laws of the nation to ensure it. I believe that large organizations reflect the principles and values of their leaders. Therefore, if confirmed, I will convey through my leadership, words and actions that civilian leadership of the Department is central and preeminent.

Who is the client of the DOD General Counsel?

The Department of Defense and its senior leaders in their official capacities are the

clients of the DoD General Counsel.

Conflicts of Interest

Federal ethics laws, to include 18 U.S.C. §208, prohibit government employees from participating in matters where they, or certain family members or organizations with which they have certain relationships, have a financial interest.

Do you agree, without qualification, if confirmed, to disclose any potential conflicts of interest, including investments, business ties, family relationships, or other connections that could be perceived as influencing your decision making?

I agree to comply with all conflicts of interest disclosure requirements set forth in the Ethics in Government Act and implementing regulations.

Do you agree, without qualification, if confirmed, that if a conflict of interest arises, you will recuse yourself from participating in any decisions regarding that specific matter?

I agree to comply with all recusal requirements under 18 U.S.C. § 208 and implementing regulations.

Do you commit, without qualification, if confirmed, to decide matters on the merits, and exclusively in the public interest, without regard to private gain or personal benefit?

I commit to deciding matters on the merits based on the public interest, without regard to any private gain or personal benefit.

Exercise of Independent Professional Legal Judgment

President Trump’s February 18, 2025, Executive Order entitled “Ensuring Accountability for All Agencies” states in section 7 that “No employee of the executive branch acting in their official capacity may advance an interpretation of the law as the position of the United States that contravenes the President or the Attorney General’s opinion on a matter of law. . . .”

What is your understanding of the rules of professional responsibility that apply to civilian attorneys in the Department of Defense, including those that work within the DOD Office of the General Counsel?

DOD attorneys must be licensed in at least one U.S. state, commonwealth, territory, or the District of Columbia and are subject to the rules of professional conduct for their

licensing jurisdiction. Additionally, DoD civilian attorneys are subject to the professional responsibility provisions set forth in DoD Instruction 1442.02.

If confirmed, what rules of professional responsibility would apply to you personally in your practice of law?

I am currently licensed in the District of Columbia and would be subject to the District of Columbia Rules of Professional Conduct under the authority of the District of Columbia Court of Appeals, as well as DoD Instruction 1442.02.

If confirmed, how will you implement section 7 of the above referenced Executive Order and enforce it throughout the Department?

The Attorney General, through DOJ's Office of Legal Counsel (OLC), interprets how the law applies to the Executive Branch, and that interpretation is binding on the Department of Defense. Section 7's articulation of the President's and Attorney General's authority and function as they pertain to interpretations of the law may be new, but the underlying principles described in Section 7 are consistent with my understanding of standard practices of the Department of Defense. Accordingly, for questions where I am unsure about the appropriate interpretation of law, I intend to authorize outreach to OLC for formal or informal guidance on the appropriate interpretation of law and apply OLC's advice to the activities of the Department.

What is your view of the applicability of section 7 to you personally, if confirmed as the DOD General Counsel?

As an Executive Order that is currently in force, section 7 of EO 14215 would apply to my activities as General Counsel, if I am confirmed.

If confirmed, how would you address a situation where your independent professional legal judgment differs from the opinion of the President?

If confirmed, I do not anticipate that my professional legal judgment would often differ from the opinion of the President or his legal advisors. If a difference were to emerge, I would seek further guidance from legal advisors at the White House and at the Department of Justice, and if appropriate, would request a review of my interpretation by the DOJ Office of Legal Counsel.

Major Challenges and Priorities

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

The major challenges confronting the next General Counsel of the Department of Defense mirror the major challenges facing the Department writ large. These include

supporting the President's focus on the restoration of the Department of Defense as a race-blind, merit and values based, warfighting focused institution.

If confirmed, what broad parameters would you establish as to the types of legal and policy issues on which you and the Office of the DOD General Counsel *must be consulted*?

Based on my experience, DoD appears to have a culture that values legal input and appears to have robust processes in place to obtain that input on critical issues. If I am confirmed, I will lead the experienced attorneys in the Office of the DoD General Counsel and in the wider DoD legal community in their efforts to provide the best possible legal advice to decisionmakers throughout the Department of Defense as they implement the priorities of the President. I would work to ensure that I am consulted on any issues potentially impacting the execution of the Secretary's national defense strategic guidance, particularly matters with the potential for significant financial or litigation risk for the Department.

Relations with Congress

What are your views on the state of the DOD Office of the General Counsel's relationship with the Senate Armed Services Committee in particular, and with Congress in general?

I believe the Office of General Counsel works collaboratively with both the Senate Armed Services Committee and with the Congress as a whole. Strong relationships with Congress are essential to mission success. If confirmed, I will continue to maintain and cultivate those strong relationships, especially those involving the Armed Services Committee.

If confirmed, what actions would you take to sustain a productive and mutually beneficial relationship between this Committee and the DOD Office of the General Counsel?

If confirmed, I would encourage open, honest, and timely communications between the Committee and the Department. I am committed to building and maintaining open lines of communication. If confirmed, I will work closely with Members of this Committee, the Congress as a whole, as well as the professional staff of the Armed Services Committee.

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

Executive Privilege is invoked by the Counsel to the President. If confirmed, I would

work closely with interagency lawyers, to include the White House Counsel's office, regarding matters of privilege.

Under what extraordinary circumstances do you believe it would be appropriate for the Secretary of Defense to limit review of an Executive Order by the Armed Services Committees?

Executive Orders are issued by the President, and as such are White House documents. If confirmed, I commit to working with interagency lawyers to include the White House Counsel's office to resolve any matters of privilege on a timely basis.

Legal Opinions

Are the legal opinions of the Office of the DOD General Counsel binding on all Department of Defense attorneys?

The legal opinions of the DoD General Counsel generally are binding throughout the Department of Defense. Under 10 U.S.C. § 140, the DoD General Counsel is the "chief legal officer of the Department of Defense," and under DoD Directive 5145.01, the General Counsel is responsible for "[e]stablish[ing] DoD policy on general legal issues, determin[ing] the DoD position on specific legal problems, and resolv[ing] disagreements within the DoD on such matters." 10 U.S.C. § 140, however, does not apply to the General Counsel to the Inspector General. In addition, Title 10 prohibits any officer or employee of DoD from interfering with the independent legal advice of certain senior military lawyers.

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

I am not presently aware of any current legal opinions that, if I am confirmed, I would expect to reconsider or revise. However, I expect that, if I am confirmed, I will have the occasion to revisit matters and welcome the opportunity to do so.

Relationship with the Department of Justice (DOJ)

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

The Department of Justice has the statutory responsibility to represent the United States and its officers, employees, and agencies, including the Department of Defense, in litigation. Attorneys from the Department of Defense work closely with Department of Justice lawyers on matters in which DoD, or one or more of its components or officials, is

a party or has an interest.

What role do you expect to play, if confirmed, in the development and consideration (or reconsideration) of legal opinions by the Office of Legal Counsel of the Department of Justice that directly affect the Department of Defense?

If I am confirmed, I expect to work closely with the Office of Legal Counsel of the Department of Justice (OLC) on the most complicated legal issues confronting the Department of Defense. By continuing to foster a close working relationship with OLC, I will strive to ensure that DoD and its officials have the benefit of the highest-caliber legal advice within the Executive Branch.

If confirmed, what actions would you take to address an opinion issued by the Office of Legal Counsel with which you disagreed as a matter of proper interpretation of the law?

The Attorney General, usually acting through the Assistant Attorney General for OLC, sometimes is called on to issue legal opinions that are binding on the entire Executive Branch, including the Department of Defense. If I am confirmed, and in the event that OLC issues an opinion with which I disagree as a matter of law, I would express my opinion to the Assistant Attorney General or, if necessary and appropriate, the Attorney General and ask for reconsideration of the OLC opinion. I hope to have developed a sufficiently close working relationship with OLC that my input would be considered prior to issuance of the legal opinion.

Independent Legal Advice by Judge Advocates

What is your view of the requirement for the Judge Advocates General of the Services, the Staff Judge Advocate to the Commandant of the Marine Corps, and the legal advisor to the Chairman of the Joint Chiefs of Staff to provide independent legal advice to the Secretaries of the Military Departments, the Chairman of the Joint Chiefs, and the Service Chiefs?

I understand that the Judge Advocates General of the Services, the Staff Judge Advocate to the Commandant of the Marine Corps, and the legal advisor to the Chairman of the Joint Chiefs of Staff provide independent legal advice to the leadership of their respective Military Departments, and that under the law no officer or employee of DoD may interfere with that. If confirmed, I will respect and support the important role played by these officers and be clear with my expectation that we fully comply with the law in this regard. Having served as an Army Judge Advocate, I understand that the uniformed lawyers of the military play a critical role within the Department, and that due to their military training and background offer an important perspective.

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

I understand that that Judge Advocates in the field, in support of their Services or at joint commands, have a responsibility to provide independent legal advice to military commanders. Having served as an Army Judge Advocate, I understand that the uniformed lawyers of the military play a critical role within the Department, and that due to their military training and background offer an important perspective.

What is your understanding of the DOD General Counsel’s responsibilities with regard to military justice and The Judge Advocates General?

In my view, the role of the DoD Office of General Counsel is to provide legal advice to the Secretary of Defense and DoD stakeholders on policy, legislative, and programmatic initiatives intended to deter misconduct. If confirmed, I will work with the Judge Advocates General of the Military Departments and the Staff Judge Advocate to the Commandant of the Marine Corps, as well as the Lead Special Trial Counsel, to refine policies and seek additional authorities, as required, to promote justice, deter misconduct, and facilitate appropriate accountability.

The Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps play crucial roles in providing military justice personnel and training in their Military Services. However, decisions in the military justice system are made independently by certain personnel, including convening authorities, special trial counsel, defense counsel, military judges, and court-martial panel members (jurors). For the system to operate fairly—and be perceived as operating fairly—those Service members who exercise independent judgment in the system must perform discretionary duties free from improper influence by their superiors.

If confirmed, what relationship would you establish with the General Counsels of the Military Departments?

If confirmed, I expect to work closely with the General Counsels of the Military Departments. I would develop strong lines of communication to assist them in providing timely and accurate legal advice to the senior leadership of their respective military departments, and to ensure that legal matters are effectively coordinated across the Department.

Authorization for the Use of Military Force (AUMF)

In your view, in what circumstances should the President seek authorization from Congress before using military force?

While the President is chief executive and Commander in Chief, the Constitution assigns to the Congress an essential role in decisions to declare war. Further, the War Powers Resolution prescribes that the President “in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities.”

Consistent with the constitutional division of roles, the President may direct certain military action pursuant to Article II of the Constitution when that action serves an important national interest and the reasonably anticipated nature, scope, and duration of the operation and any possible responses would not rise to the level of “war” under the Constitution. I understand this has been the longstanding view of both Democratic and Republican administrations across several decades, as reflected in a series of opinions by the Department of Justice Office of Legal Counsel.

General and Flag Officer Nominations

Existing law and policy provide that adverse and reportable information pertaining to an officer must be evaluated by senior leaders in the Military Departments and in the Office of the Secretary of Defense prior to the nomination of such an officer for promotion to a general or flag officer grade, or for appointment to a position of “importance and responsibility.”

In your view, what is the role of the DOD General Counsel in the officer promotion system generally, and more specifically in reviewing the nomination of officers for promotion to general and flag officer grades and positions?

It is my understanding that all reports of promotion selection boards are reviewed by the Office of the DoD General Counsel prior to final action on the report by the Secretary of Defense or the Under Secretary of Defense for Personnel and Readiness. This review comes after similar legal reviews have been conducted at the Military Service and Military Department levels. If the DoD General Counsel determines that a promotion selection board did not conform to law or policy, it would be the duty of the General Counsel to inform the Secretary of Defense or Under Secretary of Defense for Personnel and Readiness, as the case may be, of the irregularities and to recommend appropriate corrective action. I am also aware that the Office of the DoD General Counsel reviews the nomination package for each officer recommended for appointment to the grade of O-9 or O-10 while serving in a position of importance and responsibility, ensuring that any adverse or reportable information pertaining to an officer is accurately summarized. The Office of the DoD General Counsel also has a role in ensuring that officer promotion policies in DoD regulations accurately reflect the law in title 10, U.S. Code.

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

It is my understanding that these current policies and procedures, many of which are based on law, provide the Secretary of Defense, the President, and the Senate sufficient information on which to make informed decisions as to which officers should be

promoted and/or assigned to positions of importance and responsibility. If confirmed, I will recommend changes to the current policies and procedures if I determine they are appropriate.

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

Yes, it is my understanding that these policies and procedures are fair. When adverse information pertaining to the officer is involved, I am aware that the officer's statement regarding such information is included in the appointment or nomination package. If confirmed, I will recommend changes to the policies and procedures if I determine they are appropriate.

Sexual Assault and Sexual Harassment Prevention and Response

What is your understanding of the role of the DOD General Counsel in addressing sexual assault and sexual harassment within the Department of Defense?

In my view, the role of the DoD Office of General Counsel is to provide legal advice to the Secretary of Defense and DoD stakeholders on policy, legislative, and programmatic initiatives intended to deter this misconduct. If confirmed, I will work with the Judge Advocates General of the Military Departments and the Staff Judge Advocate to the Commandant of the Marine Corps, as well as the Services' Lead Special Trial Counsel, to refine policies and seek additional authorities, as required, to promote justice, deter misconduct, and facilitate appropriate accountability. I anticipate ensuring high-level focus on this issue.

What is your assessment of the efficacy of the Department's sexual assault prevention and response program?

I understand the Department has undertaken numerous initiatives to prevent and respond to sexual assault, including establishing the Offices of Special Trial Counsel within the military Services. I expect that it will take time to assess the efficacy of this initiative and other legal and policy changes implemented by the Department.

Maintaining good order and discipline in the Armed Forces promotes efficiency and effectiveness in the military establishment and thereby strengthens the national security of the United States. If confirmed, I will work with DoD stakeholders to support these programs to ensure the readiness of the warfighter.

Whistleblower Protection

Section 1034 of title 10, U.S. Code, prohibits taking or threatening to take an unfavorable personnel action against a member of the armed forces in retaliation for

making a protected communication. Section 2302 of title 5, U.S. Code, provides similar protections to Federal civilian employees.

If confirmed, what role would you establish for yourself in, and what specific actions would you take, ensuring that service members and civilian employees of the Department of Defense who report fraud, waste, and abuse, or gross mismanagement are protected from reprisal?

Whistleblowers perform an important service by reporting what they reasonably believe to be evidence of waste, fraud, and abuse or gross mismanagement. Whistleblower protection laws exist to ensure that whistleblowers may report freely concerning issues of fraud, waste, and abuse or gross mismanagement without fear of retaliation and/or reprisal. If confirmed, I will ensure that the Department of Defense provides all the protections to which whistleblowers are entitled under law and policy. Moreover, I will work to ensure that throughout DoD there is appropriate policy in place on whistleblower protection. Lastly, I believe that all senior defense officials have an obligation to emphasize, in both their words and actions, the importance of whistleblower protection and the benefits derived by DoD from investigations and reviews based on protected communications. If I am confirmed, this will be a personal point of emphasis for me.

Support to the Department of Defense Inspector General

What is the relationship between the DOD General Counsel and the DOD Inspector General?

The DoD Inspector General has an independent statutory status as does the General Counsel to the DoD IG, which is established by law in an amendment to the Inspector General Act. The General Counsel to the IG, who is not under the supervision of the DoD General Counsel, is appointed by the Inspector General and serves as the chief legal officer of the Office of the Inspector General. It is my understanding that reviewing the legal sufficiency of Inspector General investigations, including whistleblower investigations, is performed by the General Counsel to the IG, not the DoD General Counsel. If confirmed, I will provide appropriate legal advice to the Department in conjunction with actions stemming from an investigation and will assist the Office of the Inspector General as requested and appropriate.

Is the DOD Inspector General bound by the legal opinions of the DOD General Counsel?

In accordance with 10 U.S.C. § 140, legal opinions of the DoD General Counsel generally are binding throughout the Department of Defense. The General Counsel to the Inspector General, however, is expressly exempted from the scope of 10 U.S.C. § 140 by virtue of Section 907 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009 (5 U.S.C. App. § 408(h)).

What role, if any, does the DOD General Counsel have in reviewing DOD IG reports of investigation and inspections? In your view, do you see a need for a change in this role?

It is my understanding that the DoD General Counsel does not review the legal sufficiency of Inspector General investigations and recommendations. This review is provided by the General Counsel to the Inspector General. It would be appropriate, however, for the DoD General Counsel to assist the Office of the Inspector General as requested by that office, including review of certain IG investigation and inspection reports prior to finalization and release.

Civilian Attorney Recruiting and Retention

In your view, does the Office of the General Counsel of the Department of Defense have a sufficient number of attorneys to perform its many missions? Please explain your answer.

While I am currently not able to assess this, if I am confirmed I would explore whether the Department has sufficient legal resources to meet the Department's needs in terms of quantity and quality of civilian attorneys.

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

While I am not currently able to assess this, if confirmed, I will collaborate with Department leaders to identify ways to strengthen our civilian attorney talent management efforts and implement modernized hiring practices that enhance workforce efficiency. I would determine whether the current civilian attorneys are provided sufficient opportunities for advancement and professional fulfillment. If not, I would take steps to improve these opportunities.

I am not currently aware of any incentives that are necessary, but if confirmed, I would take the necessary steps to evaluate and assess the situation to help make this determination. The civilian attorney workforce is a key part of the DoD team, and the Department must efficiently recruit and retain highly skilled civilian attorneys who contribute to the public interest.

The DOD General Counsel serves as the selecting official for all OSD career Senior Executive Service (SES) attorney positions.

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

If I am confirmed, I will lead the experienced attorneys in the Office of the DoD General Counsel and in the wider DoD legal community in their efforts to provide the best possible legal advice to decisionmakers throughout the Department of Defense. To do this effectively, I will seek SES attorneys who possess critical leadership skills and are capable of building multi-disciplinary and cohesive teams to accomplish the priorities of the President and the Secretary of Defense.

Acquisition

What is your understanding of the role of the DOD General Counsel in ensuring that the Department's acquisition programs are executed in accordance with applicable law and policy?

As the chief legal officer of the Department of Defense, the General Counsel has the critical role of advising clients throughout the Defense acquisition community on the requirements of law and regulation as they relate to the execution of DoD's acquisition programs, including especially some of the largest and most important programs of the Department. If I am confirmed, I would ensure my team of highly qualified acquisition attorneys is watchful that the Department conducts procurements fairly and openly, mindful of the need to be good stewards of the American taxpayers' dollars. Moreover, I would be very clear that the Department needs to comply with all statutory limitations and prohibitions and that the thought or ignoring them for the mere sake of business expediency is not to be tolerated.

What are your views on the overall effects on DOD of defense acquisition reform to date?

I understand that over the past several years the Department has made strides in implementing the Adaptive Acquisition Framework, which provides multiple fit-to-purpose pathways for differing types of acquisitions and recast the former "one size fits all" approach. I imagine it would be overly optimistic to consider the job done. There must still be more to accomplish, and I look forward, if confirmed, to working with the Department's leadership and the team of acquisition attorneys at DoD to keep the ball rolling in this important effort.

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

The job of the DoD General Counsel is to apply the laws promulgated by Congress as they relate to the Department. I commit to you that, if I am confirmed, I would approach this task with the full understanding of the intent of Congress. In this context I would consider one of the primary functions of the job, and part of the duties of the acquisition attorneys on staff, to be tracking the enactment of new authorities and communicate with the client community to make sure it is aware of flexibilities that new enactments might

provide. I would encourage greater use of any legislatively bestowed flexibility however, wherever, and whenever appropriate.

If confirmed, how would you deal with contractors that improperly mark technical data, do not deliver technical data under the terms of the contract, or otherwise enforce technical data rights and ordering to ensure DOD is able to maintain competition and its core logistics capabilities?

This is a simple matter of contract enforcement, rooted in insistence on compliance with the terms of our written agreements. A lawyer's role here is no different than it would be in other business disputes: providing well-grounded advice and effective advocacy, especially after the point where matters have devolved to litigation.

Risk Aversion

Many attempts at management reform in the Department of Defense, to include personnel reform and acquisition reform, involve allowing senior and local leadership to make maximum use of authorized flexibilities and exceptions to standard practices. It is generally believed that DOD's so-called "risk averse culture" stifles initiative and traps the Department in a set of antiquated and burdensome practices. At times, this culture of risk aversion has been attributed to the legal advice rendered by DOD and component attorneys.

In your view, what role should the assessment of "risk" play in an attorney's provision of legal advice?

The need to foster a culture of innovation across the department is pressing. We ought not let an undue concern for risk frustrate meeting that need. My role, if confirmed, will be to see that attorneys within the DoD Office of the General Counsel understand the flexibilities as well as the limits provided in law and regulation and that they advise their clients accordingly. The mere presence of risk should not lead an attorney to withhold advising on possible options. Certainly, a DoD attorney should seek to make sure that his or her clients are aware of any legal risks associated with various options, but he or she should make it part of his or her job to find ways to mitigate those risks and, wherever possible, advise on alternate paths that present none of the identified risks. In the end, however, attorneys only advise. The business decision makers and policy clients need to settle on how best to proceed, after fully understanding a range of legally available options. The job of a lawyer is to present those legally available options.

Ethics and Professional Responsibility

Service member and DOD civilian employee conflicts of interest have long been a concern. What is the general prevalence in the armed forces, and in the DOD

civilian workforce, of violations of criminal laws and executive branch and DOD ethics regulations relating to conflicts of interest?

I believe preventing conflicts of interest is critical to maintaining the public's trust and confidence in the Department's operations. Based on the most recent annual data reported on the Office of Government Ethics website, I understand that there were only 2 statutory violations and 110 regulatory violations in a Department of over 1.7 million full-time personnel during CY 2023. That represents less than .5% of the total DoD workforce. As the Department of Defense Designated Agency Ethics Official, I will, if confirmed, carry out an effective ethics program to prevent and resolve conflicts of interest and the appearance of conflicts of interest.

What is the role of the General Counsel of the Department of Defense in ensuring that attorneys under his supervision adhere to Rules of Professional Conduct? If confirmed, how would you approach this critical supervisory duty with regard to the Office of the DOD General Counsel?

The DoD General Counsel (GC) is responsible for establishing professional responsibility standards for the civilian attorneys under the GC's supervision and for overseeing adherence to these standards, in accordance with DoD Directive 5145.01 and DoD Instruction 1442.02. If confirmed, I will implement these rules to ensure legal services are provided with the highest degree of professionalism.

Are the laws and regulations relating to the post-government employment of DOD personnel—military and civilian—adequate, coherent, and comprehensible, in your view?

There is a long-standing framework of Executive Branch-wide ethics statutes and regulations that balance the interests of the public in preventing conflicts of interest with the employment rights of individual employees and the Government's interest in recruiting talent. I understand that a 2021 Government Accountability Office audit report concluded that DoD has strong post-government employment training, guidance, and practices for implementing these laws and made no findings of violations. Additionally, a Congressionally mandated Federally Funded Research & Development Center study finalized in 2024 concluded that the proliferation of ethics provisions that address the same or similar issues risks confusion that could undermine compliance and enforcement. The study further found that there was not a strong reason to treat DoD officials more stringently than officials in other agencies. If confirmed, I would support clear, consistent, and balanced ethics laws, which are essential to maintaining the public's trust.

If confirmed, what actions would you take were it brought to your attention that a certain appointment or designation was potentially in violation of the Federal Vacancies Reform Act and associated case law?

If I am confirmed and it were brought to my attention that an appointment potentially violated the Federal Vacancies Reform Act, I would obtain the facts pertaining to the

appointment and provide my best legal advice to the Secretary regarding the appointment. If I believed the appointment would violate the Federal Vacancies Reform Act, I would provide that advice.

If confirmed, what actions would you take if it were brought to your attention that a potential nominee, military or civilian, does not meet statutory prerequisites for the position for which the individual would be nominated?

If I am confirmed and it were brought to my attention that a potential nominee, military or civilian, does not meet statutory prerequisites for the position for which the individual would be nominated, I would obtain the facts pertaining to the appointment and provide my best legal advice to the Secretary regarding the nomination. If I believed the nomination did not meet statutory prerequisites for the position, I would provide that advice.

If confirmed, what actions would you take were it brought to your attention that an individual pending nomination or confirmation by the Senate, to a Presidentially-appointed, Senate-confirmed office was potentially acting in contravention of the policies of the Senate Armed Services Committee regarding the presumption of confirmation?

If I am confirmed and it were brought to my attention that an individual pending nomination or confirmation by the Senate, to a Presidentially-appointed, Senate-confirmed office was potentially acting in contravention of the policies of the Senate Armed Services Committee regarding the presumption of confirmation, I would obtain the facts pertaining to the appointment and provide my best legal advice to the Secretary regarding the nomination. If I believed the individual pending nomination or confirmation was potentially acting in a manner inconsistent with the policies of the Senate Armed Services Committee regarding the presumption of confirmation, I would provide that advice.

Annual Department of Defense Legislative Program

One of the responsibilities of the DOD General Counsel is to coordinate the Department's legislative program and to provide the Department's views on legislative proposals initiated from outside the Department.

If confirmed, what actions would you take to ensure that the Department's legislative proposals are submitted to the Armed Services Committees of the Senate and the House of Representatives in a timely manner, so as to ensure ample opportunity for consideration of such proposals by Congress and the public before markup of the annual NDAA?

I understand the need to provide fully coordinated draft legislation to the Armed Services Committees as early as possible after the President submits his budget to Congress. If

confirmed, I will work with DoD components and the Office of Management and Budget to expedite review and coordination of draft legislation for inclusion in the annual NDAA. I fully appreciate that the earlier the Department submits its legislative proposals, the more likely the Armed Services Committees will consider the Department's proposals and recommend that they be enacted.

What actions would you take, if confirmed, to ensure Congress receives the Department's views on other proposed legislation in a timely manner?

It is my understanding that the Office of the Assistant Secretary of Defense for Legislative Affairs manages the Department's response to congressional requests for informal views of specific pieces of legislation. If confirmed, I will work with that office to ensure timely responses to those requests.

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, reports, records (including documents and electronic communications) and other information from the Department.

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

Yes.

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

Yes.

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

Yes.

Do you agree, without qualification, if confirmed, to keep this committee, its subcommittees, other appropriate committees of Congress, and their respective

staffs apprised of new information that materially impacts the accuracy of testimony, briefings, reports, records—including documents and electronic communications, and other information you or your organization previously provided? Please answer with a simple yes or no.

Yes.

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

Yes.

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

Yes.

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

Yes.