

**Advance Policy Questions for Gordon O. Tanner**  
**Nominee for the Position of General Counsel**  
**of the Department of the Air Force**

**1. Defense Reforms**

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

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

Answer: At this time I am unaware of any reason to amend the Goldwater-Nichols Act. If I am confirmed and I identify areas that I believe merit changes, I will propose those changes through the established process.

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

Answer: See my prior answer.

**2. Duties**

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

Answer: The duties and functions of the General Counsel are determined and assigned by the Secretary of the Air Force. 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 and exercises oversight of intelligence and other sensitive activities and investigations.

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

Answer: I believe that my education and over 40 years of practice--in both public service and private practice--have well prepared me for the challenges of this office. I received a Bachelors of Arts degree from the University of Alabama and was commissioned as a Distinguished Graduate through its Air Force ROTC program. I attended the Vanderbilt University School of Law where I received a J.D. degree. While in law school I worked for the Tennessee Legislative Council to assist members of the Tennessee Legislature to draft proposed legislation. Upon passing the state bar examination, I began four years of active duty military service as a Judge Advocate at Tyndall Air Force Base, Florida. At the expiration of my active duty commitment, I returned to my hometown and joined the law firm of McDermott, Slepian, Windom & Reed and undertook my first assignment in the Air Force Reserve as the Staff Judge Advocate of the 926 Tactical Fighter Group in New Orleans, LA. I remained with the same law firm and its successor, Sirote & Permutt for approximately twenty years. Likewise, I remained in the Air Force Reserves and retired as a Colonel after 24 years of service. I believe that my experience as both an active duty and Reserve judge advocate; my 12 years of service in the Air Force General Counsel's office, culminating with 22 months as the Principal Deputy General Counsel; my opportunities to serve as both a Deputy Assistant Secretary of the Air Force (Reserve Affairs) and the Principal Deputy Assistant Secretary of the Air Force (Manpower and Reserve Affairs); as well as my experience in private practice at a law firm with national and international clients, have prepared me for the challenging and diverse legal issues that will face the Department of the Air Force.

**C. 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?**

Answer: I believe I have the necessary legal training, experience and leadership abilities to be the General Counsel. This is especially true given my experience as the Principal Deputy General Counsel and the Principal Deputy Assistant Secretary of Manpower and Reserve Affairs, as well as my career as a Reserve Air Force judge advocate. I am also a firm believer, however, that the best lawyers work hard to completely understand the operations of their client. If confirmed, I will benefit from the extraordinary talent, expertise and experience of the civilian and military lawyers in the Department as I broaden my understanding of the issues the Air Force faces every day.

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

Answer: If confirmed, I anticipate Secretary James will expect me to provide timely, accurate, and candid legal advice and counsel, ensuring compliance with the law and the protection of the legal prerogatives of the Department. I expect the duties and functions of the office will cover the wide range of legal issues and responsibilities prescribed by the Secretary. I anticipate the Secretary would expect me to manage the General Counsel's Office efficiently and effectively. Additionally, I anticipate the Secretary

would expect me to foster an atmosphere of professionalism and responsiveness regarding all legal matters and services while working 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.

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

Answer: If confirmed, I will work closely and collaboratively with the General Counsel of the Department of Defense. Although the General Counsel of the Department of the Air Force does not have a direct reporting relationship with the DoD General Counsel, the DoD General Counsel is by law (10 U.S.C. section 140(b)) and by regulation (DoD Directive 5145.01), the chief legal officer of the Department of Defense. If confirmed, I anticipate having a close and professional relationship with the DoD General Counsel, characterized by continuing consultation, communication, and cooperation on matters of mutual interest, in furtherance of the best interests of DoD.

**3. Major Challenges**

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

Answer: The challenges facing the Department of 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 Hagel has made clear that institutional reform will be a priority in the near term, and I expect that to be a priority for the General Counsel of the Air Force as well. As you know, Secretary Hagel's concept of institutional reform has three components: (1) Reform and reshape our defense enterprise; (2) Direct more resources to military capabilities and readiness; and (3) Make organizations flatter and more responsive. Secretary James is working on reshaping our defense enterprise. Under her leadership the Air Force budget execution and budget submission are shifting more resources to military readiness and modernization. Finally, she has made significant efforts to flatten our organization by reducing our management staff by 20% in a single year. Secretary Hagel and Secretary James will continue to make these efforts priorities and therefore they will be mine as well.

Although the current environment makes it difficult to anticipate all specific legal questions, I also expect to confront issues relating to operational matters, intelligence, privatization initiatives, military and civilian personnel policies, and compliance with environmental laws. In addressing these challenges, I think it will be critically important that the Office of the General Counsel and the Office of The Judge Advocate General have a cooperative and professional partnership.

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

Answer: If confirmed, I plan on working closely with the Secretary, the Chief of Staff, The Judge Advocate General, and the talented and dedicated attorneys in the Department of the Air Force to candidly evaluate the challenges and to ensure responsive and accurate legal services are provided to meet and address these challenges. In addition, if confirmed, I will work to expertly staff the Air Force legal community, in order to guarantee decision makers at all levels access to the best legal advice possible.

**C. What do you see as the greatest legal problems facing the Air Force in the coming year?**

Answer: In a time of declining budgets, the Air Force is being forced to make hard decisions. All of these decisions will require consultation with Congress and a careful reading of the laws passed by Congress. If confirmed, I will ensure the Office of the General Counsel facilitates communication with Congress. I will also ensure that the Office of the General Counsel provides timely, accurate, and candid legal advice, ensuring compliance with the law and protection of the legal prerogatives of the Air Force. It is imperative that the Air Force has the legal support necessary to build and maintain the very best air, space and cyberspace capabilities possible.

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

Answer: Yes. The Office of the General Counsel, like the rest of the management structure of the Air Force, participated in the SECDEF-directed 20 percent reduction in management resources. While these cuts will present challenges, I believe we have adequate resources to provide good legal advice to Air Force senior leaders as we work together to resolve significant legal challenges. I also believe that there are lessons to be learned from the Office of the Judge Advocate General, private law firms and the legal staffs of other federal agencies that could maintain and even improve the existing high quality of service by the Air Force General Counsel's office in this time of reduced manning and resources.

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

Answer: I plan to continue the work underway in the Office of the General Counsel to refine a strategic plan. This plan starts by simply stating the mission of this organization – to wit: The Office of the General Counsel enables the Air Force to achieve its mission through the provision of independent and candid legal advice, effective advocacy, and problem-solving. The draft Strategic Plan focuses on four areas that will help the Office of the General Counsel achieve its mission: (1) Talent Management; (2) Customer Satisfaction; (3) Program Execution; and (4) Knowledge Management. If confirmed, I

will provide the leadership necessary to refine, approve and implement the Office of the General Counsel strategic plan.

#### **4. Relationship with the Judge Advocate General**

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

Answer: Throughout my career of military and civil service, particularly during the nearly 15 years of my civil service, I have enjoyed an excellent working relationship with The Judge Advocate General's Corps that resulted in the delivery of high quality legal services to Air Force leadership at all levels. I learned first-hand about the unique and vital experiences and expertise that civilian and military lawyers bring to the table, and that the final legal advice given to the client benefited greatly from our close working relationship. I was very proud to be a member of the team that delivered those services. If confirmed, I will work to maintain a close professional relationship with The Judge Advocate General. Consultation on matters of mutual import and interest should characterize that relationship. It is imperative that the two offices work well together to provide the highest quality of legal support to the Department of the Air Force.

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

Answer: My career of military and civil service convinced me that it is critical that The Judge Advocate General and the General Counsel work as collaborative partners to provide the best possible legal services to our common client. If confirmed, I will make maintaining such a partnership a priority. 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 of the Air Force and other Department officials. In addition, 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. 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.

##### **C. How will you ensure that legal opinions of your office will be available to Air Force attorneys, including judge advocates?**

Answer: Close professional cooperation between the civilian and uniformed members of the Air Force's legal community is absolutely essential to ensure appropriate legal opinions issued by the Office of the Air Force General Counsel will be available to all Air Force attorneys and Judge Advocates, and vice versa. If confirmed, I will survey existing avenues for sharing information and consult with The Judge Advocate General on ensuring the thorough and timely dissemination of key advice.

**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. Congress also required a study and review by outside experts of the relationships between the legal elements of each of the military departments of each of the military departments.**

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

Answer: 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. Uniformed attorneys bring another perspective and can provide insight and advice shaped by years of service throughout the Air Force.

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

Answer: 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.

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

Answer: 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, to ensure the effective delivery of legal services to the Department of the Air Force.

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

Answer: Within the areas of responsibility and functions assigned to me by the Secretary under 10 USC §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 provided to senior Air Force leadership. During my

tenure as the Principal Deputy Air Force General Counsel, my practice was to ensure that such opinions were drafted in collaboration with The Judge Advocate General and his staff. I cannot recall a single instance during my service as Principal Deputy General Counsel where any differences weren't resolved through discussions between the staffs. If there were to be such a disagreement, since the General Counsel and The Judge Advocate General both act under the authority of the Secretary, The Judge Advocate General would always have the ability to offer independent advice to the Secretary and seek resolution of the disagreement. Any resulting legal opinions would thus be rendered under the authority of the Secretary.

**H. How will you ensure that such legal opinions are available to Air Force lawyers?**

Answer: Final opinions are published through a cooperative General Counsel and TJAG process. As for proposed opinions, if confirmed, I would ensure close cooperation between General Counsel and TJAG offices to ensure they are available to those whose coordination and consultation are appropriate to the subject matter and potential impacts of the opinion.

**I. 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?**

Answer: At this time I am not aware of any specific categories that require revision. If confirmed as the General Counsel of the Air Force, I will undertake the responsibilities of the office with an open mind. Only after a thorough review and assessment of existing opinions, as well as appropriate consultation, will I consider revision of existing opinions. I believe one of the responsibilities of the General Counsel is to constantly assess opinions rendered in areas of the law and particular issues that may need reconsideration and/or revision based on current events and legal, regulatory and policy development.

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

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

Answer: 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.

## **5. Attorney Recruiting and Retention Issues**

### **A. How do you assess your ability to hire and retain top quality attorneys and provide sufficient opportunity for advancement?**

Answer: If confirmed, I plan to work to maintain the Air Force's ability to recruit and retain the highest quality civilian and military attorneys both in the General Counsel's Office and The Judge Advocate General's Corps. If confirmed, I want to make Federal service as a civilian attorney in the Air Force as attractive and professionally rewarding as possible. I will also work with The Judge Advocate General to ensure the Air Force has the tools we need to continue to recruit and retain the best and most diverse attorneys available to support the mission.

### **B. In your view, does the Department of the Air Force have a sufficient number of attorneys to perform its missions?**

Answer: If confirmed, I will work closely with The Judge Advocate General to evaluate the adequacy of the number of attorneys to ensure that there are a sufficient number of attorneys in the Department of the Air Force to accomplish the Air Force's missions. We must ensure that we continue to develop and maintain the right balance of legal skill sets and properly develop future leaders needed for our full-spectrum legal support that enables Air Force mission success.

For example, The Judge Advocate General's Corps has both a significant home-station (military justice, litigation support) and contingency (operations, Rule of Law, detention ops) legal support mission. The JAG Corps has averaged 234 deployment requirements per year for the past 12 years. Sustained legal support operations over the past 12 years in every Combatant Commander AOR translate into reduced capacity for the home station mission. In addition, while the Air Force looks to reduce overall end strength to meet budgetary constraints, missions continue to grow for Air Force legal professionals. For example, the Corps continues to lead the Air Force in its efforts to combat sexual assault through the Special Victims Counsel program and with a cadre of highly trained sex assault prosecutors. Sustainment of those valuable programs, as well as other important missions such as civil litigation and legal advice to commanders at all echelons, requires a steady, reliable, and predictable stream of JAG and GC accessions.

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

Answer: If confirmed, in consultation with The Judge Advocate General, I will look at this area very carefully and support initiatives that enhance the Air Force's ability to recruit and retain the best legal talent available.



## **6. Detainee Issues**

### **A. What role do you expect to play, if confirmed, in helping the Department of Defense and the Department of the Air Force address legal issues regarding detainees?**

Answer: The legal issues regarding detainees are of critical importance to DOD and the Department of the Air Force. These issues need to be handled with great care, and with a clear focus on the rule of law. If confirmed, I will work closely with the DOD General Counsel in executing the President's directives. Additionally, in consultation with The Judge Advocate General, I will provide advice to the Secretary regarding detainee issues affecting the Air Force, with particular focus on our obligation to treat all detainees humanely.

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

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

Answer: Yes, this prohibition is in the best interest of the United States. Prohibiting the cruel, inhumane, or degrading treatment or punishment of individuals in our custody or under our physical control upholds our ideals and obligations, and reinforces our moral authority around the world.

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

Answer: I understand that considerable attention has been given to this issue within DOD. If confirmed, I will play an active part in ensuring the Department's implementing directives make clear what conduct is prohibited.

### **D. What role do you believe the General Counsel of the Air Force should play in the interpretation of this standard?**

Answer: The appropriate role of the General Counsel is to provide advice to the Secretary of the Air Force and her staff on policies that implement this standard. If confirmed, I will ensure Air Force implementation is and remains consistent with the law.

**E. What role do you believe the Judge Advocate General of the Air Force should play in the interpretation of this standard?**

Answer. The Judge Advocate General provides advice on policies that implement this standard. The Judge Advocate General should also continue to train and supervise the judge advocates in the field, who are instrumental in maintaining this standard.

**F. If confirmed, will you take steps to ensure that all relevant Air Force directives, regulations, policies, practices, and procedures fully comply with the requirements of section 1403 and with Common Article 3 of the Geneva Conventions?**

Answer: I will. The requirements of section 1403 and Common Article 3 of the Geneva Conventions remain essential to maintaining a disciplined Air Force, bound by the Rule of Law.

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

Answer: I do.

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

**H. 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?**

Answer: This statute is intended to provide criminal sanctions for specific war crimes as provided under international law and also violations of the Uniform Code of Military Justice. Even apart from our obligations to prosecute these violations, however, the United States also has the obligation to "take all measures necessary for the suppression" of all other violations of the Geneva Conventions, even those that are not grave breaches, and I believe the Department must continue to hold military members accountable for violations of these standards as well. I think that this statute, in addition to robust and vigilant training of Airmen of our legal obligations, will protect against abusive treatment of foreign detainees in U.S. custody, as well as provide proper criminal sanctions against those who do not likewise secure reciprocal protection of U.S. detainees in foreign custody.

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

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

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

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

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

Answer: If confirmed, I will study this issue and assess what changes to MEJA may be appropriate, if any.

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

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

**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 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.**

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

Answer: The UCMJ provides commanders the tools necessary to maintain good order and discipline and ensure the morale, welfare and safety of all those under their jurisdiction during military operations. Because misconduct by contractors can undermine good order and discipline, Congress extended UCMJ jurisdiction over such

individuals in times of declared war or contingency operations. In turn, the Secretary of Defense published guidance on the prudent exercise of such jurisdiction. This guidance ensures that the Department of Justice and the DOD each play an appropriate role in resolving whether, and under which system, jurisdiction might be better exercised in each potential case.

**E. 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?**

Answer: I have not had an opportunity to review the procedures agreed upon by DOD and the Department of Justice to reconcile jurisdictional responsibilities under MEJA and the UCMJ. If confirmed, I will, in coordination with The Judge Advocate General, assess the effectiveness of the procedures and whether further refinement of these procedures is necessary.

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

Answer: At present, I am not aware of any specific provisions in need of change. It is my understanding, however, that the Secretary of Defense has appointed a working group staffed with personnel from each of the Services to undertake a complete review of the UCMJ. If confirmed, I will do all that I can to support this review and offer resources, opinion and counsel as appropriate.

**8. Religious Guidelines**

**A. In your view, do Department of Defense 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?**

Answer: Yes. However, I am aware that there is Congressional concern about whether or not the Air Force implementation and execution of the Department of Defense policies are adequately protecting individual expressions of belief. I am also aware that the Air Force is taking these concerns seriously and is currently reviewing its policies. If confirmed, I will study this issue to determine if changes or further changes are necessary under the law.

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

Answer: Yes. I know from my previous working relationship with leaders of the Air Force Chaplain Corps that Air Force chaplains are never compelled to offer prayers that are inconsistent with their faith. I further know that they are expected to remain sensitive to the needs of, and provide care for, all the Air Force members they serve. Military chaplains have always had the prerogative to pray according to their endorsing faith group traditions inside or outside of religious services. Chaplains are trained and equipped to consider the setting and audience in preparation of prayers outside of religious services. Additionally, they have always had the freedom and protection to decline the opportunity to offer a prayer at a ceremony that may conflict with their personal beliefs without fear of discipline or discrimination. If I am confirmed, I will consult with the Chief of Chaplains about whether any adjustments are necessary or advisable.

**Section 533 of the FY13 National Defense Authorization Act (P.L. 112-239), as amended by section 532 of the FY14 National Defense Authorization Act (P.L. 113-66) protects rights of conscience of members of the armed forces and chaplains of such members, and prohibits, so far as possible, use of such beliefs as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment. Members of some religious denominations have sincerely held beliefs in opposition to same-sex marriage.**

**C. In your view, may a member of the armed forces who has a sincerely held belief in opposition to same-sex marriage be subject to adverse personnel action or similar other adverse action, if he or she shares those personal views on the subject in a personal capacity?**

Answer: No. A member of the armed forces who has a sincerely held belief in opposition to same-sex marriage should not be subject to adverse personnel action if he or she shares those personal views in a personal capacity, as long as the member's expression, in his or her personal capacity, is not disruptive to good order and discipline, respects the dignity of those with whom he or she may disagree, and is not coercive in nature.

## **9. General and Flag Officer Nominations**

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

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

Answer. I understand that, for general officer promotions, the Office of the General Counsel reviews the following:

A. Memoranda of Instruction that govern the conduct of promotion selection boards and subsequent promotion selection board reports.

B. Adverse information that is not in an officer's official military personnel file that may be presented to the promotion selection board. I have been advised that this information is reviewed to ensure it is accurate and comports with the requirements of Title 10 such that the information is "substantiated, relevant information that could reasonably affect the deliberations of the selection board."

C. Adverse information related to general officers. In general officer cases, the standard for adverse information that must be presented to a promotion selection board is "any credible information of an adverse nature." I have been advised that the Office of the General Counsel participates in a detailed screening process in which all credible information related to officers whose records will be reviewed by a promotion selection board for promotion to a general officer grade. The process ensures that all adverse information is properly identified for presentation to the promotion selection board.

D. Adverse information that becomes available after a promotion selection board makes its recommendations. I have been advised that the Office of the General Counsel provides legal advice to the Secretary of the Air Force so that she may determine whether a promotion review board should be convened to consider whether to continue to support the promotion of the considered officer or take steps to remove the officer from the board report or promotion list.

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

Answer: I understand that, prior to approval by the Secretary of the Air Force, all Memoranda of Instructions for officer promotion selection boards are reviewed by the Office of the General Counsel to ensure the Secretary's instructions conform to statutes and accurately reflect her guidance regarding attributes necessary for service in the next grade. All reports of promotion selection boards are reviewed by the Office of the General Counsel prior to final action on the report by the Secretary. The General Counsel must determine that the Air Force has met applicable statutory standards, DOD direction and Secretary of the Air Force guidelines and that individual selection board reports conform to the law. The General Counsel must advise the Secretary of the Air Force of any case in which a selection board report fails to adhere to the statutory standards, either generally or with regard to a particular officer being considered for promotion. In advising the Secretary of the Air Force 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.

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

Answer: It is my understanding that, under current practice within the Department of the Air Force, the General Counsel's office reviews each selection board report, as well as Departmental communications to the Committee, the President, and the Secretary of Defense concerning nominations, to ensure that the reports and communications comply in form and substance with law and regulation. If confirmed, I will ensure that the General Counsel's office gives special attention to cases of nominees with substantiated or potentially adverse information, in order to ensure that such information is reported to the Senate Armed Services Committee in a timely, accurate, and comprehensible manner.

**10. Military Personnel Policy and Cases**

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

Answer: If confirmed, I will work closely with the Secretary of the Air Force, the Assistant Secretary of the Air Force (Manpower and Reserve Affairs), and other senior Department leaders to ensure that the Department of the Air Force military personnel policies are formulated and applied uniformly, fairly, and in accordance with applicable laws and regulations. If confirmed, it will be my duty to take appropriate action if I become aware of an individual case in which military personnel policies were not fairly and lawfully applied. If confirmed, I will coordinate with the Assistant Secretary of the Air Force (Manpower and Reserve Affairs), who exercises overall supervision of the Air Force Review Boards Agency, regarding the legal sufficiency of the determinations made by the Air Force Board for the Correction of Military Records. In addition, I am aware of, and fully respect, the independent role that the Air Force Board for the Correction of Military Records plays in the correction of military records.

**11. Sexual Assault Prevention and Response**

**The Fiscal Year 2013 Department of Defense Annual Report on Sexual Assault in the Military reflects that reports of sexual assaults in the Air Force increased by 33% from fiscal year 2012 to 1,047 reports of sexual assault.**

**A. What is your assessment of this report?**

Answer: I have been working on sexual assault prevention and response in the Air Force for many years now. Victims are now reporting in unprecedented numbers and we view that as a positive sign.

Historically, reports of sexual assault have increased about 5% per year since 2006. As you note, in FY13, reports are up an unprecedented over 30%. Our best assessment is that this increase is consistent with growing confidence in our response system. As the Department of Defense and the Air Force continue to collect information, I believe we will be able to provide concrete evidence to show that the increase reflects growing confidence in Air Force response systems that provide victims with supportive services and hold offenders appropriately accountable. I believe the success of the Special Victim's Counsel program is playing a significant role in the growing confidence.

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

Answer: The Air Force Sexual Assault Prevention and Response program has dramatically improved over the past two years. Now directly aligned under the Air Force Vice Chief of Staff reflecting broad Air Force support from the highest levels of leadership, and with the dedication of new resources to address this issue, the program is moving forward very quickly. This office is working hard to implement many new Congressional and Department of Defense initiatives, as well as its own. The Air Force is becoming an innovative leader in this area with initiatives that are being adopted across the Department of Defense, such as its Special Victim's Counsel program that provides victims an unprecedented level of service and support.

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

Answer: Expanded reporting is necessary to provide enhanced care, increase awareness and understanding of the issue, and hold perpetrators accountable. Restricted Reporting is a valuable option which ensures that victims who are otherwise not ready to participate in the investigative process have access to the care they desperately need, while at the same time leaving open the possibility to pursue accountability for the offender at a later time.

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

Answer: The chain of command is critical to making progress to prevent instances of sexual assault. Caring, empathetic support by the chain of command is the key to building victim confidence and ensuring victims are encouraged to avail themselves of free legal representation, expedited transfers, and professional responders. The chain of command also plays a significant role in building Airmen's awareness of resources available outside the chain of command.



**E. 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?**

Answer: As victims of one of society's most underreported crimes continue to come forward in increasing numbers, the resources required to continue the necessary quality of medical, psychological, and legal help may need to be revisited. If confirmed, I will work with senior Air Force leadership to ensure the Air Force continually monitors the adequacy of the resources dedicated to supporting victims.

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

Answer: Sexual Assault Prevention and Response is a full-time, worldwide commitment for the Air Force. Airmen receive both pre- and post-deployment briefings, and the Air Force has fully qualified military personnel who are worldwide deployable and prepared for constant rotation to contingency areas to ensure awareness of this program and its importance.

**G. 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?**

Answer: The Air Force has increased its emphasis on both training and resources dedicated to response to allegations of sexual assault. Congress has been very supportive in dedicating funds for this purpose and the Air Force has been quick to develop courses, curriculum, studies, techniques, and specialized training to hone the skills of its investigators and qualify experts who can better support victims and hold perpetrators accountable--while at the same time protecting the rights of all parties involved. If confirmed, I will continue to work with other Air Force leaders to ensure continued availability of adequate training and resources.

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

Answer: My nearly 30 years of active duty, reserve, and civilian Air Force experience taught me that the chain of command is the catalyst for cultural change in the military. In part, this is because of the responsibility and accountability commanders have for all aspects of their commands, with multiple layers of observation and higher-level oversight. Commanders are specifically charged with maintaining climates of dignity and respect, as well as supporting sexual assault prevention and victim-care principles. Air Force regulations now require commanders to be graded on their success in this endeavor on their annual performance reports.

**I. In your view, what would be the impact of requiring a judge advocate outside the chain of command to determine whether allegations of sexual assault should be prosecuted?**

Answer: I do not have sufficient information or expertise to accurately assess the potential impact. Because of the importance of the chain of command in all prevention and response efforts, I believe it is critical that the chain of command remain significantly involved in holding perpetrators of sexual assault accountable for the crimes they commit.

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

Answer: Given the importance of this issue to the nation, its Air Force and all its Airmen, if confirmed, I will make it my top priority to work with senior leaders to explore and implement new initiatives and seek improvements to our current programs and processes.

**12. Whistleblower Protection**

**Section 1034, 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.**

**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?**

Answer: 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.

**13. Real Estate Transactions**

**Recent budget cuts continue to adversely impact availability of funds for Air Force military construction projects. To mitigate, the Air Force has used innovative methods to continue to meet the infrastructure requirements of the warfighter. For example, this included working with Oklahoma state officials to lease a former automotive plant to accommodate additional work performed by the Oklahoma**

**City Air Logistics Complex and the purchase of property contiguous to the base for KC-46 depot maintenance. Another initiative is the Enhanced Use Lease project at Hill Air Force Base. However, as with any new public/private endeavor, questions have arisen as to the projects' compliance with statutes written long ago and designed to regulate other practices. Resolving these questions has greatly slowed the approval process for a number of these projects.**

**How might the law and regulations be modified to facilitate approval of innovative projects based on their merits rather than delayed to ensure compliance with potentially obsolete legal and administrative requirements?**

Answer: As the Committee is aware, I have a good deal of hands-on experience in public-private partnerships. Specifically, my work in Privatized Military Housing and Enhanced Use Leases, has given me a unique understanding of the opportunities and risks associated with this area of the law. I know that there have been varying interpretations of the intent of legislation within the Air Force and the Department of Defense – often resulting in a “risk averse” interpretation of statute. This sometimes means that innovative initiatives have been subject to time consuming and costly processes...which can result in not pursuing or deferring an initiative. If confirmed, my intent is to work with my counterparts across the Air Force and the Department of Defense to identify where these situations exist, and to help them either clarify Air Force interpretation of statute or request legislative change (or support) where needed. Additionally, if confirmed, I will undertake a comprehensive review of the laws and regulations in this area to identify areas that need modification to enhance the ability of the Air Force to take advantage of public-private partnerships and will work closely with the Army, Navy and Department of Defense to secure their support for legislation to modify, clarify or expand existing authorities in this area.

#### **14. Support to Air Force Inspector General**

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

Answer: If confirmed, I will establish and maintain a close, professional relationship with the Inspector General, and will provide candid, independent, and objective legal advice. As part of my responsibility to review legal and policy issues arising from the Air Force intelligence and counterintelligence activities, I will advise the Inspector General concerning proper reporting of the Air Force intelligence oversight activities. Of course, 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.

## **15. Civilian Attorneys**

**Judge advocates in the armed forces benefit from an established career ladder, substantial training opportunities, and exposure to a broad spectrum of legal areas and problems. 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.**

**In your opinion, does the personnel management of civilian attorneys need changing? If so, what do you see as the major problems and what changes would you suggest?**

Answer: Comprehensive and deliberate professional development of career civilian attorneys and paralegals is an important building block to ensure the Air Force receives the highest quality legal services. In December 2006, the Air Force General Counsel and The Judge Advocate General co-signed an Air Force Civilian Legal Personnel Development Advisory Council Charter that established a program to provide policy and guidance regarding: career progression, training, assignments, program objectives, general operation requirements, and career management actions proposed or initiated in support of legal civilian force management objectives. I served as chair of that Council for two years and updated its charter in 2012 to establish and define the role of a development team in pursuing the above-mentioned objectives. I can assure you that the General Counsel and The Judge Advocate General have placed great emphasis on the personnel development of civilian attorneys. The nomination and selection of civilian attorneys to attend Civilian Development Education opportunities has quadrupled since these charters were signed. If confirmed, I will continue to emphasize the importance of an organized and comprehensive approach to the management, training, and development of civilian attorneys.

## **16. Client**

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

Answer: The client of the General Counsel of the Department of the Air Force is the Department of the Air Force, acting through its authorized officials.

## **17. Acquisition Issues**

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

Answer: If confirmed, I will work closely with the Secretary of the Air Force, the Assistant Secretary of the Air Force (Acquisition), and other senior officials to ensure the

Department of the Air Force's acquisition and procurement programs are executed in accordance with applicable provisions of law, as well as DOD guidance. Participation by Air Force lawyers should start in the earliest stages of program development. They should seek out potential legal issues and, where appropriate, identify lawful alternative courses of action. Air Force attorneys should also be able to anticipate emerging issues and provide future-oriented guidance that improves the procurement system's ability to provide warfighters with mission-critical systems at prices that are affordable for the taxpayer.

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

Answer: Ethics training, acquisition ethics training, and fostering a culture of ethics throughout the Air Force are paramount in creating an organizational climate that is sensitive to the need of avoiding conflicts of interest and that reacts appropriately when such issues arise. If confirmed, I will work closely with the Secretary of the Air Force, the Assistant Secretary of the Air Force (Acquisition), The Judge Advocate General, and other senior officials to promote an organizational climate that is sensitive to the need to avoid conflicts of interest and that reacts appropriately when specific issues arise. This also extends to ensuring that Air Force personnel adhere to the letter and spirit of the law relating to post-employment restrictions. Air Force lawyers can make a significant contribution to these endeavors through provision of training, early and sustained involvement in the Department's acquisition programs and procurement activities, and continued instructional outreach to industry.

**18. Detecting Organizational Conflicts of Interest**

**Organizational conflicts of interest have become a major concern with the growing use of private contractors being tasked to perform key functions that the services had formerly performed in-house. This has been seen in cases in which highly qualified individuals who expect to be hired as government employees need a salary pending completion of the hiring process.**

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

Answer: 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. Our goals need to include avoidance of conflicting roles that might bias a contractor's judgment and prevention of circumstances that may result in an unfair competitive advantage.

**B. What is your understanding of steps the Air Force has taken to address the problems created by delays in the hiring process under circumstances in which the Air Force intends to hire an individual into government service?**

Answer: I understand that Air Force leadership has engaged with the Office of Personnel Management, DOD and associated liaison offices to address factors that can delay hiring actions. If confirmed, I look forward to working with Air Force leadership to continue this effort to minimize or eliminate delays.

**19. Legal Ethics**

**A. 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?**

Answer: 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.

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

Answer: I understand that government attorneys may participate in pro bono activities on their own time, consistent with statute, regulation, or other rule or guidelines. I also understand that specific guidance applicable to the JAG Corps permits pro bono work with supervisory approval so long as the representation does not occur on government time or at its expense, does not interfere with official duties, and does not create a conflict of interest or the appearance of a conflict of interest. Although I am not aware of the need to address pro bono activities, if confirmed, I would review the current policy with The Judge Advocate General.

**C. 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?**

Answer: 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. If confirmed, I will review the rules of professional responsibility applicable to Air Force lawyers to assess if changes are required.

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

**In your view, what is the role of the General Counsel of the Department of the Air Force in ensuring the integrity and proper functioning of the officer promotion process?**

Answer: 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 the Air Force of any case in which a selection board report or selection board process fails to adhere to the statutory standards, either generally or with regard to a particular officer being considered for promotion. In advising the Secretary of the Air Force 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.

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

**A. In your opinion, what is the relationship between the Department of the Air Force and the Department of Justice with respect to litigation involving the Department of Defense?**

Answer: The Department of Justice represents the Department of the Air Force in civil litigation. If confirmed, I will work with The Judge Advocate General to ensure the continuation of a collaborative relationship with the Department of Justice with respect to litigation involving the Department of the Air Force.

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

Answer: It is my understanding that the Air Force's interests in civil litigation are effectively protected and defended by the Department of Justice. If confirmed, I will work with The Judge Advocate General to ensure that adequate resources are available to ensure that the Air Force is able 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.

## **22. Congressional Oversight**

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

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

Answer: Yes.

- B. Do you agree, if confirmed, to appear before this Committee, or designated members of this Committee, and provide information, subject to appropriate and necessary security protection, with respect to your responsibilities as the General Counsel of the Department of the Air Force?**

Answer: Yes.

- C. 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?**

Answer: Yes.

- D. 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?**

Answer: Yes.