

Senate Judiciary Committee
“Nominations”
Questions for the Record
May 10, 2017

Senator Amy Klobuchar

Questions for Mr. Engel, Nominee to be Assistant Attorney General, Office of Legal Counsel

Earlier this week, former Acting Attorney General Sally Yates explained her view of the role of the Office of Legal Counsel (OLC) in reviewing executive orders from the President before they are released.

- What is your view of the approach that OLC should take in these matters?

Response: The Office of Legal Counsel has a responsibility to review proposed executive orders and determine that they would comply with the Constitution and laws of the United States. OLC’s advice is essential to ensuring that the President fulfills his constitutional duty to take care that the laws be faithfully executed.

During her Senate testimony, Ms. Yates advised, “The Office of Legal Counsel has a narrow function, and that is to look at the face of an executive order and to determine purely on its face whether there is some set of circumstances under which at least some part of the executive order may be lawful.” I believe that description of OLC’s role is too narrow. OLC’s job is not to identify “whether there is some set of circumstances” under which “part of the executive order” may be lawful. Rather, OLC must ensure, in the best judgment of the Office, that all portions of an order are lawful. In my experience, if one part of an order is problematic, then OLC will not sign off on a draft until it is revised to make it consistent with the law.

The Office of Legal Counsel has been described as “the most significant centralized source of legal advice within the Executive Branch.” Sometimes, providing legal advice means saying no.

- When you previously worked in the Office of Legal Counsel, did you ever have to say no to the Attorney General, the White House Counsel, or any executive branch agencies? If so, how did you handle these situations?
- Would you be willing to tell the White House Counsel that the President’s proposed course of action is illegal? Would you be willing to do so if the situation involved national security issues?

Response: Yes, that is all part of the job. In my experience in the Office, OLC would regularly advise clients within the Executive Branch that certain proposals must be modified or rescinded to be consistent with the law. I have no problem providing candid, independent, and principled advice to clients. In my experience, in both private practice and government service, clients respect lawyers who provide such advice and benefit in the long run from receiving it. If I confirmed, I will adhere to those standards without regard to the subject matter of the advice or the identity of the Executive Branch client.