

Advance Questions for Charles A. Blanchard
Nominee for the Position of General Counsel
of the Department of the Air Force

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.

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

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.

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

See my prior answer.

Duties

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

The duties and functions of the General Counsel are determined and assigned by the Secretary of the Air Force. 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. As the chief legal officer of the Department of the Air Force, 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 exercises oversight of intelligence and other sensitive activities and investigations.

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

I believe that my education and over twenty years of practice—in both public service and private practice—has well prepared me for the challenges of this office.

I received a Bachelors of Science degree (with honors) from Lewis & Clark College, where I was awarded the Rena Ratte Award given to the most outstanding graduating senior. After graduating from college, I attended Harvard Law School and the Harvard Kennedy School of Government, where I received both a J.D. and a Master of Public Policy in 1985. I graduated first in my class at Harvard Law School, and served as one of two Articles Editors at the *Harvard Law Review*. I clerked for Judge Harry Edwards of the U.S. Court of Appeals for the District of Columbia and Justice Sandra Day O'Connor on the U.S. Supreme Court.

After serving as an Associate Independent Counsel in the Office of Independent Counsel James C. McKay, in 1988, I returned to Phoenix, Arizona, and joined the law firm of Brown & Bain, which subsequently merged with Perkins Coie, my present firm. I became a partner at the firm in 1996, and my practice has focused on complex commercial litigation, antitrust law, state constitutional law and election law.

My work in private practice has been interrupted by several years in public service. While still an associate at Brown & Bain, I served as a member of the Arizona State Senate from 1991-1995, where I chaired the Judiciary Committee and also served as Vice Chair of the Environment Committee. In 1997, I left the firm and became the Chief Legal Counsel for the White House Office of National Drug Control Policy, which was under the leadership of General (Ret.) Barry McCaffrey.

For purposes of the position for which I am nominated, my most relevant experience was as General Counsel of the Army from 1999 until 2001.

I returned to private practice in Arizona in 2001, where I also serve as Adjunct Professor of Law at the Arizona State University Sandra D. O'Connor College of Law, where I have taught National Security Law and Election Law.

I believe that my experience as the chief legal counsel for two government agencies, especially my service as General Counsel of the Army, as well as my experience in private practice at a national law firm, have prepared me for the challenging and diverse legal issues that will face the Department of the Air Force.

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

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 Army General Counsel for two years. 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.

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

If confirmed, I anticipate Secretary Donley 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 and the other Military Departments, as well as the legal staffs of other government agencies.

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

The General Counsel of the Department of Defense is the Chief Legal Officer and final legal authority for the Department of Defense. Although there is no direct reporting relationship to the General Counsel of the Department of Defense, Mr. Jeh Johnson has made clear in his testimony before this Committee and his actions in the Department, that he intends to work closely with the Service General Counsels. If confirmed, I anticipate having a close and professional relationship with Mr. Johnson, characterized by continuing consultation, communication, and cooperation on matters of mutual interest, in furtherance of the best interests of the Department of Defense.

Major Challenges

In your view, what are the major challenges that will confront the General Counsel of the Department of the Air Force?

The challenges facing the Department of the Air Force as a whole, as well as the Department of Defense, will largely determine the challenges that will confront the General Counsel of the Air Force. Certainly both President Obama and Secretary Gates have made clear that acquisition 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. 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.

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

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 adequately resource and expertly staff the Air Force legal community, in order to guarantee decision makers at all levels access to the best legal advice possible.

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

If confirmed, my foremost priority will be to provide the Air Force 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.

Relationship with the Judge Advocate General

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

As General Counsel of the Army from 1999 to 2001, I enjoyed an excellent working relationship with the Judge Advocate General's Corps that resulted in the delivery of high quality legal services to the Army leadership. I learned that civilian and military lawyers bring unique and vital experiences and expertise to the table, and that the final legal advice given to the client benefited greatly from our close working relationship. If confirmed, I will work to establish 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.

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

My experience at the Army convinced me that it is critical that The Judge Advocate General and the General Counsel work as collaborative partners in providing the best possible legal services to our common client. If confirmed, I will make developing such a partnership a priority. The Secretary of the Air Force has designated the Air Force General Counsel as the chief legal officer of the Department of the Air Force. In recognition of the unique expertise and experiences provided by the Office of the General Counsel and The Judge Advocate General, both offices provide legal advice to the Secretary 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.

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

It is my understanding that the majority of legal opinions provided to Air Force attorneys and judge advocates are published through a cooperative General Counsel and TJAG process. 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.

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.

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?

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.

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

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

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

If confirmed, I will make improving the relationship 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.

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?

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. I will, if confirmed, consult with The Judge Advocate General on matters of mutual interest or concern relating to military justice, recognizing his statutory duties and special expertise in this area, and will provide advice to the Secretary of the Air Force as needed.

Attorney Recruiting and Retention Issues

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

If confirmed, I plan to work to maintain the Air Force’s ability to obtain 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 attorneys available.

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

If confirmed, I will, in consultation with The Judge Advocate General, evaluate the adequacy of the numbers of attorneys in the Department of the Air Force to accomplish the Air Force’s missions.

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

While General Counsel of the Army, I worked closely with the Judge Advocate General to implement retention bonuses for military lawyers. My understanding is that this program was very effective in retaining outstanding military lawyers. I am not familiar with the full scope of the Air Force’s programs for recruiting and retaining military and civilian attorneys, but 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.

Detainee Issues

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?

The legal issues regarding detainees are of critical importance to the Department of Defense 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. I understand that the Air Force Office of the General Counsel and the Office of The Judge Advocate General have representatives assisting the DOD General Counsel in responding to the President's Executive Orders in this area. 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.

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

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.

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?

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

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

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

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

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.

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?

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.

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

I do.

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.

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?

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.

Contractors on the Battlefield

U.S. military operations in Iraq have relied on contractor support to a greater degree than any previous U.S. military operations. The extensive involvement of contractor employees in a broad array of activities – including security functions – has raised questions about the legal accountability of contractor employees for their actions.

Do you believe that current Department of Defense and Department of the Air Force regulations appropriately define and limit the scope of security functions that may be performed by contractors in an area of combat operations?

It is my understanding that Department of Defense instructions and procurement regulations that define the limit and scope of security functions are currently under review. Accordingly, it would be premature for me to offer an opinion at this time regarding whether current Department of Defense and Department of the Air Force regulations on the subject are adequate.

What changes, if any, would you recommend to such regulations?

I have been advised that the Office of Management and Budget is leading an interagency working group to write definitions and criteria for sorting out the blended workforce and that the Department of Defense is reviewing certain instructions in this area. Accordingly, it would be premature for me to offer specific changes to Department of Defense or Department of the Air Force regulations until the results of these reviews are known.

Do you believe that current Department of Defense and Department of the Air Force regulations appropriately define and limit the scope of contractor participation in the interrogation of detainees?

It is my understanding that current Department of Defense policy appropriately limits contractor participation in the interrogation of detainees. If confirmed, I will examine the Air Force implementation of these policies.

What changes, if any, would you recommend to such regulations?

I have no basis to propose any changes at this time.

OMB Circular A-76 defines “inherently governmental functions” to include “discretionary functions” that could “significantly affect the life, liberty, or property of private persons”.

In your view, is the performance of security functions that may reasonably be expected to require the use of deadly force in highly hazardous public areas in an area of combat operations an inherently governmental function?

I understand that support services that require substantial discretion or prudent judgment are inherently governmental, and that the likelihood that an individual will be required to resort to force, especially deadly force, and the degree to which an individual may be required to exercise force in public are important factors to consider in assessing whether a particular security mission is inherently governmental. Therefore, if I am confirmed, I am willing to examine this matter to ensure appropriate attention is given to the legal aspects of this issue.

In your view, is the interrogation of enemy prisoners of war and other detainees during and in the aftermath of hostilities an inherently governmental function?

I understand that under Department of Defense policy the direction and control of interrogations—to include the approval, supervision and oversight of interrogations, as well as the execution of those aspects of an interrogation that entail substantial discretion—are inherently governmental activities. Consequently, in my view, the Department should continue to assess the appropriateness of the contractor’s role, if any, in interrogations.

What role do you expect to play, if confirmed, in addressing the issue of what functions may appropriately be performed by contractors on the battlefield?

If confirmed, I will advise senior Air Force leadership regarding the functions that contractors may legally perform on the battlefield, and I will assist them in implementing policies regarding the use of contractors that are consistent with applicable law and DOD policy.

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.

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

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, members of the Armed Forces, and former members of the Armed Forces, including their 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.

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

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

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

If confirmed, I expect to would 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.

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?

The UCMJ provides commanders the tools necessary to maintain good order and discipline and the morale, welfare and safety of all those under their jurisdiction during military operations. Because misconduct by contractors may undermine good order and discipline, Congress extended UCMJ jurisdiction over such individuals, and the Secretary of Defense, in turn, published guidance on the prudent exercise of such jurisdiction. This guidance ensures that the Department of Justice and the Department of Defense each play an appropriate role in resolving whether, and under which system, jurisdiction might be better exercised in each potential case.

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

I have not had an opportunity to review the procedures agreed upon by the Department of Defense 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 refinements of these procedures are necessary.

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

At present, I am not aware of any specific provisions in need of change.

Religious Guidelines

What is your understanding of current policies and programs of the Department of Defense and the Department of the Air Force regarding religious practices in the military?

It is my understanding that the Air Force has supported policies of religious tolerance and mutual respect. If confirmed, I would continue the Air Force's commitment to upholding the Constitutional tenets of the "free exercise" and "establishment" clauses, and review policies as necessary to assure continued compliance with the First Amendment.

In your view, do these policies accommodate the free exercise of religion and other beliefs without impinging on those who have different beliefs, including no religious belief?

I have not had opportunity to review the Air Force's policies regarding free exercise of religion and other beliefs. If confirmed, I will study this issue to determine if changes in policy are necessary under the law.

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

I understand that chaplains are not compelled to offer prayers that are inconsistent with their faith, but are expected to remain sensitive to the pluralistic Air Force and society they serve. In my opinion, such an approach strikes an appropriate balance given the diversity of religious views in the Air Force. If confirmed, I am willing to study this issue further to determine if changes in policy are necessary under the law.

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.

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

As General Counsel of the Army, I played a role in reviewing general officer nominations, and I understand that the role of the Air Force General Counsel is similar to that of the Army General Counsel. 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 he 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.

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?

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 his 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.

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?

From my service as General Counsel of the Army, I understand the importance of ensuring that substantiated or potentially adverse information is reported to the Senate Armed Services Committee in a timely, accurate and comprehensive manner. It is my understanding that under current Department of the Air Force practice, 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.

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?

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.

Sexual Assault Prevention and Response Policy

Numerous cases of sexual misconduct involving airmen and cadets have been reported over the last several years. Many victims and their advocates contend that they were victimized twice: first by attackers in their own ranks and then by unresponsive or inadequate military treatment. They asserted that the military failed to respond appropriately by providing basic services, including medical attention and criminal investigations of their charges.

What is your understanding of the resources and programs the Air Force has in place in deployed locations to offer victims of serious sexual assaults the medical, psychological, and legal help they need?

This is an extremely important issue for the Air Force and, if confirmed, I will focus significant attention on this area. I am not fully aware of all Air Force initiatives or resources, but I understand that the Air Force has recently taken steps to improve the assistance to all victims of sexual assaults, with enhanced recognition of the special circumstances that apply to deployments. If confirmed, in consultation with The Judge Advocate General and other senior leaders, I will study this matter in greater depth with a view to ensuring the Air Force continues to take appropriate steps to provide medical, psychological, and legal help to Airmen who are victims of sexual assault.

What is your view of the steps the Air Force has taken to prevent additional sexual assaults on female soldiers at their home stations and when they are deployed?

I do not have sufficient information to evaluate the steps taken by the Air Force to prevent sexual assaults on female Airmen. I understand the importance of this issue, however, and if confirmed, I will assess whether additional steps need to be taken. If confirmed, I look forward to working closely with Air Force leaders on all initiatives to prevent sexual assault.

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

Presently, I am not familiar with all of the Air Force training and resources to investigate and respond to allegations of sexual assault. If confirmed, I will become familiar with them and will assess whether additional steps should be taken to support victims and hold offenders accountable.

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?

If confirmed, I will work with 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.

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?

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.

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?

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. I understand that in December 2006 the Air Force General Counsel and The Judge Advocate General formed a joint program to actively develop civilian legal personnel to meet current and future Air Force functional and leadership requirements. I am advised that, in accordance with the charter for this program, a Civilian Legal Community Policy Council composed of representatives of both organizations meets regularly to advance initiatives for the development of the Air Force civilian legal community. If confirmed, I will work closely with all of the entities affected by this issue to support the continuing and important efforts of the Policy Council and any other initiative deemed appropriate.

Client

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

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.

Acquisition Issues

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?

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.

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?

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. I believe Air Force lawyers can make a significant contribution to these endeavors through provision of training, through early and sustained involvement in the Department's acquisition programs and procurement activities, and through continued instructional outreach to industry.

Allegations of fraud and abuse during contingency contracting in Iraq and Afghanistan have been wide-spread.

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

If confirmed, I will work closely with the Secretary of the Air Force, the Assistant Secretary of the Air Force (Acquisition), The Judge Advocate General, and other senior officials to ensure the legal community continues to fully support training, policy development, and an ethical climate to promote the highest technical and ethical standards in our contingency contracting operations. I strongly support initiatives to adequately resource, train and equip contracting personnel to properly conduct contingency contracting, assuring vigilant stewardship of taxpayer dollars. Lastly, I would promote increased collaboration between our acquisition professionals, investigators, fraud counsel, and other stakeholders to ensure that we are doing everything we can to limit the opportunity for fraud, waste, and abuse in the contingency contracting process, and to correct those situations where there has been a breach.

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.

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?

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.

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?

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

Legal Ethics

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

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.

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?

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.

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

I understand that all DOD lawyers are required to be members in good standing of a State Bar and are therefore subject to the rules of professional responsibility of their particular jurisdiction. Lawyers engaged in litigation must also comply with the rules of

the court in which they appear. All military and civilian lawyers in The Judge Advocate General's Corps must comply with the specific rules applicable to them. If confirmed, I will review the rules of professional responsibility applicable to Air Force lawyers to assess if changes are required.

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?

I understand that, under Title 10, 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.

Litigation Involving the Department of the Air Force

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?

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.

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

It is my understanding that the Air Force'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.

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.

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

Yes

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

Yes

Do you agree to ensure that testimony, briefings and other communications of information are provided to this Committee and its staff and other appropriate Committees?

Yes

Do you agree to provide documents, including copies of electronic forms of communication, in a timely manner when requested by a duly constituted Committee, or to consult with the Committee regarding the basis for any good faith delay or denial in providing such documents?

Yes