

Advance Questions for Paul L. Oostburg Sanz
Nominee for the Position of
General Counsel of the Department of the Navy

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?

Answer: Goldwater-Nichols was very effective in clarifying the chain of command, strengthening civilian leadership of the military, and enhancing the ability of the Services to act jointly. I am not currently aware of any need to change Goldwater-Nichols at this time. If confirmed, I am committed to supporting the intent of Goldwater-Nichols and forwarding any suggestions for change to the Secretary and Under Secretary of the Navy.

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

Answer: I am not currently aware of any modifications that are needed to Goldwater-Nichols.

Duties

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

Answer: The General Counsel is the chief legal officer of the Department, and legal opinions issued by the General Counsel are the controlling legal opinions within the Department. However, the General Counsel cannot derogate the authority of the Judge Advocate General of the Navy under section 5148(d) of title 10, United States Code, and other applicable law. The General Counsel provides legal advice, counsel, and guidance to the Secretary, the Under Secretary, the Assistant Secretaries, and their staffs. He is also responsible for providing legal services throughout the Department in a variety of fields, including: acquisition law, including international transactions; business and commercial law; real and personal property law; civilian personnel and labor law; fiscal law; environmental law; intellectual property law; intelligence law; ethics and standards

of conduct; and Freedom of Information Act and Privacy Act law. He is responsible for litigation in the areas enumerated above, and oversees all litigation affecting the Department. The General Counsel also serves as the Suspending and Debarring Official and Designated Agency Ethics Official for the Department, and assists the Under Secretary of the Navy in overseeing the Naval Criminal Investigative Service.

In addition, per section 5019 of title 10, United States Code, the Secretary of the Navy may prescribe other duties and functions for the General Counsel as the Secretary deems appropriate.

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

Answer: The responsibilities of the General Counsel of the Department of the Navy are quite broad. Overall, it is essential for the General Counsel to possess sound legal and analytical skills, with a willingness to work collaboratively with individual experts over a variety of fields. The General Counsel of the Navy must have strong managerial skills as well as possess effective leadership abilities. I believe that my work as General Counsel for the House Armed Services Committee (HASC) and other previous work experiences in federal government and elsewhere have prepared me well to execute the duties of General Counsel of the Department of the Navy, if confirmed.

For nearly three years, I have served as the chief legal officer for the HASC. My principal responsibility in this position has been to advise the Chairman and the Staff Director of the HASC in the development, consideration, and enactment of the annual national defense authorization acts (NDAA). A significant part of that process has been identifying, negotiating, and resolving approximately 100 jurisdictional claims by numerous congressional committees related to the NDAA. As General Counsel of the HASC, I also have provided legal counsel to the HASC on criminal investigations involving former HASC Members or other Members, personnel-related matters, compliance with professional ethical obligations under the rules of the House of Representatives and current law, and other issues such as responding to Freedom of Information Act requests. In addition, I have advised the Chairman and other HASC Members on detainee policy, the activities of the Department of Defense to counter the illicit narcotics trade, and matters related to the United States Southern Command. For each of these substantive policy areas, I have conducted oversight of Administration policies and programs, drafted legislative proposals, been prepared to testify before the HASC, as well as negotiated directly with senior Administration officials, Members of Congress, and outside interest groups.

From 2001 to 2006, I was the Deputy Chief Counsel for the Democratic Staff of the House International Relations Committee. In that position, I fulfilled many similar counsel and legislative responsibilities that I would later perform on the HASC. Before beginning work in Congress, I clerked for Judge José A. Fusté in the United States District Court for the District of Puerto Rico for nearly two years. Prior to receiving a

law degree from Harvard Law School and a Master in Public Affairs from Princeton University, I conducted political party training in South Africa during the first all-inclusive national elections, as a Project Officer for the Joint Center for Political and Economic Studies, and served as a Peace Corps Volunteer in Guinea-Bissau, West Africa, teaching English in secondary schools.

As a result of my background and these professional experiences, I understand the general challenges and opportunities of the Department, appreciate the intersection of legal and policy questions, have established many working relationships in the Department of Defense and elsewhere in the Administration, and developed experience managing people and processes to achieve high-stakes outcomes. All of which will permit me to perform efficiently and effectively the duties of General Counsel, if confirmed.

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 Navy?

Answer:

I am confident that I possess the requisite legal expertise and leadership skills to be the next General Counsel of the Department of the Navy. If confirmed, I anticipate requesting further information about the major legal challenges facing the Department so as to sharpen my understandings of these matters and be able to provide more nuanced counsel to the Secretary and Under Secretary of the Navy. In addition, I strongly believe that establishing and maintaining productive working relationships with the career civil servants in the Office of General Counsel and throughout the Department as well as the Judge Advocate General of the Navy, the Staff Judge Advocate to the Commandant of the Marine Corps, the General Counsel of the Department of Defense, and the General Counsels of the other services, is paramount. If confirmed as the General Counsel, I hope to benefit from their knowledge and judgment as we seek to best serve our sailors, marines, their families, and the civilian employees of the Department.

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

Answer: If confirmed, I expect that the Secretary will rely upon me as the chief legal officer of the Department. I expect that the Secretary will require my candid and objective legal advice on all issues facing the Department of the Navy. I also anticipate that the Secretary will expect me to continue the collaborative relationship which currently exists between the General Counsel, the Judge Advocate General of the Navy, and the Staff Judge Advocate to the Commandant of the Marine Corps so as to further the interests of the uniformed men and women of the Department.

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

Answer: The General Counsel of the Department of Defense (DoD) is the chief legal officer of the Department of Defense. If confirmed, I will work closely with the General Counsel of DoD on matters of mutual interest or concern. If confirmed, I also expect to collaborate and coordinate with the General Counsels of the other military departments, defense agencies, other agencies, and Congress, when necessary and appropriate.

Major Challenges

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

Answer: The Department of the Navy faces many substantive issues in future years. These must be addressed with timely, accurate, and well reasoned legal advice. It is essential that the Department possess a robust cadre of military and civilian attorneys. If confirmed, my major challenge will be to ensure that sufficient resources exist to continue to hire and retain the talented and dedicated professionals who are needed to meet the diverse and changing requirements of the Department and that these professionals have opportunities to perfect their craft and excel throughout their careers in the Department of the Navy.

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

Answer: If confirmed, I will review the resources, organization, and operation of the Office of the General Counsel, and work in collaboration with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant to identify opportunities for growth and resource requirements.

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 Navy?

Answer: If confirmed, my highest priorities will be to ensure that the Department of the Navy receives the highest quality legal advice and services and that the attorneys of the Office of the General Counsel continue to explore ways to strengthen cooperation with their uniformed colleagues in the offices of the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps.

Relationship with the Judge Advocate General and the Staff Judge Advocate to the Commandant of the Marine Corps

What is your understanding of the role and authority of the Judge Advocate General of the Navy vis a vis the General Counsel of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps (SJA CMC)?

Answer: The Judge Advocate General of the Navy is responsible for providing legal and policy advice to the Secretary of the Navy on military justice, administrative law, claims, investigations, operational and international law, legal assistance, civil law, environmental law, intelligence, and litigation involving matters under his practice areas. If confirmed, I anticipate that we will consult with each other on matters of mutual interest or concern relating to military justice. With respect to civil law matters involving Navy and Marine Corps components, my understanding is that primary responsibility is divided, by major subject area, between the Office of the General Counsel and the Office of the Judge Advocate General. I am certain that there will be situations in which our responsibilities overlap and create seams in the administration of legal services. In those instances, I would expect that we would work together to ensure a collaborative approach.

In carrying out your duties, if you are confirmed, how will you work with the Judge Advocate General of the Navy and the SJA CMC?

Answer: If confirmed, it is paramount that I, the Judge Advocate General of the Navy, and Staff Judge Advocate to the Commandant have a working relationship that builds upon the strong tradition of partnership among the three legal offices and continues to consult, communicate, and cooperate to the greatest extent possible for the benefit of our clients throughout the Department of the Navy.

How are the legal responsibilities of the Department of the Navy allocated between the General Counsel and the Judge Advocate General and the SJA CMC?

Answer. The General Counsel is the chief legal officer of the Department of the Navy, and the principal legal advisor to the Secretary of the Navy, the Assistant Secretaries, and their staffs, and is the head of the Office of the General Counsel. The Office of the General Counsel's practice includes business and commercial law, environmental law, personnel and labor law, fiscal law, intellectual property law, and ethics, among other subjects. The Judge Advocate General of the Navy also reports directly to the Secretary of the Navy and generally provides legal services in the areas of military justice, international law, matters associated with military operations, environmental law, military personnel law, administrative law, claims, and ethics. The Staff Judge Advocate to the Commandant of the Marine Corps is the senior military lawyer to the Commandant, and his responsibilities largely parallel those of the Judge Advocate General of the Navy. Although the responsibilities of the General Counsel, the Judge Advocate General, and Staff Judge Advocate to the Commandant will overlap on occasion, I understand that the three offices have recently agreed to a strategy for collaborating on issues of mutual interest or concern, called "One Mission, One Team: A 21st Century Strategic Vision for Legal Support in the U.S. Department of the Navy."

How will you ensure that legal opinions of your office will be available to Navy and Marine Corps attorneys, including judge advocates?

Answer: I understand that the legal opinions of the Office of the General Counsel are disseminated throughout the Department of the Navy via normal Departmental distribution processes. If confirmed, I expect to continue this practice and identify, if necessary, new digital media for more targeted and timely distributions.

In response to attempts within the Department of Defense to subordinate legal functions and authorities of the Judge Advocates General to the General Counsels of the Department of Defense and the military services, Congress enacted legislation prohibiting any officer or employee of the Department of Defense from interfering with the ability of the Judge Advocates General of the military services and the legal advisor to the Chairman of the Joint Chiefs of Staff to provide independent legal advice to the Chairman, service secretaries, and service chiefs.

What is your view of the need for the Judge Advocate General of the Navy and the SJA CMC to provide independent legal advice to the Secretary of the Navy and the Chief of Naval Operations, and the Commandant of the Marine Corps?

Answer: The Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps must be in a position to provide their best independent legal advice to the Secretary of the Navy, the Chief of Naval Operations, and the Commandant of the Marine Corps, as appropriate. Effective decision-making cannot occur without their candid, honest, and objective analysis.

What is your view of the responsibility of Navy and Marine Corps judge advocates to provide independent legal advice to military commanders?

Answer: It is the responsibility of Navy and Marine Corps judge advocates to provide independent legal advice to military commanders. This advice must be free of any improper external influence.

If confirmed, would you propose any changes to the current relationships between the Judge Advocate General, the SJA CMC, and the General Counsel?

Answer: I am not aware of any changes that are required to the current relationships between the uniformed judge advocates and the General Counsel of the Department of the Navy. I am aware of the independent review directed by Section 506 of the National Defense Authorization Act for Fiscal Year 2010. If confirmed, I will study closely the

findings of that Commission and, if appropriate, consider any of their recommendations for improving these relationships.

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 and, in the Marine Corps, to the Commandant of the Marine Corps.

How do you view the responsibilities of the Navy General Counsel in the performance of military justice matters with regard to the Judge Advocate General of the Navy and the SJA CMC?

Answer: The Judge Advocates General of the military services have primary jurisdiction over the performance of military justice. If confirmed, as the chief legal officer of the Department of the Navy, I will have an interest in the administration of military justice and, as an example, anticipate participating in the Secretary of the Navy's review of the DOD's Inspector General's report on the court-martial appellate review process within the Department of the Navy, as required by the Senate Armed Services Committee in the committee's report accompanying this year's defense authorization bill. If confirmed, I would endeavor to continue the close working relationship with the Judge Advocate General of the Navy and Staff Judge Advocate to the Commandant of the Marine Corps, in which we share information and work collaboratively when necessary to resolve issues of policy and matters pertaining to specific cases.

Attacks at Fort Hood

The recent attack that resulted in the deaths of 12 soldiers and one civilian employee and the wounding of many more at Fort Hood was allegedly carried out by a Muslim Army medical officer. Media reports indicate that warning signs of the Major's extremist views were observed but not documented in official personnel records that were shared with the FBI.

In your view, do current Navy and Marine Corps policies limit the ability to include information in official records that may assist in the identification of potential threats?

Answer: I am not aware of the policies that currently exist within the Department of the Navy in this matter. If confirmed, I will look into this issue and allow for this type of information to be included in official personnel records.

Do current Navy and Marine Corps procedures hinder the ability to share this type of information with other official agencies charged with identifying and monitoring potential extremist or terrorist activities?

Answer: I am not aware of the procedures currently in operation to address this issue. If confirmed, I will inquire into these procedures and provide my recommendations to the Secretary and Under Secretary of the Navy regarding the impact of existing procedures on the monitoring of potential threats.

What is your understanding of how the Department of the Navy balances the need to identify and respond to potentially harmful extremist views held by soldiers against individual privacy and respect for the right of sailors and marines to hold and express personal beliefs?

Answer: The proper balance between individual privacy rights and the need to identify threats is very difficult to attain. I am not aware of how the Department currently balances these interests. If confirmed, I will inquire into this issue and provide my recommendations to the Secretary and Under Secretary of the Navy.

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

Answer: I am not aware of a need to change this balance at this time.

Attorney Recruiting and Retention Issues

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

Answer: It is my understanding that the Department of the Navy continues to hire outstanding civilian attorneys. If confirmed, I will work with the senior staff of the Office of the General Counsel to address any recruiting and retention issues.

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

Answer: I do not know whether there are a sufficient number of attorneys to perform their on-going missions. I am familiar with the Department of the Navy's CNA assessment regarding JAG Corps manning. If confirmed, I will work with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps to ensure the Department has a sufficient number of highly skilled lawyers to meet its requirements.

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

Answer: I am not currently aware of any new incentives that need to be implemented at this time.

Detainee Issues

What role do you expect to play, if confirmed, in helping the Department of Defense and the Department of the Navy address legal issues regarding detainees?

Answer: As General Counsel of the House Armed Services Committee, I have closely monitored the policies and activities of the Department of Defense relating to detainees and have worked on related legislation. If confirmed, and if requested, I would expect to play an active role in assisting the General Counsel of the Department of Defense, the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant in addressing this complicated issue.

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?

Answer: This prohibition is in the national security interests of the United States and generally in the best interest of our country.

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: Yes, I do, with the understanding that the scope of the definition will continue to evolve with the case law on the Constitutional prohibition against cruel, unusual, and inhumane treatment or punishment.

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

Answer: Within the guidance provided by the General Counsel of the Department of Defense, the legal interpretation of the standard by the General Counsel of the Navy, as approved by the Secretary of the Navy, should be controlling within the Department of the Navy.

What role do you believe the Judge Advocates General of the Navy and the SJA CMC should play in the interpretation of this standard?

Answer: The Judge Advocate General of the Navy and the SJA CMC should also play a prominent role in the interpretation of this standard. If confirmed, and if called upon to offer any guidance on this standard, I will work with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant to incorporate their unique perspectives that are informed by the Navy JAG Corps' and the Marine judge advocates' field experiences.

If confirmed, will you take steps to ensure that all relevant Navy and Marine Corps directives, regulations, policies, practices, and procedures fully comply with the requirements of Section 1403 and with Common Article 3 of the Geneva Conventions?

Answer: Yes, I will.

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: Yes, 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?

Answer: If confirmed, I expect to review this issue more closely and work with the General Counsel of the Department of Defense to promote the "golden rule."

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 Navy regulations appropriately define and limit the scope of security functions that may be performed by contractors in an area of combat operations?

Answer: I have not had an opportunity to become familiar with the specific provisions of the Department's regulations in this area. If confirmed, I will review these regulations as soon as possible.

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

Answer: If confirmed and after reviewing the regulations, I will make such recommendations as may be necessary.

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

Answer: Although I am not familiar with the Department's regulations in this area, I know that section 1038 of the National Defense Authorization Act for Fiscal Year 2010 (P.L. 111-84) prohibits contractors from interrogating detainees but permits contractors to perform some supporting roles with regard to these interrogations.

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

Answer: If confirmed and after reviewing the regulations, I will make such recommendations as may be necessary.

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?

Answer: I have not had the opportunity to be briefed on this issue. If confirmed, I will carefully review the governing regulations to provide the appropriate legal advice and guidance.

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?

Answer: Yes, and I am aware that the Congress enacted section 1057 of the National Defense Authorization Act for Fiscal Year 2009 (P.L. 110-417) affirming this position.

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?

Answer: If confirmed, and if requested, I would expect to play an active role in assisting the General Counsel of the Department of Defense in addressing this complicated issue.

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?

Answer: I am generally aware of the MEJA provisions and appreciate the importance of appropriate accountability over all persons supporting our armed forces wherever they may be located. *See, e.g.*, section 861(a) (6) of the National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181). If I am confirmed, it will be a high priority of mine to achieving that objective.

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

Answer: At this time, I am not aware of any legislative changes that are needed to be made to MEJA.

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

Answer: If confirmed, and if requested, I would expect to play an active role in assisting the General Counsel of the Department of Defense in addressing this complicated issue.

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?

Answer: I understand and appreciate the importance of appropriate accountability over all persons supporting our armed forces wherever they are located. I do not now have an informed view about whether the UCMJ currently provides the appropriate jurisdictional reach.

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 am generally aware that there are procedures to reconcile these responsibilities, but I do not now have an informed view about whether the procedures strike the appropriate balance in the exercise of criminal jurisdiction.

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

Answer: I am not prepared to recommend any changes to the UCMJ at this time.

What are your views on the impact of Article 12 of the Status of Forces Agreement between the United States and Iraq on U.S. jurisdiction over contractor personnel pursuant to either MEJA or the UCMJ?

Answer: I have not had the opportunity to study this issue, but if confirmed, I will carefully review the SOFA, MEJA, and UCMJ to provide the appropriate legal advice and guidance.

How are jurisdictional matters arising out of Article 12 being addressed?

Answer: I am not aware of how jurisdictional matters arising out of Article 12 are currently being addressed. However, if confirmed, I will carefully review all applicable authorities to provide the appropriate legal advice and guidance to the Department of the Navy.

Manpower Requirements for Navy and Marine Corps Judge Advocates

The Center for Naval Analyses (CNA) recently completed a study of manpower requirements for the Navy's Judge Advocate Generals Corps in which it concluded that the Navy is significantly understrength for its various legal missions, including combat service support in Iraq and Afghanistan. Section 506 of the National Defense Authorization Act for Fiscal Year 2010 established an independent panel to review the judge advocate requirements of the Navy and Marine Corps and make appropriate recommendations.

What is your understanding of the CNA study's findings with respect to manpower in the Navy JAG Corps?

Answer: I am generally aware of the CNA report, but I have not had an opportunity to review its findings. As discussed earlier, and if confirmed, I will be committed to ensuring that the Department possesses a robust cadre of military and civilian attorneys.

What is your understanding of the total numbers of judge advocates on active duty in the Navy and Marine Corps vis a vis the Army and the Air Force?

Answer: It is my understanding that the Navy and Marine Corps have fewer judge advocates than the Army and the Air Force. This is due to a number of factors, including the size of the Services and the different functions performed by the uniformed lawyers within each Service. For example, many of the legal functions performed by judge advocates in the Army and Air Force are performed by attorneys in the Office of General Counsel of the Department of the Navy. Additionally, the Marine Corps does not have a separate Judge Advocate Corps. As a result, all of their judge advocates also fill line billets at various stages of their careers.

If confirmed, will you review the judge advocate manning within the Navy and Marine Corps, determine whether current active-duty strengths are adequate to support their missions, and support the independent review panel in the accomplishment of its study and recommendations?

Answer: Yes, I will.

Role of Women in Military Service

The Chief of Naval Operations recently stated that the Navy will assign female sailors to submarines starting in 2011.

What is your understanding of the issues that must be resolved in order for women to successfully perform submarine duty?

Answer: Other than the need to provide official notification to Congress, I am not currently aware of any legal issues which need to be addressed in order to implement this policy. I understand, however, that there are manpower and personnel considerations which must be addressed to implement the policy successfully.

If you are confirmed, what role would you expect to have in changing this policy, and what would your role, if any, be in implementing the new policy?

Answer: If confirmed, I would expect to coordinate with the Judge Advocate General of the Navy to advise the Secretary of the Navy on any legal implications associated with the implementation of the new policy.

What are your views on opening additional specialties to women serving in the Navy or the Marine Corps?

Answer: At this time, I am not aware of any legal impediments to opening additional specialties to women within the Navy or the Marine Corps.

Women in Combat

Current DoD policies regarding the combat role of women in uniform have been in effect since 1994.

What is your understanding of the conclusions and lessons that have been learned from Operation Iraqi Freedom and Operation Enduring Freedom about the feasibility of current policies regarding women in combat?

Answer: I have not had an opportunity to review any lessons learned from the participation of women in Operation Iraqi Freedom and Operation Enduring Freedom. If confirmed, I will make the review of the current policies a priority, seek to be informed by field experiences as relayed by the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps, and work directly with the Secretary and Under Secretary of the Navy to address any legal concerns that may have arisen from the review of current policies in the context of these operations. At the end of this process, I would expect to propose to the Secretary and Under Secretary of the Navy changes to current policy, if they are warranted.

What is your assessment of Navy and Marine Corps compliance with the requirements of laws relating to women in combat?

Answer: It is my understanding that the Navy and Marine Corps are in compliance with these requirements.

In your view, should the current policy regarding assignment of women in combat be revised to reflect the realities of the modern battlefield, effective counter-insurgency requirements, and changing societal expectations regarding roles for female sailors and marines?

Answer: I have not had an opportunity to review this matter in depth. If confirmed, I will work directly with the Secretary and Under Secretary of the Navy to address any legal concerns associated with any proposed changes to this policy.

Religious Guidelines

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

Answer: It is my understanding that current policies and programs regarding religious practices are initiated through the Secretary of Defense and his staff. Each Service Secretary may supplement the overall guidance.

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?

Answer: I have not had an opportunity to review these policies. If confirmed, I am committed to reviewing the current policies to ensure that an appropriate balance has been reached between these important interests.

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?

Answer: See my response to the immediately preceding question.

Homosexual Conduct Policy

The current Homosexual Conduct Policy, commonly referred to as "Don't Ask, Don't Tell," went into effect in February 1994 after months of congressional hearings and debate resulting in the enactment of a Federal statute (10 U.S.C. sec

654). Although there have been some changes in how this policy has been implemented, the basic policy has not changed. President Obama has made it clear that he intends to work with the military and Congress to repeal the policy.

What is your view of the current policy, as stated in section 654?

Answer: I have not had an opportunity to review the current policy. It is my understanding, though, that the policy is currently being reviewed within the Administration and the Department of Defense.

What is your view on repealing or changing this policy?

Answer: The current policy and any proposed changes to it will likely have significant legal and other implications. Without having had an opportunity to become fully informed about this policy, its implementation, and the ongoing review by the Department of Defense, I am not in a position at this time to offer an informed view on the effects of repealing or changing this policy.

In your view, would changing this policy have an adverse impact on good order and discipline in the military?

Answer: See my answer to the immediately preceding question.

If confirmed, what role would you play in efforts to repeal or change this policy?

Answer: If confirmed, I would expect to advise the Secretary of the Navy on all legal matters associated with the repeal or change to this policy.

If the policy is changed by Congress, would you recommend a phase-in period for implementation of the new policy?

Answer: See my answer to the preceding question regarding my view on repealing or changing the current policy.

If confirmed, what role will you play in implementing a new policy?

Answer: If confirmed, I would expect to advise the Secretary of the Navy on all legal matters associated with the implementation of a new policy.

Role in the Officer Promotion and Confirmation Process

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

Answer: Military personnel matters are primarily under the cognizance of the respective service Judge Advocates. The Secretary of the Navy is responsible for the proper functioning of the Department of the Navy's promotion selection process. If confirmed, I would envision a close working relationship with the Judge Advocate General of the Navy and Staff Judge Advocate to the Commandant of the Marine Corps to resolve issues of policy and matters pertaining to specific cases.

Do you see any need for change in this role?

Answer: I am not aware of any need for change at this time.

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 for promotion and certain assignments.

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

Answer: General and flag officer nominations are also within the primary cognizance of the Judge Advocate Generals of each military service. If confirmed, and when requested, I would provide advice on cases of Department of the Navy nominees with adverse, or potentially adverse, information in order to ensure that such information is properly evaluated and reported to the Senate Armed Services Committee.

What is your understanding of the role of the General Counsel of the Department of the Navy in ensuring the legal sufficiency of statutory selection board processes?

Answer: See my answer to the preceding question.

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

Answer: See my answer to the preceding question.

Military Personnel Policy and Cases

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

Answer: The General Counsel plays an important role in ensuring that military personnel policies are consistent with law and implemented in a fair and consistent manner. If confirmed, I would work closely with the Secretary of the Navy, the Assistant Secretary of the Navy (Manpower and Reserve Affairs) to ensure that these policies are formulated and applied in a fair and consistent manner.

Sexual Assault Prevention and Response Policy

Numerous cases of sexual misconduct involving service members 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 Navy and Marine Corps have in place in deployed locations to offer victims of sexual assaults the medical, psychological, and legal help they need?

Answer: It is my understanding that the Department has endeavored to improve the delivery of assistance to all victims of sexual assault, wherever they are located. I also know that one of the Secretary of the Navy's top manpower priorities is eliminating sexual assaults from Navy and Marine Corps ranks and placing the total force on the cutting edge of all sexual assault prevention and response-related programs. If confirmed, I am committed to reviewing the Department of the Navy's policies and procedures to ensure that victims of sexual assault receive the care and services that they need.

What is your view of the steps the Navy and Marine Corps have taken to prevent sexual assaults on female soldiers at their home stations and when they are deployed?

Answer: The prevention of sexual assault has been a key issue for the Department of the Navy for some time. It is my understanding that the Department of the Navy has implemented measures which are designed to cultivate a culturally aware and educated work environment within the Department that is intolerant of sexual assault. If confirmed, I am committed to enforcing a climate that is intolerant of sexual assault.

What is your view of the adequacy of the training and resources the Navy and Marine Corps have in place to investigate and respond to allegations of sexual assault?

Answer: Although I know the Department of the Navy is committed to eliminating sexual assaults from within its ranks, I have not had the opportunity to review the Department's communication, training, and education strategies. If confirmed, I will review this program and provide oversight in all areas under my authority to prevent sexual assaults and protect sexual assault victims.

Do you consider the current Navy and Marine Corps sexual assault policies and procedures, particularly those on confidential reporting, to be effective?

Answer: I have not had the opportunity to study the effectiveness of Navy and Marine Corps confidential reporting policies and procedures. If confirmed, I will study these policies and procedures to ensure the Department of the Navy continues to promote programs which assist victims and encourage the reporting of sexual assaults.

Specifically, do you think Sexual Assault Response Coordinators should be afforded a confidentiality privilege in order to help them perform their duties more effectively?

Answer: I have not had the opportunity to review the specific role of Sexual Assault Response Coordinators within the Department of the Navy's overall sexual assault prevention and response program. If confirmed, I will review all aspects of the Department of the Navy's program to ensure that all legal means are employed to support victims and investigate alleged offenders fully and fairly.

Whistleblower Protection

Section 1034 of Title 10, United States Code, prohibits taking retaliatory personnel action against a member of the armed forces as reprisal for making a protected communication. By definition, protected communications include communications to certain individuals and organizations outside of the chain of command.

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: It is my understanding that the Department of the Navy fully implements applicable law, regulations, and rules on whistleblower protections. If confirmed, I, in

concert with the Navy JAG, will act to ensure that prospective commanding and executive officers are briefed before they take their positions and continue to receive training during their commands on the need to protect service members who report misconduct. I, in concert with the Navy JAG, will further act to ensure that military members whose actions are protected are not subject to illegal reprisals or retaliation. If a case of illegal reprisal comes to my attention, I will work to ensure that it is addressed in accordance with the law.

Support to Naval Inspector General

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

Answer: The General Counsel must provide independent and objective legal advice to the Secretary and Under Secretary of the Navy concerning the Inspector General's duties and responsibilities. This execution of this obligation, however, must respect the Inspector General's independence and not infringe upon the Inspector General's authority. If confirmed, I will establish a productive working relationship with the Naval Inspector General and the Deputy Naval Inspector General for Marine Corps matters, while maintaining strong working relationships with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps.

Civilian Attorneys

Judge advocates in the armed forces benefit from an established career progression, substantial mentoring and training opportunities, and exposure to a broad spectrum of legal areas and leadership responsibilities. By contrast, civilian attorneys in the military departments normally do not have established career programs and may do the same work for many years, with promotion based solely upon longevity and vacancies.

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

Answer: The Department of the Navy is different from other military services in that its Office of General Counsel, which is largely composed of civilian attorneys, is responsible for legal support in acquisition, business and commercial law, real and personal property law, and other areas. Responsibility for several other areas of practice, including environmental law, is shared with Navy and Marine Corps judge advocates. While I am not familiar with Navy OGC's career development program, I understand that Navy OGC is centrally managed, with career development for its attorneys being an important priority. If confirmed, I will continue to look for ways that the Office of the General Counsel can assist in the career development of its civilian attorneys.

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

Answer: I am not aware of any necessary revisions at this time.

Client

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

Answer: The Department of the Navy is the client.

Acquisition Issues

What role should the General Counsel play in ensuring that Navy and Marine Corps procurement programs are executed in accordance with the law and DoD acquisition policy?

Answer: The General Counsel plays a critical role in ensuring compliance with acquisition laws and current DoD acquisition policy. Acquisition integrity is critical to the effectiveness of the Department of the Navy's procurement program. It is essential for the General Counsel to be actively involved in ensuring compliance to all legal obligations in order to ensure this integrity.

What role should the General Counsel play in ensuring that ethics provisions on conflict of interest are followed both by Navy and Marine Corps personnel and by Navy and Marine Corps contractors?

Answer: The General Counsel is the Designated Agency Ethics Official (DAEO) and the Suspending and Debaring Official (SDO) within the Department of the Navy. In his capacity as the DAEO, it is the General Counsel's responsibility to ensure that all ethics provisions, especially those dealing with conflicts of interest, are properly understood and followed within the Department. In his capacity as the SDO, the General Counsel ensures that the Department does business only with responsible contractors.

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

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

Answer: The General Counsel must have an active role in ensuring that all contingency contracting personnel of the Department of the Navy are adequately trained and supervised.

Detecting Conflicts of Interest

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

What do you think the Department of the Navy should do, and what should the General Counsel's role be, in ensuring that the Navy and Marine Corps identify personal and organizational conflicts of interest and take the appropriate steps to avoid or mitigate them?

Answer: It is incumbent upon the Department to ensure that an efficient and effective process for reviewing potential personal and organizational conflicts of interest exists. If confirmed, I am committed to evaluating the current processes established within the Department and, should it be necessary, modifying them so that they can effectively identify these potential conflicts of interest.

What is your understanding of the steps the Navy and Marine Corps take to identify and address potential conflicts of interest during the hiring process?

Answer: I am not currently aware of the processes undertaken within the Department to identify and address potential conflicts of interest in the hiring process. If confirmed, I am committed to evaluating these and, should I deem necessary, modifying them so that they can be most effective.

Recent reports have raised concerns about potential personal conflicts of interest by contractor employees, including retired general and flag officers ("senior mentors") who advise senior government officials.

What is your understanding of existing statutes and regulations pertaining to personal conflicts of interest by contractor employees who advise senior government officials?

Answer: I am familiar with the recent series of press articles addressing the concerns associated with the "senior mentors" programs. It is my understanding that existing

ethics regulations are intended to address the problems associated with the potential conflicts of interest associated with hiring personnel to assist the Department of Defense. If confirmed, I will make it a high priority to review these regulations and the current practice with regard to the hiring of “senior mentors” in order to assist the Secretary in determining what changes in policy may need to be made.

Do you see any need for changes to these statutes and regulations?

Answer: It is my understanding that the Department of Defense is currently evaluating the hiring practices associated with “senior mentors” and that guidance may be forthcoming. If confirmed, I am committed to working with the General Counsel of the Department of Defense and coordinating with the General Counsels of the other military departments and agencies on this matter.

What role do you see for the General Counsel in identifying and addressing potential conflicts of interest by employees of Navy and Marine Corps contractors?

Answer: The General Counsel must play a primary role in identifying and addressing potential conflicts of interest within the Department of the Navy.

Legal Ethics

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

Answer: Every attorney of the Department of Defense is under a professional obligation to comply faithfully with all applicable laws and regulations. It is my understanding that there may also be Departmental regulations on this obligation. If a Department of the Navy attorney learns of improper activities by an official who has sought his or her legal advice but is unwilling to follow it, the attorney should immediately notify his or her legal supervisor (or the senior lawyer in the next higher level of his or her organization) for review and appropriate action by that higher level attorney.

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 and revised?

Answer: To my knowledge, the present limits on pro bono activities are appropriate. If confirmed, I will encourage attorneys of the Department of the Navy to participate in bar association activities for their professional development.

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

Answer: If confirmed, I will examine the adequacy of the professional responsibility rules for attorneys in the Department, and make appropriate modifications or issue supplemental guidance, if warranted.

Litigation Involving the Department of the Navy

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

Answer: The Department of Justice has statutory responsibility to represent the United States, its agencies, and its officers, including the Department of Defense, in all litigation matters. Department of the Navy attorneys will assist counsel at the Department of Justice in cases in which the Department of the Navy is a party or has an interest.

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: I am currently not aware of the need for more independence or resources to conduct litigation, but, if confirmed, I will review this issue.

United Nations Convention on the Law of the Sea

The United Nations Convention on the Law of the Sea (UNCLOS) is currently pending in the Senate. Military and civilian leaders in the Department of Defense have consistently articulated their support for accession to the Convention and have stressed the benefits for our national security.

What are your views on accession by the United States to UNCLOS?

Answer: I support U.S. accession to the United Nations Convention on the Law of the Sea. It is my understanding that there are important national security interests furthered by U.S. accession and that this is a priority of the Secretary of the Navy, the Chief of Naval Operations, and the Administration.

From a national security standpoint, what do you see as the legal advantages and disadvantages of the United States being a party to UNCLOS?

Answer: It is my understanding that the United Nations Convention on the Law of the Sea secures important rights relating to the freedom of navigation. Failure to be a party to the Convention forces the United States to rely solely upon customary international law to enforce our views relating to international law.

During testimony before the Senate Armed Services Committee in June 2009, Secretary Mabus stated his strong support for U.S. accession to UNCLOS.

What do you see as the role of the General Counsel of the Department of the Navy in the accession process?

Answer: It is my understanding that the Judge Advocate General of the Navy has primary responsibility for advising the Secretary on the United Nations Convention on the Law of the Sea. The Judge Advocate General of the Navy has the responsibility within the Department to report directly to the Secretary of the Navy on international law as well as matters associated with military operations. As such, if confirmed, I would expect that the General Counsel's primary responsibility will be to assist the Judge Advocate General of the Navy and the Secretary of the Navy in developing their strategy to support the accessions process.

If confirmed, what should you do to support and advance the Navy Secretary's desire to join UNCLOS?

Answer: If confirmed, I will work directly with the Secretary of the Navy and provide the guidance and support that he deems necessary to advance his desire for accession to the United Nations Convention on the Law of the Sea.

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?

Answer: 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 Navy?

Answer: 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?

Answer: 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?

Answer: Yes.