

**Senate Armed Services Committee**  
**Advance Policy Questions for Mr. John Patrick Coffey**  
**Nominee to be General Counsel of the Department of the Navy**

**Duties and Responsibilities**

**Section 8019 of title 10, U.S. Code, establishes the position of the Department of the Navy General Counsel and provides that the General Counsel shall perform such functions as the Secretary of the Navy may prescribe.**

**1. What is your understanding of the current duties and functions of the General Counsel of the Department of the Navy?**

It is my understanding that the General Counsel (GC) of the Department of the Navy performs the duties and functions that are prescribed by the Secretary of the Navy. The GC is the principal legal advisor to the Secretary and is the chief legal officer of the Department of the Navy. The GC provides or oversees the provision of legal advice and counsel to the Secretary of the Navy, the Under Secretary of the Navy, the Assistant Secretaries of the Navy, the civilian executive assistants, the staff assistants, and their staffs on matters affecting the Department of the Navy. The GC's legal opinions are controlling within the Department. The GC is also the head of the Office of the General Counsel. In this role, he is responsible for providing legal services throughout the Department on a variety of issues, including acquisition law and international transactions; business and commercial law; fiscal law; acquisition-related security cooperation matters; acquisition integrity; arms control and international arms regulation; intelligence and national security law; real and personal property law; civilian and military personnel; labor law; environmental law; occupational safety and health law; medical and health affairs law, including credentialing; education law; intellectual property law; law pertaining to cyberspace; ethics and standards of conduct; Freedom of Information Act (FOIA) and Privacy Act law; legislation; and such other legal services as may be assigned to support the mission of the Navy and the Marine Corps or the discharge of other duties assigned by the Secretary. The GC is responsible for litigation in these areas, oversees litigation affecting the Department of the Navy, and coordinates with the Department of Justice, as necessary. The GC is the Designated Agency Ethics Official for the Department; oversees the Department's Acquisition Integrity Program and the Suspension and Debarment Official; manages the Alternative Dispute Resolution Program; advises and assists with the oversight of the Naval Criminal Investigative Service, and the Department's law enforcement and related activities; and assists the Under Secretary with overseeing all Department of the Navy intelligence and intelligence-related activities. The GC also coordinates with the Department of Defense and Military Department GCs in matters of mutual concern. Finally, it is my understanding that the GC maintains a close working relationship with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps on issues of common interest.

**2. What additional duties and functions do you expect the Secretary of the Navy to prescribe for you, if you are confirmed?**

If I am confirmed, I anticipate providing candid and accurate legal advice and counsel to the Secretary, the Under Secretary, the Assistant Secretaries of the Navy, the civilian executive assistants, the staff assistants, and their staffs. I also expect to lead the Office of the General Counsel to the best of my abilities while complying with the letter and the spirit of the law. I anticipate that the Secretary will want me to continue the collaborative working relationship previous General Counsels have established with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant. Finally, I expect that the Secretary may prescribe additional duties, in accordance with 10 U.S.C. § 8019.

**3. In your opinion, who is the “client” of the Navy General Counsel?**

The Department of the Navy is the client.

**4. What is your view of the responsibilities and authorities associated with the Navy General Counsel’s designation as the Chief Legal Officer of the Department of the Navy?**

The General Counsel, as the Chief Legal Officer of the Department of the Navy, provides or oversees the provision of legal advice and counsel to the Secretary, the Under Secretary, the Assistant Secretaries of the Navy, the civilian executive assistants, the staff assistants, and their staffs on all issues affecting the Department subject to all legal requirements.

**5. If confirmed, how would you work with the General Counsel of the Department of Defense in his/her role as the Chief Legal Officer of the Department of Defense?**

If I am confirmed, I will work closely and collaboratively with the General Counsel of the Department of Defense on issues of mutual interest or concerns, and on issues affecting the Department of the Navy and the Department of Defense. The Navy General Counsel, as the Chief Legal Officer of the Department, determines the controlling legal position of the Department.

**6. If confirmed, what actions would you take to effectuate your duties as the Designated Agency Ethics Official for the Department of the Navy?**

If I am confirmed, it will be my responsibility as the Designated Agency Ethics Official (DAEO) to ensure that all Department of the Navy civilian and military personnel understand and follow all ethics laws and regulations. As a member of the Navy Secretariat, I will be responsible for ensuring that all Department of the Navy personnel, including my colleagues and myself, are held to the highest of ethical standards.

**7. Is there value in a General Counsel’s practice of “preventive law”, in your view? How, if at all, would you encourage and engage in the practice of preventive law, if confirmed to be the Navy General Counsel?**

I strongly believe in the practice of “preventive law.” To be successful, the practice of “preventive law” requires collaboration and communication between client and attorney to maintain the trust and candor that is critical to maintaining the relationship. If confirmed, I expect to provide candid, accurate legal advice and counsel to the Secretary, the Under Secretary, the Assistant Secretaries of the Navy, the civilian executive assistants, the staff assistants, and their staffs, and collaborate with them to spot issues and manage risk.

**Alternate Dispute Resolution (ADR) programs encourage the use of alternative means of dispute resolution and conflict management practices as an integral part of normal business practices.**

**8. What is your view of the role of the Navy General Counsel in facilitating the provision of ADR services to the Department of the Navy?**

ADR can efficiently resolve issues in controversy and effectively enable resources and personnel to remain focused on the Department of the Navy’s mission. If confirmed, I would be responsible for managing the Department’s ADR program. In my view, the role of the General Counsel is to resolve disputes and controversies at the earliest stage possible, on the best terms possible, and by the fastest and most efficient means possible, which will enable the Department to remain focused on mission. The General Counsel must ensure that the use of ADR is consistent with law, regulations, policy, and professional ethics.

**9. Are there particular types of disputes in the context of Navy and Marine Corps operations, as to which you perceive ADR may be of particular utility?**

My belief is that ADR can be considered for any conflict or dispute, regardless of subject matter.

**10. In your view, what role, if any, should the Navy General Counsel and attorneys assigned to the Office of the Navy General Counsel play in developing and reviewing Navy and Marine Corps military personnel policies and advising on policy application in individual cases, including cases before the Board for Correction of Naval Records?**

It is my understanding that military personnel policy and practice is a matter under the cognizance of the Secretariat, specifically the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) pursuant to 10 U.S.C. §§ 8013, 8014. ASN (M&RA) receives legal advice from a dedicated component of the Office of the General Counsel, whose members are experienced civilian attorneys, many of whom have worked in other federal agencies and the private sector, and who are led by a member of the Senior Executive Service. It is my belief that these capable civilian attorneys possess the experience needed to work in this complex legal area and are aware that they should be proactive and engaged with the client. Specifically with regard to the BCNR, 10 U.S.C. § 1552 calls for the Secretary to act through civilian boards; as such it is entirely appropriate for attorneys of the Office of General Counsel to advise the Board.

## **Qualifications**

### **11. What background and experience do you possess that qualify you to serve as the General Counsel of the Department of the Navy?**

As chief legal and chief ethics officer for the Department of the Navy, the Navy General Counsel must be a lawyer with sound legal skills and experience, a strong ethical compass, demonstrated leadership abilities, and a commitment to working collaboratively within and outside the Department. I believe my background and experience show that I meet these criteria.

I received my law degree through the evening program at Georgetown University Law Center while stationed on active duty in Washington. I returned home to New York, where I have practiced law for over three decades and currently serve as Chair of Complex Litigation at Kramer Levin Naftalis & Frankel. Over the course of my legal career, I have handled significant litigation in courts all over the country, and been involved in several landmark cases. Among the more notable was the WorldCom securities litigation where, in addition to leading a team that secured one of the largest settlements in history, we fortified the principle of personal accountability by insisting that each senior individual involved in the scandal pay personally (that is, not rely simply on insurance). For a role with as broad a portfolio as the Navy General Counsel, I would if confirmed bring the perspective of a lawyer who has litigated both as a plaintiff's lawyer and defense lawyer, and who has both represented major institutions and taken on powerful institutions. My varied docket has included matters involving breach of contract; intellectual property; accounting; environmental issues; housing; veterans' benefits; securities; bankruptcy; and international law. In addition, I served for several years as a federal prosecutor in the U.S. Attorney's Office for the Southern District of New York, an experience that I believe will enhance my ability, if confirmed, to interact with the Justice Department on matters where it represents the Department of the Navy. With regard to issues of ethics and integrity, I served on the board of Common Cause New York for over a decade and was active in seeking to advance ethics in government and hold public officials accountable for misconduct. In what I believe was an endorsement of my reputation for probity and ethics, I was selected by an organization comprised of notable attorneys and sitting federal judges to serve as President of the Federal Bar Foundation (a position I still hold). I believe that, if confirmed, my broad experience on handling some of the country's most challenging and impactful cases, building effective teams, and providing candid and timely counsel on thorny legal issues have prepared me well to serve as Navy General Counsel.

If confirmed, I would also bring to the role over thirty years of experience in the Navy in both operational and plans and policy billets. After graduating from the Naval Academy, I served as a Naval Flight Officer in P-3C Orion squadrons for sixteen of the next twenty-six years (four on active duty and the balance as a Reservist). Based largely in Maine, I commanded aircrews that deployed to the Atlantic, Pacific, and Indian Oceans, as well as the Mediterranean, Caribbean, South China, and Northern Arabian Seas. In addition to tracking Soviet submarines during the Cold War, I flew surface reconnaissance missions, armed missions to enforce the United Nations embargo of the former Yugoslavia, and counter-narcotic missions over the Caribbean and South America. I was selected to command a reserve P-3C squadron (Patrol Squadron 92) and, after promotion to Captain, served as commanding officer of the reserve component of the Enterprise

carrier battle group staff (CCDG-12). My extensive operational experience was complemented by three tours in Washington. As a junior officer on active duty, I served in the Strategy Division in the Plans and Policy Directorate (J-5) of the Organization of the Joint Chiefs of Staff and as the personal aide to Vice President George Bush. In my final tour of duty, I served for four years in the Office of the Assistant Secretary of Defense for Reserve Affairs, focused primarily on the use of reservists in the wars in Iraq and Afghanistan. If confirmed, I believe that my effectiveness as Navy General Counsel will be enhanced by my experiences in the Fleet, the Pentagon and the White House.

In sum, I believe that my background and these varied experiences qualify me to serve as Navy General Counsel.

**12. Do you believe that there are any actions you need to take to enhance your ability to perform the duties of the Navy General Counsel?**

I believe I have the legal skills, leadership qualities, and ethical compass necessary to perform the duties of Navy General Counsel. If confirmed, I would of course seek to learn as much about my new client as expeditiously as possible, a process that I believe would be enhanced by my own military experiences in Washington and in the Fleet. I would look to be briefed on the major legal challenges facing the Department and to develop an understanding of how best to provide sound, candid, and timely legal advice regarding those and other issues to Secretary Del Toro and the other clients of the Office of the General Counsel. In doing so I anticipate that I would benefit from the experience and knowledge of the career civilian lawyers in the Office, and, if confirmed, I would work to develop strong and productive relationships with those lawyers. I would also work to forge a cooperative and respectful relationship with the uniformed leaders of the Navy Judge Advocate General and the Marine Corps Staff Judge Advocate. I believe that developing strong working relationships with the General Counsel of the Defense Department as well as the general counsels of the other services will also be important, and I would look for opportunities to benefit from their knowledge and experiences. Consistent with how I have led legal teams and military units throughout my legal and military careers, I would if confirmed work collaboratively with others to ensure that the Office of the General Counsel provides the finest legal services to the Department and does its part to care for our Sailors, Marines, Civilians and their families.

**Major Challenges and Priorities**

**13. What do you see as the most significant legal and policy issues the Department of the Navy will be required to address in the coming year?**

I believe that readiness, lethality, and modernization are essential requirements for both the Department of the Navy and the Department of Defense. Addressing these issues requires timely, accurate, candid, and well-reasoned legal advice. If I am confirmed, I will ensure that the Navy legal community is proactively engaged with our clients to implement these priorities. I will encourage our clients seek advice and counsel from the Office of the General Counsel on every major decision impacting the Navy, not just on legal questions or issues. I will identify

and seek the resources necessary to recruit and retain the high-caliber and diverse legal talent needed to assist the Department in meeting its ever-changing requirements.

**14. What do you consider to be the most significant challenges you will face if confirmed as the Navy General Counsel?**

I believe that a significant challenge that the Department of the Navy faces is maximizing the Navy and Marine Corps maritime dominance in an era of strategic competition. This challenge is complicated by emerging threats that cause disruptions in the international order by other state and non-state actors. If confirmed, I anticipate opportunities to drive a culture within the Department that ensures every military member and civilian employee is treated with respect; to eliminate harmful behaviors, including sexual harassment, sexual assault and suicide; to address climate change and the climate resilience of our infrastructure and systems; to strengthen our strategic partnerships and alliances; and to come through the Coronavirus-19 (COVID-19) pandemic with a healthy, ready and capable force.

The Department of the Navy must address these challenges with the assistance of candid, accurate, and timely legal advice from a proactive group of military and civilian attorneys working collaboratively together. If I am confirmed, my major challenge will be to ensure that there are sufficient resources to recruit, hire, and retain talented, diverse, and dedicated attorneys and professional staff to meet the ever-changing requirements of the Department.

**15. What plans do you have for addressing each of these challenges, if confirmed?**

If I am confirmed, I will ensure that the Navy legal community is proactively engaged with our clients to find innovative and legally sufficient solutions to address and overcome these challenges. I will personally review the resources, organization, and operation of the Office of the General Counsel to identify developmental opportunities and to find the appropriate resources to complete these efforts. I will also work collaboratively with the Secretary of the Navy, the Judge Advocate General of the Navy, and the Staff Judge Advocate to the Commandant to ensure that there are adequate legal resources across the Department to address these challenges.

**16. If confirmed, what broad parameters would you establish in terms of the types of legal and policy issues on which you and the other attorneys comprising the Office of the Navy General Counsel should be consulted?**

As discussed above, I would ensure that the Office of the General Counsel is proactively engaged with our clients to support the Department's mission and priorities, using the legal skills and expertise in the areas under the cognizance of the Office of the General Counsel, providing candid, innovative and timely legal options to decision makers and collaborating with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant, as needed.

**17. If confirmed, what actions would you take to focus the Office of the Navy General Counsel on your broad priorities and significant legal issues?**

If I am confirmed, my first action will be to review the work already being done by Office of General Counsel attorneys and determine what, if any, actions are needed to ensure they are able to meet my foremost priority, which will be to ensure that the Department of the Navy continues to receive the highest quality legal advice and counsel to meet the Department's mission and support our Sailors, Marines, Civilians and their families.

**18. If confirmed, what actions would you take to sustain a productive and mutually beneficial relationship between Congress and the Department of the Navy?**

Congress is a vital partner in implementing the National Defense Strategy and Secretary Austin's priorities of defending the Nation, taking care of our people, and succeeding through teamwork, as well Secretary Del Toro's focus on maintaining maritime dominance, empowering our people, and strengthening strategic partnerships. If I am confirmed, I will work with the Secretary of the Navy to ensure that the Department works closely with Congress and that the Department is transparent, proactive, and responsive to Congressional requests.

**Civilian Control of the Military**

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

If I am confirmed, I will support the Secretary in fully exercising his Title 10 responsibilities to the Department of the Navy. As General Counsel, I will advise the Secretary on his statutory and regulatory duties when conducting the business of the Department of the Navy, both at his request and when I determine that a matter requires his attention.

**In its 2018 report, *Providing for the Common Defense*, the National Defense Strategy Commission observed, "there is an imbalance in civil-military relations on critical issues. . . . Civilian voices appear relatively muted on issues at the center of U.S. defense and national security policy."**

**20. Do you agree with this assessment? If confirmed, how would you ensure inclusion of the Navy General Counsel in the discussion, debate, and resolution of Department of the Navy, defense, and national security issues?**

Currently, I am not in a position to agree or disagree with this assessment. If I am confirmed, I will work to build strong client relationships with the Secretary, the Under Secretary, the Assistant Secretaries of the Navy, the civilian executive assistants, the staff assistants, and their staffs to ensure I am able to provide candid, accurate, and timely legal advice so we can resolve Department of the Navy, defense, and national security issues as a team.

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

**21. How are the responsibilities and authorities for providing legal services, including the responsibility for the provision of ethics advice to senior officials, to the Department of the Navy and the Marine Corps allocated between the General Counsel of the Navy, the Judge Advocate General of the Navy, and the Staff Judge Advocate to the Commandant of the Marine Corps?**

The General Counsel performs such duties and function as prescribed by the Secretary of the Navy. The General Counsel of the Navy is the principal legal advisor to the Secretary and the chief legal officer of the Department of the Navy. The General Counsel provides, or oversees the provision of, legal advice and counsel to the Secretary, the Under Secretary, the Assistant Secretaries of the Navy, the civilian executive assistants, the staff assistants, and their staffs on all issues affecting the Department. The General Counsel's legal opinions are controlling within the Department. Further, the General Counsel leads the Office of the General Counsel. In this role, the General Counsel provides, or oversees the provision of, legal services in the Department in a multitude of areas, including acquisition law and related international transactions; acquisition-related matters; acquisition integrity; arms control and international arms regulation; business and commercial law; real and personal property law; civilian and military personnel and labor law; fiscal law; environmental law; occupational safety and health law; intellectual property law; intelligence and national security law; law related to cyberspace; ethics and standards of conduct; Freedom of Information Act (FOIA) and Privacy Act law; legislation; education law; medical and health affairs law, including credentialing; and such other legal services as may be assigned to support the mission of the Navy and the Marine Corps or the discharge other duties assigned by the. The General Counsel is also responsible for litigation in each of these areas and oversees litigation affecting the Department. The GC coordinates with the Department of Justice, as needed. Furthermore, the General Counsel is the Navy's Designated Agency Ethics Official, is responsible for overseeing the Acquisition Integrity program, managing the Alternative Dispute Resolution program, and advising and assisting with the oversight of Department of the Navy intelligence and intelligence-related activities, the Naval Criminal Investigative Service (NCIS), and Department of the Navy law enforcement and related investigative activities. Finally, the General Counsel must maintain a close and collaborative relationship with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps on issues of common interest.

It is my understanding that the Judge Advocate General of the Navy reports directly to the Secretary and provides independent legal and policy advice on military justice, administrative law, claims, investigations, operational and international law, legal assistance, and civil law. The Judge Advocate General of the Navy also provides legal and policy advice to the Chief of Naval Operations. The Staff Judge Advocate to the Commandant of the Marine Corps is the senior uniformed attorney in the Marine Corps, and is responsible for providing independent legal advice to the Secretary on matters as assigned by the Secretary, and to the Commandant of the Marine Corps and other officers and officials of the Marine Corps. The Staff Judge Advocate to the Commandant supervises and manages legal issues arising in the Marine Corps that relate to military justice, operational and international law, civil and administrative law, and legal assistance. It is also my understanding that the responsibilities of the General Counsel, the Judge Advocate General, and the Staff Judge Advocate to the Commandant overlap in the areas of environmental law; intelligence and national security law; law related to cyberspace; FOIA and



Privacy Act law; legislation; litigation; and ethics and standards of conduct.

Section 8088 of Title 10 prohibits interference with the ability of the Judge Advocate General of the Navy to give independent legal advice to the Secretary. The Judge Advocate General of the Navy also directs the Judge Advocate General's Corps in the performance of their duties and is primarily responsible for providing legal advice regarding the Uniform Code of Military Justice and the administration of military discipline. Section 8046 of Title 10 prohibits interference with the ability of the Staff Judge Advocate to the Commandant of the Marine Corps to give independent legal advice to the Commandant. The Staff Judge Advocate's principal role is to be the senior uniformed legal advisor on military justice, administrative law, international and operational law, and legal assistant matters to the Commandant. If I am confirmed, I will continue to enhance the strong cooperative and collaborative relationship between the General Counsel and the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant.

**22. What is your understanding of the relationship between the General Counsel of the Navy and the Counsel to the Commandant of the Marine Corps? Do you believe this relationship is appropriate, or does it require review?**

My understanding is that the Counsel to the Commandant is a civilian attorney within the Office of the General Counsel assigned by the General Counsel to support the Commandant and the Marine Corps and who provides legal advice in the areas under the oversight of the General Counsel. This alignment is consistent with the relationship of other senior civilian attorneys assigned to organizations across the Department. If I am confirmed, I will ensure that there is a strong relationship between the General Counsel and the Counsel to the Commandant so the Marine Corps continues to receive candid, accurate, and timely legal advice.

**23. What is your understanding of the allocation of responsibilities and authorities for providing legal services to the Commandant of the Marine Corps between the Staff Judge Advocate to the Commandant of the Marine Corps and the Counsel to the Commandant? Do you believe this relationship is appropriate, or does it require review?**

As previously stated, the Staff Judge Advocate to the Commandant of the Marine Corps is the senior uniformed attorney to the Commandant. The Staff Judge Advocate is responsible for providing independent legal advice to the Secretary on matters as assigned by the Secretary and to the Commandant of the Marine Corps and other officers and officials of the Marine Corps. The Staff Judge Advocate to the Commandant supervises and manages legal issues arising in the Marine Corps that relate to military justice, operational and international law, civil and administrative law, and legal assistance. As a member of the Office of General Counsel, the Counsel to the Commandant is responsible for providing legal advice under the oversight of the General Counsel. If I am confirmed, I will review this relationship to ensure there is a strong cooperative and collaborative relationship between the Staff Judge Advocate to the Commandant and the Office of General Counsel, including the Counsel to the Commandant, so the Marine Corps continues to receive candid, accurate, and timely legal advice.

**24. In your view, is the allocation of responsibilities and authorities for the provision of legal services to the Commandant of the Marine Corps by the Staff Judge Advocate to the Commandant and the Counsel to the Commandant the same as the allocation of responsibilities and authorities for legal services provided to the Chief of Naval Operations by the Judge Advocate General of the Navy and the General Counsel of the Navy? If not, how do these allocations of responsibility and authority differ and why are they different?**

The Office of the General Counsel, including the Counsel to the Commandant, and the Navy and Marine Corps uniformed judge advocates are partners in the Navy's legal team. If I am confirmed, I anticipate that the Office of General Counsel will continue to work closely and collaboratively with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant to provide the Chief of Naval Operations and the Commandant with coordinated legal advice across the spectrum of their duties and responsibilities.

**25. In your view, what is the purpose underpinning the assignment of a senior civilian attorney as Counsel to the Commandant of the Marine Corps?**

A senior civilian attorney is assigned as Counsel to the Commandant in order to provide business and business-related legal advice, which is the Office of General Counsel's primary function. The Office of General Counsel, including the Counsel to the Commandant, has developed in-depth expertise in these areas, which are vital to the Department of the Navy's mission and which provide clients with continuity of support.

**26. What is your understanding of the role and authority of the Judge Advocate General of the Navy vis-à-vis the Special Counsel for the Chief of Naval Operations?**

It is my understanding that the Judge Advocate General serves as Special Assistant for Legal Services to the Chief of Naval Operations to advise him in formulating and executing policies related to providing legal services within the Navy. The Special Counsel to the Chief of Naval Operations is a Navy Judge Advocate captain assigned to the Chief of Naval Operations' staff.

**27. If confirmed, how would you work with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps in carrying out your duties?**

If I am confirmed, I expect to continue and further strengthen the General Counsel's strong working relationship with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps by ensuring close coordination, collaboration, consultation, and communication on issues affecting the Department of the Navy.

**In response to attempts within the Department of Defense to subordinate legal functions and authorities of the Judge Advocates General to the General Counsel of the Department of Defense and the General Counsels of the Military Departments, Congress enacted legislation prohibiting DOD officers or employees from interfering with the ability of the Judge Advocates General, the Staff Judge Advocate to the Commandant of the**

**Marine Corps, and the Legal Advisor to the Chairman of the Joint Chiefs of Staff to provide independent legal advice to the Secretaries of the Military Departments, the Service Chiefs, and the Chairman of the Joint Chiefs of Staff.**

**28. What is your view of the authority of the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps, particularly with regard to the provision of independent legal advice to the Secretary of the Navy, the Chief of Naval Operations, and the Commandant of the Marine Corps?**

Section 8088 of Title 10 prohibits interference with the ability of the Judge Advocate General of the Navy to give independent legal advice to the Secretary. Similarly, section 8046 of Title 10 prohibits interference with the ability of the Staff Judge Advocate to the Commandant of the Marine Corps to give independent legal advice to the Commandant. My opinion is that these statutory authorities should be respected and are sufficient to ensure that the Judge Advocate General and the Staff Judge Advocate can provide independent legal advice to the Secretary, the Chief of Naval Operations, and the Commandant of the Marine Corps. If confirmed, I will continue to strengthen this productive and collaborative partnership for the benefit of the Department.

**29. What is your view of the responsibility of Navy and Marine Corps judge advocates to provide independent legal advice to military commanders and other Military Service officials and employees?**

I believe that it is essential that Navy and Marine Corps judge advocates provide legal advice to military commanders and other Military Service officials free of improper external influence. Uniformed judge advocates bring a different experience and perspective to the practice of law that is shaped by their service. This perspective should not be marginalized or silenced. My opinion is that this perspective enhances the decision-making process. While there should be coordination across the Navy legal communities, the judge advocates must be able to provide candid, frank, independent, and objective legal advice to their clients.

**30. If confirmed, would you propose any changes in the current relationships between the Navy General Counsel and the Judge Advocate General of the Navy and between the Navy General Counsel, including through the Counsel to the Commandant, and the Staff Judge Advocate to the Commandant of the Marine Corps?**

At this time, I am not aware of any changes that need to be made to the relationship between the uniformed judge advocates and the General Counsel, including the Counsel to the Commandant. I understand that the General Counsel, including the Counsel to the Commandant, the Judge Advocate General of the Navy, the Staff Judge Advocate to the Commandant, and their teams enjoy a collaborative and close working relationship. If confirmed, I will review these relationships and make every effort to strengthen the relationships between the uniformed judge advocates and the Office of the General Counsel.

**31. If confirmed, would you propose any changes to the current relationships and/or allocation of responsibilities between uniformed Military Service judge advocates and attorneys of the Office of the Navy General Counsel?**

At this time, I am not aware of any changes that need to be made. If confirmed, I intend to continue to strengthen the relationship between the uniformed judge advocates and the civilian attorneys and will partner with the military legal community. Should any changes to the responsibilities assigned to the civilian or military legal communities be identified in the future, I would expect that the uniformed lawyers and civilian attorneys will partner with one another to propose any necessary changes.

**32. In your view, are legal opinions of the Navy's Office of the General Counsel binding on all Navy and Marine Corps attorneys?**

It is my understanding that the legal opinions of the General Counsel, as the Department's Chief Legal Officer, are the controlling legal opinions within the Department. I also understand that the General Counsel frequently collaborates with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant on legal opinions. If I am confirmed, I will make every effort to ensure that my legal opinions take into account the expertise of both the civilian and uniformed members of the Navy legal community, as appropriate.

**33. If confirmed, how would you ensure that controlling legal opinions of your office are available to all Navy and Marine Corps attorneys, including judge advocates?**

It is my understanding that the legal opinions of the Office of the General Counsel are disseminated throughout the Department via normal Departmental distribution processes. If I am confirmed, I would continue this process and determine if other methods of distribution are available to ensure widest dissemination of the legal opinions.

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

I am not aware of any legal opinions that need to be reconsidered or revised. If I am confirmed, I will ensure that the Office of the General Counsel works collaboratively with civilian and uniformed members of the Navy legal community to update any legal opinions that warrant reconsideration or revisions based on changes to controlling statutes or regulations, policy, or precedent.

**Article 6 of the Uniform Code of Military Justice assigns to the Judge Advocates General of the Army, Navy, and Air Force, and the Staff Judge Advocate to the Commandant of the Marine Corps, responsibility for the supervision of the administration of military justice.**

**35. How do you view the role and responsibilities of the Navy General Counsel in the supervision and oversight of military justice matters vis-à-vis the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps?**

My view is that the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant have the statutory responsibility to ensure proper administration of the military justice system and have primary jurisdiction over military justice issues in the Department of the Navy. If I am confirmed, I will work to continue the strong and effective relationship with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant, in which our offices share information and work collaboratively as appropriate to resolve policy issues and issues related to specific cases, recognizing that they have express statutory responsibility for, and expertise in, this area of law.

**In his letter forwarding to Congress the recommendations of the Independent Review Commission on Sexual Assault in the Military, Secretary of Defense Austin stated that he intended to create dedicated offices in the Secretariat of each Military Department to handle the prosecution of special victim crimes.**

**36. Were Secretary Austin's proposal to be implemented, what role would you expect the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps to have in the operation and oversight of this Secretariat office and the special victim prosecutors assigned thereto, particularly given the intent that any such office and special victim prosecutors are intended to be "outside the chain of command"?**

I support Secretary Austin's efforts to eliminate sexual harassment and sexual assault in the military by implementing meaningful reforms, some proposed by the Independent Review Commission, including by removing prosecution decisions related to these crimes from the chain of command. I understand that the legislative amendments to the Uniform Code of Military Justice necessary to effectuate that particular reform are presently under consideration. If confirmed, I will be wholly committed to working with Department of the Navy leaders, including the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps, to implement any directed reform in accordance with law and Department policy.

**37. What role would you expect the General Counsel of the Navy to play in the operations and oversight of this Secretariat office and the special victim prosecutors assigned thereto?**

If confirmed, as the principal legal advisor to the Secretary, I will work with the Secretary, the Judge Advocate General of the Navy, and the Staff Judge Advocate to the Commandant of the Marine Corps to implement the policies established by the Secretary of Defense to ensure that all investigations and prosecutions, including those related to sexual assault and sexual harassment, are conducted professionally, in accordance with due process of law, and protect the statutory rights of all, including those of victims.

**38. Would you foresee a role for the DOD General Counsel in the operations and oversight of this Department of the Navy Secretariat Office? If so, what would be the appropriate role for DOD General Counsel, in your view?**

I understand that Secretary Austin proposed that the Component Department Offices of the Special Victim Prosecutor would receive appropriate legal oversight and guidance from the Office of the Secretary of Defense, consistent with existing practice. I have not had the opportunity to learn the specific practices employed within the Department of Defense. If confirmed, I will learn the DoD's oversight practices and I will work closely and collaboratively with the General Counsel of the Department of Defense on issues of mutual interest or concern.

**39. In your view, how do unlawful command influence and the appearance of unlawful command influence jeopardize the credibility of, and public confidence in the military justice system?**

Unlawful command influence and even the appearance of unlawful command influence has a detrimental impact on the military justice system. The public, and especially Sailors and Marines, must be able to rely on a properly functioning military justice system. In order to maintain confidence, the Department of the Navy must maintain a military justice system that ensures that commanders and military prosecutors are free to act with independent discretion; the accused has the full and equal ability to obtain evidence and witnesses; and members of the court-martial are free to decide the case based on the evidence presented and the law as instructed by the military judge. When the actions or statements of civilian or military leaders impede the exercise of this discretion, it can have a widespread detrimental effect. If confirmed, I will work with the Judge Advocate of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps to ensure that there are appropriate policies and training to promote public confidence in the military justice system, and to ensure that the military justice system operates in a fair and efficient manner.

**40. In your view, would the placement of the special victim prosecutions office in the Office of the Secretary of the Navy raise any particular concerns with regard to the unlawful command influence or the appearance of same with regard to the conduct of special victim prosecutions? If so, what steps would you take to eliminate or mitigate such concerns?**

As previously stated, unlawful command influence and the appearance of unlawful command influence can have a detrimental impact on the military justice system. The public should be able to rely on a properly functioning military justice system. 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 establish training and policies to ensure placement of the special victim prosecutions office in the Office of the Secretary of the Navy does not erode public confidence in the military justice system.

**41. What role should the Navy General Counsel play, in your perspective, in ensuring that all sailors and Marines accused of a criminal offense receive a fair trial and due process?**

While the General Counsel of the Navy is the principal legal advisor to the Secretary and the Chief Legal Officer of the Department of the Navy, the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant are primarily responsible for providing independent legal advice on military justice matters. If I am confirmed, I will work with the Judge Advocate General and the Staff Judge Advocate to the Commandant to ensure appropriate policies and training to guarantee that all Sailors and Marines accused of a criminal offense receive a fair trial and due process.

**42. What is your assessment of the potential impact, if any, of proposals to remove from military commanders case disposition authority over most felony violations of the Uniform Code of Military Justice?**

The Secretary of Defense has committed to doing more to counter sexual assault and sexual harassment, and I am fully supportive of these efforts. Commanders must be held accountable for both the good and the bad in their commands. Commanders must have the tools needed to promote mission readiness, good order and discipline, and unit morale, and must be held accountable. The ability to refer cases for trial by court-martial is one of those tools. The commander's case disposition authority is a vital tool to establish good order and discipline, and to demonstrate acceptable behaviors. If confirmed, I will work with Department leadership to assess the impact of any proposals to remove case disposition authority over felony violations of the Uniform Code of Military Justice from military commanders.

**The Government Accountability Office (GAO) recently found that the timing, amount, and mix of legal training provided to commanders may not be meeting their needs.**

**43. If confirmed, what role would you establish for yourself in ensuring that military commanders receive the legal training they need properly to effectuate their role in the military justice system?**

I am not familiar with the legal training that is currently provided to commanders to effectuate their role in the military justice system. If confirmed, I will work collaboratively with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps to determine the most effective means of meeting the training needs for the Department's military commanders.

**44. In your view, does the Department of the Navy have a sufficient number of military and civilian attorneys to meet mission requirements?**

At this time, I do not have the information needed to assess whether the Department has a sufficient number of attorneys to perform its ongoing missions. If confirmed, I will review the civilian staffing of the Office of General Counsel and work with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant to ensure that the Department has a

sufficient number of highly talented and efficient military and civilian attorneys to meet the Department's requirements while reducing any redundancies.

**Judge Advocates in the Navy and Marine Corps benefit from an established career progression, substantial mentoring and training opportunities, and exposure to a broad spectrum of legal practice 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 promotions based solely upon longevity and vacancies.**

**45. If confirmed, what specific actions would you take to recruit, hire, and retain high quality civilian attorneys and provide sufficient opportunities for their development and advancement through positions of increasing responsibility and leadership in the career civilian component of the Navy and Marine Corps legal community?**

I understand that the Department has a robust recruiting program and hires outstanding civilian attorneys. If I am confirmed, I will work closely with the senior leadership of the Office of the General Counsel to ensure that the Office continues its efforts to recruit, hire, retain, and develop highly skilled and effective attorneys to satisfy the Department's needs.

**46. Do you foresee that in the coming years, the Department of the Navy's demand for civilian attorneys in particular low-density legal specialties or areas of technical legal expertise (e.g., cyber law, the space domain, intellectual property) will increase, commensurate with the Department's evolving missions? If so, in what legal specialties would you expect the Navy and Marine Corps' requirements for legal services to increase, and why?**

At this time, I do not have specific information about the number of types of attorneys assigned to each of the Office of General Counsel's practice areas. If confirmed, I will endeavor to ensure that the Department recruits, retains, and develops the right number of attorneys in the appropriate technical practice areas required to support the Department's changing legal needs.

**47. Do you believe the Office of the Navy General Counsel needs additional recruitment incentives and talent management tools to recruit, develop, sustain, and retain highly competent career civilian attorney workforce capable of meeting current and future mission requirements? If so, what sort of incentives and tools would be helpful?**

It is my understanding that the Office of the General Counsel has successful recruiting and retention programs. I am not aware that any new recruitment incentives or talent management tools are needed.

### **Detainee Matters**

**48. What role do you expect to play, if confirmed, in addressing legal issues regarding detention under the law of armed conflict?**



My understanding is that the Department of Defense Office of General Counsel is primarily responsible for addressing this issue. If confirmed, I will work closely and collaboratively with the General Counsel of the Department of Defense, the Judge Advocate General of the Navy, and the Staff Judge Advocate to the Commandant to address legal issues regarding detention under the law of armed conflict that arise within the Department of the Navy.

**49. 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 August 19, 2014?**

Yes. I support the standards for detainee treatment set forth in these documents and compliance with applicable legal obligations regarding detention and treatment of detainees.

**50. What role, if any, do you believe the Navy General Counsel should play in the interpretation of international and domestic law and DOD policy governing the treatment and interrogation of detainees? What role, if any, should the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps play in the interpretation of laws and policies pertaining to detainees?**

My understanding is that the Department of Defense Office of General Counsel is primarily responsible for addressing this issue. If confirmed and called upon to give legal advice on this issue, I will work closely with the General Counsel of the Department of Defense, the Judge Advocate General of the Navy, and the Staff Judge Advocate to the Commandant of the Marine Corps on the interpretation of law and policy applicable to detainees, to ensure that the Department of the Navy adheres to all of its legal obligations under the Constitution, treaties, and laws of the United States.

**51. What are your views on the continued use of the detention facility at Guantanamo?**

The United States should ensure the continued safe, humane, and legal care and treatment of detainees. If the Guantanamo detention facility is identified for closure, I will work the Secretary of the Navy and Department of Defense leadership to carry out this intent.

**52. In your view, does the United States have the legal authority to continue detaining alleged members and supporters of Al Qaeda and the Taliban as enemy combatants, without charges or prosecution?**

Yes. The 2001 Authorization for the Use of Military Force (AUMF), along with the 2002 AUMF and the President's constitutional authorities, provide the United States with the legal authority to detain members and associated forces of al-Qaeda and the Taliban as enemy combatants. Congress and the federal courts have confirmed that the Executive Branch has the authority to detain individuals who were part of, or substantially supported, al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its

coalition partners. This authority includes the power to detain any person who has committed a belligerent act, or has directly supported hostilities, in aid of such enemy forces.

**53. How does the withdrawal of U.S. forces from Afghanistan affect the Department's authority to detain unlawful enemy combatants at Guantanamo? Please explain your answer.**

It does not. The 2001 Authorization for the Use of Military Force (AUMF) and the President's constitutional authority is not impacted by the withdrawal of U.S. forces from Afghanistan. The Department still maintains authority to detain unlawful enemy combatants at Guantanamo under the 2001 AUMF regardless of the status of forces in Afghanistan.

**54. In your view, does the United States have the legal authority to detain ISIS fighters as enemy combatants?**

It is my understanding that ISIS fighters are considered "associated forces" pursuant to the 2001 AUMF, and, as described above, could therefore be detained as enemy combatants.

**As the Guantanamo detainee population ages, detainees are increasingly subject to chronic, age-related illnesses and injuries. In addition, it is asserted that many detainees show signs of mental health conditions.**

**55. In your view, what standard should the United States apply to the medical care, including mental and behavioral health care, provided to detainees?**

Adequate and humane care for the detainees at Guantanamo that complies with the standards of Common Article 3 of the Geneva Conventions of 1949 is an important part of the mission. As the detainee population ages and detainees experience chronic medical conditions, we will continue to apply Department policy and relevant laws to protect the health and well-being of Guantanamo detainees.

**The Periodic Review Board (PRB) process, enacted in law by section 1023 of the Fiscal Year (FY) 2012 National Defense Authorization Act (NDAA), is conducted "to determine whether certain individuals detained at [Guantanamo] represent a continuing significant threat to the security of the United States such that their continued detention is warranted".**

**56. Do you support continuing the process of PRB determinations, and the transfer of detainees based on those determinations, subject to restrictions currently in law?**

The Periodic Review Board (PRB) process, enacted in law by section 1023 of the Fiscal Year (FY) 2012 National Defense Authorization Act (NDAA), is conducted "to determine whether certain individuals detained at [Guantanamo] represent a continuing significant threat to the security of the United States such that their continued detention is warranted." I support this process.

## **Authorization for the Use of Military Force (AUMF)**

### **57. In your view, under what circumstances should the President seek authorization from Congress before using military force?**

The War Powers Resolution states that “the President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.” If I am confirmed and called upon to provide legal advice on the issue, I would support following the procedures and standards laid out in the War Powers Resolution.

### **58. In your view, should the American public be provided a clear, unclassified explanation of the legal and policy frameworks under which military force can be used abroad generally, and in each specific case in which the President authorizes such a use of force?**

I believe the American public should have access to explanations of frameworks under which military force can be used abroad, as well as specific cases in which the President authorizes such use, when in the national security interests of the United States, and when following Department of Defense policies, as well as any other applicable policies and statutes.

**Congress enacted the 2001 AUMF shortly after 9/11 to provide the President authority to take action against al-Q’aida, the Taliban, and their associated forces, and to detain enemy personnel captured during the course of the armed conflict.**

### **59. What is your understanding of the current interpretation and application of the 2001 AUMF?**

My understanding is that current interpretation of the 2001 AUMF provides the President with the legal authority to use force against al-Qaeda, the Taliban, and associated forces, including the Islamic State of Iraq and Syria.

### **60. How is the application of that authorization affected by the withdrawal of U.S. forces from Afghanistan? Please explain your answer.**

The authorization remains in effect regardless of the status of U.S. forces in Afghanistan. The use of force in Afghanistan relied on the 2001 Authorization for the Use of Military Force (AUMF).

**Congress enacted the 2002 AUMF in the run-up to the 2003 U.S. invasion of Iraq. It authorized the U.S. to defend against the threat posed by Saddam Hussein’s regime and weapons of mass destruction program. The Administration has stated that it does not rely solely on the 2002 AUMF as the legal basis for any ongoing military operations.**

**61. Do you share the view that the 2002 AUMF does not provide the sole legal basis for any ongoing military operation?**

My understanding is that the United States does not currently rely on the 2002 AUMF as the sole domestic legal basis for any ongoing operations, and that administrations have cited the statute as additional authority to support counterterrorism operations for at least the last ten years. If confirmed and called upon to do so, I will evaluate this issue.

**62. In your view, can the 2002 AUMF be rescinded without significantly affecting ongoing DOD operations? Should it be rescinded? Please explain your answers.**

The 2001 and 2002 Authorizations for the Use of Military Force and the President's constitutional authority provide the domestic authority to conduct counter-terrorism operations. I am not familiar with all aspects of ongoing DoD operations or the impact of rescinding the 2002 AUMF. If confirmed and called upon to do so, I will review the issue.

**Military Commissions Act**

**63. In your view, have the military commissions constituted pursuant to the Military Commissions Act of 2009 provided an effective forum for trying violations of the law of armed conflict in the context of the global war on terrorism?**

In my view, the Military Commissions Act provides appropriate standards and processes for trials of alien unprivileged enemy belligerents for offenses against the law of armed conflict and others traditionally triable by military commission.

**64. In your view, what are the advantages, if any, of prosecuting alleged terrorists by military commission?**

Military commission procedures comply with U.S. and international law. They provide a just forum for trying alleged terrorists for terrorism-related offenses. However, there are legal and procedural challenges due to the number of unsettled legal and procedural issues.

**65. What changes, if any, to the Military Commissions Act of 2009 would you propose, if confirmed?**

If confirmed, I will review and evaluate any proposed amendments to the Military Commissions Act of 2009. Presently, I do not have any specific proposals.

**United Nations Convention on the Law of the Sea**

**Military and civilian leaders in the Department of Defense have advocated for accession to the United Nations Convention on the Law of the Sea, stressing the benefits to**

## **U.S. national security.**

### **66. Do you support U.S. accession to the United Nations Convention on the Law of the Sea?**

It is my understanding that the U.S. Navy already acts in a manner consistent with the principles of navigation and overflight outlined in the United Nations Convention on the Law of the Sea. If confirmed, I will take a closer look at the Convention and work with my colleagues within the Department and interagency to consider the issue.

### **67. From a national security standpoint, what are the advantages and disadvantages to being a party to the Convention?**

While I have not worked on the issue closely in the past, it is my understanding that acceding to the Convention would strengthen our global security posture and put us on a more equal footing with States that are party to it, such as China and Russia. Accession would enable the United States to reinforce all of the rights, freedoms, and uses of the sea and airspace recognized in the Convention, including the navigational and overflight rights that are critical to the global mobility of U.S. forces.

### **68. In your view, what impact, if any, would U.S. accession to the Law of the Sea Convention have on ongoing and emerging maritime disputes, such as in the South China Sea and in the Arctic?**

It is my understanding that acceding to the Convention would improve our ability to maintain freedom of navigation and challenge excessive maritime claims made by our adversaries in regions like the South China Sea and the Arctic, and allow us to avail ourselves of all the tools and mechanisms available to parties to the Convention.

### **69. What do you view as the role of the General Counsel of the Department of the Navy in providing advice regarding the law of the sea and accession to the Convention?**

It is my understanding that the Department of Defense Office of General Counsel is primarily responsible for addressing issues related to accession, and the Judge Advocate General of the Navy is the Department of Defense Representative for Ocean Policy Affairs. If confirmed, I will work closely with the Secretary of the Navy, the Department of Defense Office of General Counsel, and the Judge Advocate General of the Navy to address this issue.

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

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

**70. In your view, does MEJA provide appropriate jurisdiction over the alleged criminal actions of private contractor employees in nations in which U.S. armed forces are engaged in combat operations?**

Yes, it is important to have a mechanism whereby everyone associated with the United States military overseas, including service members' family members and civilian personnel, may be held appropriately accountable for any criminal misconduct. I am generally familiar with MEJA, but I have not studied its application in particular circumstances in depth. If confirmed, I would evaluate this issue.

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

I do not currently have an opinion as to whether it should be amended. If confirmed, I would examine this issue, if called upon to do so, and recommend any appropriate modifications.

**Section 552 of the NDAA for FY 2007 extended to military courts jurisdiction under the Uniform Code of Military Justice (UCMJ) over persons serving with, or accompanying an armed force in the field during time of declared war or a contingency operation.**

**72. In your view, does a military court, applying the UCMJ, provide an appropriate forum for the disposition of the alleged criminal acts of private contractor employees serving in areas in which U.S. armed forces are engaged in contingency operations?**

The United States must ensure that all of those accompanying the U.S. military in the field can be held appropriately accountable for any criminal misconduct. I am aware of the Fiscal Year 2007 extension of court-martial jurisdiction to include civilians accompanying the U.S. military in the field during contingency operations. If confirmed, I would study whether any further modifications should be made concerning alleged criminal misconduct by contractor employees engaged in contingency operations.

**73. What is your view of the procedures to which the Department of Defense and the Department of Justice have agreed to reconcile jurisdictional responsibilities under MEJA and the UCMJ?**

I am generally familiar with the memorandum of understanding between the Department of Defense and the Department of Justice concerning investigation and prosecution of certain crimes, but I would need to examine the operation of that Memorandum of Understanding to determine whether I should recommend any adjustments.

**74. What changes, if any, would you recommend to the UCMJ to perfect its jurisdiction over the alleged criminal conduct of private contractor employees, in appropriate cases?**

I do not now have any recommendations to amend the UCMJ concerning its application to contractor employees. If confirmed, I would consider whether any such amendments are

appropriate.

### **Religious Accommodation**

**75. In your view, do Navy and Marine Corps policies and processes appropriately accommodate the religious practices of individual service members as mandated by the Religious Freedom Restoration Act and the NDAAs for FYs 2013 and 2014?**

It is my understanding that the Department respects the rights of individuals to express their religious beliefs or no religious beliefs at all. I also understand that current Navy and Marine Corps policies and processes appropriately accommodate the religious practices of service members pursuant to the Free Exercise Clause of the First Amendment to the U.S. Constitution, the Religious Freedom Restoration Act, the National Defense Authorization Acts for Fiscal Years 2013 and 2014, and Department of Defense Instruction 1300.17, "Religious Liberty in the Military Services."

**76. Under current law and policy, do you believe individual sailors' and Marines' expressions of religious belief are accommodated, provided they do not impact unit cohesion and good order and discipline?**

Yes. It is my understanding is that the Department of the Navy complies with all laws requiring the Department to accommodate Sailors' and Marines' expressions of religious belief unless, consistent with the law, such accommodation could have an adverse impact on military readiness, unit cohesion, and good order and discipline.

**77. Do you support a policy that allows a prospective recruit to request and receive an accommodation of religious practices prior to enlisting or accepting a commission in the Navy or in the Marine Corps?**

Yes, both the Navy and Marine Corps have processes for review and action on pre-accession requests for the accommodation of religious practices. Applicants have the opportunity to submit a request for religious accommodation and receive a final decision on that request prior to enlistment, participation in a commissioning program or warrant officer program, or enrollment at a Service Academy.

**78. Do you support a policy that allows a sailor's or Marine's religious accommodation, once granted, to follow the member throughout his/her military career—no matter where he/she is stationed or the nature of his/her specific duties—unless it can be demonstrated that the accommodation adversely affects military mission accomplishment?**

Yes.

**79. In your view, how should the Navy and Marine Corps' religious accommodation policies and processes be applied to sailors and Marines who decline to receive the COVID-19 vaccination on the basis of their religious beliefs?**

It is my understanding that the Navy and Marine Corps policies and procedures for mandatory vaccination of all Sailors, Marines, and civilians include processes by which individuals may seek and receive accommodation based upon religious beliefs to forego vaccination for COVID-19. I believe that process is appropriate.

**Role in the Officer Promotion and Confirmation Process**

**80. What is your understanding of the role of the General Counsel of the Department of the Navy in ensuring the integrity and propriety of the statutory officer promotion selection board process?**

The Secretary of the Navy convenes promotion selection boards as authorized by 10 U.S.C. § 611 and issues precepts to ensure those boards comply with statutes and regulations. The uniformed, service Judge Advocates assume primary responsibility for military personnel matters, and 10 U.S.C § 8088 requires the Navy Judge Advocate General conduct a compliance review of promotion boards. Ultimately, the Secretary exercises 10 U.S.C. § 618 approval authority for promotion boards. As the General Counsel, I will support the Secretary by working with both the Judge Advocate General of the Navy and Staff Judge Advocate to the Commandant of the Marine Corps on officer promotion matters.

**81. Do you perceive any need for change in this role? Please explain your answer.**

I am not aware of any changes that are needed in this role.

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

Congress mandated changes to the officer promotion process in both the 2020 and 2021 NDAA's to ensure promotion boards review adverse material in an officer's record. It is my understanding that those recent requirements, coupled with pre-existing policies and procedures provide the Military Departments the means to gather records that are as complete and accurate as possible, and provide military officers the opportunity to address matters in their records, including adverse or allegedly adverse information, prior to review. Accordingly, it is my belief that the Secretaries of the Military Departments, the Secretary of Defense, the President, and the Senate can engage in informed decision-making.

**83. In your view, are these policies and procedures fair to the individual Navy and Marine Corps officers proceeding through the promotion or assignment processes?**



Yes. It is my belief that the promotion and assignment policies and procedures adequately balance the need for legal compliance and procedural efficiency, while ensuring consideration of the equities of the individual officers.

**84. What is the role, if any, of the General Counsel of the Department of the Navy in advising senior Navy, Marine Corps, and DOD officials on the implications of adverse or reportable information pertaining to a military officer nominated for promotion to General/Flag grade or for appointment to a position of “importance and responsibility”? Do you believe this role should be changed in any way?**

In accordance with Title 10, applicable regulations, and the direction of the Secretary, the General Counsel must support the integrity of all Department activities. With respect to Department of the Navy nominees, the General Counsel provides advice on cases with adverse or potentially adverse information to ensure that the information is properly evaluated and timely reported to the Office of the Secretary of Defense and the Senate Armed Services Committee.

**Non-Deployable Service members**

**DODI 1332.45, *Retention Determinations for Non-Deployable Service members*, provides that the Secretaries of the Military Departments may “retain . . . those service members whose period of non-deployability exceeds the 12 consecutive month limit . . . if determined to be in the best interest of the Military Service.”**

**85. Do you agree that sailors and Marines who are non-deployable for more than 12 consecutive months should be subject either to separation from the Service or referral into the Disability Evaluation System?**

Generally, Service members identified as non-deployable for 12 consecutive months should be evaluated for continued service. However, each case must be evaluated individually based on the facts presented. I believe that the Department of Defense policy appropriately balances mission and individual equities.

**86. In your view, under what circumstances might the retention of a sailor or Marine who has been non-deployable for more than 12 months be “in the best interest of the Service”?**

Each case must be evaluated individually based on the facts presented. What is in the best interest of the Service depends on whether the Service member can perform their military duties and the needs of the Service at the time of the review. An example may be a Service member whose skill set is in high demand and who can perform their duties from a non-deployed environment. Moreover, pregnant and combat wounded Service members are exempt from the 12-month non-deployability determination requirements.

**87. In your view, how should this policy be applied to sailors and Marines with HIV?  
To those who identify as transgender?**

Readiness is vital to an effective military, and all Service members must be treated with dignity and respect. It is my understanding that DoDI 6485.01, "Human Immunodeficiency Virus (HIV) in Military Service Members" sets forth the procedures for managing service members with HIV. These procedures include referring service members with HIV for appropriate medical treatment and evaluation of fitness for continued service in the same manner as a service member with other chronic or progressive illnesses. Further, I understand that DoDI 1300.28, "In-Service Transition for Transgender Service Members" sets forth the procedures by which Service members may transition gender and requires determinations regarding deployability to be effected the same way as would be for any service member undergoing comparable medical procedures or treatment unrelated to transition.

**88. Has the Navy or Marine Corps established any class or group of personnel deemed "deployable with limitations," such that the class or group is exempt from the 12-month non-deployable retention determination requirement?**

It is my understanding that, in accordance with current policy, the Navy and Marine Corps characterize service members with a medical condition that required medical screening or Combatant Commander approval prior to deployment outside the continental United States as Deployable with Limitations. This characterization includes conditions referenced in DoDI 6490.07, Deployment-Limiting Medical Conditions for Service Members and DoD Civilian Employees. The list of conditions includes pregnant and combat wounded Service members.

**DODI 1332.45 also establishes categories and criteria to be applied in determining and tracking whether or not a service member is deployable.**

**89. In your view, should a sailor or Marine's readiness to perform the specific missions, functions, and tasks required of him/her in the context of a particular deployment also be considered in determining whether a service member is deployable?**

Yes, but each case must be evaluated individually based on the facts presented. If confirmed, I will review current policies and work with Department leadership to ensure commanders have the legal authorities needed to accomplish mission while maintaining readiness.

**90. If confirmed, what would be your role in improving the timeliness of the Navy's Disability Evaluation System process as it applies to both Active and Reserve Component sailors and Marines?**

Sailors, Marines, and their families need to rely on accurate and efficient processes, including the Disability Evaluation System process. If confirmed, I will review the Navy's Disability Evaluation System processes and work with Department leadership to look for ways to improve those processes.

## Emerging Contaminants

**Environmental and health effects associated with exposure to Perfluorooctane sulfonate (PFOS) and Perfluorooctanoic acid (PFOA) have long been a major concern for DOD, Congress, military families, and communities in the vicinity of military installations. According to GAO, the Navy has identified 127 installations with known or suspected releases of PFOS and PFOA.**

**91. If confirmed, what would be your role in efforts to address PFOS/PFOA contamination at Navy or Marine Corps installations?**

The health and safety of Sailors, Marines, their families, and the communities surrounding military installations is a top priority. If confirmed, I will work with senior leaders to ensure the Department of the Navy complies with applicable laws, regulations, and guidance from the U.S. Environmental Protection Agency to address PFOS/PFOA resulting from Navy or Marine Corps activities. I will also ensure the Department of the Navy remains committed to supporting Department of Defense efforts concerning this important issue.

**92. If confirmed, how would you advise the Secretary of the Navy on his approach to addressing the health concerns of service members and their families who may have been exposed to potentially harmful contaminants on Navy or Marine Corps bases and in the context of performing military duties?**

The health and safety of service members and their families is of paramount concern. If confirmed, I will advise the Secretary of the Navy on the legal options available to promote the continued well-being of Sailors, Marines, and their families.

## Suicide Prevention

**93. If confirmed, specifically what would you do to assist the Secretary of the Navy in maintaining a strong focus on preventing suicides in the Active Navy and Marine Corps, the Navy and Marine Corps Reserve, and in the families of sailors and Marines?**

If confirmed, I will work with Department leadership to ensure the health and safety of Sailors, Marines, civilians, and their family members remain a high priority. I will advise the Secretary on legal options to enhance the health and safety of the force and their families. The Department must ensure that resources are available to address this issue and that support is available to help Service members, their families, and our civilian workforce.

**94. Mindful of the U.S. Constitution, Amendment II, and related statutes, what are your ideas for preventing suicides by curtailing the misuse of lethal means by service members and their families?**

If confirmed, I will work with Department leadership to support efforts to prevent suicides. It is

my understanding that the Department has worked with the Defense Suicide Prevention office (DSPO) to offer free gun locks at medical facilities, Fleet & Family Support Centers (FFSCs), and other locations throughout the Fleet. Training, policies, and outreach materials encourage Sailors, Marines, and their families to use gun locks and to practice other forms of safety, including voluntary storage of personally-owned firearms during periods of increased stress and proactively disposing of unused prescription medications.

### **Mental and Behavioral Health Care**

**Although the Department has made some progress in reducing the stigma associated with help-seeking behaviors, many service members remain concerned that their military careers will be adversely affected should their chain of command become aware that they are seeking mental or behavioral health care. At the same time, the military chain of command has a legitimate need to be aware of physical and mental health conditions that may affect the readiness of service members under their command.**

**95. In your view, how can the Navy and Marine Corps bridge the gap between a sailor or Marine's desire for confidentiality and the chain of command's legitimate need to know about matters that may affect the readiness of the service member and the unit?**

The Department is dedicated to ensuring the health and well-being of Sailors, Marines, civilians, and family members. If confirmed, I will advise Department leadership on navigating the legal and regulatory impacts that may arise from the Department's efforts to bridge the gap between a Sailor or Marine's desire for confidentiality and the chain of command's need to know about matters that may affect the readiness of the Service member and the unit.

### **Military Sexual Assault and Harassment Prevention and Response**

**96. Have you reviewed the report of the Independent Review Commission on Sexual Assault in the Military? If so, what were your impressions of the Commission's recommendations in regard to the prevention of sexual assault in the military?**

There is no place in any workplace especially in the Department of the Navy for sexual assault and harassment. I have reviewed the Independent Review Commission and its recommendations. I am also aware that Secretary of Defense Austin has accepted the IRC's recommendations with some adjustments made to ensure effective implementation. My initial impressions of the IRC recommendations are positive in that it sets forth a comprehensive approach across multiple lines of effort. If confirmed, I will provide my best legal advice in support of Secretary Austin's efforts to effectuate the recommendations across the Department of the Navy.

**97. If confirmed, specifically what would you do to increase the Navy and Marine Corps' focus on the *prevention* of sexual assaults?**

It is my understanding that the Department always strives to find better ways to prevent and, where prevention fails, respond to sexual assault, and that the Department of the Navy has made comprehensive efforts to support survivors, promote reporting, and encourage participation in the military justice process. If confirmed, I will work with the Department's leadership to ensure that sexual assault prevention and response is a high priority, including by effectuating the prevention and cultural reforms proposed by the Independent Review Commission and accepted by Secretary Austin. Sexual harassment and assault do not have a place in the Services. I will provide the legal support needed to ensure that the Department's SAPR programs are implemented.

**98. What is your assessment of the Navy and Marine Corps' implementation of protections against retaliation—most notably social ostracism—against sailors and Marines who report sexual assault?**

Retaliation and reprisal do not belong in the Services. I understand that the Department of the Navy is focused on ensuring sexual assault reporting does not result in reprisal, and is training service members on recognizing and preventing retaliation and social ostracism. The Naval Inspector General and Deputy Naval Inspector General for Marine Corps Matters have responsibility for assisting the Secretary in implementing section 1034 of title 10, United States Code. If confirmed, as the principal legal advisor to the Secretary, I will work with Department leadership to ensure that reprisal investigations are thorough and conducted in accordance with statute, regulation, and policy. I will provide comprehensive legal advice to ensure that appropriate administrative or disciplinary action is taken against Service members or civilian personnel who engage in illegal reprisal or retaliation.

**99. Do the Navy and Marine Corps' methods for recording the outcomes of informal complaints of harassment or discrimination provide Navy and Corps' leaders, supervisors, and managers with a means of identifying repeat perpetrators in the military force?**

It is my understanding that the Department of the Navy does not tolerate harassment of any kind or unlawful discrimination. Such acts are contrary to the Department's core values of honor, courage, and commitment. The Department maintains an equal opportunity program in accordance with all statutory and regulatory requirements but seeks to exceed the minimum requirements. An important part of this program is to regularly inform senior leaders to ensure consistent and effective program execution. While I have some familiarity with the equal opportunity processes, I have not had the opportunity to review the specific processes used in the Department. If confirmed, I will review the Department's program to ensure that it utilizes all legal means to track repeat offenders, prevent sexual harassment, and protect victims from such acts.

**Sexual Harassment in the Civilian Workforce**

**In responding to the 2018 DOD Civilian Employee Workplace and Gender Relations survey, 17.7 percent of female and 5.8 percent of male DOD employees indicated**

that they had experienced sexual harassment and/or gender discrimination by “someone at work” in the 12 months prior to completing the survey.

**100. What is your assessment of the current climate regarding sexual harassment and gender discrimination in the office of the General Counsel of the Navy?**

I have not had any opportunity to review any data or discuss this matter with any current or former members of the Office of General Counsel. If confirmed, I can assure you that I will promote a climate that treats all the members of the Office of General Counsel with dignity and respect and does not tolerate any form of harassment or illegal discrimination.

**101. If confirmed, what actions would you take were you to receive or become aware of a complaint of sexual harassment or discrimination from a civilian employee of the Office of the Navy General Counsel?**

If confirmed, I would take any complaint of sexual harassment or discrimination seriously, and I would ensure that the Office of the General Counsel followed all existing policies and procedures to include the conduct of an inquiry by appropriate authority and, if necessary, taking action to resolve the matter in an efficient and expeditious manner.

**102. In your view, do Navy and Marine Corps’ methods for tracking the submission and monitoring the resolution of complaints of harassment or discrimination provide appropriate leaders, supervisors, and managers with an accurate picture of the systemic prevalence of these adverse behaviors in the civilian workforces of the Navy and in the Corps?**

The Department of the Navy (DON) policy is clear that harassment of any kind or unlawful discrimination will not be tolerated. Such acts are contrary to the DON’s core values of honor, courage, and commitment. The Department maintains an equal employment opportunity program in accordance with all statutory and regulatory requirements, but seeks to exceed the minimum requirements. I have not had the opportunity to review all the methods used in the DON to track and monitor complaints and resolutions to express an opinion on their adequacy in providing an accurate assessment upon which leaders can rely. If confirmed, I would review these systems with the appropriate officials to identify areas in which they may be improved.

**103. What actions has the Department of the Navy taken to establish a modern, comprehensive harassment prevention and response policy and program for the Navy and Marine Corps’ civilian workforces?**

The Department of the Navy (DON) is committed to maintaining a positive and healthy culture where sexual harassment, sexual assault and other harmful behaviors are not tolerated, offenders are held accountable, and all personnel receive the support they need. I understand that the Secretary of the Navy has issued a Department-wide anti-harassment statement informing all employees, supervisors, managers, and leaders that harassment is illegal and will not be tolerated, and that the DON has established education and training programs and a complaint resolution process to prevent and respond to harassment and discrimination claims. These

programs address the identification, prevention, and resolution of sexual harassment and prevention of reprisals, and are directed at personnel of all levels and occupations.

**104. In your view, is civilian workforce harassment prevention and response training across the Navy and Marine Corps adequate and useful to employees?**

I have some familiarity with the processes applicable to the civilian workforce; however, I have not had the opportunity to review the specific processes used in the Department of the Navy. If confirmed, I will ensure that the Department uses all appropriate options to proactively prevent and respond to complaints of harassment and discrimination.

**105. How does the Department of the Navy confirm that civilian employees across the Navy and the Corps have completed such training at the appropriate periodicity, and what metric does the Navy apply to measure the efficacy of such training?**

While I am somewhat familiar with the Government-wide equal employment opportunity processes applicable to the civilian workforce, I have not had the opportunity to review the specific processes used within the Department of the Navy or the metrics tracked by the Department. If confirmed, I am committed to working with Department leaders to ensure that appropriate and effective training is provided to all employees so that they understand the responsibility to prevent, report, and respond to complaints of harassment and discrimination.

**106. Do the Navy and Marine Corps' methods for responding to complaints of harassment or discrimination in their civilian workforces provide appropriate care and services for victims?**

I have some familiarity with the Government-wide equal employment opportunity processes available to the civilian workforce as well as the existence of civilian employee assistance programs. I also understand that the Department of the Navy has a comprehensive and multi-faceted response system for victims, which continues to evolve. If confirmed, I will emphasize the high priority for support of all victims, including those within our civilian workforce.

**US Naval Academy**

**107. What is your assessment of the efficacy of the policies and processes in place at the U.S. Naval Academy to prevent and respond to sexual harassment and sexual assault, and to ensure that those who report harassment or assault are not subject to retaliation (including reprisal and social ostracism)?**

I strongly believe that sexual assault and harassment at the Naval Academy, my alma mater, are unacceptable. I believe the Department is committed to ensuring that all Service members, including Midshipmen at the Academy, are treated with respect and dignity. If confirmed, I will work with Department leadership to continue improving the Department's efforts to prevent and respond to these issues, including at the Academy.

**108. What is your assessment of the efficacy of the policies and processes in place at the U.S. Naval Academy to ensure the free exercise of religion and the accommodation of religious practices?**

I have not had an opportunity to review the most current policies and processes at the Naval Academy, and do not have an opinion on the efficacy of them. If confirmed, I will provide the Department and Academy leadership the legal support they need on this issue. As a Naval Academy graduate, I know that the Academy's policies reflect the value the Department places on the rights of Service members to observe their religion or no religion. I also know that the Naval Academy has a command religious program (CRP) that supports the diverse religious beliefs of the Brigade of Midshipman and that can adapt to new requirements.

**109. What is your assessment of the efficacy of suicide prevention programs at the U.S. Naval Academy?**

I have not had an opportunity to review the most current policies and processes at the Naval Academy. In my view, suicide can be prevented and any loss to suicide is avoidable. As a Naval Academy graduate, I am committed to working with Department leadership to ensure the health and safety of our Midshipmen. If confirmed, I will work with Department and Academy leadership to examine the Academy's current policies and to assess whether improvements can be made.

**110. Given the provisions of title 10, U.S. Code, under what conditions would you deem it appropriate, if confirmed, to permit a military officer to play professional sports prior to completing two consecutive years of commissioned service following graduation from the U.S. Naval Academy?**

Pursuant to 10 U.S.C. § 8459, a midshipman may not seek release from their commissioned service obligation to play professional sports until they complete at least two consecutive years of commissioned service. If confirmed, I will work with Department leadership to ascertain whether and how a policy can be formulated that is consistent with Title 10.

**Officer Personnel Management System Reforms**

**The John S. McCain NDAA for FY 2019 contained several provisions to modernize the officer personnel management system. These reforms were designed to align officer career management with the priorities outlined in the 2018 NDS.**

**111. How are the Navy and Marine Corps implementing these authorities today and to what effect?**

I understand the authorities granted by the FY 2019 NDAA have given the Department of the Navy more flexibility to better manage its officer corps. I also understand that the Services have used the authority to merit-reorder promotion selection lists; that Navy has allowed officers to



“opt out” of promotion screening to accommodate opportunities for career broadening assignments, instituted “up and stay” policies, and expanded its spot promotions in accordance with the FY 2019 NDAA authorities. If confirmed, I intend to work with the Secretariat staff, Chief of Naval Operations, and the Commandant of the Marine Corps to understand the impact of these changes and to offer any necessary legal support to pursue additional authorities that would offer more flexibility for the Department of the Navy to manage its officers.

**112. If confirmed, what would be your role in advising and assisting the Navy and Marine Corps in further leveraging these new authorities?**

If confirmed, I will advise the Department’s leadership regarding any issues related to these authorities and ensure that application of the authorities is consistent with Title 10, United States Code, and relevant Department of Defense and Department of Navy regulations.

**113. Are there other authorities that the Navy and Marine Corps need in order to modernize the management of its officer personnel?**

I am unaware of whether the Navy and Marine Corps need other authorities to modernize officer management. If confirmed, I will work with the Secretariat staff, Chief of Naval Operations, and the Commandant of the Marine Corps to develop a full understanding of authorities available to the Department in managing its officer personnel. If needed, I would ensure the Office of the General Counsel supported the pursuit of any additional authorities that would provide more flexibility for the Department of the Navy to manage its officers.

**114. In your view, how can the scrolling and appointments processes be improved so as to improve permeability between the Active and Reserve Components of the Navy and Marine Corps?**

I have not had the opportunity to review the scrolling and appointments process and, therefore, I do not have enough information to provide an informed recommendation as to whether the process requires modification to improve permeability between the Active and Reserve Components of the Navy and Marine Corps. I do believe that the policies should allow greater permeability for officers to move between the active (regular) and reserve components without excessive delays for administrative processing and, if confirmed, I will work with Department leadership to evaluate the needs of the Navy and Marine Corps and to propose legal solutions to satisfy those requirements.

**Whistleblower Protection**

**Section 1034 of title 10, U.S. Code, prohibits taking or threatening to take an unfavorable personnel action against a member of the armed forces in retaliation for making a protected communication. Section 2302 of title 5, U.S. Code, provides similar protections to Federal civilian employees. By definition, protected communications include communications to certain individuals and organizations outside of the chain of command, including the Congress.**

**115. If confirmed, what actions would you take to ensure that sailors, Marines, and civilian employees of the Department of the Navy who report fraud, waste, and abuse, or gross mismanagement to appropriate authorities within or outside the chain of command, are protected from reprisal and retaliation, including from the very highest levels of the Navy, DOD, and the Executive Branch?**

In my view, whistleblower protections are critical to maintaining the confidence of the workforce when Sailors, Marines or civilian employees make protected disclosures of wrongdoing within the Government. If confirmed, I will advise Department leadership and those individuals who are responsible for ensuring reprisal investigations are conducted thoroughly, on issues including taking appropriate administrative or disciplinary action against personnel who have engaged in illegal reprisal or retaliation.

**116. If confirmed, what role would you play in ensuring consistency in the application and interpretation of whistleblower protections across the Department of the Navy and in the Department of Defense?**

If confirmed as General Counsel, it would be my duty to maintain uniformity in applying legal principles with regard to matters for which I am responsible, including ensuring consistency in applying and interpreting whistleblower protections across the Department of the Navy. As General Counsel, I would work with the Office of Special Counsel, the DoD General Counsel, the DoD Inspector General, the DoD General Counsel, the Judge Advocate General of the Navy, the Staff Judge Advocate to the Commandant of the Marine Corps, the Naval Inspector General, and the Deputy Naval Inspector General for Marine Corps matters to ensure consistency in the application and interpretation of whistleblower protection laws and regulations.

**Support to the Navy and Marine Corps Inspectors General**

**117. In your view, what role, if any, should the Navy General Counsel have in reviewing and rendering opinions on the legal sufficiency of the investigations and recommendations of the Navy and Marine Corps Inspectors General?**

The General Counsel plays an important role in reviewing and rendering opinions on the legal sufficiency of investigations and recommendations of the Naval Inspector General. If confirmed, I will advise and assist the Secretary in the oversight of the Department of the Navy law enforcement and investigative activities, including those conducted by the Naval Inspector General and the Deputy Naval Inspector General for Marine Corps Matters. If confirmed, I intend to provide my independent and objective legal advice concerning the duties and responsibilities of the Naval Inspector General and the Deputy Naval Inspector General for Marine Corps Matters, but will respect the independence of these officers and not infringe upon their statutory authority. To accomplish this goal, I intend, if confirmed, to establish a collaborative and productive working relationship with the Naval Inspector General and the Deputy Naval Inspector General for Marine Corps Matters.

## **Department of Defense Acquisition Reforms**

**In successive NDAs beginning in FY 2013, Congress enacted sweeping reforms of the defense acquisition system and organizational structure. These reforms included expansion in acquisition-related functions of the Service Chiefs and measures designed to reduce the cost and development timelines of major systems. Further, in February 2019, the Congressionally-established Advisory Panel on Streamlining and Codifying Acquisition Regulations (the “809 Panel”) submitted its final report, detailing 98 recommendations to enhance DOD’s ability to acquire and deliver warfighting capability in a cost-effective and timely manner, better to address the concerns raised by the current international security environment.**

**118. What is your understanding of the role of the Navy General Counsel in ensuring that Navy and Marine Corps acquisition programs are executed in accordance with the law and DOD and Navy acquisition policy?**

The General Counsel plays a leading role in ensuring that the Department’s acquisition programs and procurement activities comply both with statute and regulation, and with Department of Defense and Department of the Navy acquisition policy. Complying with statute and regulation and preserving acquisition integrity are vital to the Department’s ability to meet the needs of the warfighter, including the need to maintain a robust and secure industrial base. The General Counsel must actively ensure compliance and integrity at all levels of the acquisition enterprise.

**119. What are your overall views of the effects of defense acquisition reform to date?**

It is my understanding that the effects of acquisition reform have been positive overall. Specifically, enacting additional acquisition pathways, such as the middle-tier acquisition and software acquisition pathways, and increasing the Department’s acquisition decision-making authority have been helpful and are enabling a more agile and adaptive acquisition system. The Department must continue to focus on effective implementation and execution of the reforms that have been enacted.

**120. If confirmed, how would you ensure that Navy and Marine Corps acquisition officials understand and leverage the flexibilities provided by Congress in the context of acquisition reform?**

The General Counsel must proactively identify legal authorities and flexibilities that will help acquisition officials successfully and efficiently execute program requirements and objectives. The General Counsel must inform acquisition officials of new authorities and flexibilities, and assist the officials to identify specific authorities and flexibilities that will benefit specific programs or projects. The General Counsel also must support development of effective guidance, policy, and training to implement new authorities and flexibilities.

**121. If confirmed, how would you assist the Chief of Naval Operations and the Commandant of the Marine Corps in the performance of certain acquisition-related functions, while ensuring their actions remain compatible with the duties and**

**responsibilities of the Assistant Secretary of the Navy for Research, Development, and Acquisition (as established in title 10, U.S. Code, sections 8014 and 8016)?**

If confirmed, I will work with the Chief of Naval Operations and the Commandant of the Marine Corps to ensure they fully understand their role in the acquisition process outlined in 10 U.S.C. § 2547, as well as the enhanced acquisition roles for the Service Chiefs enacted in previous National Defense Authorization Acts. I will work with the Chief of Naval Operations and the Commandant of the Marine Corps to ensure they understand the relationship between these roles and functions and the statutory duties and responsibilities of the Assistant Secretary of the Navy for Research, Development and Acquisition, including such duties with respect to sustainment of DON systems.

**122. Are there any additional acquisition reforms you would endorse, in light of the recommendations of the 809 Panel?**

I do not have any specific recommendations for further acquisition reform at this time.

**Identifying and Addressing Conflicts of Interest**

**In the fallout of the Glenn Defense Marine Asia (GDMA) scandal, a significant number of Navy admirals and numerous other Service personnel were investigated for bribery, corruption, and violations of criminal conflict of interest laws and executive branch ethics regulations. Some were prosecuted and convicted in federal or military courts, and many more were subject to public censure and forced into early retirement from the Service.**

**123. In your view, has the Navy taken sufficient actions in response to the GDMA scandal to ensure that its officers and other personnel are trained—throughout their careers—on objective ethics and the Navy’s core values?**

My understanding is that, following the GDMA scandal, the Department of the Navy conducted a thorough review of its ethics and professionalism programs to ensure it maximizes all available resources to place an emphasis on ethics training of all personnel throughout their careers. In addition to training requirements identified in 5 C.F.R. § 2638 Subpart C, the Department also provides in-depth ethics and professionalism training at the Senior Leaders Legal Course, which is required for all prospective commanding officers, executive officers, and command master chiefs, as well as the Senior Enlisted Academy and the Navy Supply Corps School. In 2018, the Naval War College established the College of Leadership and Ethics and the Chief of Naval Operation’s released an updated “Navy Leader Development Framework.” Flag officers, general officers, and senior executives receive ethics training at various executive symposiums that are held annually. Moreover, all flag and general officers and their staffs are required to receive in-person ethics training annually from a certified ethics counselor. If confirmed, I intend to work closely and collaboratively with the Judge Advocate General and the Staff Judge Advocate to the Commandant of the Marine Corps to provide the highest quality of legal services, including ethics and standards of conduct training and advice across the Department.

Furthermore, each employee or service member who is new to the Department receives initial ethics training that meets the Office of Government Ethics regulatory requirements. Additionally, any employee or service member who is required to file an Office of Government Ethics financial disclosure report, OGE form 278e or OGE form 450, must complete interactive annual ethics training. Annually, the Office of the Assistant General Counsel for Ethics develops interactive on-line training that is available to all Department employees and meets the Office of Government Ethics annual training regulatory requirements. Also many commands require annual in-person ethics training for all employees regardless of whether the employee is a financial disclosure filer. In addition to initial and annual ethics training, the Navy offers specialized ethics training for specific groups, when requested.

Additionally, the Secretary of the Navy issues an annual ethics message emphasizing values-based decision-making rather than merely complying with minimum rules, and reinforcing the expectation that Department of the Navy personnel act with integrity and correctly apply the ethics and standards of conduct rules. Emphasis is placed on ethical leadership from the top down and requires senior leaders take ownership of the ethics program within their respective command or organization.

**A number of officers investigated were able to rely on the “safe harbor” of having consulted a Navy ethics official or a Navy lawyer prior to accepting a gift from a prohibited source.**

**124. What training do Navy and Marine Corps lawyers receive to ensure they are competent to provide effective, accurate, and timely guidance to personnel in need of such counsel? In your view, what is the appropriate role of the Navy General Counsel in providing such training to Navy and Marine Corps lawyers?**

As the Designated Agency Ethics Official and senior legal official in the Department of the Navy, the Navy General Counsel has an important role in providing training and legal practice resources to Department of the Navy legal professionals. My understanding is that the Office of the General Counsel provides in-person and web-based training and legal practice products to the legal community. Additionally, in order to be certified as an ethics counselor, a Department of the Navy uniformed or civilian attorney must complete a comprehensive course on ethics and standards of conduct training for ethics counselors and satisfy the requirement to take annual refresher training in order to retain the ethics counselor designation. Furthermore, Department of the Navy uniformed and civilian attorneys regularly participate in a host of multi-day ethics courses offered by the Navy, other Services, and the Department of Defense Office of General Counsel. If confirmed, I will work closely and collaboratively with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps to address training needs for all uniformed and civilian attorneys and legal support personnel within the Department and continue to strengthen the Navy’s ethical climate and culture.

**125. What resources has the Department of the Navy made available to provide General/Flag Officers and other Military Service personnel the training, advice, and**

**assistance they need to adhere to ethical and legal standards of conduct? Please explain your answer.**

It is my understanding that the Department has several avenues by which flag officers and service members receive ethics and professionalism training throughout their careers. Specifically, new Navy flag officers are required to attend the New Flag Training and, as follow-on training, flag officers and members of the Senior Executive Service attend an annual Flag Officers and Senior Executives Symposium during which they receive additional training on ethics and standards of conduct. Furthermore, the Vice Chief of Naval Operations issues an annual ethics and standards of conduct memo for flag officers. In 2012, the VCNO established a requirement that all flag officers and their staff must receive in-person ethics and standards of conduct training and this requirement remains in effect. The Marine Corps offers similar training for its general officers and senior executives. Specifically, the Marine Corps hosts a General Officer Offsite and an Executive Offsite at least once per fiscal year, where attendees receive annual ethics training presented by the Counsel for the Commandant of the Marine Corps and the Staff Judge Advocate to the Commandant of the Marine Corps. The Navy and Marine Corps provide in-depth ethics and professionalism training at various stages of career development, including to prospective commanding officers, executive officers, and senior enlisted leaders. In 2018 the Naval War College established the College of Leadership and Ethics as a venue for officers and senior civilians to continually learn and develop as leaders of character. Finally, as part of career transition, all flag and general officers attend a pre-separation ethics brief that includes a review of post-Government employment conflict of interest restrictions on their future employment.

**126. What role should the Navy General Counsel play in ensuring that Department of the Navy personnel identify personal and organizational conflicts of interest and take all appropriate steps to avoid or mitigate them?**

The General Counsel, as the Designated Agency Ethics Official, is responsible for the Department of the Navy's ethics program to prevent conflicts of interest in order to maintain the public trust. Therefore, ensuring that the Department's business practices are designed to prevent personal and organizational conflicts of interest should be one of the Navy's highest priorities. If confirmed, I will work closely with senior Departmental officials to promote an organizational climate that is vigilant about preventing conflicts of interest and reacts appropriately when specific issues arise. I believe that Department attorneys play a significant role in this area by providing training and advice on acquisition and the Standards of Conduct for Employees of the Executive Branch (5 CFR 2635). Furthermore, my expectation is that the Department attorneys will engage in all phases of the acquisition and contracting process to assist the decision makers and to help identify and resolve conflicts of interest.

**127. What is your understanding of the actions required of a Department of the Navy attorney or judge advocate who becomes aware of improper activities by a Department of the Navy official who has sought, but failed to follow that attorney's legal advice in the domain of ethics?**

Department of the Navy attorneys are obligated to comply with all applicable laws, rules, and

regulations. If an attorney believes that a Department official will act contrary to his/her advice and the action will violate or has violated a law or regulation, the attorney must take appropriate action, including immediately notifying his/her supervisory attorney. If the allegation is against a senior official, per DoD Directive 5505.06, "Investigations of Allegations Against Senior Officials of the Department of Defense," the alleged violation must be reported to the DoD Inspector General within five working days.

### **Litigation Involving the Department of the Navy**

#### **128. 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?**

The Department of Justice (DOJ) has the statutory responsibility to represent the United States, its agencies, including the Department of Defense, and its officers in litigation before federal courts. The Department of the Navy (DON) attorneys assist DOJ attorneys in federal court cases where the DON is a party or has an interest. If confirmed, I will continue the DON's well established collaborative relationship with the DOJ and advocate the Department's interests.

#### **129. In your view, should the Department of the Navy have the independence and resources to conduct its own litigation?**

The Navy Office of the General Counsel has a well-established, productive relationship with the Department of Justice. I am unaware of a need for more independence or resources to conduct litigation. If confirmed, I will evaluate this issue to determine if more independence or resources are needed.

#### **130. In your view, should the *Feres* Doctrine be repealed in whole—or in particular types of cases—to permit sailors and Marines to sue the U.S. government and collect damages for personal injuries sustained in the performance of their duties?**

The *Feres* Doctrine should not be repealed. It is my understanding that DoD has a benefits framework that has been designed to maximize the benefits to be provided injured Service members or surviving family members without regard to the circumstances surrounding the death or injury. The existing scheme of benefits and no-fault compensation established by Congress for Service members and their families ensures they are fairly compensated for injuries suffered incident to service in a consistent manner.

#### **131. How many administrative claims has the Department of the Navy processed under the authority of title 10, U.S. Code, section 2733a, as added by the National Defense Authorization Act for Fiscal Year 2020?**

It is my understanding that the DON Tort Claims Unit (TCU) began receiving claims in January 2020. All tort claims involving Navy and Marine Corps personnel are adjudicated by the TCU. I am not aware of the number of claims processed by the DON; however, if confirmed, I will

familiarize myself with the number and amounts claimed.

**132. What is the total value of the claims paid to date pursuant to section 2733a?**

I am not aware of the number of claims processed by the DON; however, if confirmed, I will familiarize myself with the number and amounts claimed.

**133. If confirmed, what role would you establish for yourself in mitigating the risks leading to claims under section 2733a?**

If confirmed, I will become familiar with the types and value of claims brought against the Department of the Navy (DON). As General Counsel, I will work with Department leadership to ensure that the DON takes all appropriate action to avoid personal injury or deaths caused by medical malpractice of a Department of Defense health care provider and to mitigate any impact to our Service members.

**The DOD and Navy Civilian Workforce**

**DOD is the federal government's largest employer of civilian personnel. The vast majority of DOD and Navy civilian personnel policies comport with requirements set forth in title 5 of the U.S. Code, and corresponding regulations under the purview of the Office of Personnel Management. Over the years, Congress has provided numerous extraordinary hiring and management authorities applicable to specific segments of the DOD and Navy civilian workforces.**

**134. In your judgment, what is the biggest challenge facing the Navy in effectively and efficiently managing its civilian workforce?**

I believe that the Department's biggest challenge is competing for talent, especially in cutting-edge technical fields. If confirmed, I will work with Department leadership to examine ways and provide advice to enable the Department to eliminate obstacles and promote opportunities to attract individuals with the necessary critical skills to allow the Department to compete and meet its missions.

**135. In your view, do Navy and Marine Corps supervisors have adequate authorities and access to the expert human resources and legal support required to address and remediate employee misconduct and poor duty performance?**

I believe that the Department generally has the authorities needed to hold the civilian workforce accountable for misconduct and poor performance. If confirmed, I will work with Department leadership to ensure that all civilian and military supervisors have adequate training to supervise and lead the workforce. If confirmed, I will ensure that Office of General Counsel attorneys proactively assist with providing this training and advice to clients if or when these issues arise.



**136. Are Navy and Marine Corps attorneys adequately trained to advise and assist civilian and military supervisors in the appropriate exercise of such authorities? If not, what additional authorities or training do Navy and Marine Corps attorneys require?**

If confirmed, I will review the resources, organization, and operation of the Office of General Counsel attorneys to ensure that they are adequately trained to proactively advise and assist clients if or when these issues arise.

### **Congressional Oversight**

**In order to exercise legislative and oversight responsibilities, it is important that this committee, its subcommittees, and other appropriate committees of Congress receive timely testimony, briefings, reports, records—including documents and electronic communications, and other information from the executive branch.**

**137. Do you agree, if confirmed, and on request, to appear and testify before this committee, its subcommittees, and other appropriate committees of Congress?**

Yes.

**138. Do you agree, if confirmed, to provide this committee, its subcommittees, other appropriate committees of Congress, and their respective staffs such witnesses and briefers, briefings, reports, records—including documents and electronic communications, and other information, as may be requested of you, and to do so in a timely manner?**

Yes.

**139. Do you agree, if confirmed, to consult with this committee, its subcommittees, other appropriate committees of Congress, and their respective staffs, regarding your basis for any delay or denial in providing testimony, briefings, reports, records—including documents and electronic communications, and other information requested of you?**

Yes.

**140. Do you agree, if confirmed, to keep this committee, its subcommittees, other appropriate committees of Congress, and their respective staffs apprised of new information that materially impacts the accuracy of testimony, briefings, reports, records—including documents and electronic communications, and other information you or your organization previously provided?**

Yes.

**141. Do you agree, if confirmed, and on request, to provide this committee and its subcommittees with records and other information within their oversight jurisdiction, even absent a formal Committee request?**

Yes.

**142. Do you agree, if confirmed, to respond timely to letters to, and/or inquiries and other requests of you or your organization from individual Senators who are members of this committee?**

Yes.

**143. Do you agree, if confirmed, to ensure that you and other members of your organization protect from retaliation any military member, federal employee, or contractor employee who testifies before, or communicates with this committee, its subcommittees, and any other appropriate committee of Congress?**

Yes.