

**Advance Policy Questions for Charles Stimson**  
**Nominee for General Counsel of the Department of the Navy**

**Department of Defense Reforms**

**The National Defense Authorization Act for Fiscal Year 2017 included the most sweeping reforms since the Goldwater-Nichols Department of Defense Reorganization Act of 1986.**

**Do you support these reforms?**

Yes.

**What other areas for defense reform do you believe might be appropriate for this Committee to address?**

If confirmed, I will work with the Secretary of the Navy to assess and make recommendations for possible areas of defense reform.

**Duties**

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

Pursuant to section 5019 of title 10, United States Code, the General Counsel is responsible for performing those functions the Secretary of the Navy deems appropriate. The General Counsel of the Navy is the chief legal officer of the Department of the Navy and is the head of the Office of the General Counsel. Legal opinions issued by the General Counsel are the controlling legal opinions within the Department. The General Counsel 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 all matters of common interest. The General Counsel provides legal advice, counsel, and guidance to the Secretary, the Under Secretary, the Assistant Secretaries, and their staffs. The General Counsel is also responsible for providing legal services throughout the Department in a variety of fields: acquisition law and related international transactions; business and commercial law; real and personal property law; civilian personnel and labor law; fiscal law; environmental law; intellectual property law; intelligence and national security law; law pertaining to cyberspace; ethics and standards of conduct; and, Freedom of Information Act (FOIA) and Privacy Act law. He is responsible for litigation in the areas enumerated above, and oversees all litigation affecting the Department. The General Counsel is the Designated Agency Ethics Official for the Department, oversees the Suspending and Debarring Official, and assists the Under Secretary of the Navy in overseeing the Naval Criminal Investigative Service.

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

The client is the Department of the Navy.

## **Qualifications**

### **What background and experience do you possess that qualify you for this position?**

It is essential that the General Counsel of the Navy possess sound legal and analytical skills, integrity, and the ability to work collaboratively. In addition, the General Counsel of the Navy should have strong managerial skills. I believe that my professional and personal work experiences in law, business, my community, and the military have prepared me to execute the duties of the General Counsel of the Department of the Navy, if confirmed.

My military background includes three years of active duty and over twenty years in the Navy Reserve as a member of the Navy Judge Advocate General's Corps. During my time on active duty and in the Reserves, I have served in a number of assignments that have given me a broad understanding of the functions of the Department of Defense and the Department of the Navy.

In my civilian capacity, I have served as an Assistant U.S. Attorney in the District of Columbia, the Deputy Assistant Secretary of Defense for Detainee Affairs under President George W. Bush, and Vice President for Private Equity Mergers & Acquisitions at Marsh McLennan. I am also the Vice Chairman of the C.D. Stimson Company in Seattle, Washington, a private commercial real estate concern. I am currently a Senior Legal Fellow and Manager of the National Security Law Program at The Heritage Foundation, where I lead the foundation's research efforts related to national security law issues including the Law of Armed Conflict, the Foreign Intelligence Surveillance Act, military law, War Powers, military commissions, and U.S. detention and interrogation policy. I also specialize in criminal law and homeland security.

I believe my combination of military and civilian experiences, both inside and outside of government, qualifies me for the position and will enable me to lead successfully the women and men of the Office of the General Counsel and serve as the chief legal officer of the Department of the Navy.

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

I am confident that I possess the requisite legal experience and leadership qualities that are required of the position. If confirmed, I will strive to lead effectively the Office of the General Counsel organization, work closely with my military and civilian counterparts within the Department of Defense, and learn from the men and women with whom I will have the pleasure to serve on a daily basis.

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

If confirmed, I expect to provide sound legal advice, counsel, and guidance to the Secretary, the Under Secretary, the Assistant Secretaries, and their staffs. I will also lead the Office of the General Counsel to the best of my abilities. Additionally, I anticipate that the Secretary will expect me to continue the great relationship previous General Counsels have built between the General Counsel, the Judge Advocate General of the Navy, and the Staff Judge Advocate to the Commandant.

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

If confirmed, I will work closely with the General Counsel of the Department of Defense on issues of mutual concern and collaboratively on issues affecting the Department of the Navy and the Department of Defense. I also look forward to building strong working relationships with the General Counsels of the Army and the Air Force.

### **Major Challenges and Priorities**

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

In these times of increasing conflict and tension around the world, the Department of the Navy faces significant, myriad challenges. These challenges must be addressed with timely and accurate legal advice which requires a robust cadre of military and civilian attorneys. If confirmed, my major challenge will be to ensure that sufficient resources exist to continue to hire and retain the talented and dedicated professionals who are needed to meet the diverse and changing requirements of the Department.

**If confirmed, what plans do you have for addressing these challenges?**

If confirmed, I will review the resources, organization, and operation of the Office of the General Counsel.

**What do you see as the most significant legal issues the Department of the Navy will face in the coming year?**

In these times of increasing conflict and tension around the world, we must ensure that the warfighter is highly trained and well equipped and ready to fight at a moment's notice. In order to accomplish this task, we must improve and modernize our capabilities and find solutions to streamline our processes. This will require talented and dedicated legal professionals to meet the diverse and changing requirements of the Department.

**Does the Navy's Office of the General Counsel have the resources to deal with these**

**problems?**

If confirmed, I will examine the current structure and resources to determine if they are adequate.

**If confirmed, what broad priorities would you establish in terms of issues that must be addressed by the Navy's Office of the General Counsel?**

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

### **Relations with Congress**

**What are your views on the state of the Department of the Navy's relationship with the Senate Armed Services Committee in particular, and with Congress in general?**

The Department of the Navy must have a strong relationship and partnership with the Senate Armed Services Committee and the Congress. If confirmed, I look forward to supporting the Secretary of the Navy and ensuring these relationships remain collaborative and professional.

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

If confirmed, I will work with the Secretary of the Navy to ensure that the Department works in close partnership with the Congress and is transparent, proactive, and responsive to all Congressional matters of importance.

### **Relationship 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 you are confirmed, how will you work with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps (SJA CMC)?**

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 provide the best legal advice to the Department. This will not be difficult for me, as I have served on active duty with Vice Admiral Crawford and his Deputy, Rear Admiral Hannink in the 1990s, and have remained friends with them ever since. Furthermore, I have a good relationship with General John Ewers.

**How are the legal responsibilities of the Department of the Navy allocated between the General Counsel and the Judge Advocate General of the Navy and the SJA CMC, including responsibility for the provision of ethics advice to senior officials?**

The General Counsel is the chief legal officer of the Department of the Navy, and the principal legal advisor to the Secretary of the Navy, the Assistant Secretaries, and their staffs. The Office of the General Counsel's practice areas include: acquisition law, including international transactions; business and commercial law; real and personal property law; civilian personnel and labor law; fiscal law; and, intellectual property law. The Judge Advocate General of the Navy also reports directly to the Secretary of the Navy and provides legal and policy advice on military justice, administrative law, claims, investigations, operational and international law, legal assistance, and civil law. 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 of the Navy on matters as assigned by the Secretary of the Navy, and to the Commandant of the Marine Corps and other officers and officials of the Marine Corps. The responsibilities of the Staff Judge Advocate to the Commandant of the Marine Corps largely parallel those of the Judge Advocate General of the Navy. The responsibilities of the General Counsel, the Judge Advocate General, and Staff Judge Advocate to the Commandant overlap in several areas including: environmental law; intelligence and national security law; the law pertaining to cyberspace; Freedom of Information Act and Privacy Act law; legislation and litigation; and, ethics and standards of conduct. If confirmed, I would expect to continue the strong working relationship between the General Counsel, the Judge Advocate General of the Navy, and the Staff Judge Advocate to the Commandant of the Marine Corps, which would include close coordination and collaboration on ethics advice to senior officials.

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

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

I believe that the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps must be in a position to provide their best independent legal advice to the Secretary of the Navy, the Chief of Naval Operations, and the Commandant of the Marine Corps, as appropriate. Senior Department of the Navy leaders need candid, honest, and objective analysis from various individuals, including their legal counsel, to make the best decisions.

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

I believe that Navy and Marine Corps judge advocates must be able to provide independent legal advice to military commanders that is free of any improper external influence.

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

No. I am unaware of any changes that need to be made to the current relationships between the uniformed judge advocates and the General Counsel of the Navy.

**Are legal opinions of the Navy's Office of the General Counsel binding on all Navy and Marine Corps attorneys?**

Yes, pursuant to Department of the Navy regulations, the legal opinions issued by the General Counsel of the Navy are the controlling legal opinions within the Department of the Navy.

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

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

**If confirmed, are there specific categories of Navy General Counsel legal opinions that you expect to reconsider and possibly revise? If so, what categories?**

At this time, I do not know of any specific categories of legal opinions that require reconsideration or revision.

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

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

The Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps have primary jurisdiction over the military justice practice in the Department of the Navy. If confirmed, I look forward to consulting with

the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps, as needed, on military justice matters of interest to the Secretary, recognizing that they have express statutory duties in this area.

**In your view, is it essential to preserve the role of the military commander, including the joint force commander in deployed situations, for disposition of military justice matters?**

Yes. As I have written in my scholarship, the role of the Commander in the administration of the military justice system is essential to the regulation of good order and discipline at the local command or unit level.

### **Attorney Recruiting and Retention Issues**

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

It is my understanding that the Department of the Navy Office of the General Counsel has a strong recruiting program and has been able to hire outstanding civilian attorneys. If confirmed, I will work with the senior staff of the Office of the General Counsel to ensure that we continue our recruiting and retention programs and seek ways to enhance them.

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

At this point in time, I do not have information or knowledge as to whether there are a sufficient number of attorneys to support the Department in its critical mission. If confirmed, I will work with the senior staff of the Office of the General Counsel, the Judge Advocate General of the Navy, and the Staff Judge Advocate to the Commandant of the Marine Corps to evaluate staffing levels and ensure the Department has a sufficient number of highly skilled lawyers to meet its requirements.

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

To the best of my knowledge, the recruiting and retention programs have been successful and I am not currently aware of any new incentives that need to be implemented at this time.

### **Detainee Issues**

**What role do you expect to play, if confirmed, in addressing legal issues regarding detainees?**

If confirmed, I would work closely with the General Counsel of the Department of Defense as well as the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant on any issues that arise within the Department of the Navy.

**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, and required by section 1045 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92)?**

Yes, I support the standards for detainee treatment in the Army Field Manual on Interrogations, FM 2-22.3, issued in September 2006, and in Department of Defense Directive 2310.01E, the Department of Defense Detainee Program, dated August 19, 2014, and required by section 1045 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92). I played a key role as the Deputy Assistant Secretary of Defense for Detainee Affairs in the development and roll out of DOD Directive 2310.01E and the Army Field Manual on Interrogations. I consider the Army Field Manual the gold standard for interrogation techniques. Individuals in the custody or control of the U.S. Government may not be subjected to any interrogation technique or approach, or any treatment related to interrogation, that is not authorized by, and listed in, the Army Field Manual.

**What role, if any, do you believe the Navy General Counsel should play in the interpretation of this provision of law?**

If confirmed, I would work closely with the General Counsel of the Department of Defense as well as the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant on any interpretation of this provision of law.

**What role do you believe the Judge Advocate General of the Navy and the SJA CMC should play in the interpretation of this provision of law?**

If confirmed, I would work closely with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant on any interpretation of this provision of law.

**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?**

Yes. As I have written in my scholarship, detention for the duration of hostilities to prevent a combatant's return to the battlefield is a fundamental precept of the law of armed conflict. United States courts, including the U.S. Supreme Court, have confirmed this principle and upheld the authority of the Department to detain combatants under the AUMF. The 2001 AUMF is the statutory basis that provides the legal authority to detain members, and associated forces of Al Qaeda and the Taliban as enemy combatants.



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

Yes

**In your view, should the U.S. Government continue the current Periodic Review Board Process and the process of transferring detainees to other countries, subject to the restrictions currently in law?**

The Department of Defense has long had processes for reviewing detention of unlawful enemy combatants, and making recommendations whether to transfer, release, or continue to detain individuals from Guantanamo. If confirmed and if asked, I would assist in the assessment of the Periodic Review Board process and ensure that the Department is acting consistent with the law.

**In your view, do the federal courts have the procedures and capabilities needed to fairly and appropriately review the detention of enemy combatants, pursuant to habeas corpus petitions, where necessary under current law?**

Yes. Our federal courts, pursuant to habeas corpus petitions, have developed adequate procedures and capabilities needed to fairly and appropriately review the detention of enemy combatants. The federal district court in Washington, and the D.C. Circuit, have played an invaluable role in this process. For instance, a number of Guantanamo detainees have either been granted their habeas corpus petition or have had their habeas corpus petition denied.

**Section 2441 of title 18, United States Code, defines grave breaches of common Article 3 of the Geneva Conventions, including torture and cruel and inhuman treatment.**

**In your view, does section 2441 define these terms in a manner that provides appropriate protection from abusive treatment to U.S. detainees in foreign custody and to foreign detainees in U.S. custody?**

I think section 2441 of Title 18, United States Code, appropriately defines grave breaches of Common Article 3 of the Geneva Conventions in such a manner that provides appropriate protection from abusive treatment to U.S. detainees in foreign custody and to foreign detainees in U.S. custody. In addition, all relevant Department of Defense directives, regulations, policies, practices, and procedures must fully comply with Common Article 3 of the Geneva Conventions.

### **Authorization for the Use of Military Force**

**In your view, is there a sufficient national and international legal basis to authorize armed conflict against ISIS? Please explain.**

Yes. The statutory basis for the use of force against ISIS is currently sufficient to confront the changing nature of the threat posed by this terrorist organization. Both the 2001 Authorization for the Use of Military Force (AUMF) relating to Al 'Qaeda (AQ) and associated forces as well as the 2002 Iraq AUMF are currently relied upon as providing the domestic authority for the use of force against ISIS worldwide. I do, however, think that the changing structure and nature of ISIS as an organization merits exploring the possibility of a new authorization for the use of force, specifically, one that is not dependent on establishing either a connection to AQ or Iraq. With the spread of ISIS ideology and attacks across the globe, greater flexibility is needed to ensure that ISIS threats to American lives and US national security are disrupted and defeated wherever they are found. The self-defense of the United States and its citizens, as well as the collective self-defense of our international partners, are sufficient international legal bases for the use of force against ISIS.

### **Military Commissions Act**

**In your view, do military commissions constituted pursuant to the Military Commissions Act of 2009 provide an effective forum for trying violations of the law of armed conflict?**

Yes. As I have written in my scholarship, and testified before the House of Representatives, military commissions pursuant to the Military Commissions Act of 2006 (as amended in 2009) provide an effective forum for trying alien unprivileged enemy belligerents for offenses against the law of war and other offenses traditionally triable by military commission.

**Are you concerned about the length of the pretrial procedures for the current military commission cases?**

Yes, although delays are to be expected in trials of this complexity.

**In your view, what are the advantages of prosecuting alleged terrorists in military commissions?**

The current military commissions provide a just method for trying a select few detainees for terrorism-related offenses. Military commission procedures comply with U.S. and international law. Nonetheless, legal and procedural challenges remain, particularly in light of the number of unsettled legal and procedural issues.

**Do you see the need for any changes to the Military Commissions Act of 2009?**

If confirmed, it is possible that I may consider suggesting amendments to the Military Commissions Act of 2006 (as amended in 2009), but at the present time, I cannot think of

any. Any such suggestions would be submitted to the General Counsel of the Department of Defense for review.

### **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 the U.S. armed forces outside the United States.**

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

It is important to ensure that 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 and how it has been used in recent years, but I have not studied its application in particular circumstances in depth. If confirmed, I would evaluate this issue.

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

I am not sufficiently familiar with how MEJA has been applied in particular circumstances to 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 National Defense Authorization Act for Fiscal Year 2007 extended criminal jurisdiction of the military courts under the Uniform Code of Military Justice (UCMJ) to persons serving with or accompanying an armed force in the field during time of declared war or a contingency operation, such as our current operations in Afghanistan.**

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

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. It is important to ensure that all of those accompanying the U.S. military in the field can be held appropriately accountable for any criminal misconduct. If confirmed, I would study whether any further modifications should be made concerning alleged criminal misconduct by contractor employee in Afghanistan and other areas of combat operations.

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

I 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 have not read it. If confirmed, I would examine the operation of that Memorandum of Understanding to determine whether I should recommend any adjustments.

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

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.

**Identification of Potential Extremist Views**

**In your view, do current Department of the Navy policies limit the ability to include information about extremist views in official records that may assist in the identification of potential threats?**

I am not aware of Department of the Navy policies that address this matter. If confirmed, I will examine the issue.

**In your view, do current Department of the Navy procedures hinder the ability to share this type of information with other official agencies charged with identifying and monitoring potential extremist or terrorist activities?**

I am not aware of current Department of the Navy procedures that address this matter. If confirmed, I will study these procedures and provide my recommendations to the Secretary and Under Secretary of the Navy.

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

It is always difficult to strike the proper balance between individual privacy rights and the need to identify actual threats. I am not aware of exactly how the Department of the Navy currently balances these interests. If confirmed, I will study this matter and provide my recommendations to the Secretary and Under Secretary of the Navy.

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

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

## **Religious Guidelines**

**In your view, do Department of Defense policies concerning religious accommodation in the military appropriately accommodate the free exercise of religion and other beliefs, including individual expressions of belief, without impinging on those who have different beliefs, including no religious belief?**

Yes. Department policies strive to accommodate the free exercise of religion by all Service members. Further, it is my understanding and experience that the Department respects the rights of individuals to express their own religious beliefs, including the right to hold no religious beliefs at all.

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

Department policies allow Military Chaplains to perform religious services in accordance with the tenets of their respective religions, and that the Department policies provide guidance to chaplains concerning the respectful incorporation of religious beliefs in a pluralistic military society. As a Sailor, I think military chaplains are an integral part of the armed forces; they play a very important role in furthering the well-being and readiness of our Service members and their families, and assisting commanders in facilitating the spiritual needs of their Service members.

**Do you believe the Department of Defense should exercise reasonable accommodation standards when dealing with Senior Reserve Officers' Training Corps units at religiously affiliated colleges and universities?**

The Department cannot establish a religious qualification test for the assignment or evaluation of its Service members, but should strive to respect the faith-based traditions and practices of such universities to the extent we may do so under the law and applicable policy.

**Section 533 of the National Defense Authorization Act for Fiscal Year 2013, as amended by section 532 of the National Defense Authorization Act for Fiscal Year 2014, protects individual expressions of religious belief, unless such expressions of belief could have an adverse impact on unit cohesion and good order and discipline.**

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

It is my understanding that the provision of law to which this question refers provides that “[u]nless it could have an adverse impact on military readiness, unit cohesion, and good order and discipline, the Armed Forces shall accommodate individual expressions of belief . . .” I believe this is an appropriate standard to apply when considering scenarios such as the ones posed in this question. However, as I may have to evaluate such situations, if I am confirmed, it is not appropriate to provide a definitive answer to the scenarios presented in this case. I can state unequivocally that I support the rights of individual Service members to express such beliefs in a manner consistent with readiness and good order and discipline.

The Religious Freedom Restoration Act provides very broad protections for religious liberty, and provides that the Government, which includes the military, may not substantially burden a person’s exercise of religion unless it furthers a compelling government interest, and that any such burden must be the least restrictive means of furthering that interest.

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**Do you believe that uniformity of appearance in the military constitutes a compelling government interest?**

I understand that Department policies provide that there is a compelling government interest in unit cohesion, and that an essential part of unit cohesion is establishing and maintaining uniform military grooming and appearance standards. As a Naval officer, it is my experience that uniformity of appearance is an important component to unit cohesion and readiness.

**If so, do you believe that denying certain faith groups the ability to deviate from uniform and grooming standards, e.g., in maintaining an unshorn beard, in observation of their sincerely-held religious belief, is the least restrictive means of furthering that interest?**

As I may have to evaluate such situations, if I am confirmed, it is not appropriate to provide a definitive answer to the scenario presented in this case. I can state unequivocally that I support the rights of individual Service members to exercise their religion in a manner consistent with the Religious Freedom Restoration Act.

**How does the practice of allowing waivers for tattoos, including for religious-themed tattoos, and medical shaving profiles for service members both home and deployed, affect your analysis?**

As I may have to evaluate such situations, if I am confirmed, it is not appropriate to provide a definitive answer to the scenario presented in this case. I can state unequivocally that I support the rights of individual Service members to exercise their religion in a manner consistent with the Religious Freedom Restoration Act.

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

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

The officer promotion process is a matter of military personnel law. As such, it falls primarily under the cognizance of service Judge Advocates. Section 618 of title 10 directs the Secretary of the Navy to review officer promotion board reports to ensure promotion selection boards act in accordance with law and regulation. Section 5148 of title 10 specifically charges the Judge Advocate General of the Navy with receiving, revising, and having recorded the proceedings of these promotion boards. If confirmed, I promise to work closely with the Judge Advocate General of the Navy, as well as the Staff Judge Advocate to the Commandant of the Marine Corps, and work to resolve important policy issues and any matters arising that relate to specific individual officer promotion cases.

**Do you see a need for change in this role?**

No.

### **General Officer Nominations**

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

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

The officer promotion system, including the review of general and flag officer nominations, is a matter of military personnel law. Accordingly, it falls primarily under the cognizance of the Judge Advocate General of the Navy for Navy and Marine Corps officers. If confirmed, I will establish a close working relationship with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps and advise, when requested, on individual general and flag officer nomination cases involving adverse or alleged adverse information. The Department of the Navy will ensure that we properly evaluate and provide adverse and alleged adverse

information to the Senate Armed Services Committee or the Office of the Secretary of Defense, fully in accordance with Department of Defense Instruction 1320.04.

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

Statutory selection board processes are the bedrock of the officer promotion process, which is a matter of military personnel law. Accordingly, these processes fall primarily under the cognizance of the Judge Advocate General of the Navy, as delineated in section 5148 of title 10. This section specifically charges the Judge Advocate General of the Navy with receiving, revising, and having recorded the proceedings of promotion selection boards. If confirmed, I will establish a close working relationship with the Judge Advocate General of the Navy, as well as the Staff Judge Advocate to the Commandant of the Marine Corps, and advise when requested.

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

The officer promotion system is a matter of military personnel law. Accordingly, it falls primarily under the cognizance of the Judge Advocate General of the Navy for Navy and Marine Corps officers. If confirmed, I will establish a close working relationship with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps and advise, when requested, on officer nominations involving potentially adverse information. The Department of the Navy will ensure that we properly evaluate and provide potentially adverse information to the Senate Armed Services Committee.

**Military Personnel Policy and Cases**

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

The General Counsel and civilian attorneys assigned to the Navy's Office of the General Counsel play important roles in military personnel policy and individual cases. If confirmed, I will work with the Assistant Secretary of the Navy (Manpower and Reserve Affairs) to ensure that military personnel policies are applied and individual cases adjudicated consistent with law and regulation and in a fair and consistent manner.

**In your view, do Navy and Marine Corps commanding officers have the requisite authorities to reduce the number of non-deployable Sailors and Marines assigned to units in order to improve unit readiness?**



Yes.

### **Selective Service Act**

**Some have suggested that the success of the All-Volunteer Force has reduced the need for our Nation to have a continuing authority and capability to conduct a draft. Further, a future national emergency may require that the military have the ability to identify citizens with unique and specialized skills to fill critical combat support requirements, both within the military and in the civilian sector. Currently, the Selective Service System does not identify individuals with such skills.**

**Do you believe the Selective Service Act should be repealed?**

No.

**If the Selective Service Act is not repealed, do you believe Congress should amend the Selective Service Act to require the registration of women?**

Yes. This is an extremely important question to consider since all combat positions are now open to women. To date, the All-Volunteer Force has served our nation well. That said, questions such as these should be based on the needs of the force and solid data. Therefore, I look forward to the data and recommendations of the National Commission on Military, National, and Public Service.

**Do you believe the Selective Service system, with its focus on supplying large numbers of replacement combat soldiers, meets the needs of today's military and the type of personnel that would likely need to be drafted in a future conflict, including skilled personnel in the medical, linguistic, cyber, and other specialist fields?**

The Selective Service System was designed to provide a starting point for identifying the eligible population in our country for prospective compulsory military service. It is difficult to know before the fact, what a specific crisis may require in terms of unique skills. As a veteran, I think it is vitally important to continue to recruit, attract, and incentivize volunteers to join our military, and retain those same skilled personnel who are experts in cyber, medical, linguistic, and other fields.

**Do you believe the United States should have a national public service requirement?**

I think public service is a noble and worthwhile endeavor. There are many ways in which citizens can benefit the country, and public service is certainly one of them. That said, I do not think the Congress should mandate public service for every citizen, but rather encourage everyone to give back to society in some manner.

**Via the Selective Service Alternative Service Program for would-be draftees who profess to be conscientious objectors to any form of military service, the Selective Service system currently provides for alternate service doing non-military work that benefits the nation in the civilian sector, including in the areas of conservation, caring for the very young or old, education, and health care.**

**Do you believe this provides a model for re-thinking Selective Service in this country to include addressing national security needs that reside outside of military service per se, and how we might best leverage the skills and abilities of the civilian population to address all national security needs (not just military) and other national goals?**

The Selective Service Alternative Service Program affects “those persons whose conscientious objection encompasses both combatant and noncombatant military training and service.” It allows those few who falls into that category to fulfill their service obligation in a civilian capacity. Whether this program should serve as a model for re-thinking Selective Service will hopefully be studied, in depth, by the National Commission on Military, National, and Public Service. I look forward to studying their findings and recommendations.

**You are identified as a contributor to the Heritage Foundation’s “Blueprint for a New Administration: Priorities for the President.” This document states: “The President should make a clear policy statement that women will not be required to register for Selective Service and that current policy under the Military Selective Service Act, limiting registration to males who are 18–25 years of age, should be maintained. The President should direct military leaders to revise the policy of eliminating women’s combat exemption, which removes a well-established limit on universal Selective Service registration and conscription.”**

**Did you participate in developing this position?**

No.

**Does this statement reflect your views?**

I believe that military personnel policy should be developed with the goal of increasing combat readiness.

### **Sexual Assault Prevention and Response**

**What is your understanding of the role of the Navy General Counsel in addressing the problem of sexual assault in the Navy and Marine Corps?**

Preventing sexual assault is a top priority for the entire Department of Defense; this includes the Department of the Navy. Sexual assault is a heinous crime, one that has

profound and lasting effects on victims, and undermines the morale, good order, discipline, and readiness of the Navy and Marine Corps. If confirmed, I will remain firmly committed, as I have been throughout my Navy career, to supporting military and civilian leaders at all levels in their ongoing efforts to foster a culture that eradicates the threat of sexual assault through heightened awareness, facilitation of reporting options and assistance for victims, and by aggressively investigating and prosecuting those who would engage in criminal acts. I will work to ensure the Department possesses the legal expertise necessary to support sexual assault and prevention initiatives, to back the investigative work of the Naval Criminal Investigative Service, and to aid our legal colleagues within the judge advocate corps who prosecute and hold offenders accountable for their actions.

**What is your assessment of the Navy and Marine Corps' sexual assault prevention and response program?**

As I have experienced as a Navy officer, and as I have written in my scholarship, the prevention of sexual assault has been a key issue for the Department of the Navy for some time. It is my understanding that both services within the Department have implemented measures designed to heighten awareness and to eradicate this threat to our armed forces. If confirmed, I am absolutely committed to continuing our efforts in terms of both prevention and response.

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

Victims of sexual assault deserve the support they need. In that vein, the option to make a restricted or unrestricted report is vital to the Department of the Navy's goal of supporting victims. While the criminal investigation and administration of military justice remain paramount in our response to sexual assault, it is imperative that victims receive the help and support they need, regardless of whether they participate in the investigation and military justice process. The restricted reporting option allows a victim to receive access to separate support from medical providers, clinical counselors, victim's legal counsel and chaplains even when they do not choose to participate in the investigation or administration of military justice. The system is designed to empower victims and give them a choice of how their case should proceed. In addition, they can receive anonymous crisis counseling and information from the Department of Defense safe helpline.

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

As I have written in my scholarship, commanders, with the advice of their staff judge advocates, are best positioned to make decisions regarding case disposition. Ultimately, commanders are responsible for maintaining good order and discipline within their command and promoting healthy command climates. Commanders are actively engaging in sexual assault prevention programs throughout their commands and are working to

ensure victims have adequate support. Convening Authorities receive advice from their staff judge advocates, as well as prosecutors assigned to litigate the cases they refer to court-martial. Convening Authorities understand their roles within the military justice system as well as the requirement that they remain unbiased when making disposition decisions.

**What is your understanding of the adequacy of Navy and Marine Corps resources and programs to provide victims of sexual assault the medical, psychological, and legal help they need?**

The Department of the Navy has endeavored to improve the delivery of assistance to all victims of sexual assault, wherever they are located. Sexual Assault forensic exams are widely available at Navy hospitals and medical providers have been specifically trained in victim support. The Department of the Navy offers mental health services and clinical counselors from Fleet and Family Support Centers to victims. Deployed Resiliency Counselors are assigned to larger ships to provide support to the deployed fleet. Victims are provided with victim advocates as well as Victims' Legal Counsel to support them throughout the court-martial process. The Department is working with both services to ensure responsive and effective processes, and also to assess the effectiveness of the victim assistance programs being offered.

**What is your view of the steps the Navy and Marine Corps have taken to prevent additional sexual assaults both at home station and deployed locations?**

The Navy and Marine Corps must do everything possible to cultivate a culturally aware and educated work environment within the Department that is intolerant of sexual assault. Every Sailor, Marine, and Department civilian receives sexual assault prevention and response training. If confirmed, I am committed to enforcing a climate that is intolerant of sexual assault. The Navy and Marine Corps have made steady advances in the area of incident reporting and that trend needs to continue in order to enable prevention efforts. We must continue to resource and emphasize the prevention programs in the areas of sexual assault and alcohol abuse, which has a close correlation with the incidence of sexual assault. As a Naval officer and JAG Captain, I have seen the progress the Department has made over the last 25 years. If confirmed, I commit to work on this issue and to make the system even better.

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

The Navy and Marine Corps have dedicated Special Victims' Investigation and Prosecution professionals working on this difficult issue. The initiatives that have been put in place over the past several years in terms of training and resources have greatly improved the quality of and confidence in the system. The Navy JAG Corps established the Military Justice Litigation Career Track (MJLCT) in 2007 to improve the overall quality of Navy court-martial litigation by cultivating judge advocates with demonstrated

military justice knowledge and advocacy skills. I was part of the team that helped draft the Military Justice Litigation Career Track instruction. Trial counsel (prosecutors) and investigators collaborate throughout the duration of the case to maximize the pursuit of justice. The addition of Navy Defense Litigation Support Specialists (DLSS) and Marine Corps Regional Trial Counsel has greatly improved the investigation of cases for the defense. As a military trial judge in the Navy-Marine Corps Trial Judiciary for over four years, I saw first-hand the qualitative improvement in performance by trial and defense counsel alike. I also know as a former instructor at the Naval Justice School, that both the Navy and Marine Corps have advanced training initiatives in place to ensure the highest quality trial counsel and defense counsel through the Trial and Defense Counsel Assistance Programs and the Naval Justice School. Initiatives such as these are vital, but must be constantly reviewed, funded, and improved upon.

**What is your view on the value of the Navy and Marine Corps' Victims' Legal Counsel Programs? What, if any, impact has this program had on the reporting and prosecution of allegations of sexual assault in the Navy and Marine Corps?**

Overall, the Victims' Legal Counsel Program has been a great success, and this is based on the feedback of victim clients themselves. Commanders have also hailed the benefits of the program. The expansion of the rights of victims and the addition of Victims' Legal Counsel has, however, added a new layer of complexity and volume to both trial and appellate practice, which in some cases has translated into delays at both the investigative and litigation phases of a case. I have not had the opportunity to review the specific impact, if any, these programs have had on reporting and prosecution of allegations of sexual assault. 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 evaluate the effect of these programs.

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

As I have written in my scholarship, Commanders are responsible, by statute, regulation, and tradition, for maintaining the safety, security, good order, and discipline of their assigned units. The chain of command is responsible for setting the tone for the entire organization. When it comes to culture change, the chain of command must do two things: lead the conversation, and lead by example.

**In your view, what would be the impact of requiring a judge advocate outside the chain of command, rather than commanders, to determine whether allegations of sexual assault should be prosecuted by the military?**

As I have written in my scholarship, the military justice system is unique, and for good reason. It is designed to allow commanders to enforce good order and discipline, and ultimately, designed so that if called upon to do so, we can fight and win wars. The naval services have always emphasized the related tenets of authority, responsibility, and accountability. Commanders in the Navy and the Marine Corps, advised by their staff

judge advocates, are best situated to determine whether allegations of sexual assault---or any other crime for that matter--should be prosecuted. Commanders have significant experience making myriad difficult, and often life or death decisions all the time, and are skilled in the demands of leading the men and women in their chain of command. Staff judge advocates with specialized legal training inform Commander's decisions and ensure the military justice system both supports good order and discipline and remains just. Taking criminal referral authority away from commanders, who only need probable cause to refer a case to a court-martial, and giving it to a Judge Advocate would weaken the ability of commanders to enforce good order and discipline, and also, as I have written, result in fewer cases being referred to court-martial.

**Annual reports on sexual assault in the military and annual reports on sexual harassment and violence at the military service academies consistently document the direct correlation of incidents of sexual harassment and incidents of sexual assault.**

**What is your view of the Navy and Marine Corps' programs to prevent and respond to sexual harassment?**

Sexual assault not only affects individuals, it erodes the readiness of our forces. I believe that the Department of the Navy's sexual assault prevention and response programs aim to ensure that no form of sexual assault is ever acceptable. Combatting sexual assault and supporting sexual assault victims are primary responsibilities at every level of civilian and military leadership. The Secretariat, the Chief of Naval Operations, and the Commandant continue to work closely to promote a culture where sexual harassment and sexual assault are never tolerated, victims receive compassionate and coordinated support, and offenders are held appropriately accountable.

**What additional steps would you take, if confirmed, to address the problem of sexual assaults in the Navy and Marine Corps?**

If confirmed, I will work closely with the Department of the Navy's leadership to ensure that sexual assault prevention and response remains a key priority. Sexual harassment and assault have no place in our armed forces and I am committed to providing the legal support necessary to ensure the execution of the Department's SAPRO Programs.

### **Abusive Online Conduct**

**Recently, this Committee considered testimony on reports that certain members of Marines United, an unofficial Marine Corps Facebook group, were found to be posting degrading comments and sharing nude photos of female service members. Members of the group included a number of active-duty service members, former military members, and military retirees.**

**What are the current Navy and Marine Corps policies for use of social media by Sailors and Marines?**

It is my understanding that the Department of the Navy, U.S. Navy and U.S. Marine Corps policies all recognize the powerful communication capability social media platforms provide and require that Sailors and Marines engage responsibly in unofficial internet postings. Further, it is my understanding that the Services have promulgated or are updating directives prohibiting hazing, unlawful discrimination, and harassment, whether in person or in cyberspace. I also understand that the Acting Secretary of the Navy, Chief of Naval Operations and the Commandant have taken additional steps to prohibit the nonconsensual distribution of an intimate image and articulate consequences for such activity.

**In your view, is this policy adequate to address abuses such as what occurred in the Marines United incident?**

It is my understanding that the Acting Secretary of the Navy, the Chief of Naval Operations and the Commandant have dedicated resources (personnel and funding) to continue to evaluate the existing policies (social media and other behavior (hazing, bullying, unlawful discrimination, and sexual harassment)), training and retention practices and policies to ensure that all service members are selected, promoted and retained based upon the merit of their service. If confirmed, I will support the Secretary, the Chief of Naval Operations and the Commandant to assess and identify any necessary changes or additional policies required to ensure online misconduct and inappropriate behavior online are addressed.

**If confirmed, what action would you take to ensure that members of the Navy and Marine Corps are not subjected to abusive online conduct?**

If confirmed, I would support the Secretary, Chief of Naval Operations and the Commandant in their efforts to review policies, directives and training to ensure that Sailors and Marines are not subjected to abusive online behavior. Further, to the extent gaps are identified, I will assist in addressing those issues, to include, if appropriate, developing legislative proposals to address such gaps for presentation to this committee.

**In your view, do the Navy and Marine Corps have sufficient legal authority to hold offenders accountable for such misconduct?**

Yes. However, if confirmed, I will study the issue intently to ensure as technology advances or additional bad behaviors occur, the Department's policy keeps pace.

**What legislative authorities, if any, do you believe are necessary to address this problem?**

At present, it is my understanding that the Acting Secretary, the Chief of Naval Operations and the Commandant have directed assessments of all legal and administrative tools, as well as training, to considering what, if any, additional authorities may be needed. If confirmed, I will work with Navy and Marine Corps leaders to ensure

that the Services have the necessary tools, to include, as appropriate, recommendations for assistance from this committee to eradicate this behavior from the Department of the Navy.

### **Whistleblower Protection**

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

**If confirmed, what actions will you take to ensure that senior military leaders understand the need to protect service members who report misconduct to appropriate authorities within or outside the chain of command?**

It is my understanding that the Department of the Navy takes whistleblower allegations seriously and abides by applicable law, regulations, and rules regarding whistleblower protections. The Naval Inspector General and Deputy Naval Inspector General for Marine Corps Matters have overall responsibility for assisting the Secretary of the Navy in ensuring full implementation of section 1034 of title 10, United States Code. As the principal legal advisor to the Secretary of the Navy, I, if confirmed, will advise the Secretary and those under his/her authority who are responsible for ensuring reprisal investigations are conducted thoroughly, and that appropriate administrative or disciplinary action are taken against personnel who have engaged in illegal reprisal or retaliation, in accordance with law, regulation, and policy.

**What role does or should the Navy General Counsel play in ensuring consistency of application and interpretation of whistleblower protections across the Department of the Navy?**

If confirmed as General Counsel, I will be responsible for maintaining uniformity in the application of legal principles with regard to matters for which I am assigned responsibility, including the consistency of application and interpretation of whistleblower protections across the Department of the Navy. In doing so, I will collaborate with 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.

### **Support to the Navy and Marine Corps Inspector Generals**

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



If confirmed, I will advise and assist the Secretary and the Under Secretary of the Navy in the oversight of all Department of the Navy law enforcement and related investigative activities, including those conducted by the Navy and Marine Corps Inspectors General. While I will provide my independent and objective legal advice concerning the duties and responsibilities of the Inspectors General, at the same time, I will respect the independence of the Inspectors General and not infringe upon their authority. A critical factor is to establish a productive working relationship with the Naval Inspector General and the Deputy Naval Inspector General for Marine Corps matters. In addition, I will maintain strong working relationships with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps.

### **Civilian Attorneys**

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

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

The Department of the Navy Office of the General Counsel is largely composed of civilian attorneys and is responsible for the provision of legal services to the Department of the Navy in distinct practice areas including: acquisition law; real and personal property law; civilian personnel and labor law; fiscal law; environmental law; and, intellectual property law. Responsibility for several other areas of practice is shared with Navy and Marine Corps judge advocates. This is a different organizational structure than the other military services. While I am not familiar with specific details of the Department of the Navy Office of the General Counsel's career development program, I understand that the Department of the Navy Office of the General Counsel is centrally managed. Attorney career development is a priority of the organization. If confirmed, I will continue to look for ways that the Office of the General Counsel can further the career development of its civilians attorneys.

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

It is my understanding that the Department of the Navy Office of the General Counsel has a well-established career development program and I am not aware of any necessary revisions at this time.

### **Acquisition Issues**

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

The General Counsel of the Navy plays an essential role in ensuring that the Department of the Navy's acquisition programs and other procurement activities comply with law and with Department of Defense acquisition policy. Compliance with the law and preservation of acquisition integrity are critical to the ability of the Department of the Navy's acquisition enterprise to meet the needs of the warfighter. The General Counsel of the Navy must be actively involved in ensuring such compliance and integrity at all levels of the acquisition enterprise.

**What role should the Navy General Counsel play in ensuring that Navy and Marine Corps acquisition officials understand flexibilities provided by Congress in the acquisition and financial statutes and can take advantage of those flexibilities to act in the best interests of the Navy and Marine Corps?**

The General Counsel of the Navy should be proactive in identifying legal authorities and flexibilities that will aid acquisition officials in successfully and efficiently executing program requirements and objectives. In this regard, the General Counsel should inform acquisition officials of new authorities and flexibilities and should assist acquisition officials in identifying specific authorities and flexibilities that will be beneficial to a program or project and provide critical support to the warfighter.

**What role should the Navy General Counsel play in ensuring that ethics provisions on conflicts of interest are followed both by Department of the Navy personnel and its contractors?**

The General Counsel of the Navy is the Designated Agency Ethics Official within the Department of the Navy. The Department of the Navy's Suspending and Debarring Official (SDO) is also within the Office of the General Counsel. As the DAEO, it is the General Counsel's responsibility to ensure that all Department of the Navy personnel properly understand and follow all ethics laws and regulations, especially those dealing with conflicts of interest. The SDO ensures that the Department does business only with responsible contractors. In addition, the General Counsel assists acquisition officials in ensuring that contractors comply with applicable statutory and regulatory provisions governing the prevention of personal conflicts of interest for contractor employees performing acquisition functions.

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

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

The General Counsel of the Navy must have an active role in ensuring that all Department of the Navy contingency contracting personnel are well trained and supervised, especially with respect to their legal and ethical responsibilities.

### **Detecting Conflicts of Interest**

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

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

The Department of the Navy must ensure that an effective and efficient process exists for reviewing potential personal conflicts of interest, and that acquisition officials actively and efficiently identify and address potential organizational conflicts of interest in accordance with acquisition regulations. If confirmed, I will review the Department's current processes. If necessary, I will modify the processes for reviewing potential personal conflicts of interest and I will assist the Department's acquisition officials in improving the Department's processes for identifying and addressing organizational conflicts of interest.

**What is your understanding of the steps the Department of the Navy takes to identify and address potential conflicts of interest during the hiring process?**

I am not currently familiar with the Department of the Navy's processes for identifying and addressing potential conflicts of interest in the hiring process. If confirmed, I will review the Department's current practices and, if necessary, modify them to most effectively identify and address such potential conflicts.

### **Legal Ethics**

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

Every attorney of the Department of Defense is under a professional obligation to comply faithfully with all applicable laws and regulations. This includes the obligation common

to all Executive Branch employees under the Standards of Ethical Conduct to disclose waste, fraud, abuse, and corruption to appropriate authorities. Therefore, a Department of the Navy attorney who learns of improper activities by a Department of the Navy official, whether after seeking the attorney's legal advice or not, should immediately notify his or her legal supervisor (or the senior lawyer in the next higher level of his or her organization) for review and appropriate action by that higher level attorney.

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

I am not currently aware of any modifications that are needed to the current policy. If confirmed, I will encourage and support efforts by Department of the Navy attorneys to provide pro bono legal and volunteer services within their communities that is consistent with applicable federal statutes and regulations governing conflicts-of-interest and outside activities.

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

To the best of my knowledge, the present laws, regulations and guidelines concerning professional responsibility for Department of the Navy attorneys are appropriate. If confirmed, I will review the adequacy of the professional responsibility rules for attorneys in the Department and, if warranted, make appropriate modifications or issue supplemental guidance.

**When you were serving as the Deputy Assistant Secretary of Defense for Detainee Affairs in 2007, you made public statements in a radio interview regarding pro bono work and habeas corpus representation of detainees at Guantanamo. It was reported that you said: "I think the news story that you're really going to start seeing in the next couple of weeks is this: As a result of a FOIA request through a major news organization, somebody asked, 'Who are the lawyers around this country representing detainees down there?' and you know what, it's shocking." You then reportedly named some of these firms and stated: "I think, quite honestly, when corporate CEOs see that those firms are representing the very terrorists who hit their bottom line back in 2001, those CEOs are going to make those law firms choose between representing terrorists or representing reputable firms, and I think that is going to have major play in the next few weeks. And we want to watch that play out." When asked who was paying for the legal representation, you reportedly replied: "It's not clear, is it? Some will maintain that they are doing it out of the goodness of their heart that they're doing it pro bono, and I suspect they are; others are receiving moneys from who knows where, and I'd be curious to have them explain that."**

**What is your view on the value of competent legal representation of detainees at Guantanamo and other criminal defendants? Do you believe they are entitled to a**

### **vigorous defense?**

Having served as a criminal defense attorney before I gave that radio interview, and after, I firmly believe that detainees at Guantanamo Bay and other criminal defendants deserve to be represented by zealous, competent counsel. I think Guantanamo detainees and all criminal defendants are entitled to a vigorous defense, and have said so on many occasions, including in written and oral testimony before the House of Representatives (Subcommittee on Crime, Terrorism and Homeland Security, April 5, 2011). I have always believed that, and tried my very best as a criminal defense, trial, and appellate attorney to provide such a vigorous defense. In fact, on the morning the Supreme Court handed down its decision in *Hamdan v. Rumsfeld*, I called my friend and former JAG shipmate, LCDR Charlie Swift, who represented Hamdan before the Court, and congratulated him on a job well done, told him that I was proud of him, and wished him the best of luck in the case. That call took place over seven months before the aforementioned radio interview.

**Rule 1.2(b) of the ABA Model Rules of Professional Conduct state: “A lawyer’s representation of a client, including representation by appointment, does not constitute an endorsement of the client’s political, economic, social or moral views or activities.”**

### **What is your understanding of this rule in light of your above statements?**

I agree with Rule 1.2(b) and always have. Immediately after giving that interview, I realized it was a mistake, and issued a sincere written apology. I was raised by my late parents to admit a mistake, learn from it, and move on.

**If confirmed, what impact, if any, do you believe your prior statements would have on your ability to lead Navy and Marine Corps lawyers, including those who are involved in representing detainees at Guantanamo?**

None whatsoever.

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

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

The Department of Justice has statutory responsibility to represent the United States, its agencies, and its officers, including the Department of Defense, in all litigation matters before federal courts. Department of the Navy attorneys assist counsel at the Department of Justice in cases in which the Department of the Navy is a party or has an interest in those forums. If confirmed, I will strive to continue the well-established productive working relationship with the Department of Justice.

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

It is my understanding that the Department of the Navy Office of the General Counsel currently has a good working relationship with the Department of Justice and I am not aware of the need for more independence or resources to conduct litigation. But, if confirmed, I will review this issue.

### **Congressional Oversight**

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

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

Yes

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

Yes

**Do you agree to ensure that testimony, briefings, and other communications of information are provided to this Committee and its staff and other appropriate committees in a timely manner?**

Yes

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

Yes

**Do you agree to answer letters and requests for information from individual Senators who are members of this Committee?**

I agree to respond appropriately to letters and requests for information from members of this Committee.

**If confirmed, do you agree to advise the Navy and Marine Corps to provide to this Committee relevant information within the jurisdictional oversight of the Committee when requested by the Committee, even in the absence of the formality of a letter from the Chairman?**

I agree to respond appropriately to letters and requests for information from members of this Committee.