

Senate Armed Services Committee
Advance Policy Questions for Mr. Robert J. Sander
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?

As noted above, the General Counsel of the Navy performs such duties and functions as prescribed by the Secretary of the Navy. He is also the head of the Office of the General Counsel. As such, the General Counsel is responsible for providing legal services throughout the Department in a variety of fields: acquisition law and related international transactions; acquisition-related security cooperation matters; acquisition integrity; arms control and international arms regulation; business and commercial law; real and personal property law; civilian personnel and labor law; fiscal law; environmental law; occupational safety and health law; intellectual property law; intelligence and national security 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. The General Counsel is responsible for litigation in the areas enumerated above and coordinates with the Department of Justice, as appropriate. The General Counsel is the Designated Agency Ethics Official for the Department, overseeing the Department of the Navy Acquisition Integrity Program and the Suspending and Debarring Official, and assists the Under Secretary of the Navy in overseeing all Department of the Navy intelligence activities, the Naval Criminal Investigative Service, and all Department of the Navy law enforcement and related investigative activities. 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.

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

If confirmed, I expect to provide candid, accurate legal advice, counsel, and guidance to the Secretary, the Under Secretary, the Assistant Secretaries of the Navy, the civilian executive assistants, the staff assistants, and their staffs, and lead the Office of the General Counsel to the best of my abilities in compliance with the spirit and letter of the law. Additionally, I anticipate that the Secretary will expect me to continue the great working relationship previous General Counsel have established with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant. I also expect that the Secretary may prescribe additional duties as he deems appropriate, in accordance with

10 U.S.C. § 8019.

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

The client is the Department of the Navy.

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?

As Chief Legal Officer of the Department of the Navy, the General Counsel provides or oversees legal advice, counsel, and guidance to the Secretary, the Under Secretary, the Assistant Secretaries of the Navy, the civilian executive assistants, the staff assistants, and their respective staffs on all matters affecting the DON subject to all requirements in law.

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 confirmed, I will work closely with the General Counsel of the Department of Defense on issues of mutual interest or concern, and collaboratively on issues affecting the Department of the Navy and the Department of Defense. I look forward to continuing to the strong working relationship I have already established with him in my role as the Principal Deputy General Counsel of the Army.

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 confirmed, as the Designated Agency Ethics Official (DAEO), it will be my responsibility to ensure that all Department of the Navy personnel properly understand and follow all ethics laws and regulations. As a member of the Navy Secretariat, it will be my responsibility to ensure that and all Department of Navy personnel, including my colleagues and me, 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?

Yes. As Benjamin Franklin once stated, “[a]n ounce of prevention is worth a pound of cure.” The successful practice of “preventive law,” however, requires open collaboration between client and attorney, in order to maintain the trust and candor that is critical to the relationship. As stated above, if confirmed, I expect to provide candid, accurate legal advice, counsel, and guidance 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 with an eye towards issue-spotting and risk management.

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?

Alternative dispute resolution can efficiently resolve issues in controversy, effectively enabling resources and personnel to remain focused on the Navy's overall mission. The role of the General Counsel in this regard is to resolve disputes and controversies at the earliest stage feasible and by the fastest and most efficient method possible, empowering the Department to maintain mission focus. The General Counsel must ensure that the uses of alternative dispute resolution are 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?

Any conflict or dispute, regardless of subject matter, is a potential candidate for alternative dispute resolution.

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?

Pursuant to 10 U.S.C. §§ 5013, 5014, 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). The Assistant Secretary of the Navy is served by a dedicated component of the Office of the General Counsel, whose members are broadly experienced civilian attorneys, many of whom have worked in other federal agencies and the private sector, and who are capably led by a member of the Senior Executive Service. These attorneys possess the depth of experience necessary to work in this complex area of the law and should be proactive and engaged with the client. If necessary, they should seek advisory opinions from the Navy and Marine Corps.

Qualifications

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

The General Counsel of the Navy must possess sound legal and analytical skills, good judgment, integrity, and the ability to work with members of the Department of the Navy, the Department of Defense, other Government Agencies, Congress and their staffs,

Private Industry, and Academia. Additionally, the General Counsel of the Navy must be a leader, who can inspire and motivate the entire Navy Legal Community to provide the very best in legal services to our clients, including our Sailors, Marines, their families, our Civilian Work Force, and our Retirees. The knowledge, skills and experience I have gained as a dedicated public servant and uniformed member of the military have prepared me very well to meet the challenges of this position.

Since June 2019, I have served as the Senior Official Performing the Duties of the General Counsel of the Army in addition to my normal duties as Principal Deputy General Counsel of the Army. In this role as the Legal Counsel to the Secretary of the Army, I have been responsible for determining the Army's legal position on numerous legal questions, including a host of personnel initiatives which significantly improved the readiness of the force and quality of life for Soldiers and their families, acquisition and modernization reforms, environmental matters, business reforms, and ethical reforms. In these roles, I was responsible for the professional supervision and leadership of over 2,500 attorneys and support personnel across the Army.

Prior to becoming the Principal Deputy General Counsel, I was detailed to the Office of the Director of National Intelligence Office of General Counsel. Since 2010, I have worked as a federal prosecutor in the U.S. Department of Justice, National Security Division, and Counterterrorism Section. Previously, I served as the Chief of the Economic Crimes Unit and the Captain of the Narcotics Enforcement Team in the Montgomery County, Pennsylvania District Attorney's Office and as a Special Assistant United States Attorney for the Eastern District of Pennsylvania.

In my military capacity, I am a Lieutenant Colonel in the United States Army Reserve - Judge Advocate General's (JAG) Corps, where I serve as a Senior Legal Advisor for the Network Enterprise Technology Command and the U.S. Army Intelligence Center of Excellence at Fort Huachuca, AZ. I also serve as an Adjunct Professor at the National Intelligence University (NIU). Previously, I have held numerous assignments, including joint and interagency, where I have had the opportunity to serve with some of the best Soldiers, Sailors, Marines, Airmen, and Coastguardsmen the world has ever seen. Throughout my career, I have developed the skills and expertise required of this important position.

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 am confident that I possess the requisite legal experience, analytical skills, and leadership qualities that are required to be the General Counsel of the Department of the Navy. Each and every attorney, however, must continually educate themselves as new issues arise in order to serve their clients more effectively and efficiently. If confirmed, I will dedicate myself to leading the Office of the General Counsel organization, work closely with my military and civilian counterparts within the Department of Defense, and rely on the collective knowledge of the dedicated and talented men and women with whom I will have the pleasure to serve on a daily basis. I will also continue to build and

enhance working relationships with members of the Department of the Navy, the Department of Defense, other Government Agencies, Congress and their staffs, Private Industry, and Academia.

Relationships

The law, DOD and Military Department policy, and traditional practice establish important relationships between the Navy General Counsel and other officials and organizations of the DOD. Please describe your understanding of the relationship of the Navy General Counsel to each of the following:

13. The Secretary of the Navy

The General Counsel should provide candid, sound legal advice, counsel, and guidance to the Secretary, as requested by the Secretary, and should offer advice on any matter that the General Counsel determines should be brought to the Secretary's attention. If confirmed, I will work to maintain and enhance the partnership with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps to ensure that all three legal offices continue to consult, communicate, and cooperate to the greatest extent possible for the benefit of the Secretary and the Department of the Navy.

14. The Chief of Naval Operations

The General Counsel should provide candid, sound legal advice, counsel, and guidance to the Chief of Naval Operations, as requested by the Chief of Naval Operations, and may volunteer advice on any matter that the General Counsel determines should be brought to his attention. In so doing, I am committed to continuing the collaborative relationship with the Judge Advocate General of the Navy and the judge advocates practicing under his cognizance.

15. The Commandant of the Marine Corps

The General Counsel should provide candid, sound legal advice, counsel, and guidance to the Commandant of the Marine Corps, as requested by the Commandant of the Marine Corps, and may volunteer advice on any matter that the General Counsel determines should be brought to his attention. In so doing, I am committed to continuing a collaborative relationship with the Staff Judge Advocate to the Commandant of the Marine Corps and the judge advocates practicing under his cognizance.

16. The Secretary of Homeland Security

If confirmed, I would work closely with the Department of Homeland Security, primarily through the General Counsel of the Department of Defense and through the General Counsel for the Department of Homeland Security, on matters of mutual interest and concern. I'm committed to building a collaborative culture with all of our federal agency

partners and their legal teams.

17. The Commandant of the Coast Guard

The General Counsel of the Navy will advise the Secretary of the Navy whenever the Coast Guard operates as a service in the Navy under section 3 of title 14. The General Counsel of the Navy will coordinate with the Judge Advocate General and Chief Counsel of the Coast Guard, as appropriate.

18. The Legal Counsel to the Chairman of the Joint Chiefs of Staff

The General Counsel of the Navy should work closely with the Legal Counsel to the Chairman of the Joint Chiefs of Staff on issues of mutual interest or concern, and collaboratively on issues affecting the Department of the Navy and the Chairman of the Joint Chiefs of Staff.

19. The General Counsel of the Department of Defense

As noted above, the General Counsel of the Navy should work closely with the General Counsel of the Department of Defense on issues of mutual interest or concern, and collaboratively on issues affecting the Department of the Navy and the Department of Defense. I look forward to continuing the strong working relationship I have already established with him in my role as the Principal Deputy General Counsel of the Army.

20. The General Counsels of the Departments of the Army and Air Force

Similar to his relationship with the General Counsel of the Department of Defense, the General Counsel of the Navy should work closely with the General Counsel of the Departments of Army and Air Force on issues of mutual interest or concern, and collaboratively on issues affecting the Department of the Navy, the Department of the Army, and the Department of the Air Force. I look forward to continuing the strong working relationship I have already established with them in my role as The Senior Official Performing the Duties of the General Counsel of the Army and Principal Deputy General Counsel of the Army.

21. The Special Counsel for the Chief of Naval Operations

I view our Department of the Navy uniformed judge advocates, both Navy and Marines, as partners in the Navy's Legal Team. If confirmed, I look forward to working closely with the Judge Advocate General of the Navy and the Special Counsel to the Chief of Naval Operations to deliver the Chief of Naval Operations coordinated, legal solutions across the full spectrum of his responsibilities.

22. The Special Assistants to the Secretary of the Navy for Legal and Legislative Matters

I view our Department of the Navy uniformed judge advocates as partners in the Navy's legal team. If confirmed, I look forward to working closely with the Judge Advocate General of the Navy, the Staff Judge Advocate to the Commandant of the Marine Corps, and the Special Assistants to the Secretary of the Navy for Legal and Legislative Matters to deliver the Secretary coordinated, legal solutions across the full spectrum of his responsibilities.

23. The Inspector General of the Navy

The Office of the General Counsel works closely with, and advises the Inspector General of the Navy to ensure that the Inspector General of the Navy receives candid, sound legal advice for all areas of responsibility of the Inspector General of the Navy. If confirmed, I will advise and assist the Secretary regarding many matters related to the duties of the Naval Inspector General. In doing so, I will remain mindful and respectful of the independence of the Naval Inspector General and Deputy Inspector General for Marine Corps matters while establishing a candid, transparent, and productive working relationship.

Major Challenges and Priorities

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

In these times of increasing conflict and tension around the world, as discussed in the *2018 National Defense Strategy*, and as noted in the Secretary of the Navy's vision to provide a combat credible Navy and Marine Corps Team focused on rebuilding military readiness, strengthening alliances, and reforming business practices, in support of the *National Defense Strategy*, the Department of the Navy faces a number of various and significant challenges. These challenges must be addressed with candid, timely, and accurate legal advice from a robust cadre of military and civilian attorneys working in conjunction with one another. If confirmed, my major challenge will be to ensure that sufficient resources exist to continue to recruit, hire, and retain the talented and dedicated professionals needed to meet the diverse and dynamic requirements of the Department.

Additionally, if confirmed, I anticipate facing challenges relating to a host of personnel initiatives designed to improve readiness of the force and quality of life for Sailors, Marines, and their families; acquisition and modernization reforms; environmental matters; business reforms; and ethical reforms. I would also expect the Navy's continued efforts to address the prevention and response to sexual harassment and sexual assault and suicides will be significant challenges.

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

If confirmed, I will ensure that the Navy Legal Family is proactive and engaged with our clients in finding solutions to these problems. Additionally, I will personally review the resources, organization, and operation of the Office of the General Counsel in order to identify opportunities for development and resource requirements and work

collaboratively with the Secretary of the Navy, the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant in ensuring legal resources are sufficient across the Department to address these and future challenges.

26. 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 noted above, I would ensure that the Department of the Navy, Office of the General Counsel is proactive and engaged with our clients in finding solutions to these problems and that we collaborate with the Judge Advocate General of the Navy and Staff Judge Advocate to the Commandant of the Marine Corps, as appropriate.

27. 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?

As noted by the Secretary of the Navy, and as discussed in the *National Defense Strategy*, readiness, lethality, and modernization are the cornerstone requirements of both the Department of the Navy and the Department of Defense. These matters require timely, accurate, and well-reasoned legal advice. If confirmed, I will ensure that the Navy Legal Family is proactive and engaged with our clients in implementing these priorities. I will also ensure that the advice and counsel of the Navy General Counsel Team under my leadership is constantly sought on every major decision impacting the Navy, not just legal questions or issues. If confirmed, I will also ensure that sufficient resources exist to continue to recruit and retain the cadre of talented legal professionals needed to assist the Department in meeting these diverse and dynamic requirements of the Department.

28. 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 confirmed, my highest priority 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 strengthen cooperation and collaboration 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.

29. 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 key partner in implementing the NDS and Secretary Spencer's three priorities focusing on People, Capabilities, and Processes. If confirmed, I will work with the Secretary of the Navy to ensure that the Department works closely with Congress and is transparent, proactive, and responsive to Congressional matters.

Civilian Control of the Military

30. 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 confirmed, I am committed to supporting the Secretary in fully exercising his Title 10 responsibilities to the Department of the Navy. As General Counsel, I will advise the Secretary of the Navy on his statutory and regulatory duties to conduct all affairs of the Department of the Navy, both at his request and of my own volition on matters that require 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.”

31. 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?

At this time, I am not in a position to agree or disagree with this assessment, as it relates to the Department of the Navy. If confirmed, I will endeavor to build strong client relationships with the Secretary, the Under Secretary, the civilian executive assistants, the staff assistants, and their staffs, to ensure I am in a position to provide candid, accurate, and timely legal advice, as we cooperate as a team to resolve Department of the Navy, defense, and national security issues.

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

32. How are the responsibilities and authorities for providing legal services 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, the Staff Judge Advocate to the Commandant of the Marine Corps, and the Counsel to the Commandant, including the responsibility for the provision of ethics advice to senior officials?

As noted above, the General Counsel performs such duties and functions as prescribed by the Secretary of the Navy. The General Counsel provides or oversees legal advice, counsel, and guidance to the Secretary, the Under Secretary, the Assistant Secretaries of the Navy, the civilian executive assistants, the staff assistants, and their respective staffs on all matters affecting the Department of the Navy. The General Counsel is also the head of the Office of the General Counsel. As such, the General Counsel is responsible for providing legal services throughout the Department in a variety of fields: acquisition law and related international transactions; acquisition-related security cooperation matters; acquisition integrity; arms control and international arms regulation; business and commercial law; real and personal property law; civilian personnel and labor law;

fiscal law; environmental law; occupational safety and health law; intellectual property law; intelligence and national security 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. He is responsible for litigation in the areas enumerated above and oversees all litigation affecting the Department, coordinating with the Department of Justice, as appropriate. The General Counsel is the Designated Agency Ethics Official for the Department, is responsible for oversight of the Acquisition Integrity Program, and assists the Under Secretary of the Navy in overseeing all Department of the Navy intelligence activities, the Naval Criminal Investigative Service, and all Department of the Navy law enforcement and related investigative activities. 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 Judge Advocate General of the Navy 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 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 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 Staff Judge Advocate to the Commandant supervises and manages legal matters arising in the Marine Corps in the areas of military justice, operational and international law, and civil and administrative law. The responsibilities of the General Counsel, the Judge Advocate General, and the 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.

The law prohibits interference with the ability of the Judge Advocate General to give independent legal advice to the Secretary of the Navy. The Judge Advocate General also directs the members of the Judge Advocate General's Corps in the performance of their duties, and has primary responsibility for providing legal advice and services regarding the Uniform Code of Military Justice and the administration of military discipline. If confirmed, I would continue and build upon the strong working relationships with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps.

33. What is your understanding of the unique role and authority of the Judge Advocate General of the Navy vis-a-vis the General Counsel of the Navy, the Staff Judge Advocate to the Commandant of the Marine Corps, and the Counsel to the Commandant?

The General Counsel of the Navy, the Judge Advocate General of the Navy, and the Staff

Judge Advocate work closely and collaboratively to provide legal services to the Department of the Navy, to include the Chief of Naval Operations and the Commandant of the Marine Corps. Both Counsel to the Commandant (a member of the Office of the General Counsel) and the Staff Judge Advocate to the Commandant of the Marine Corps collaborate to provide quality legal services to the Commandant. It is the responsibility of the Navy and Marine Corps judge advocates to provide independent legal advice to military commanders and this advice must be free of any improper external influence.

34. 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?

The Judge Advocate General serves as Special Assistant for Legal Services to the Chief of Naval Operations to advise and assist the Chief of Naval Operations in formulating and implementing policies and initiatives pertaining to the provision of 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' personal staff.

35. If 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 in carrying out your duties?

If confirmed, I would expect to continue and build upon the General Counsel of the Navy's historically strong working relationships with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps, which would include close coordination, collaboration, consultation, and communication on matters 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 Chairman, the Secretaries of the Military Departments, and the Service Chiefs.

36. 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 as regards the provision of independent legal advice to the Secretary of the Navy, the Chief of Naval Operations, and the Commandant of the Marine Corps?

The law prohibits interference with the ability of the Judge Advocate General and the Staff Judge Advocate to the Commandant to give independent legal advice to the Secretary of the Navy. I believe these authorities of the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps should be respected and are sufficient to ensure their ability to provide independent legal advice to

the Secretary of the Navy, the Chief of Naval Operations, and the Commandant of the Marine Corps, as appropriate. If confirmed, I will continue to build upon this productive partnership for the benefit of the Department of the Navy.

37. 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?

It is absolutely essential that Navy and Marine Corps judge advocates who provide legal advice to military commanders and other Military Service officials remain free of any improper external influence. Uniformed judge advocates bring unique experience and perspective to the practice of law shaped by their service to this Nation. Their perspective should not be silenced or marginalized and, in fact, enhances the decision making process. Although attorneys across the Navy Legal Family should coordinate, these judge advocates must be empowered to provide their candid, honest, and objective advice to their principals.

38. 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 and the Staff Judge Advocate to the Commandant of the Marine Corps?

I am not aware of any changes that are required to the current relationships between the uniformed judge advocates and the General Counsel of the Department of the Navy. It is my understanding that the Navy General Counsel, the Judge Advocate General of the Navy, the Staff Judge Advocate to the Commandant of the Marine Corps, and their respective teams enjoy an excellent working relationship. If confirmed, I will seek to deepen the relationships between our Navy and Marine Corps uniformed judge advocates and the Office of the General Counsel.

39. 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?

I am not aware of any changes that are required.

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

I understand that the General Counsel often collaborates with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps on legal opinions. If confirmed, I will work to ensure that my legal opinions are informed by the expertise of both the civilian and uniformed members of the Navy legal community as appropriate.

41. 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?

I understand that the legal opinions of the Office of the General Counsel are disseminated throughout the Department of the Navy via normal Departmental distribution processes. If confirmed, I expect to continue this practice and, if necessary, identify other methods of distribution available to ensure widest dissemination of the opinions.

42. 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 merit reconsideration or revision. If confirmed, I will ensure the Navy Office of General Counsel works collaboratively with legal personnel across the Department of the Navy to update any legal opinions that warrant reconsideration or revision based on changes to controlling law, 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.

43. 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?

The Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps have the statutory responsibility to ensure the proper administration of the military justice system and have primary jurisdiction over the military justice practice in the Department of the Navy. If confirmed, I would endeavor to continue this close working relationship with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps, in which we share information and work collaboratively when necessary to resolve issues of policy and matters pertaining to specific cases recognizing that they have express statutory responsibilities and expertise in this area of the law.

44. What is your understanding of the Navy's reliance on a centralized Case Disposition Authority for the administration of military justice in a particular group of cases, or in a defined geographic area?

It is my understanding that the Navy and Marine Corps may continue to utilize Consolidated Disposition Authorities to address cases where the accused are assigned to, or alleged misconduct occurs across, various units to ensure efficiency and the consistent administration of military justice among related cases. The Navy also has ten regions

across the world where regional commanders frequently act as general court-martial convening authorities.

45. Do you view the military commander, including a ship's Commanding Officer while at sea, or the deployed joint force commander, as essential to the disposition of military justice matters with regard to sailors and Marines under their command? Please explain your answer.

Yes, Good order and discipline is essential to an effective fighting force. The commander is essential to the disposition of all military justice matters because the commander is in the best position to have a meaningful impact on good order and discipline at the local command or unit level. The commander should have direct oversight over his/her Sailors/Marines and is ideally situated to administer justice while achieving mission success. As the Navy and Marine Corps continue to assess their policies and procedures, I will fully support efforts to ensure commanders have all of the tools and resources they need to address destructive behaviors in their commands and that commanders are held accountable for the exercise of that authority.

Comprehensive Review of Department of Navy Uniformed Military Legal Communities

On August 1, 2019, the Chief of Naval Operations directed the Vice Chief of Naval Operations to lead a "[c]omprehensive review of the Navy JAG Corps leadership and performance over the last four years." On August 21, 2019, the Secretary of the Navy expanded this review and directed the Chief of Naval Operations and the Commandant of the Marine Corps "to conduct a comprehensive review of [their] respective military legal communities." In his tasking memorandum, the Secretary said, "[t]he reviews may expand to encompass any matter deemed appropriate that is directly related to the organization, leadership, oversight, and performance of the Navy and Marine Corps legal communities."

46. If confirmed, what role, if any, will you play in the review of the Navy and Marine Corps Judge Advocate communities, responsibilities, and functions?

I am generally aware of the Comprehensive Review and understand that its scope is limited to the Department of the Navy's military legal community. I am unaware of any role that the Secretary of the Navy may have assigned the General Counsel. If confirmed, I will, however, look further into the assigned role of the Navy General Counsel and implement in accordance with the law.

47. If confirmed, what would be your further role in applying the review's findings and recommendations across the Department of the Navy?

My understanding is that the final report of the Comprehensive Review is expected in November 2019. The Secretary of the Navy will review the findings and recommendations and take appropriate action, if any. If confirmed, I, and the Office of the General Counsel, will support the Secretary as appropriate.

48. In your view, will the review directed by the Secretary of the Navy address the relationship and division of responsibilities between the Navy Judge Advocate General and the Navy General Counsel? Between the Navy General Counsel, Staff Judge Advocate to the Commandant of the Marine Corps, and the Counsel to the Commandant?

Although I am aware that there is a Comprehensive Review examining the Department of the Navy's military legal community, I have not been informed as to the matters the review panel may address in its final report to the Secretary of the Navy. If confirmed, however, I will work collaboratively with Navy and Marine Corps Leadership and members of this Committee to look for better ways to address the challenges posed by today's complex security environment.

Civilian Attorney Recruiting and Retention

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

At this point in time, I do not have information as to whether the Department of the Navy has a sufficient number of attorneys to perform the on-going missions. If confirmed, I will work with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps to ensure that the Department of the Navy has a sufficient number of highly skilled lawyers, both military and civilian, to meet the Department's requirements while reducing redundancy and enhancing efficiency.

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.

50. 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?

It is my understanding that the Department of the Navy has a robust recruiting program and continues to hire outstanding civilian attorneys. If confirmed, I will work closely with the senior staff of the Office of the General Counsel to ensure that the Office of the General Counsel continues to recruit, retain, and develop a cadre of highly skilled and talented lawyers to meet the Department's needs.

51. 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?

As noted previously, I do not have specific information as to the numbers and types of attorneys assigned within the Office of the General Counsel's practice areas. If confirmed, I will work to ensure that the Department continues to recruit, retain, and develop the right number of attorneys in the necessary technical specialties required to support evolving legal needs.

52. Do you believe the Office of the Navy General Counsel needs additional recruitment incentives and talent management tools to recruit, develop, sustain, and retain a 21st century career civilian attorney workforce? If so, what sort of incentives and tools do you perceive would be helpful?

To my knowledge, the recruiting and retention programs within the Office of the General Counsel have been successful, and I am not aware of any new incentives that are required at this time.

The American Bar Association's *Standing Committee on Pro Bono and Public Service* asserts that "[w]hen society confers the privilege to practice law on an individual, he or she accepts the responsibility to promote justice and to make justice equally accessible to all people. Thus, all lawyers should aspire to render some legal services without fee or expectation of fee for the good of the public."

53. If confirmed, would you favor the creation of a program to permit civilian attorneys in the Office of the Navy General Counsel to engage in *pro bono* work? If not, why not? If so, what would be the parameters of such a program?

It is my understanding that the Office of the General Counsel has a policy regarding *pro bono* legal and volunteer services that encourages volunteer legal work consistent with applicable federal statutes and regulations governing conflicts-of-interests and outside activities. If confirmed, I would continue to support such activities consistent with the governing laws and regulations.

Detainee Issues

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

The Department of Defense Office of General Counsel has the primary responsibility for addressing this issue. If confirmed, however, I would work closely with the General Counsel of the Department of Defense as well as with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps to address

any legal issues regarding detention under the law of armed conflict that arise within the Department of the Navy.

55. 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 as set forth in these issuances and compliance with applicable legal obligations regarding detention operations and treatment of detainees.

56. 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?

The Department of Defense Office of General Counsel has the primary responsibility for addressing this issue. If confirmed, I would work closely with the General Counsel of the Department of Defense as well as with the Judge Advocate General of the Navy, and the Staff Judge Advocate to the Commandant on any interpretations of law and policy applicable to detainees.

More than seventeen years have passed since the first detainee in the global war on terrorism arrived in Guantanamo Bay Naval Station. At the height of operations, Guantanamo held almost 800 detainees. Today, only 40 remain. Estimates of the cost of maintaining an individual detainee at Guantanamo are as high as \$8 million annually.

57. What are your views on the continued use of the detention facility at Guantanamo? Should use of the facility be expanded or terminated?

Law of war principles, as recognized by the U.S. Supreme Court, provide that the continuation of hostilities justifies the continued detention of those engaged in such hostilities. Specifically, hostilities against the United States by groups and individuals covered by the 2001 Authorization for Use of Military Force (AUMF) continue; therefore, the use of the detention facility at Guantanamo to detain these groups and individuals, remains lawful. I am unaware of a current requirement to expand the use of the detention facility at Guantanamo.

58. 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? Under what circumstances is such long-term detention appropriate? Please explain your

answer.

Yes. The 2001 Authorization for the Use of Military Force (AUMF), along with the 2002 AUMF and the President's constitutional authorities, provide the U.S. forces the domestic legal authority to detain members and associated forces of al-Qaeda and the Taliban as enemy combatants. Law of war principles, as recognized by the U.S. Supreme Court, provide that the circumstance that justifies the continued law of war detention of detainees is the continuation of hostilities. I support Department of Defense policy that provides for the release of a detainee while hostilities are ongoing if a competent authority determines that the threat such an individual poses to the security of the United States can be mitigated by other lawful means.

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

Yes.

The ages of the remaining Guantanamo detainee range from 33 to 71 years old. As the population ages, detainees are subject to chronic, age-related illnesses and injuries. In addition, many of the detainees show signs of mental health conditions.

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

As a baseline, I support Department of Defense policy that explicitly incorporates the standards in Common Article 3 of the Geneva Conventions of 1949, requiring humane treatment in all circumstances, as the minimum standard for the treatment of detainees. Humane treatment includes appropriate medical care and attention required by the detainee's condition, including appropriate mental and behavioral health care, to the extent practicable.

61. Should detainees be permitted to enter the United States for the limited purpose of receiving medically necessary care not available on the island of Guantanamo?

Under the current law, enemy combatants detained at Guantanamo are prohibited from entering the United States for any purpose. I am familiar with the policy and procedures established to render medically necessary care to detainees at Guantanamo. If and until such time as the current law is amended or repealed, I will offer advice consistent with the law and current DoD policy.

The Periodic Review Board process enacted in law by section 1023 of the Fiscal Year (FY) 2012 National Defense Authorization Act (NDAA) "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", appears to be stalled.

62. What is your understanding of the cause of this standstill?

My understanding is that there are many factors at play in the complex Periodic Review Board process. Nevertheless, as evidenced by the process changes in the last few years, including the November 2017 Deputy Secretary of Defense Policy Memorandum updating the procedures, the Department is committed to a fair and transparent process.

63. In your view, should the Periodic Review Board process and the process of transferring detainees to other countries, be continued or terminated? Please explain your answer.

I think the Periodic Review Board process and the process of transferring detainees to other countries should be continued until such time as the President and the Congress determine that the use of military force against members and associated forces of al-Qaeda and the Taliban is no longer required to protect and secure the United States against these enemy combatants.

64. In your view, do federal courts have the capacity, capabilities, and procedures necessary to review and adjudicate, fairly and appropriately, petitions of habeas corpus filed to challenge the detention of an enemy combatant?

Yes. Federal courts have the capacity, capabilities, and adequate procedures necessary to review and adjudicate, fairly and appropriately, petitions of habeas corpus filed by enemy combatants.

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

65. In your view, does section 2441 define these terms in a way that provides U.S. detainees in the custody of other nations, as well as foreign detainees in U.S. custody appropriate protections from abusive treatment?

I believe that section 2441 of Title 18, U.S. Code, appropriately defines grave breaches of Common Article 3 of the Geneva Conventions in such a manner that provides appropriate protections from abusive treatment to U.S. detainees in foreign custody and to foreign detainees in U.S. custody.

Authorization for the Use of Military Force

66. What is your understanding of the interpretations and applications of the 2001 Authorization for the Use of Military Force (AUMF) made by both the Obama and Trump administrations? Do you agree with these interpretations and applications? Please explain your answer.

I understand that both Administrations have interpreted the 2001 AUMF to provide the

President with legal authority to use force against al-Qaeda, the Taliban, and associated forces, including against the Islamic State of Iraq and Syria. It is being applied today in the ongoing armed conflict against those groups.

Over the last several years, Congress has on a number of occasions debated whether or not to update the 2001 AUMF as the legal basis for military operations to counter the current terrorism threat.

67. In your view, what are the benefits and costs associated with any revision to the 2001 AUMF?

If confirmed as the Department of the Navy General Counsel, I have an obligation to apply the law. If asked, I will carefully review all considerations and potential impacts of a potential revised 2001 Authorization for the Use of Military Force and provide my best legal advice.

68. What factors should be considered in reviewing the legal basis for military operations against the current terrorism threat?

U.S. forces have an obligation to follow applicable U.S. law during all military operations. Currently, there is sufficient domestic and international legal basis for our military operations against the existing terrorist threat. Also, a nation always has the inherent right to act in self-defense and may come to the defense of another nation at its request. .

69. In your view, would the rescission of the 2002 AUMF affect any ongoing DOD operations or can it be rescinded? Please explain your answer.

Our domestic authorities to conduct counter-terrorism operations are the 2001 and 2002 Authorizations for the Use of Military Force, along with the President's constitutional authority. A repeal or substantive revision of the 2002 Authorization for the Use of Military Force would create substantial, avoidable, and unnecessary litigation risk by unsettling the existing legal framework.

Military Commissions Act

70. 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?

Yes. The military commissions do provide an effective forum for trying alien unprivileged enemy belligerents for law of war offenses and other offenses traditionally triable by military commission.

71. Does the extensive duration of pretrial procedures in current contested military commission cases give you any cause for concern that the commission system may not be effective? Please explain your answer.

A duration of years for pretrial procedures in a criminal trial is always cause for concern. However, such delays are often expected in trials of this magnitude and complexity. The voluminous evidentiary records and unique procedural hurdles create time-consuming litigation at every stage of the pre-trial and trial process. My understanding is that trials are scheduled to begin in 2020 and 2021 for most of the remaining cases.

72. 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, and provide a just forum for trying detainees for terrorism-related offenses. Nonetheless, legal and procedural challenges remain, particularly in light of the number of unsettled legal and procedural issues.

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

If confirmed, I would review and consider any proposed amendments to the Military Commissions Act of 2009. However, at the present time, I do not have any specific proposals. Any such suggestions would be submitted to the General Counsel of the Department of Defense for review.

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.

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

It has been the U.S. longstanding position, that certain portions of the United Nations Convention on the Law of the Sea reflects the customary international law applicable to all. The U.S. Government and military forces act in a manner consistent with the law of the sea.

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

The United Nations Convention on the Law of the Sea, to which many nations throughout the world are party, including China, largely reflects customary international law. Acceding to the Law of the Sea Convention would strengthen our credibility with

other parties and improve our strategic position in certain maritime disputes, as with our efforts to counter excessive maritime claims made by other countries. However, even without accession to the Law of the Sea Convention, the United States has been assertive in seeking adherence to principles reflected in the Law of the Sea Convention, such as those related to freedom of navigation..

76. How would you respond to critics of the Convention who assert that accession is not in the national security interests of the United States?

As the world's foremost maritime power, U.S. security and broader national interests are intrinsically linked to freedom of navigation. Regardless of whether the United States accedes to the Law of the Sea Convention, the United States and our allies will continue operating in a manner consistent with longstanding international law of the sea (e.g., freedoms of navigation and overflight, passage rights, traditional uses of the sea).

77. 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?

If confirmed, I will support the Navy's promotion of the rules-based international order and the exercise of rights and freedoms of all nations by flying, sailing, and operating wherever international law allows.

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

The Department of Defense General Counsel's Office has the primary responsibility for addressing this issue. If confirmed, I would work closely with the Secretary of the Navy as well as 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 to advocate for those law of the sea matters that are determined to be in the best interest of the Department of the Navy. The Judge Advocate General of the Navy serves as the Department of Defense Representative for Oceans Policy Affairs.

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.

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

It is important to ensure that everyone associated with the Department of Defense serving overseas with our Marines and Sailors, family members, and civilian personnel, are held appropriately accountable for any criminal misconduct. I am familiar with the Military Extraterritorial Jurisdiction Act, but not how the Navy and Marine Corps in conjunction with the Justice Department have applied this statute in recent years. If confirmed, I would evaluate this issue.

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

Currently, there are no changes to MEJA that I would make. However, if confirmed, I would be willing to review and propose changes.

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.

81. 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 Afghanistan or other areas in which U.S. armed forces are engaged in contingency operations?

The United States must ensure that all of those accompanying the United States 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 United States military in the field during contingency operations.

82. 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.

83. 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?

If confirmed, I may review and consider any proposed amendments to the Uniform Code of Military Justice. However, at the present time, I do not have any specific proposals concerning its application to contractor employees. Any such recommendations would be submitted to the General Counsel of the Department of Defense for review.

Lessons Learned from Post-Mishap Investigations

The report of the post-mishap investigation into the June 17, 2017, collision between the *USS Fitzgerald* and a Philippine-flagged container ship found that the collision was avoidable and resulted from an accumulation of “smaller errors over time,” ultimately resulting in a lack of adherence to sound navigational practices. Similarly, the report of investigation into the collision of the *USS John S. McCain* and merchant vessel *Alnic MC* on August 21, 2017, found that this collision also was avoidable and resulted primarily from crew complacency, over-confidence, and lack of procedural compliance. Seventeen sailors were killed in the two collisions.

84. What has the Navy done to counter the “smaller errors over time” and the “complacency, overconfidence, and lack of procedural compliance” that resulted in these otherwise “avoidable” collisions?

I understand that the Readiness Reform and Oversight Council, co-chaired by the Under Secretary of the Navy and the Vice Chief of Naval Operations, implemented over 100 recommendations from the Comprehensive Review and Strategic Readiness Review, making significant progress on delivering a more ready and more capable surface force.

85. In your view, are the Navy’s actions to date sufficient? If confirmed as General Counsel of the Navy, how would you assist the Navy in addressing and correcting the deficiencies found to have caused these two collisions?

I understand that the Navy has taken appropriate actions in response to the collisions. I understand that all Comprehensive Review/Strategic Readiness Review recommendations are on schedule to complete their timely implementation. I also understand that the Readiness Reform and Oversight Council will maintain oversight as a proven mechanism to remove barriers and spearhead funding necessary to continue progress and monitor results. If confirmed as the General Counsel of the Navy, I would fully support the continuing efforts of the Readiness Reform and Oversight Council and ensure that their recommendations are properly implemented.

In April 2019, the Navy dismissed court-martial charges, including charges of negligent homicide, against the Captain of the *Fitzgerald* and his junior tactical officer. The Navy announced publicly that “[t]he cases are being dismissed for legal reasons that impeded the continued prosecution of either officer.”

86. What is your understanding of the reasons underlying the dismissal of court-martial charges in the *Fitzgerald* case?

My understanding is that a military judge determined the original convening authority was disqualified from taking further action in the case. However, the military judge did not order the charges be dismissed. A successor convening authority determined that dismissal of the charges was in the best interest of the Navy.

87. In your view, what actions could the Navy legal community have taken and/or what actions should the Navy legal community *not have taken*, with a view to forestalling the circumstances that led to dismissal of the charges?

I am aware that the Judge Advocate General of the Navy has directed a review of the matter. The review will commence upon completion of related administrative determinations.

88. 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 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. In order to maintain public confidence, we must maintain a military justice system that ensures: (1) commanders at every level are free to act with independent discretion; (2) the accused is free to build a case without outside influences limiting the full ability to obtain evidence and witnesses with full commitment to the justice process; and (3) members of the court-martial must be free to decide the case on the merits and, as necessary, a proper sentence based only on the evidence presented, law as instructed by the military judge, and arguments of counsel. If confirmed, I will work with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps to ensure training and policies are in place to foster public confidence in the military justice system and that our military justice system runs fairly and efficiently.

Religious Accommodation

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

It is my understanding that Department of the Navy policies comport with the Religious Freedom Restoration Act, the FY2013 and FY2014 National Defense Authorization Acts, and Department of Defense implementing instructions. Further, it is my understanding that the Department respects the rights of individuals to express their own religious beliefs, including the right to hold no religious beliefs at all.

90. 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?

It is my understanding that the Department of the Navy complies with the provision of law to which this question refers, which states 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."

91. 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?

Yes. It is my understanding that current Navy policy authorizes Navy accession sources such as Navy Recruiting Command, Naval Service Training Command, the U.S. Naval Academy and Navy Bureau of Medicine and Surgery, to act upon pre-accession religious accommodation requests as appropriate.

92. 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.

It is my understanding that the Department of the Navy's current policy provides that approved religious accommodations will remain in effect unless and until the requester's current or future commander notifies the member that a compelling government interest requires a suspension or withdrawal of the religious accommodation.

93. In your view, do existing DOD and Navy policies and practices regarding public prayers offered by a military chaplain in both official and unofficial settings strike the proper balance between a chaplain's right to pray in accordance with the tenets of his/her religious faith and the rights of other service members who may hold with different beliefs, including no religious beliefs, who may be present in these settings?

It is my understanding that the Department of the Navy policies allow military chaplains to perform religious services in accordance with the tenets of their respective religions, and the Department policies provide guidance to chaplains concerning the respectful incorporation of religious beliefs in a pluralistic military society. I believe military chaplains are an integral part of the armed forces, and that 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. If confirmed, I will work with my clients to ensure compliance with RFRA and the appropriate balance for the needs of the Service.

94. In your view, does a military climate that welcomes and respects open and candid discussions about personal religious faith and beliefs in a garrison environment contribute in a positive way to preparing U.S. forces to be effective in overseas assignments?

Yes.

95. In your view, would a policy that discourages open discussions about personal faith and beliefs be more or less effective at preparing service members to work and operate in a pluralistic environment?

Service members have the right to express their personal views on matters of personal faith and belief so long as the totality of the circumstances of a service member expressing their personal beliefs is done in a manner that upholds dignity and respect for all service members and civilian employees. If confirmed, I will ensure that Department of the Navy policy protects expressions of belief that do not have an adverse impact on unit cohesion or good order and discipline.

96. Do you believe that allowing sailors and Marines of certain faiths, such as Sikh, Orthodox Judaism, or Islam, to maintain beards or wear turbans or other religious headwear, while in uniform, strengthens or weakens the United States military's standing in areas of the world where such religions predominate? Would such allowance help or hurt our coordination and engagement with such foreign nations?

I support the rights of individual service members to exercise their personal religious beliefs and their religion in a manner consistent with the Religious Freedom Restoration Act.

Role in the Officer Promotion and Confirmation Process

97. 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?

Military personnel matters are primarily within the purview of the respective service Judge Advocates. The Secretary of the Navy has a statutory obligation under 10 U.S.C. § 618 to ensure the promotion selection boards comply with law and regulation. The Secretary of the Navy exercises that obligation primarily through the Judge Advocate General of the Navy who, under 10 U.S.C. § 5148, receives, revises, and records the proceedings of promotion boards. If confirmed, I will work closely with the Judge Advocate General of the Navy, as well as the Staff Judge Advocate to the Commandant of the Marine Corps, to resolve important policy issues and any matters pertaining to specific individual officer promotion cases.

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

I am not aware of any need for change in this role at this time.

99. 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 Secretaries of the Military Departments, the Secretary of Defense, the President, and the Senate? Please explain your answer.

Yes. The current policies and procedures provide the military departments and the services the means to compile as complete and accurate records as is possible, as well as providing military officers adequate opportunities to address matters in their records prior to review, including adverse and/or allegedly adverse information. As such, these policies and processes enable informed decisions by the Secretaries of the Military Departments, the Secretary of Defense, the President, and the Senate.

100. 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. Current officer promotion and assignment policies balance the need for legal compliance and procedural efficiency while ensuring due consideration of the equities of the individual officers concerned.

101. 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.”

Consistent with Title 10, applicable regulations, and the direction of the Secretary of the Navy, the General Counsel must support the integrity and propriety of all activities of the Department. As concerns Department of the Navy nominees, the General Counsel would provide advice on cases with adverse or potentially adverse information in order to ensure such information is properly evaluated and reported to the Office of the Secretary of Defense and the Senate Armed Services Committee.

Cyber

In March 2019, the Secretary of the Navy released his *Cyber Readiness Review*. The Report presented a scathing assessment of the Department of the Navy’s approach to cybersecurity, finding that “[c]ompetitors and potential adversaries have exploited DON information systems, penetrated its defenses, and stolen massive amounts of national security” intellectual property. The Report hi-lighted the urgent need for the Navy and Marine Corps to modify their business and data hygiene processes to protect data as a resource.

102. If confirmed as General Counsel of the Navy, what would be your role in addressing the recommendations set forth in the Secretary’s *Cyber Readiness Review*?

My understanding is that the Cyber Readiness Review made recommendations across a broad range of areas, from culture and personnel, to processes and resources. If confirmed, my role would be to ensure that the Department of the Navy Office of General Counsel assigns experienced attorneys to support the implementation of the

recommended actions. Additionally, I will support the Secretary and Department leadership, as needed, to implement effective information security programs and standards for the Department's information and information systems that comply with applicable laws and regulations.

103. If confirmed, what would you do to improve the cybersecurity culture across the Navy and Marine Corps workforces—military, civilian, and contractor—including in the Office of the Navy General Counsel?

If confirmed, I would advise the Secretary of the Navy and Department leadership on all available legal authorities to enhance cybersecurity expertise and implementation of necessary information security programs and policies. I would also encourage Department of the Navy Office of General Counsel attorneys to recommend that Department contracting activities utilize contractual measures to protect the integrity of sensitive information residing on contractor networks. Moreover, I would continue to enhance the Department of the Navy legal community's cybersecurity culture and information management functions.

Non-Deployable Service members

Recently, the Department published DODI 1332.45, *Retention Determinations for Non-Deployable Service members*.

104. Do you agree that sailors and Marine 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?

Yes. As a general rule, Service members identified as non-deployable for 12 consecutive months should be evaluated for continued service. Each case must be evaluated on its own set of facts. Current Department of Defense policy appropriately balances mission and individual equities, and I am not aware of a need to propose any changes to the current policies.

DODI 1332.45 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.”

105. 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 on its own set of facts. What is in the best interest of the Service is dependent on whether the Service member can perform his/her military duties and the needs of the Service at the time the matter is subject to review. One such, example might be a service member whose skill set is in high demand and can perform their duties from a non-deployed environment. Additionally, in general and consistent

with the DODI, pregnant and combat wounded Service members are also exempt from the 12-month Non-deployability Determination Requirements.

106. In your view, how should this policy be applied to sailors and Marines with HIV?

Readiness is key to having an effective military and all our Service members should always be treated with dignity and respect. Department of Defense Instruction 6485.01, Human Immunodeficiency Virus (HIV) in Military Service Members, prescribes procedures for management of service members with HIV. It is my understanding that service members with HIV are referred for appropriate medical treatment and medical evaluation of fitness for continued service in the same manner as a service member with any other chronic or progressive illnesses.

107. To those who identify as transgender?

The 2019 DoD policy allows transgender Service members who, prior to the effective date of the policy, had accessed in their preferred gender or received a confirmed diagnosis of gender dysphoria to continue serving.

108. 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?

Consistent with existing policy, the Navy and Marine Corps characterize service members with a medical condition that requires additional medical screening or Combatant Commander approval prior to deployment outside the continental United States, as Deployable with Limitations. This includes, but is not limited to, conditions referred to in Department of Defense Instruction 6490.07, Deployment-Limiting Medical Conditions for Service Members and DoD Civilian Employees. This list includes pregnant and combat wounded Service members

DODI 1332.45 sets forth the categories and criteria to be applied in determining and tracking whether or not a service member is deployable.

109. 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. Each case must be evaluated on its own set of facts. If confirmed, I will evaluate current policy authorities and work to ensure commanders continue to have the legal authorities necessary to accomplish mission while maintaining their readiness.

110. 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?

We owe it to our Sailors, Marines, and their families to make sure we accurately and efficiently improve all our processes, including the Disability Evaluation System process. If confirmed, I will review the Navy's Disability Evaluation System processes and proactively look for ways to improve the Disability Evaluation System process.

Service of Transgender Persons

In January of 2019, the Supreme Court issued an order allowing DOD to implement this Administration's policy prohibiting some transgender persons from joining the military. The new DOD policy took effect on April 12, 2019.

111. If confirmed, what would be your role in implementing the new DOD policy on the service of transgender persons in the Navy and Marine Corps?

If confirmed, I would ensure that all our Service members are treated with dignity and respect, coordinate with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps on any legal implications associated with the implementation of the new policy, provide my best legal advice regarding this policy, and ensure that all members of the Department of the Navy fairly and faithfully comply with the policy.

112. How will the Department of the Navy determine which sailors and Marines should be "grandfathered" under the 2016 policy?

It is my understanding that the Department of the Navy will make its determinations consistent with the Department of Defense policy of April 12, 2019, the Department of Defense Directive-Type Memorandum 19-004 of March 12, 2019 ("Military Service by Transgender Persons and Persons with Gender Dysphoria"), the Department of Defense clarifying guidance of April 16, 2019, and the forthcoming update to Department of Defense Instruction 1300.28 ("Military Service by Transgender Persons and Persons With Gender Dysphoria").

113. If confirmed, how would you advise the Department of the Navy or the Marine Corps in determining whether or not to grant an exception to policy to permit a transgender applicant for military service both to access into the Navy or the Marine Corps and to serve in his or her preferred gender?

If confirmed, I would evaluate each set of facts on its own and advise the Secretary of the Navy regarding exceptions to the transgender service policy consistent with applicable law, regulations, and current Department of Defense policy.

Selective Service System

There has not been a military draft in the United States since conscription was ended in 1973. Still, the Selective Service System requires all men who are citizens or residents of the United States to register on attaining the age of 18; men who fail to register are penalized. In February 2019, a federal judge rejected arguments for limiting selective service registration to men and declared that exempting women from registration violates the Constitution's equal protection principles.

114. Do you believe that women should be required to register with the Selective Service System when they turn 18?

I believe that men and women should be able to serve in any position within the military, assuming they meet the qualification standards. However, under current law, only men are required to register for the draft.

115. Given the success of the All-Volunteer Force, particularly as demonstrated over the past years of persistent conflict, do you believe that there remains any necessity or utility for the Selective Service System?

One of the strengths of our military is being an “All-Volunteer Force”. However, one never knows in the future what types of armed conflict the United States will be engaged in. Our Nation’s Leaders should have this tool available as an option, even if it is never utilized.

116. Do you believe the Selective Service System, with its focus on supplying large numbers of replacement combat troops, meets the needs of today’s military? Can the Selective Service System, as presently constituted, generate the type of capabilities that might be needed in a future conflict, including personnel skilled in medical, linguistic, cyber, hard sciences, and other specialties? If not, what changes would you recommend to the Selective Service System?

As stated above, 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. 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.

117. Do you believe the Selective Service Act should be repealed?

No. The Selective Service Act and the requirement to register provides the structure to support a mass mobilization of the nation’s population that can rapidly increase the size of the nation’s military forces. I also look forward to the results of the review being conducted by the National Commission on Military, National, and Public Service on this issue.

118. What changes to law should Congress consider to meet military, national, and

public service needs of the future?

If confirmed, I would work with my clients to examine potential changes to the Selective Service System that could make it more effective in meeting the needs of the force if it ever needed to be employed.

Post-9/11 GI Bill

In 2008, Congress passed the Post-9/11 Veterans Educational Assistance Act (Post-9/11 GI Bill) that provides generous educational benefits for post-9/11 service members who serve at least 90 days on active duty. The Post-9/11 GI Bill differs from past-era GI Bills in that it allows service members to transfer education benefits to eligible dependents in exchange for an additional military service obligation. In 2018, DOD announced a policy change prohibiting most service members who have served more than 16 years from transferring their Post-9/11 GI Bill benefits to their dependents.

119. If confirmed, would you suggest any modifications to the GI Bill policy as changed in 2018? Please explain your answer.

If confirmed, I would work with my clients to examine potential changes to the GI Bill policy that could make it more effective in meeting the needs of the force in recruiting, retaining, and educating our service members and their families.

Military Housing Privatization Initiative

In the FY 1996 NDAA Congress established the Military Housing Privatization Initiative (MHPI), providing DOD with the authority to obtain private-sector financing and management to repair, renovate, construct, and operate military housing. DOD has since privatized 99 percent of its domestic housing. Earlier this year, the Committee held two hearings to address widespread complaints that over the past several years, military families living in privatized housing were exposed to environmental hazards, rodent and other infestations, and other conditions that rendered their quarters uninhabitable and, in some cases, endangered the health and well-being of their children. Certain of the “private partners” charged to manage installation housing regularly tolerated shoddy repairs or closed work orders without action. Complaints to military housing management offices often remained unaddressed and, in many cases, military oversight and chain of command engagement were non-existent. Many family members expressed fears that in speaking out about the appalling condition of the quarters in which they lived, they were opening themselves and their Service member to reprisal.

120. What actions have the Navy and Marine Corps taken to address service member and family concerns regarding the untenable living conditions prevalent in certain privatized housing locales?

Our Sailors, Marines, and their families deserve to live in clean, safe, and high-quality housing. My understanding is that the Office of the Secretary of Defense and each of the

services, including the Department of the Navy, has taken aggressive steps to improve its Military Housing Privatization Initiative oversight role, and is committed to providing Sailors, Marines, and their families with safe quality housing. While I do not have access or knowledge of all actions taken by the Navy and Marine Corps, I am aware that the Department of the Navy is working with the Office of the Secretary of Defense, the other military departments, and privatized housing partners to develop and implement a series of near, mid, and long-term corrective actions. Such actions include, and are not limited to, the development of a Resident Bill of Rights and common tenant lease framework, making work order progress transparent to residents, and establishing hotlines for Service members to report housing-related concerns. If confirmed, I will continue to work proactively and cooperatively with all parties to ensure that military personnel are provided clean, safe, and high-quality housing.

121. If confirmed as Navy General Counsel, what would be your role in establishing accountability in the Navy and Marine Corps and their “private partners” for sustaining the high quality housing that sailors, Marines, and their families deserve?

I have been involved in the United States Army’s parallel efforts to improve Military Housing Privatization Initiative housing. If confirmed, I will continue to be an active and engaged counsel exploring all legal options to promote accountability for the provision of clean, safe, and high-quality housing for our military members and their families.

122. Given the challenges associated with the MHPI, do you support the proposal to codify in law the position of the Assistant Secretary of the Navy for Energy, Installations, and the Environment?

I have not had an opportunity to study this proposal, but if confirmed, I will work closely with the Secretary of the Navy to advise on matters associated with this proposal.

123. What progress has the Navy made in creating a tenant “Bill of Rights” applicable to service member and military family tenants of privatized housing?

I am aware that the Department of the Navy has worked collaboratively with the Office of the Secretary of Defense, other military departments and Congress to develop a Resident Bill of Rights and that these efforts are on-going.

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.

124. If confirmed, what would be your role in efforts to address PFOS/PFOA contamination at Navy installations?

On his first day in office, Secretary Esper established a DoD PFAS Task Force to ensure a consistent and proactive approach throughout DoD to address PFAS. If confirmed, I will work to ensure the Department of the Navy remains committed to quickly addressing PFOS and PFOA in drinking water from the Navy activities under the federal cleanup law, and supporting DoD efforts on this national issue.

125. If confirmed, what would be your approach to addressing the health concerns of service members and their families who may have been exposed to potentially harmful contaminants on Navy bases and in the context of performing military duties?

If confirmed, I would work closely with Department of the Navy leadership to ensure the health and safety of our Sailors, Marines, civilians, their family members, and surrounding communities remains the highest priority. I would advise the Secretary on all legal options that promote the continued safety and health of our force and their families.

Commissary and Military Exchange Systems

126. What is your view on the proposal to consolidate the commissaries and the Service Exchanges into a single defense resale system?

If confirmed, I would support initiatives that reduce costs and enhance operational efficiency, such as consolidation, as long as they preserve the benefit for our Service members, their families, our civilian workforce, and our retirees.

Suicide Prevention

The number of suicides in each of the Services continues to concern the Committee. Five sailors assigned to the *USS George H.W. Bush* have committed suicide in the last two years.

127. Has the Navy conducted a comprehensive review of these suicides to determine whether there are any common causal factors? If so, what did the Navy find?

The loss of any Sailor to suicide is one too many. I understand that the Navy currently is investigating the circumstances surrounding these recent tragedies. I have not been briefed on the investigations, nor on any findings that the Navy has made.

128. What specific actions has the Navy taken to care for the sailors who remain in service on the *Bush*?

While I have not been briefed on the matter, I am aware that in addition to investigating the circumstances surrounding the suicides, the Navy has also increased counseling and support for the crew of the USS George H.W. Bush (CVN-77). If confirmed, I will make every effort to ensure that Sailors have all the resources needed to help them address this

tragedy and to help mitigate the factors that often lead to suicide and other negative behaviors.

129. If confirmed, what specifically would you do to maintain 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 would work closely with Department of the Navy Leadership to ensure the health and safety, including efforts to enhance suicide prevention, of our Sailors, Marines, civilians, and their family members remains a high priority. I would advise the Secretary on all legal options that enhance the safety and health of our force and their families. The Navy must ensure that the proper resources are dedicated to combatting this issue which tears apart unit cohesion and that the proper networks are in place to support our Service members, their families, and our civilian population.

130. If confirmed, what specifically would you do to enhance the reporting and tracking of suicide among family members and dependents of sailors and Marines across all Components?

Suicide prevention must remain a top priority within the Department of the Navy. If confirmed, I would work closely with Department of the Navy leadership in assessing opportunities for enhancing the accurate and timely reporting and tracking of suicides among family members of Service members. I would advise the Secretary on all legal options that promote the continued safety and health of our force and their families in an effort to proactively address this problem.

131. 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 support suicide prevention efforts. The Department has worked closely with the Defense Suicide Prevention Office (DSPO) to offer free gun locks at medical facilities, Fleet & Family Support Centers (FFSCs), and other access points throughout the Fleet. Department training, policies and outreach materials encourage Sailors, Marines, and their families to use gun locks and practice other forms of lethal means safety, such as voluntary storage of personally-owned firearms during times of increased stress and proactively disposing of unused prescription medications.

Mental and Behavioral Health Care

Although the Department has made great strides 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 the service members under their command.

132. As regards the provision of mental and behavioral health care, how do 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 Navy and Marine Corps are dedicated to ensuring the health and well-being of our Sailors, Marines, civilians, and family members. As General Counsel of the Navy, if confirmed, my role would be to assist the Department of the Navy Leadership in navigating the legal and regulatory impacts that may arise from the Navy and Marine Corps' efforts to 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.

Sexual Assault Prevention and Response

Despite significant efforts by the Military Services to enhance their response to sexual assaults, including measures to care for victims and hold assailants accountable, the DOD Annual Report on Sexual Assault in the Military for Fiscal Year 2018 documented a statistically significant increase in the past-year prevalence of sexual assault, primarily for female service members in the 17 to 24 age group. These findings echoed earlier reports of alarming increases in the prevalence of sexual harassment and assault at the Military Service Academies, including the U.S. Naval Academy.

133. In your view, are the policies, programs, and training that the Navy has put in place to prevent sexual assault and respond to sexual assault when it does occur, adequate and effective?

Preventing sexual assault is a top priority of mine and the entire Department of the Defense and the Department of the Navy. Sexual assault is a heinous crime that undermines the morale, good order, discipline and readiness of the services. If confirmed, 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 law enforcement, to support Victims' Legal Counsel, and utilize military justice personnel and processes to advocates who advise command on how best to hold offenders appropriately accountable for their actions.

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

The Department of the Navy is constantly looking for better ways to prevent and respond to sexual assault, support survivors, promote reporting, and encourage participation in the military justice process. If confirmed, I will work closely with the Department of the Navy's leadership to implement the Department of Defense Sexual Assault Prevention Plan of Action and 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 SAPR Programs.

135. What is your view of the necessity of affording a victim both restricted and unrestricted options to report a sexual assault?

It is my view that we must support individuals who report being a victim of sexual assault and provide necessary services. The option to make a restricted or unrestricted report is vital to such support. While the criminal investigation and administration of military justice remain paramount in holding the perpetrators of sexual assault appropriately accountable for their actions, it is imperative that service members who report being victimized receive the help and support they need, regardless of whether they participate in the investigation and military justice process. The restricted reporting option allows individuals to confidentially access support from medical providers, clinical counselors, victims' legal counsel and chaplains, even when they do not choose to participate in the investigation or military justice process. The Department's approach is designed to empower victims and give them a choice of how their case should proceed.

136. In your view, should the persons to whom a victim may make a restricted report of sexual assault be expanded to include members of the victim's chain of command? Why or why not?

No. A restricted report should not be expanded to include members of the victim's chain of command. As stated above, it is my view that we must support those who make a report of sexual assault and provide necessary services. 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 SAPR Programs. If confirmed, I will work with my clients to continue to improve upon those efforts in terms of both prevention and response.

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

Commanders should be held accountable for everything within their commands – both good and bad. We must give commanders all the necessary tools to promote mission readiness, good order and discipline, and unit morale and hold them appropriately accountable. Commanders' ability to refer cases for trial by court-martial is one of those tools. Commanders' exercise of such authority is particularly important in our efforts to eliminate the scourge of sexual assault. The Commander's case disposition authority is an important tool in establishing good order and discipline and to demonstrate what behaviors are unacceptable. If confirmed, I am committed to improving upon efforts to eradicate sexual assault from the military and to examining what the Department of the Navy is doing and how it can be improved.

138. In your view, could the U.S. Air Force Academy's *Safe to Report* policy be applied to the U.S. Naval Academy and/or to other types of units and organizations across the Navy and Marine Corps?

I am generally aware of the USAF Academy's "Safe to Report" Policy and we need to find ways to eliminate barriers to survivors' reporting sexual assaults while maintaining the effectiveness of the sexual assault response system. However, blanket immunity for all victim collateral misconduct would have unintended and negative side effects on the military justice system and hinder versus help in sexual assault reporting and prosecutions. Each case should be decided on a case-by-case basis after fully considering the facts while balancing the needs of victims and the administration of justice.

139. What is your assessment of the Navy and Marine Corps' implementation of protections against retaliation—most notably social ostracism—for reporting sexual assault?

Retaliation and reprisal have no place in the Department of the Navy. It is my understanding that the Department of the Navy remains focused on ensuring sexual assault reporting does not result in retaliation, and has taken action to educate its members about how to recognize and prevent retaliation and ostracism through the DoD Retaliation Prevention and Response Strategy Implementation Plan, and more recently by accepting the recommendations of the Sexual Assault Accountability and Investigation Task Force. 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.

If confirmed, I will strive to ensure that reprisal investigations are conducted thoroughly, in accordance with law, regulation, and policy. I will also provide my best legal advice to ensure that appropriate administrative or disciplinary actions are taken against personnel who engage in illegal reprisal or retaliation.

140. In your view, do military and civilian leaders in the Navy and Marine Corps have the training, authorities, and resources needed to hold subordinate commanders and supervisors accountable for the prevention of and response to sexual assault and retaliation? If not, what additional training, authorities, or resources to you believe are needed, and why?

Preventing sexual assault is a top priority for the entire Department of Defense, and the Department of the Navy. If confirmed, I will be firmly committed 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 to those who report sexual assaults, and by investigating and prosecuting, as appropriate, 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 Navy and Marine Corps who prosecute and hold offenders appropriately accountable for their actions.

141. Why are the number of prosecutions for sexual assault and retaliation in the Navy and Marine Corps so low? Why are conviction rates so low?

Sexual assault and retaliation cases are often complicated. Each case needs to be judged on its individual merits. Conviction rates are not an appropriate measure of success in holding offenders appropriately accountable. Commanding officers make various military justice decisions based on the strength of the evidence identified through an independent investigation, and on legal advice from their uniform judge advocates.

142. In your view, should the role and authority of Navy Victims' Legal Counsel be modified in any way? Please explain your answer.

Based upon the feedback of victim clients, it appears as though the Victims' Legal Counsel Program has been a great success. If confirmed, I will work closely with the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps to examine the effectiveness and efficiency of these programs, and look at how they can be improved. As I have stated above, sexual harassment and sexual 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 of the Navy's programs.

Sexual Harassment

In responding to the inaugural DOD Civilian Employee Workplace and Gender Relations survey administered in 2016, 14.2 percent of women DOD employees and 5.1 percent of men indicated that they had experienced sexual harassment and/or gender discrimination by "someone at work" in the 12 months prior to completing the survey.

143. In your view, do Navy and Marine Corps' methods for tracking the submission and monitoring the resolution of informal 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 Navy and in the Corps?

Yes. The Department of the Navy has no tolerance for harassment of any kind nor unlawful discrimination. Acts of harassment and unlawful discrimination are contrary to the Navy's core values of honor, courage, and commitment. While the Department maintains an equal employment opportunity program consistent with all statutory and regulatory requirements, the Department seeks to exceed those minimum requirements. A key aspect of this program is to inform senior leaders on a regular basis to ensure consistent and effective program execution

144. 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?

While I am familiar with Federal sector equal employment opportunity processes applicable to the civilian workforce, I have not had the opportunity to review the specific methods employed within the Department of the Navy. If confirmed, I will review all aspects of the Department of the Navy's program to ensure that the Department utilizes all legal means to track repeat offenders, prevent sexual harassment, and protect victims of such misconduct.

145. 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?

I am informed that the Secretary of the Navy has issued a Department-wide anti-harassment statement informing all employees, leaders, supervisors, and managers that harassment is prohibited and will not be tolerated. Education and training programs and a complaints resolution process are in place to prevent and respond to claims of harassment and discrimination. These programs cover the identification, prevention, and resolution of sexual harassment and reprisal prevention and are directed at all personnel from entry-level to executive level.

146. In your view, is civilian workforce harassment prevention and response training across the Navy and Marine Corps adequate and useful to employees? 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 familiar with federal sector equal employment opportunity processes applicable to the civilian workforce, I have not had the opportunity to review the specific methods employed within the Department of the Navy. If confirmed, I will review all aspects of the Department of the Navy's program to ensure that the Department utilizes all legal means to prevent and respond to complaints of harassment and discrimination.

147. 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 understand that the Department of the Navy continuously reviews its policies and processes for responding to complaints of harassment and discrimination in order to ensure that it provides appropriate avenues of redress for victims and to take appropriate corrective measures when necessary.

U.S. Naval Academy

148. 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)?

Sexual assault and harassment at the United States Naval Academy are unacceptable. The Department of the Navy is committed to ensuring an atmosphere of dignity and respect for all Service members. As a result, the prevention of sexual assault and sexual harassment at the U.S. Naval Academy is imperative. If confirmed, I am committed to working with my clients to continue to improve upon the Navy's efforts in terms of both prevention and response. I will work with my clients and uniformed colleagues to examine what the Department is doing to address this issue and how the response can be improved upon.

149. 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 formed a view of the efficacy of the policies and processes at the United States Naval Academy. If confirmed, I will work with United States Naval Academy leadership to ensure they have the requisite legal support on this issue. I understand that the Naval Academy's policies reflect the high value the military places on the rights of military members to observe their respective religions or no religion at all. I further understand that the Naval Academy has a robust command religious program (CRP), supporting the diverse religious beliefs and expressions of the Brigade of Midshipmen, and is able to adapt to new requests or requirements.

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

As previously mentioned, any loss to suicide is one too many. I am unaware of the efficacy of the policies and processes at the United States Naval Academy. Suicide is a preventable loss and I am dedicated to ensuring the health and well-being of all of our Midshipmen. If confirmed, I will work closely with my clients to examine what the Department is doing and ways in which those programs can be improved.

151. In your view, is the U.S. Naval Academy an appropriate organization at which to pilot an alternative military justice system to test the assertion that were authority to determine the disposition of sexual assault allegations removed from the chain of command, more victims would report their assaults and more sexual assault cases would be prosecuted by courts-martial? Please explain your answer.

Sexual assault and sexual harassment needs to be eliminated from our military. As previously mentioned, I believe that commanders at all levels, including the U.S. Naval Academy, should be held accountable for everything within their commands – both good and bad. We must give commanders all the necessary tools to promote mission readiness,

good order and discipline, and unit morale and hold them appropriately accountable, especially when dealing with these young men and women. The Commander's role is establishing good order and discipline is an important means they can use to demonstrate what behaviors are unacceptable. If confirmed, I am committed to working with my clients and uniformed colleagues to continue to improve upon efforts to eradicate sexual assault from the military. I will work with my clients and uniformed colleagues constantly to examine what the Department is doing and how it can be improved.

152. What is your assessment of the proposal to permit midshipmen at the U.S. Naval Academy who become victims of sexual assault, to request transfer to another Service Academy?

I have not formed a view of the proposal to permit midshipmen at the United States Naval Academy who become victims of sexual assault to request transfer to another Service Academy. If confirmed, I am committed to working with my clients and uniformed colleagues to continue to improve upon efforts to eradicate sexual assault from the military and support victims of sexual assault. I will work with my clients and uniformed colleagues constantly to examine what the Department is doing and how it can be improved.

153. 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?

Under 10 U.S.C. § 8459, a midshipman may not seek release from his/her commissioned service obligation to play professional sports until the service member completes at least two consecutive years of commissioned service. In June of this year, the President directed the Secretary of Defense to establish a policy that provides a pathway for Reserve Officer Training Corps/Military Service Academy graduates to go directly into professional sports immediately upon graduation. The new policy has yet to be implemented, but in my view it must take into consideration the requirements under Title 10. If confirmed, I would work with my clients and colleagues to determine how such a policy could be formulated consistent with the law.

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.

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

I have not had the opportunity to examine how the Navy and Marine Corps are implementing these authorities. If confirmed, I will review these implementing

authorities and advise the Secretary and other senior leaders in the Department, as appropriate.

155. 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 would expect to advise the Secretary and other senior leaders in the Department regarding any issues on which they may need advice and ensure that any application of these authorities are consistent with law.

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

At this time, I am unaware of whether other authorities are needed by the Navy and Marine Corps to modernize officer management. If confirmed, I will work closely with my clients and uniformed colleagues to examine the Services' needs and propose solutions to meet those needs.

157. 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?

At this time, I am unaware of whether the scrolling and appointments processes need to be improved so as to improve permeability between the Active and Reserve Components of the Navy and Marine Corps. If confirmed, I will work closely with my clients and uniformed colleagues to examine the Services' needs and propose solutions to meet those needs.

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.

158. 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?

If confirmed, I will advise the Secretary of the Navy and those under his/her authority who are responsible for ensuring reprisal investigations are conducted thoroughly, and

that appropriate administrative or disciplinary action is taken against personnel who have engaged in illegal reprisal or retaliation, in accordance with law, regulation, and policy.

159. 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, 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 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.

Support to the Navy and Marine Corps Inspectors General

160. 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 of the Department of the Navy plays a key 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 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 Naval Inspector General and the Deputy Naval Inspector General for Marine Corps Matters. 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 statutory authorities. 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.

Department of Defense Acquisition Reforms

In successive NDAs beginning in FY 2013 and culminating in FY 2019, 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.

161. 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 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 and Department of the Navy 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.

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

Overall, the effects of recent acquisition reform have been positive. In particular, the enactment of additional acquisition pathways, such as middle-tier acquisition, and the increase in acquisition decision-making authority of the military departments have been helpful. It would be beneficial to the Department of the Navy to focus on effective implementation and execution of the reforms that have been enacted to date.

163. 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 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 specific programs or projects. The General Counsel also supports the development of effective guidance, policy, and training to implement these authorities and flexibilities.

164. 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 would ensure that the Chief of Naval Operations and the Commandant of the Marine Corps fully understand their roles and functions in the overall acquisition process, including the enhanced acquisition roles for the Chief of Naval Operations and Commandant of the Marine Corps enacted in recent National Defense Authorization Acts. I will also ensure that the Chief of Naval Operations and Commandant of the Marine Corps are advised of the proper relationship between these roles and functions and the statutory duties and responsibilities of the Assistant Secretary of the Navy for

Research, Development & Acquisition.

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

I will make recommendations for further reforms to the Secretary of the Navy in cases where I assess that such reforms would be beneficial to execution of the Department of the Navy mission. At this time, however, I do not have any specific recommendations for further acquisition reform.

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.

166. What actions has the Navy taken 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?

The Department of Navy must be held to high ethical standards. My understanding is that the Department of the Navy conducted a thorough review of its ethics and professionalism programs to ensure the Department maximizes all available resources to ensure an emphasis on ethics training of all Department 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 to prospective commanding officers, executive officers, and officers in charge, 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 Operations released an updated “Navy Leader Development Framework.” All new flag officers and senior executives receive ethics training at various flag officer, general officer, and senior executive symposiums held annually. Moreover, all flag and general officer personnel 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, within the DON.

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 walk the “ethical midfield” on every step and action taken. Emphasis is placed on ethical

leadership from the top down and requires senior leaders to take ownership of the ethics programs within their respective DON organizations.

167. 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. 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 available to Department of the Navy legal professionals. My understanding is that the Navy Office of the General Counsel continues to provide in-person training and web-based training and legal practice products. For example, the annual Navy Office of the General Counsel Legal Training Symposium is routinely attended by both uniformed and civilian Department of the Navy legal professionals from around the world. The Navy Office of the General Counsel web-portal continues to be an outstanding 24/7 resource for up-to-date training and legal practice resources. Department of the Navy uniformed and civilian lawyers regularly participate in a host of resident 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 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.

168. What resources has the Navy made available to provide 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 and members of the Senior Executive Service are required to attend the New Flag and Senior Executive Training Symposium, 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 staffs 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 to 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.

Each employee or service member who is new to the Department receives initial ethics training that meets the Office of Government Ethics requirements. Additionally, any Service member who is required to file an Office of Government Ethics financial disclosure report, including commanding officers and executive officers of the Navy shore installations, must complete interactive annual ethics training. The Office of the Assistant General Counsel for Ethics develops annual interactive on-line training that is available to all Department employees and meets the Office of Government Ethics annual training requirements. Furthermore, many commands require annual in-person ethics training for all employees. In addition to annual and initial ethics training, the Navy offers specialized ethics training for specific groups. Finally, as part of career transition, 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.

169. 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, which prevents conflicts of interest in order to maintain the public trust. 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 C.F.R. 2635). Furthermore, my expectation is that the Department attorneys will be engaged in all phases of the acquisition and contracting process to assist the decision makers and to help identify and resolve conflicts of interest.

170. 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?

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 advice and the action will violate or has violated a law or regulation, the attorney must take appropriate action, including immediately notifying his 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 (5) working days.

Litigation Involving the Department of the Navy

171. 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 Department of the Navy’s well-established productive working relationship with the Department of Justice and advocate in the Navy’s interest.

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

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. If confirmed, I will review this issue.

173. 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?

No. The *Feres* Doctrine should not be repealed. Congress has provided a comprehensive no fault system to ensure members and families are fairly compensated for all injuries suffered by military personnel in a uniform way. Substituting the Federal Tort Claims Act as the basis for compensation in cases where medical care contributed to a disability or death would replace federal law with a set of widely varying State law rules on negligence and damage calculations. These variations would inevitably lead to treating similarly-situated Service members differently, based on where their injuries occurred.

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.

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

In my opinion, the Department's biggest challenge is competing for talent, especially in cutting-edge technical fields and with a strong economy. Specialized technical talent is in high demand and necessary to advancing the National Defense Strategy. Statutory and regulatory restrictions can hinder DoD's ability to offer market-based and competitive salaries. Although well-intentioned, numerous special hiring authorities and complex rules have complicated the ability to efficiently hire. This has resulted in uncoordinated policies which are difficult to administer.

175. 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, and ultimately to divest of a civilian employee who fails to meet requisite standards of conduct and performance? 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?

In general, the Department has the necessary authorities to hold our civilian workforce appropriately accountable for misconduct and poor performance. However, the disciplinary and remediation processes are complicated. The Department of the Navy must ensure that all supervisors, both military and civilian, receive adequate training to supervise and lead the workforce. If confirmed, I will ensure that the Navy Legal Family is proactively engaged with this type of training and working with our clients if/when these types of 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.

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

Yes.

177. 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?

If confirmed, I agree to accommodate in a timely manner all congressional requests for information by supplying the requested information to the fullest extent, consistent with applicable statutes and the U.S. Constitution.

178. 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

179. 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?

If confirmed, I agree 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 information previously provided by me or my organization to the fullest extent, consistent with applicable statutes and the U.S. Constitution

180. 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?

If confirmed, I agree to accommodate all congressional requests for information by supplying the requested information to the fullest extent, consistent with the constitutional and statutory obligations of the Executive Branch to the fullest extent, consistent with applicable statutes and the U.S. Constitution

181. 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.

182. 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.