Secretary of Defense Chuck Hagel Issues Memorandum On “Integrity of the Military Justice Process”

On August 6, 2013, Secretary of Defense Chuck Hagel signed a policy memorandum that “reiterates my expectations and those of the President regarding the integrity of the military justice process. Every military officer and enlisted member of the Department of Defense is to be made aware of [the memo’s] contents.” The Secretary’s memorandum is attached to this Sidebar.

“Independent Judgment” Central to Military Justice
The Secretary emphasizes that “[c]entral to military justice is the trust that those involved in the process base their decisions on their independent judgment. Their judgment, in turn, must be based purely on the facts of each individual case. . . . Everyone who exercises discretionary authority in the military justice process must apply his or her independent judgment.” The Secretary includes “members of court-martial panels” in “this mandate.”

Leadership’s Recent Public Comments on Sexual Assault Addressed
The President and other senior leaders have condemned sexual assault in recent public statements. The President, speaking at a press conference on May 7, 2013, stated: “I expect consequences. . . . If we find out somebody’s engaging in [sexual assault], they’ve got to be held accountable – prosecuted, stripped of their positions, court-martialed, fired, dishonorably discharged. Period.”

On June 12, 2013, the Military Judge (MJ) in U.S. v. Johnson found that the President’s statement created an appearance of unlawful command influence (UCI). Johnson is a sexual assault general court-martial pending in the Hawaii Judicial Circuit of the Navy-Marine Corps Trial Judiciary. The MJ then ruled that he would permit extensive voir dire of the members regarding the President’s statement and, in the event of a conviction, he would instruct the members that they may not award any punitive discharge. The Navy-Marine Corps Court of Criminal Appeals has stayed the trial while considering the government’s Petition for Extraordinary Relief.

The Secretary’s memorandum states: “Senior military and civilian leaders in the Department have an obligation to establish the standards of conduct expected of all military personnel. Drug abuse, sexual assault, hazing, and other criminal misconduct are not acceptable; senior leaders have made that clear and will continue to do so. But those comments are not made with the intent to indicate in any way what should or should not occur in any case.”

Please Ensure Widest Distribution of the Secretary’s Memorandum
It is critical to ensure all hands are made aware of the contents, especially those involved in the military justice process, to include commanding officers, convening authorities and prospective members.

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