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SENATE ARMED
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STATEMENT OF
MAJGEN VAUGHN A. ARY, USMC
STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE CORPS
BEFORE THE
PERSONNEL SUBCOMMITTEE
OF THE
SENATE ARMED SERVICES COMMITTEE
20 JULY 2011

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INTRODUCTION

Thank you for the opportunity to speak with you today about the requirements for your Marine Corps' uniformed legal mission. I would like to first take this opportunity to recognize the many men and women wearing the eagle, globe, and anchor today performing that mission. Currently we have 508 active duty Marine judge advocates serving around the globe; the largest number we have ever had. In addition, there are 19 legal administration officers and 542 enlisted legal services specialists in the active component, and another 328 Marine judge advocates and 167 enlisted legal services specialists in the reserve component. They have responded to the increased demand for legal services across the spectrum of traditional and non-traditional legal missions. We are extremely proud of the job they are doing for our Corps and our Nation.

We believe in command-oriented, organic legal support, provided by Marine judge advocates, who are integrated, unrestricted Marine Air Ground Task Force (MAGTF) officers. There is an inherent, intangible benefit of providing legal support that is responsive to the Service's unique history, leadership philosophy, and operational characteristics. These strengths are indispensable to our continued success.

We recognize, however, that some characteristics of our model (e.g., legacy organizational structures and legal services doctrine, a philosophy of maximum decentralization, and a limited role for the Staff Judge Advocate to the Commandant) have limited our ability to respond to the evolving requirements of our legal mission. Over the past 20 years, and more acutely in this past decade of war, our legal mission has evolved in scope, intensity, and complexity. If we are to effectively address challenges associated with increased courts-martial complexity, post-trial processing of courts-martial, and sustained levels of deployments, we need higher levels of individual proficiency and organizational efficiency, which in turn require a greater degree of supervision, centralization and uniformity.

A CALL TO ACTION

In August 2009, Congress directed the convening of the Independent Panel to Review Judge Advocate Requirements in the Department of the Navy (hereinafter “506 Panel”) and a contemporaneous Department of Defense (DoD) Inspector General’s (IG) inquiry. These Congressional directives were the result of appellate court decisions addressing delays in post-trial processing. In directing these inquiries, Congress expressed a concern that:

...cognizant legal authorities in the Department of the Navy have not taken necessary and appropriate steps to ensure that the resources, command attention, and necessary supervision have been devoted to the task of ensuring that the Navy and Marine Corps post-trial military justice system functions properly in all cases.

These Congressional directives served as a clear call to action for the senior leadership within Headquarters, Marine Corps. I want to assure this Subcommittee that the Commandant and the rest of the senior leadership in our Corps have heard this call, and have moved forward with genuine resolve to address the challenges you have identified.

In late 2009, the Marine Corps began addressing these challenges by conducting a comprehensive study of the provision of legal support within the Service (e.g., training, organization, leadership, authorities, etc.). Our study led us to two overarching conclusions.

First, we concluded that aspects of our historical approach to providing legal support, including a philosophy of maximum decentralization and a limited role for the Staff Judge Advocate to the Commandant (SJA to CMC), had created gaps in our practice and degraded unity of effort. Over time, outdated doctrine, a lack of policy and procedural guidance, and limited professional supervision had rendered performance standards unclear or unenforced. Simply stated, we did not have the accountability to ensure proficiency in our core legal competencies.

Second, we concluded that to meet the ever-increasing scope, intensity, and complexity of the legal mission, the philosophy of maximum decentralization had to evolve, in a reasonable and

balanced way, to greater supervision and uniformity in policies, practices, and processes. In a word, we needed to establish relevant common standards of practice, ensure all of our Marines were trained and equipped to those standards, and then inspect and enforce those common standards. This would ensure:

- effective professional supervision,
- transparency and accountability,
- unity of effort,
- training efficiencies, and
- proper apportionment of resources.

We remained acutely aware that uniformed legal support requirements are largely command-driven, and execution is largely command-oriented. Therefore, centralized solutions must remain responsive and relevant to the particular needs of the individual commands, and should reflect the history, leadership philosophy, and operational characteristics of the Service.

Accordingly, the Marine Corps determined that any such solutions require supervision by a Service-level senior officer who is best positioned to provide efficient and responsive leadership, has authority commensurate with his responsibility, and who can be held accountable for the performance of the legal mission.

Thus, while proceeding to address the deficiencies in our approach to the supervision of the administration of military justice and the delivery of legal services, we decided to seek specific responsibility and authority for the SJA to CMC for those functions. We recognized that this would dictate changes in the Department of the Navy's (DON) unique legal organization, which invests the specific responsibility and authorities for supervising the legal mission in a single Department-level Judge Advocate General (JAG), rather than in a Service-level officer as in the Army and the Air Force. While seeking this responsibility and authority, we stepped out, relying on de facto responsibility.

The conclusions of our study, and our way ahead, are captured in our Strategic Action Plan (SAP) 2010-2015. Published in July 2010, the SAP establishes five overarching goals, and

describes specific Service-wide initiatives intended to implement these goals. Although they are addressed more robustly in the SAP report itself, the goals can be distilled down to the following five principles:

- (1) set standards,
- (2) train to those standards,
- (3) inspect to those standards,
- (4) examine and adapt the force to achieve those standards, and
- (5) memorialize what we have learned in doctrine.

Over the past year, we have focused on addressing those goals and creating new initiatives. We continue to use these five principles to ensure that we are directing our resources and energy precisely to the requirements identified in the SAP.

THE DOD IG AND 506 PANEL REPORTS

The findings, conclusions, and recommendations in the DoD IG Report of 10 December 2010 and the 506 Panel Report of 22 February 2011 were largely consistent with our own determinations. These reports tended to validate that the Marine Corps was moving in the right direction with appropriate alacrity.

The DoD IG report, released in December 2010, found:

There have been consistent failures in leadership, supervision and oversight at all organizational levels, impacting military justice in both the Navy and Marine Corps. The failures resulted in inadequate institutional vigilance to ensure process health and, in many instances, failures to exercise the diligence and competence required of legal professionals. Serious post-trial processing problems persisted for at least the last two decades.

The 506 Panel's final report included over forty separate conclusions and recommendations. Addressing its primary statutory mandate – manpower requirements – the Panel favorably noted the Marine Corps' efforts to increase judge advocate structure and inventory. The Panel opined

that the Marine Corps' bottom-up, top-down, requirements-driven manpower determinations were realistic and useful, and agreed that a target inventory of 550 judge advocates over the next five years was sufficient.

Moving beyond manpower requirements, the 506 Panel found it necessary to focus primarily on senior-level leadership, authority, and oversight within the DON's uniformed legal communities. Notably, the 506 Panel echoed findings contained in the DoD IG Report, opining that:

...the challenge presented to the leaders of the Navy and Marine judge advocate communities, with respect to their core military justice function, has as much to do with ensuring engaged leadership and effective oversight as it does with numbers of judge advocates.

The 506 Panel's conclusions and recommendations also addressed operational law support, support to the Disability Evaluation System and the Office of Military Commissions, community health, and the assignment of Marine judge advocates to non-legal billets.

To the extent the 506 Panel recommended action at the Service level, the recommended reforms are underway in the Marine Corps. These include a deliberate and responsible realignment and increase in judge advocate force structure and inventory, the institution of a cost-effective, rapidly-fielded, and proven case tracking system, and the establishment of a Corps-wide inspection standard for the delivery of legal services. These and other Service-level initiatives are discussed in greater detail below. Implementation of the remaining recommendations, the most important of which would address the lack of Service-level supervision and accountability, would require Departmental action, including legislative proposals and implementing regulations. Increased personnel inventories and focused initiatives are partial, often temporary solutions. Enduring solutions require an institutional mechanism for holding leaders accountable for the mission.

Below I will discuss the major areas of concern from both the DoD IG report and the 506 Panel's report, and how the Marine Corps is seeking to address them.

MILITARY JUSTICE REQUIREMENTS

Court-Martial Case Tracking System

The DoD IG recommended that “the Department of the Navy develop and field a single Navy and Marine Corps military justice case processing and tracking system that satisfies user requirements and achieves system-wide visibility over the entire court-martial process, including capability for an accused to monitor his/her appellate case status directly through web access.”

The 506 Panel noted recent significant improvements in post-trial processing of courts-martial within the DON, and concluded that for such improvements to continue “it is critical that the DON employ a single case tracking system.” The requirement for any system, as identified by the 506 Panel, is to “track cases from the preferral of charges or imposition of pretrial restraint at the Service level through the appellate review at the Department level.”

The Marine Corps currently has a single, Service-wide case tracking system that effectively accomplishes its primary goal: to achieve complete and expeditious processing of every Marine Corps case from a command’s Request for Legal Services to arrival at the appellate courts in order to ensure the due process rights of each and every Marine. Although limited to those cases referred to courts-martial by Marine Corps commands, those cases represent 75% of all courts-martial processed by the Navy and Marine Corps Trial Judiciary in FY10. The Marine Corps Case Management System (CMS) could be adapted to track the remaining 25% of cases originating within the U.S. Navy, as well as tracking all cases through completion of appellate review at little cost and without significant delay.

Development. Conceptually, a single DON-wide case tracking system is an attractive goal. As yet, a single system has not been fielded or developed. Recognizing the urgency identified by the appellate courts, and that the Marine Corps’ then existing methodology for courts-martial tracking was inadequate, the SJA to CMC began identifying the requirements for an effective case tracking and management system within the Marine Corps in the summer of 2009.¹ With

¹ To minimize the demands on the case management system, SJA to CMC chose to use SharePoint for the Marine legal community’s knowledge management platform, simplifying the evaluation criteria for potential case management systems.

the singular goal of ensuring the due process rights of every accused Marine through accurate and reliable case tracking, SJA to CMC sought a case management system that would:

- provide a cradle-to-grave common operating picture for military justice practitioners and supervisors to manage and oversee case processing at all levels of the Marine Corps;
- provide easy, non-redundant data entry, retrieval, and report generation capability for military justice clerks;
- generate multiple views and reports;
- use affordable, off-the-shelf technology supportable by Marine Corps IT systems;
- allow expeditious implementation throughout the Marine Corps;
- provide total visibility of inbound cases from the Marine Corps to the Navy and Marine Corps Appellate Review Activity (NAMARA);
- accommodate expanding requirements; and
- provide up-to-date real-time data for commanders and legal leadership to identify trends.

Several systems were evaluated, including the Federal Case Management/Electronic Case Filing system (CM/ECF) and the Navy JAG Corps' Case Management, Tracking and Information System (CMTIS). CMS, a Lotus Notes-based, web-enabled software application, was ultimately selected.²

After successfully testing CMS at various Marine legal offices, the SJA to CMC mandated its use in MARADMIN 062/10 of 1 February 2010. The implementation of a common, integrated, real-time case tracking database produced immediate results by providing complete visibility over every case at every stage of the Service-level process and eliminating gaps caused by a variety of incompatible systems throughout the Marine Corps. CMS is currently being expanded to provide a separate module for administrative law (i.e. review of administrative separations and command investigations) and legal assistance (i.e. case management and client conflict checks).

Notably, CMS went from development to Marine Corps-wide implementation in six months (August 2009 – February 2010) at a total cost of \$48,480.00 (contracted database development

² Lotus Notes is the same software application the Army uses to track its military justice and administrative law matters.

and training). Since February 2010, the Marine Corps has spent approximately \$10,250.00 on CMS training (\$5,250.00 on technical support training for personnel of the Judge Advocate Division, Headquarters Marine Corps (JAD) and approximately \$5,000.00 on fleet-wide user training conducted by JAD personnel). There are two full-time DoD civilian IT professionals and one Marine Staff Sergeant (MOS 4421) currently administering all legal IT requirements for the Marine Legal Community, including centralized administration of CMS.

The DoD IG Report noted:

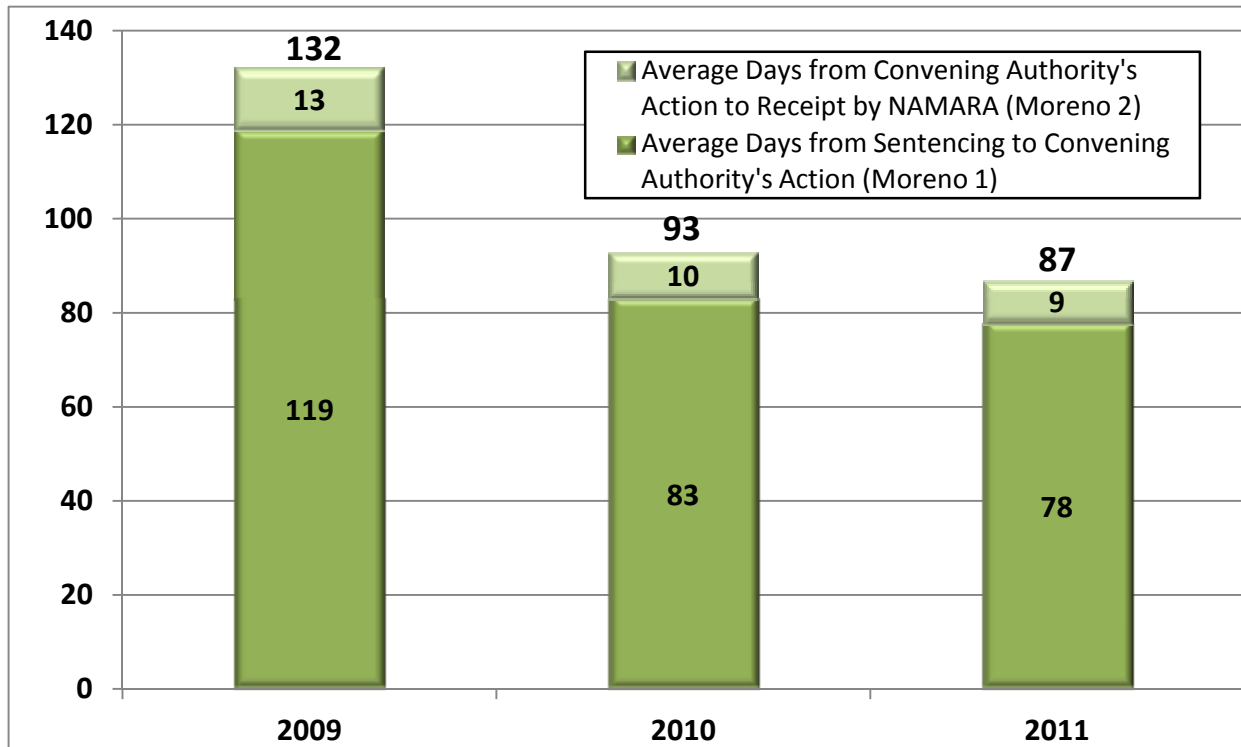
The recently-fielded Marine Corps CMS appears to have substantially greater potential than the Navy CMTIS. Specifically, CMS appears to offer better and more complete capability for management to maintain visibility over individual case processing and status in the field, including post-trial processing in the field. However, CMS is still new, relatively untested and has yet to develop all the needed capabilities.

Effective vs. Exquisite. It is worth noting the DoD IG Report was issued in December 2010 and based on evaluations of CMS the previous May. Since then, JAD has made significant upgrades and revisions to CMS, such as the addition of data fields, validation of required fields, capturing VWAP information, and updating reports and views. The majority of these upgrades were based on user feedback. Admittedly, CMS reflects the austere and expeditionary character of the Marine Corps. It lacks the appearance and feel of a more expensive software solution that one might associate with, say, an “iPad.” CMS also does not track cases from the inception of a command or law enforcement investigation. However, such capabilities do little to ensure effective courts-martial processing, and ultimately only serve to add cost, complexity, and delay in delivery of any case tracking system.

Initial Results. CMS effectively and efficiently accomplishes the purpose for which it was designed. *United States v. Moreno*³ established a presumption of unreasonable delay where the convening authority’s action is not taken within 120 days of the completion of trial or when the record of trial is not docketed by the service Court of Criminal Appeals within 30 days of

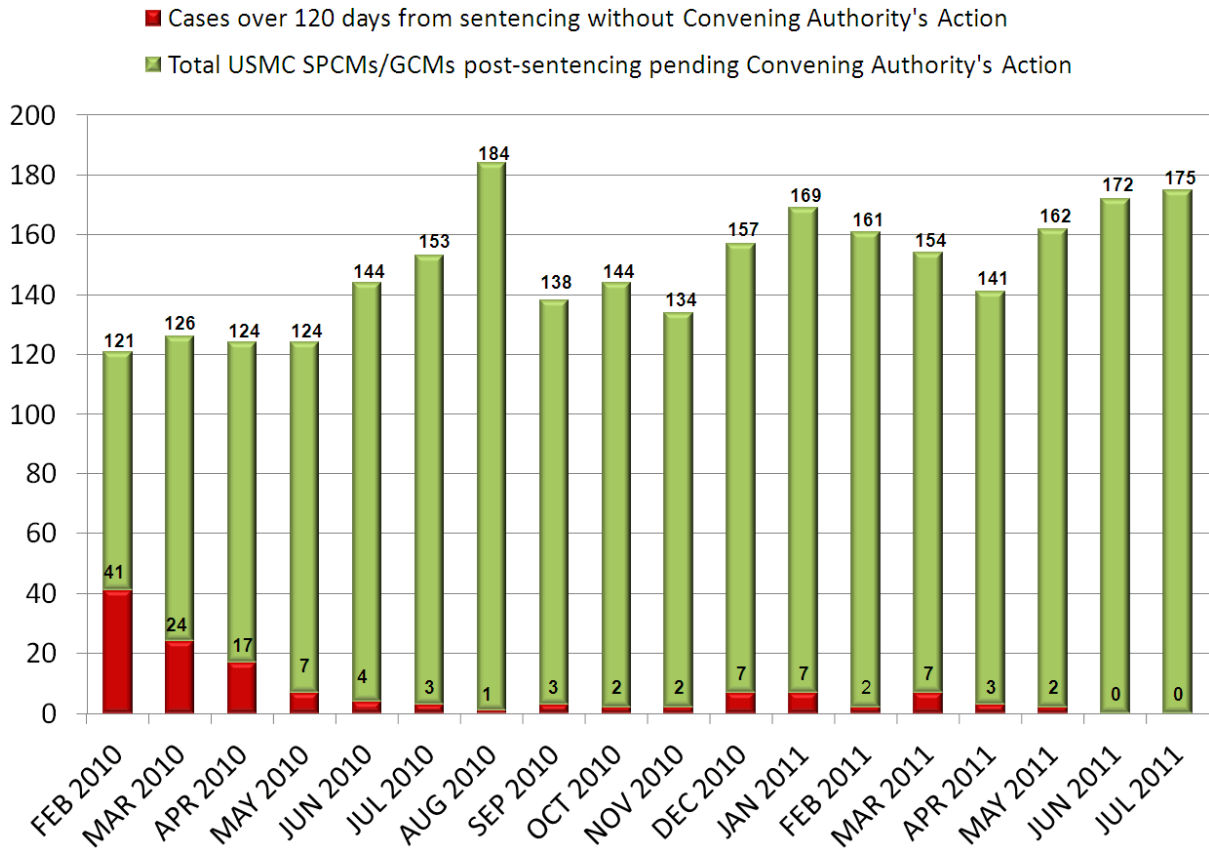
³ *U.S. v. Moreno*, 63 M.J. 129, 142 (2006).

convening authority’s action. This presumption may be rebutted by the government with evidence showing the delay was reasonable under the circumstances. As depicted in the graph below, since the implementation of CMS the average processing time for Marine Corps cases from date of sentencing to receipt of the record of trial by NAMARA has gone from 119 days in FY09 to 83 days in FY10 and is currently 78 days for FY11.⁴



In addition, on 24 February 2010, one week after the effective date of implementation of CMS, 41 of the 121 total cases in the post-trial process exceeded 120 days from the date of trial (sentencing) to convening authority’s action. As depicted in the graph below, on 12 July 2011 none of the 175 total Marine Corps cases in the post-trial process violate the presumption of delay standards created in *Moreno*.

⁴ Receipt by NAMARA marks the conclusion of the service-level post-trial processing mission. On average, those cases that are ultimately docketed with NMCCA, are docketed 1-3 days from the date NAMARA receives the record.



The institutionalization of active monitoring at all supervisory levels, through a single database real-time tracking system ensures that every law center, LSSS, and SJA office consistently meets timely post-trial processing requirements. The decrease in post-trial cases over the *Moreno* time limit is largely the result of this increased oversight. Cases that are over 90 days are flagged on CMS via an automatic alert system and reported to the SJA to CMC. Because CMS is a real-time case tracker, JAD is able to identify issues as they occur and to offer assistance as the need arises.

Military Justice Oversight Council & Annual Military Justice Report

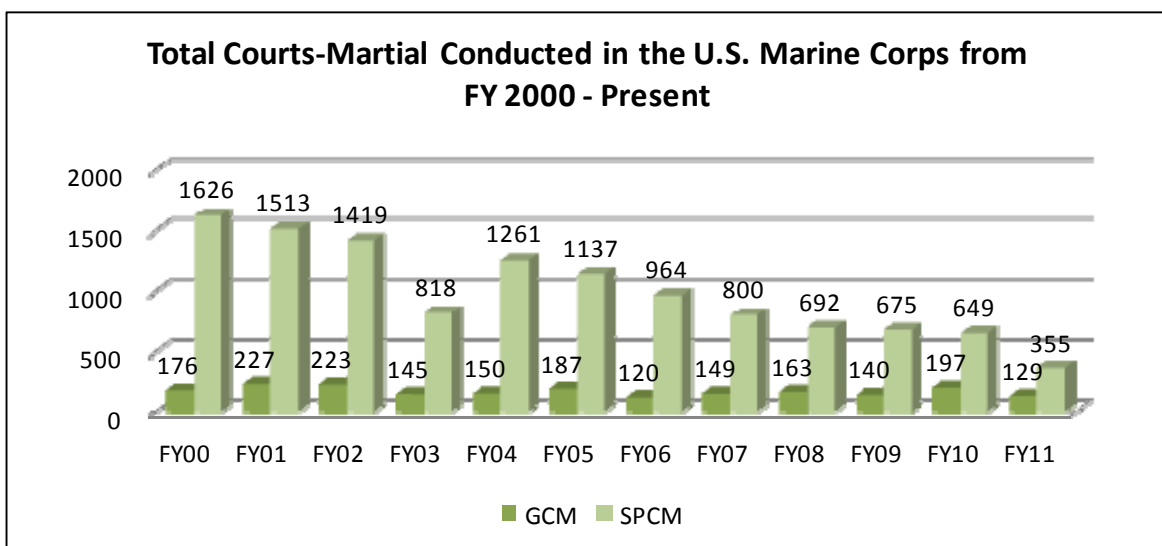
The 506 Panel recommended that the current annual military justice report requirement and the Military Justice Oversight Council (MJOC), created in 2010, be institutionalized in a Secretary

of the Navy Instruction. This was accomplished in SECNAVINST 5430.27D, signed by Secretary of the Navy on 25 April 2011.

In making this recommendation, the 506 Panel noted that the military justice mission remained the core statutory mission for the uniformed legal community, and that the requirement for this mission is not just about numbers of judge advocates. The 506 Panel stated “...more accurately, engaged leadership and effective oversight are the keys. . . .”

Case Load

As depicted below, over the past decade there has been a significant decline in general and special courts-martials from 1802 total cases tried in FY00 to 846 total cases tried in FY10. The majority of the decline is attributable to a reduction in the number of special courts-martial, from 1626 in FY00 to 649 in FY10. The general courts-martial caseload has remained more constant, from 176 cases tried in FY00 to 197 in FY10. As of 12 July 2011, the Marine Corps has tried 129 general courts-martial and 355 special courts-martial this current fiscal year. At the current rate, the Marine Corps is on pace to try approximately 600 total cases in FY11, with the general courts-martial numbers again remaining steady and another decrease in the total number of special courts-martial cases.



Although the number of courts-martial has continued to decline, the demand for military justice support has not declined. Allegations of misconduct have remained steady, with an average of approximately 12,000 allegations reported annually from FY00 through FY08, reflecting a continued trend in the disposition philosophy of our commanders to dispose of less serious misconduct at alternative forums (e.g. summary courts-martial, nonjudicial punishment, etc.). Historical data and local assessments indicate that the court-martial caseload is sufficient to provide Marine judge advocates and support personnel the opportunity to gain proficiency and build an experience base for the development of a professional military justice practice.

Requirements for Complex Cases

Trial Counsel Assistance Program. The increasing complexity of courts-martial requires today's judge advocates to have a greater breadth and depth of knowledge while still remaining proficient in the basics. Based on the success of the Defense Counsel Organization supervised by the Chief Defense Counsel of the Marine Corps, the Marine Corps stood up the Trial Counsel Assistance Program (TCAP) in May 2010 within Judge Advocate Division. The TCAP is comprised of one field grade officer and one company grade officer. The TCAP provides training and resources to assist Marine prosecutors using a number of tools, including on-site training, video teleconferencing, and the TCAP SharePoint litigation support website that contains practice advisories, a military justice blog, a motions bank, and other useful documents and links. In FY11, the SJA to CMC sponsored three regional TCAP Training Conferences at Camp LeJeune, Camp Pendleton, and Kaneohe Bay.

Victim Witness Assistance Program. The Military Justice Branch (JAM) within JAD oversees the Victim Witness Assistance Program (VWAP) for the SJA to CMC in his role as the Marine Corps' responsible official for VWAP. Beginning in FY10, the SJA to CMC sponsors an annual VWAP Training Conference, hosted by JAM and attended by VWAP representatives from every Marine Corps base. The training is tailored to provide the base program managers (Victim Witness Liaison Officers) with the tools to manage their respective programs and provide local training to their installation VWAP personnel. The conferences featured briefs from nationally recognized victim assistance and advocacy trainers, DON and Marine Corps agency heads,

Naval Criminal Investigative Service (NCIS) agents, Family Advocacy Program victim advocates, and law enforcement and corrections personnel.

Sexual Assault Prevention and Response Program. JAM continues to be actively involved in assisting Headquarters Marine Corps in developing policy and advising and training judge advocates with respect to the prevention of and response to allegations of sexual assault. The policy focuses primarily on providing a robust support system for victims of sexual assault. JAM is responsible for ensuring that all judge advocates receive initial and periodic refresher training on sexual assault response policies, victim rights, victimology, sex offenders, current scientific standards for evidence, recantations and false information, and deployment issues, including remote location assistance.

OVERALL NUMBER OF JUDGE ADVOCATES REQUIRED

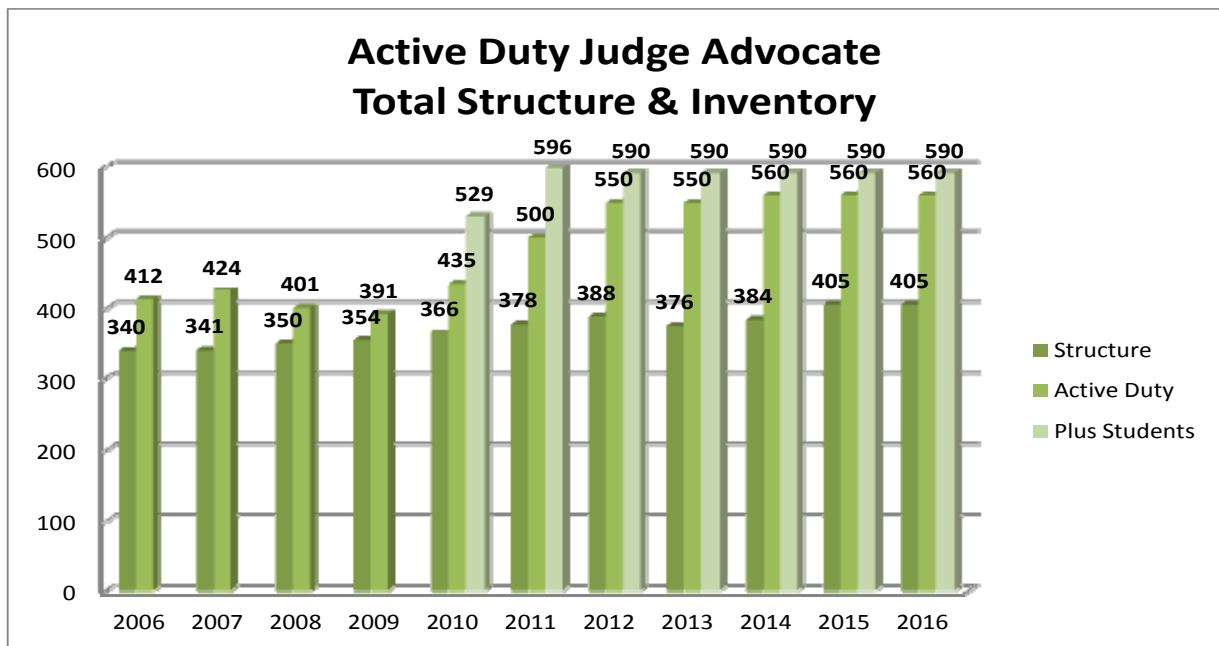
The 506 Panel concluded that “[t]he Marine Corps’ programmed target inventory of approximately 550 judge advocates over the next five years will be sufficient to fulfill the legal requirements of the Marine Corps, as well as to preserve the ability of Marine judge advocates to serve in non-legal billets, maintaining their role as well-rounded Marine Air-Ground Task Force (MAGTF) officers and contributing to the broader Marine Corps mission.”

The Marine Corps will continue to ensure that judge advocate structure, inventory and assignments are effectively managed to meet evolving mission requirements. As the 506 Panel noted:

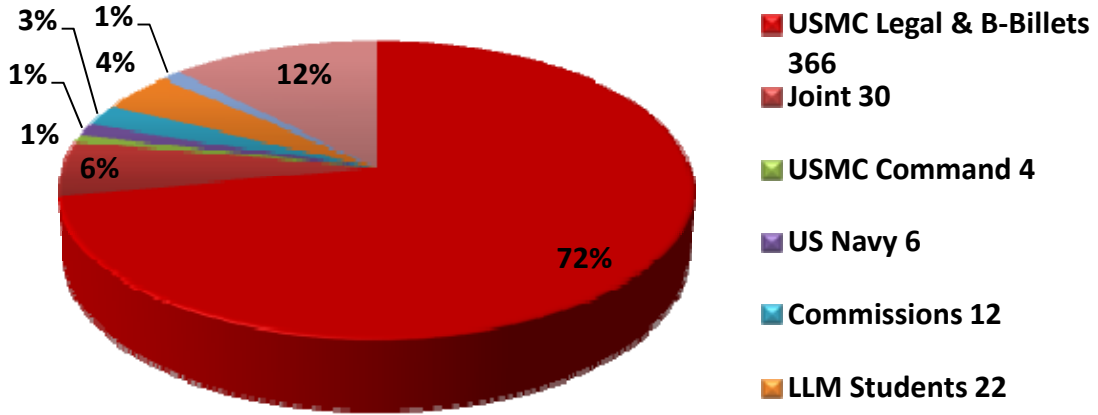
A review of internal Marine Corps studies, as well as a CNA study of Marine Corps manpower systems, reflects favorably on the Marine Corps’ efforts to actively manage legal requirements, including: its use of a “bottom-up” structure review, careful assessment of increasing demands from operations and force growth, effective incorporation of the SJA to CMC as the Occupational Field Manager into the manpower process, and building active-duty judge advocate inventory in support of approved structure increases.

...

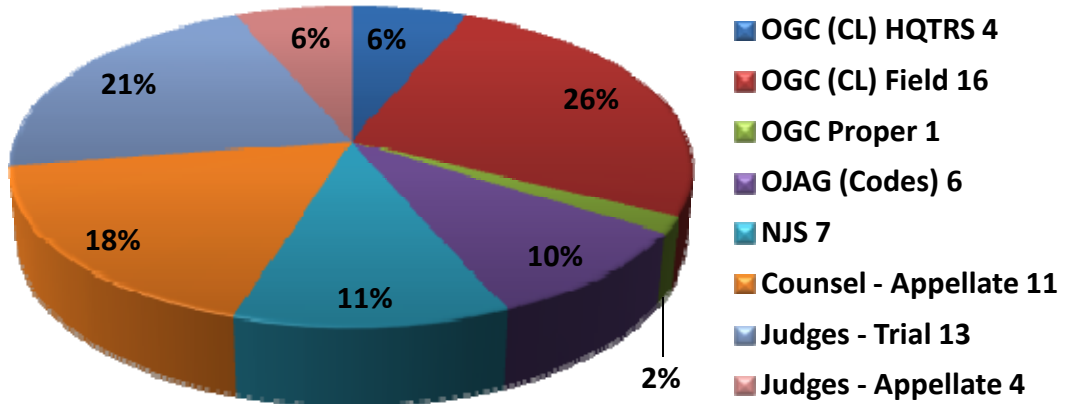
[The] Marine Corps has an effective manpower management system that deliberately and systematically identifies legal requirements within the organizational structure of the Marine Corps, then funds and builds an active duty inventory to support those requirements.



508 Active Duty Judge Advocates *Where They Are Today*



62 (12% of Total) USMC Judge Advocates Assigned to Department-Level Mission



Operational Law Requirements

The 506 Panel concluded that “permanent operational law billets can be expected to approximately double over the next decade for the Navy and Marine Corps, and there will likely be continued growth in the demand signal for judge advocates in contingency operations.” The 506 Panel recommended that the Marine Corps consider measures to expand opportunities for senior Marine judge advocates to compete for senior legal positions within the joint community.

Permanent Operational Law Assignments. Within the Marine Corps, operational law advice and services have been, and continue to be, provided primarily by SJAs permanently assigned to the command elements of the Marine Air-Ground Task Forces (MAGTFs) and the headquarters of the Marine Forces component commands (e.g., Marine Forces Europe, South, Central, etc.).⁵ Additionally, there are structured requirements for Marine judge advocates to be permanently assigned to operational law billets at service headquarters,⁶ Office of the Judge Advocate General (OJAG),⁷ Joint Staff,⁸ and training commands.⁹ Marine judge advocates also compete for permanent assignment to joint operational law billets on the staff of the combatant commands that are not structured and aligned to be filled by any particular Service. The requirements for permanently assigned judge advocates to provide operational law support has steadily increased over the years, rising 135% from 2000 through 2012, as portrayed below.

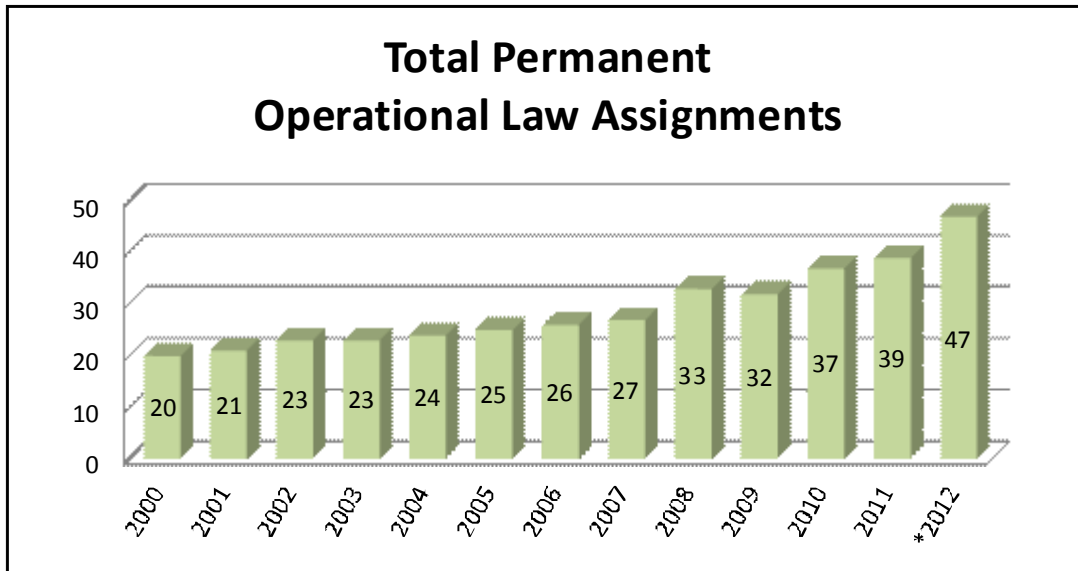
⁵ The Marine Air-Ground Task Force (MAGTF) is the Marine Corps’ principle organization for all missions across the range of military operations. MAGTFs are general purpose combined arms units that can be tailored (task-organized) to the requirements of a specific situation. Regardless of size or mission, each MAGTF has four core elements: a command element (i.e., headquarters), ground combat element (e.g., units of infantry, artillery, or tanks), aviation combat element, and logistics support element. The command element provides the command and control for planning and executing all military operations, and as such serves as the headquarters. *Id.* There are both standing MAGTFs (e.g., Marine Expeditionary Units (MEU) and Marine Expeditionary Forces (MEFs)) and mission-specific, contingency MAGTFs (e.g., Marine Expeditionary Brigade – Afghanistan (MEB-A)). There are three standing MEFs (I, II, and III MEF), and seven standing MEUs (11, 13, 15, 22, 24, 26, and 31st MEU),.

⁶ E.g., Branch Head, Operational & International Law Branch (Code JAO), Judge Advocate Division (JAD), Headquarters, Marine Corps.

⁷ E.g., International Law Officer, Code 10, Office of the Judge Advocate General.

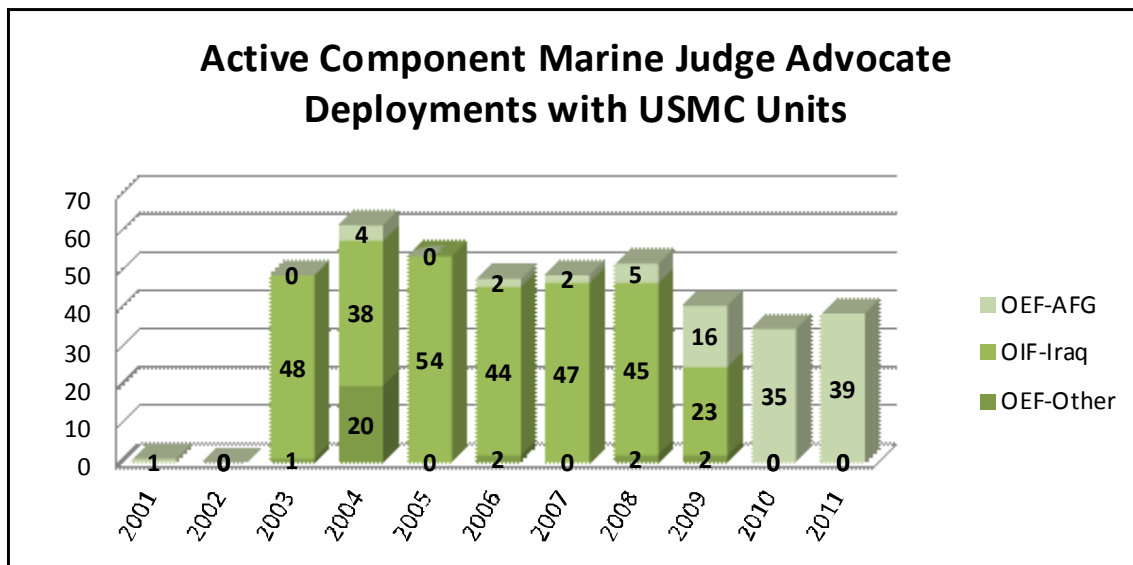
⁸ E.g., Non-Proliferation Planner, Office of Legal Counsel, Chairman of the Joint Chiefs of Staff.

⁹ E.g., Instructor/Trainer/Advisor at Naval War College, Marine Corps University, The Army Judge Advocate General’s Legal Center and School (TJAGLCS), and Marine Air Ground Combat Center (MCAGCC), 29 Palms.



These numbers include seven Marine judge advocates assigned to Marine Expeditionary Units. These rotational units have traditionally served as the “first responders” to regional crises, such as aviation support to combat operations in Libya and humanitarian assistance to Pakistan. Further, our judge advocates serving at Marine Forces component commands, which are assigned to the geographic and functional combatant commands, provide the most senior Marine operational commanders with legal advice concerning international agreements, security cooperation, and contingency operations. We are proposing measures within the Marine Corps to enhance the joint experience base and, thus, create greater opportunities for senior Marine judge advocates to compete for senior-level joint billets.

Marine Judge Advocate Support to Deployed Marine Units. In addition to the judge advocates permanently assigned to deploying Marine Corps units, there is a significant requirement to temporarily augment these units with additional judge advocates for deployments. There are currently 39 active and 8 reserve Marine judge advocates forward deployed with Marine units in support of combat and other contingency operations around the world. These deployed judge advocates provide critical operational legal advice to commanders. While future manning requirements for judge advocates assigned to our traditional legal functions, such as military justice and legal assistance, are more easily projected, aligning our judge advocate manning requirements to support contingency operations is more complicated due to the unpredictable nature of global crises.



Marine Judge Advocate Support to Joint Task Forces. There are requirements for individual augments (IA) to provide legal services to various Joint and Combined Task Forces, Joint forces and NATO commands. Marine Corps judge advocates currently serve as IAs with NATO's International Security Assistance Command – Afghanistan, U.S. Forces – Afghanistan, Combined Joint Interagency Task Force – 435 in Afghanistan, Combined Joint Task Force – Horn of Africa in Djibouti, and Joint Task Force Guantanamo Bay. One high-profile example of the importance of IAs was the selection of a Marine colonel to serve as the senior legal advisor to General Petraeus in Afghanistan. While there has been no shortage of active duty volunteers, IA billets are also being filled with volunteers from the Marine Corps Reserve. Currently there are four active component, and three reserve component judge advocates serving in IA billets.

Support to the Office of Military Commissions (OMC)

The 506 Panel noted the requirement for support to the OMC. This requirement was formally revalidated by the Deputy Secretary of Defense in April 2011. Specifically, the Deputy Secretary of Defense directed the extension of OMC manning requirements through the end of FY15. The 506 Panel also anticipated that if the majority of pending cases are referred to military commissions, the OMC would request more experienced and accomplished litigators.

By September 2011, there will be 13 active and reserve Marine Corps judge advocates at the OMC, including one of our most experienced colonels who is serving as the Chief Defense Counsel for OMC. Each judge advocate at OMC is screened on the basis of their military justice skills and experience prior to being assigned to the OMC.

Support to the Disability Evaluation System (DES)

The Wounded Warrior Act of 2008 and the DoD implementing memorandum provide that government legal counsel shall be made available:

- on a discretionary basis prior to the service member's receipt of the decision of an Informal Physical Evaluation Board (IPEB),
- on a mandatory basis, to consult about rights and elections, after receipt of the decision of the IPEB, and
- on a mandatory basis, for full representation at the Formal Physical Evaluation Board (FPEB).

The 506 Panel noted that the Services differ in exercising the discretion to provide legal counsel to wounded, ill, and injured (WII) service members prior to the decision of the Informal Physical Evaluation Board. The 506 Panel recommended that this difference in approach be examined by the DoD and DON.

IPEB Representation. Currently, reserve Navy JAG attorneys provide IPEB legal advice to WII Sailors and Marines at the following locations: Bethesda, Norfolk, Jacksonville, Pensacola, San Diego, Bremerton, and Great Lakes. The Marine Corps has mobilized five reserve judge advocates to support both mandatory and discretionary IPEB counseling requirements. Three are located on the East coast (Camp Lejeune and Bethesda Naval Hospital/MCB Quantico) and two are on the West coast (Camp Pendleton and Naval Hospital San Diego), fully devoted to pre and post-IPEB consultations.

FPEB Representation. An additional two mobilized Marine judge advocates are representing both Marines and Sailors at the Formal Physical Evaluation Boards (FPEB) alongside their Navy JAG counterparts. They are operationally assigned to the Navy Legal Services Office - North Central (NLSO-NC). NLSO-NC is tasked with all Navy FPEB representation. The need for these additional judge advocates became apparent when in March 2011 the Navy's Physical Evaluation Board (PEB) increased the number of scheduled weekly formal PEB (FPEB) hearings from 16 to 24. Continued funding for all seven (IPEB and FPEB counsel) Marine reserve mobilizations is expected through FY12 and is likely to be continued through FY13.

Long Term Solution. In conjunction with Navy JAG, we are currently examining the DES architecture, including civilian and military counsel, to develop a way ahead on providing legal counsel to our WII Marines and Sailors. An additional Marine reserve judge advocate serves within the JAD's Legal Assistance Branch to supervise Marine IPEB counsel and coordinate with OJAG (Code 16) in developing the Department's DES program. The Navy JAG anticipates hiring civilian IPEB attorneys to provide a long term solution for representation to the WII. Additional civilian IPEB counsel are contemplated to ultimately replace the mobilized reserve judge advocates by fall of 2013. As part of the FSRG, the SJA to CMC is proposing the addition of five permanent structured billets at wounded warrior regiments. The requested structure includes one Major (O-4) and one Captain (O-3) on each coast, with another Captain in the National Capital Region. The proposal is based on IPEB counsel field experience, which continues to demonstrate that the provision of legal counsel earlier in the process than the release of a member's IPEB results reduces processing time, produces more accurate IPEB results, and then reduces the number of formal hearings.

JAG Authority over USMC Manpower Policies and Assignments.

The Marine Corps concurs with the 506 Panel's recommendation against providing additional authority for the JAG over manpower policies and assignments of judge advocates in the Marine Corps, and agrees with the 506 Panel that additional authority is neither "necessary nor warranted." The 506 Panel provided several compelling bases for their recommendation, stating:

[t]he Commandant, with the assistance of the SJA to CMC, is effectively managing judge advocate manpower (i.e., structure, inventory, and assignments) to meet Service, Departmental, and joint legal requirements; and to ensure community health (i.e., recruiting, retention, and education) and proper career progression (i.e., promotions) for Marine judge advocates. Moreover, the JAG is not in the best position to exercise additional authority in these areas within the Marine Corps, given the Marine Corps' unique requirements for community health and career progression of Marine judge advocates. Lastly, transferring authority from the Commandant to the JAG could marginalize the SJA to CMC as a legal voice within his Service, contrary to the 506 Panel's view that the role of the SJA to CMC needs to be clarified and strengthened.

ENDURING INSTITUTIONAL ACCOUNTABILITY

The DoD IG Report of 10 December 2010 concluded that:

Longstanding process failures stemmed from inadequate leadership, supervision and oversight in organizations suffering from many policy and structural impediments.... Overall, the Navy JAG and senior leadership did not satisfactorily identify, address, or fix the severe post-trial processing problems that recurred over two decades despite many warnings and trouble signs.

The DoD IG Report recommended the SJA to CMC be given greater authority to conduct Article 6, UCMJ, inspections and to exercise professional supervision over Marine judge advocates.

The 506 Panel echoed findings contained in the DoD IG Report, opining that:

the challenge presented to the leaders of the Navy and Marine judge advocate communities, with respect to their core military justice function, has as much to do with ensuring engaged leadership and effective oversight as it does with numbers of judge advocates.

The 506 Panel recommended clarifying and strengthening the role of the SJA to CMC, by:

- providing the SJA to CMC “authority to supervise the administration of military justice and the delivery of legal assistance services within the Marine Corps”,
- providing the SJA to CMC “authority to exercise professional and technical supervision over all Marine judge advocates”, and
- establishing a “direct relationship between the SJA to CMC and the SECNAV.”

The 506 Panel concluded that these measures “will improve the delivery of legal services within the Marine Corps, and in particular post-trial processing at the Service level, by institutionalizing clear lines of authority and accountability.” The 506 Panel recommended a dual statutory and regulatory approach, noting that “legislation would provide the more enduring, institutional basis for clarifying and strengthening the role of the SJA to CMC.”

Both the DoD IG and the 506 Panel reports, as well as our internal study, suggest that the challenges facing the DON in the delivery of uniformed legal support are about far more than the number of judge advocates in the Navy and Marine Corps. Their conclusions suggest that the greatest obstacles to accomplishing the DON’s legal mission are decades-old systemic lack of Service-level leadership and supervision, as well as deficiencies in Departmental oversight.

Over the past few decades, several JAGs have implemented measures and dedicated precious time and resources to address these unique DON challenges. However, as the DoD IG noted, “[w]hen curative measures were taken, they were often short-lived or insufficiently institutionalized to endure past the incumbency of individuals who resolved problems at the time.” This suggests that systemic deficiencies stem not from personal leadership failures but rather from gaps inherent in the DON’s unique uniformed legal organization.

By positioning the respective Judge Advocate Generals within the Service military staffs, Congress provided the Army and Air Force with Service-level legal leadership positions with commensurate supervision authority and accountability. Congress provided for a direct relationship between the Service JAGs and the Department Secretaries. In a single-Service

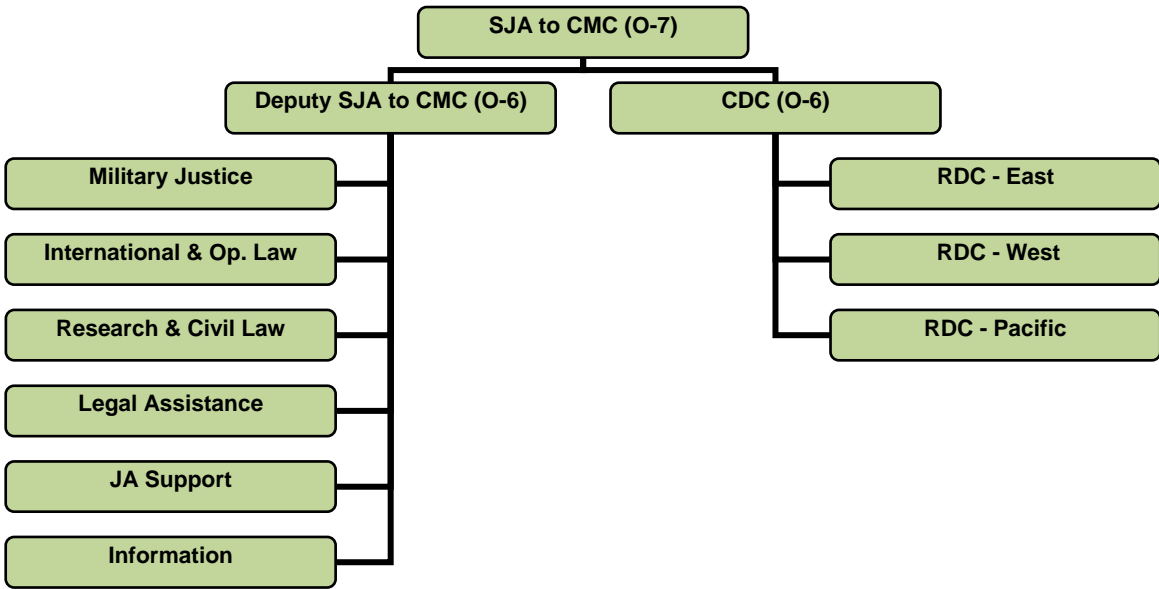
Department, the JAGs can seamlessly provide Service-level leadership and supervision while remaining accountable to their Secretaries to facilitate Departmental oversight.

The dual-Service Department of the Navy does not readily lend itself to the efficient construction of the Army and Air Force. A single JAG was placed at the Department level, presumably to provide for efficiency and integration. To this end, Congress legislated that the DON JAG and DJAG would be selected from officers of both the Navy and Marine Corps, and provided for two AJAGs – one Navy, one Marine Corps. While this statutory construct accounted for the requirement for Departmental oversight, it did not provide for a Service-level officer within each of the naval Services to exercise responsive Service-level leadership and supervision.

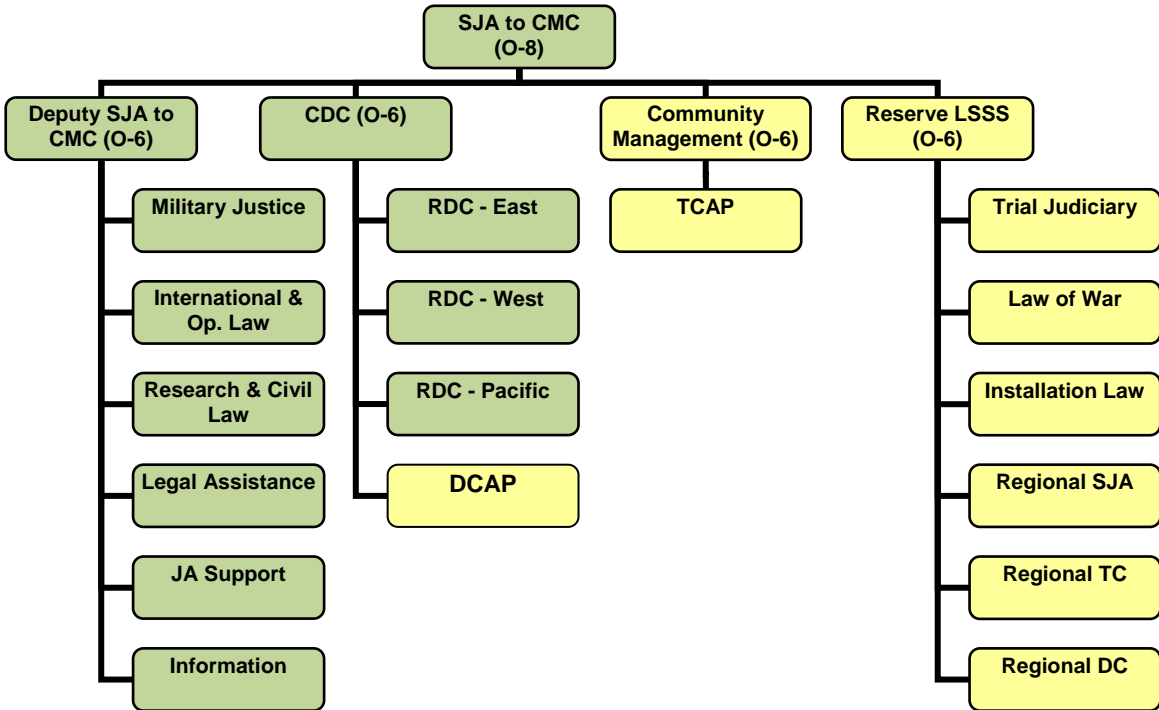
As recommended by the DoD IG and the 506 Panel, and as articulated by the Secretary of the Navy, strengthening and clarifying the role of the SJA to CMC will provide this requisite Service-level leadership.

In the meantime, we have begun providing Service-level leadership and supervision based on de facto responsibility. We have used the authority vested in the SJA to CMC through the Commandant of the Marine Corps to reorganize and reorient the Judge Advocate Division to effectively lead and supervise our legal community. That orientation is illustrated in the changes depicted below.

JAD Organization 2009



JAD Organization 2011



Assistant Judge Advocate Generals (AJAGs). The 506 Panel recognized that, while the statutory scheme provided for only two Assistant Judge Advocates General (AJAG) positions, to be balanced with one position filled by a U.S. Navy JAGC officer and the other a Marine judge advocate, the regulatory scheme provides for four AJAGs, with three positions filled by U.S. Navy JAGC officers and one filled by a Marine judge advocate. As a result, the current regulatory scheme only allows for one Marine to serve among the six Departmental JAG-related flag and general officer positions. The 506 Panel recommended that two of the Department's four AJAG positions be filled by Marine judge advocates and two be filled by U.S. Navy judge advocates, using the rotational process now being used by the U.S. Navy so that the four regulatory AJAG positions rotate through the two statutory positions.

We have recommended to the Secretary of the Navy that the AJAG billets and their responsibilities and authorities be re-examined. In the interim, I have recommended to the Secretary that the existing regulatory AJAG billets be filled in a manner that ensures Departmental balance and integration as recommended by the 506 Panel.

CONCLUSION

Again, I would like to thank Congress for its interest in the health and well-being of our mission. Congress's interest in our mission was received as a call to action by our community and the leadership within our Corps and I am proud of our response. More importantly, as I travel around to our bases and stations visiting and inspecting our legal services community, the officers and Marines, both senior and junior, are excited about the direction in which our legal community is headed.

The future of our Marine judge advocate community is bright. Recruiting trends indicate that incoming judge advocates and legal service specialists are uniformly better qualified than we were a generation ago. I believe we owe it to them to maintain a professional legal community dedicated to meeting the high standards of our Corps, with strong, enduring mechanisms for responsibility and accountability. Moreover, we owe it to our commanders and individual

Marines to ensure they continue to receive the best possible advice, representation, and legal services.

Based on the direction we are taking in our Strategic Action Plan and in response to the DoD IG Report and the 506 Panel, I am firmly convinced that we are positioning ourselves to best serve the Marine Corps, the Department of the Navy, and the Department of Defense.