

EXECUTIVE SUMMARY

A Call to Action. In August 2009, Congress's direction to convene an Independent Panel to Review Judge Advocate Requirements in the Department of the Navy ("506 Panel") and a contemporaneous Department of Defense (DoD) Inspector General's (IG) inquiry served as a clear call to action for the Marine Corps. In response, we conducted a comprehensive study of the provision of legal support within the Service, leading to several overarching conclusions.

First, the Marine Corps needs command-oriented, organic legal support, provided by Marine judge advocates, who are integrated, unrestricted Marine Air-Ground Task Force officers. As uniformed legal support requirements are command-driven, and execution is command-oriented, there is an inherent, intangible benefit to having a legal organization of Marines providing legal support that is responsive to the Service's unique history, leadership philosophy, and operational characteristics. Second, over the past two decades our legal mission has evolved in scope, intensity, and complexity. Legacy structure and doctrine, a philosophy of maximum decentralization, and a limited role for the SJA to CMC have limited our ability to adapt and respond to evolving requirements. Third, to meet the challenges of a more complex, future legal environment, we need to develop higher levels of individual proficiency and organizational efficiency, which in turn requires a greater degree of supervision, centralization and uniformity.

The conclusions of our assessment are captured in our July 2010 Strategic Action Plan (SAP), which establishes a series of initiatives to accomplish five overarching goals: (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.

The 506 Panel Report. The conclusions in the 506 Panel's report of 22 February 2011 are largely consistent with our own determinations. To the extent the Panel recommended action at the Service level, the recommended reforms are underway in the Marine Corps. Implementation of the remaining recommendations require Departmental action.

Manpower Requirements. 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."

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.

Court-Martial Case Tracking System. The DoD IG and the 506 Panel each concluded that the DoN should employ a single case tracking system that can track cases from the referral of

charges or imposition of pretrial restraint through appellate review. The Marine Corps currently has a single, Service-wide case tracking system that effectively accomplishes its singular goal – to protect the due process rights of every accused Marine through accurate and reliable case tracking. Although currently limited to Marine Corps cases (75% of DON total), the Marine Corps Case Management System (CMS) could be adapted to track all DON cases through completion of appellate review. CMS was developed in six months and implemented at a total cost of \$60,000. Its use was mandated Service-wide on 1 February 2010. CMS effectively and efficiently accomplishes the purpose for which it was designed. Since implementation, the average processing time for Marine Corps cases from date of sentencing to receipt of the record of trial by the appellate court has gone from 119 days to 87 days, and the number of cases in the post-trial process that exceeded 120 days from the completion of trial to convening authority's action has dropped from 41 cases in February 2010 to less than a handful today.

Military Justice Oversight. The Secretary of the Navy signed SECNAVINST 5430.27D on 25 April 2011 institutionalizing the annual military justice report requirement and the Military Justice Oversight Council (MJOC), consistent with the 506 Panel's recommendation.

Requirements for Complex Cases. The Marine Corps stood up the Trial Counsel Assistance Program (TCAP) in May 2010, and has since sponsored three regional TCAP Training Conferences. Since FY 10, the SJA to CMC has sponsored an annual Victim-Witness Assistance Program (VWAP) Training Conference, attended by VWAP representatives from every Marine Corps base. JAD is actively involved in developing policy and advising and training judge advocates with respect to the prevention of and response to allegations of sexual assault.

Operational Law Requirements. The 506 Panel concluded that operational law requirements can be expected to double over the next decade, and 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. The SJA to CMC is 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.

Support to the Office of Military Commissions (OMC). The Deputy Secretary of Defense directed the extension of OMC manning requirements through the end of FY15. 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.

Support to the Disability Evaluation System (DES). The Marine Corps has mobilized eight reserve component Marine judge advocates to support DES. In conjunction with Navy JAG, we are currently examining a long term plan for providing DES support. The Navy JAG anticipates

hiring civilian IPEB attorneys. Additionally, the SJA to CMC is proposing the addition of five permanent structured billets at wounded warrior regiments.

Clarifying and Strengthening the Role of the SJA to CMC. The 506 Panel recommended 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.”

The challenges in accomplishing the DON’s legal mission are about far more than the number of judge advocates. The greatest obstacles are decades-old systemic lack of Service-level leadership and supervision, as well as deficiencies in Departmental oversight, which stem from gaps inherent in the DON’s unique uniformed legal organization.

By positioning the respective Judge Advocate Generals (JAGs) 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 simultaneously provided for a direct relationship between the Service JAGs and the Department Secretaries. The dual-Service DON 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 the requisite Service-level leadership position and authorities.

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.

Assistant Judge Advocate Generals (AJAGs). The 506 Panel recommended that two of the Department’s four AJAG positions be filled by Marines and two be filled by the U.S. Navy. We have recommended that the AJAG billets be re-examined, and in the interim, the existing regulatory AJAG billets be filled in a manner that ensures Departmental balance and integration.