

STATEMENT BY

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BEFORE THE

**COMMITTEE ON ARMED SERVICES
SUBCOMMITTEE ON PERSONNEL
UNITED STATES SENATE**

**ON THE PROVISION OF LEGAL SERVICES BY
MEMBERS OF THE ARMY JUDGE ADVOCATE GENERAL'S CORPS**

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INTRODUCTION

Mr. Chairman and members of the Subcommittee: Thank you for the opportunity to discuss the provision of legal services by the outstanding members of the Army Judge Advocate General's Corps -- Active, Guard, Reserve, and Civilian -- in deployed locations and at home station. Before I begin, I want to thank you and members of this body for your support of the men and women of our Armed Forces.

PERSONNEL OVERVIEW

The Active Army JAG Corps is comprised of 1,870 Judge Advocates, 99 warrant officers, and 1,831 enlisted paralegals. The number of Judge Advocate position allocations has increased by 329 since 9/11. This is the result of an unrelenting demand for legal support from commanders who operate in an increasingly complex and legally intensive environment. Currently, there are 142 Army Judge Advocates deployed to Afghanistan and 113 Army Judge Advocates still serving in Iraq. In addition, there are 304 Judge Advocates serving in more than 19 other countries in support of our Army deployed overseas.

The JAG Corps continues to attract talented lawyers through its aggressive on-campus recruiting program, and recruited at 199 of the American Bar Association (ABA) accredited law schools during the Fiscal Year (FY) 2010 and FY 2011 on-campus recruiting seasons. In FY 2010, we welcomed 164 attorneys into the Regular Army, 94 attorneys into the Army Reserve, and 93 attorneys into the Army National Guard. As of July 15, 2011, we have accessed 151 attorneys into the Regular Army, 79 attorneys into the Army Reserve, and 74 attorneys into the Army National Guard.

Diversity in the JAG Corps has continued to remain at high levels, with women now accounting for approximately 25% of all active duty Judge Advocates. Minority officers comprise about 15% of the JAG Corps' active duty strength.

We have five active component general officers providing critical strategic oversight of our Corps while ensuring the Army's senior leadership receives the trusted and experienced counsel it demands. On a temporary basis, we have a sixth general officer serving in a joint billet in Afghanistan as the Deputy Commander, Combined Joint Interagency Task Force 435 and Commander, Rule of Law Field Force, Afghanistan. He will soon assume new duties as the Chief Prosecutor, Office of Military Commissions. In addition, we have two Brigadier Generals in the Army Reserve and one in the Army National Guard. They play an essential role in ensuring the effective integration of approximately 5,000 Reserve and Guard legal personnel into a unified team without which we could not provide the support we give to our commanders, Soldiers, and families.

DELIVERY OF LEGAL SERVICES

Army commanders expect their Judge Advocates to be highly versatile and proficient. They must operate effectively within our six core legal disciplines: military justice; international and operational law; administrative and civil law; contract and fiscal law; claims; and legal assistance. In addition, Army legal personnel, when deployed, must be fully competent in a variety of subjects ranging from detainee operations and foreign claims to inter-agency collaboration in support of Rule of Law operations. When they return to home station, the focus shifts and Judge Advocates are called upon to advise on such diverse matters as our disability evaluation system, federal litigation, environmental law, and civilian personnel law.

To improve the responsiveness of our legal support, Judge Advocates are now embedded at the Brigade level and, in some instances, at the Battalion level. They are trusted advisors who proactively address issues before they become problems. Army Judge Advocates are also committed members of the Joint Team. There is no doubt in my mind that we are most effective when serving alongside our colleagues from the Air Force, Navy, Marine Corps, and Coast Guard, and with our dedicated civilian attorneys as well.

The Judge Advocate General's Legal Center and School (TJAGLCS) plays a critical role in preparing Army legal personnel to deliver competent legal services across the spectrum of Army operations. TJAGLCS' resident program continues to educate almost 5,000 students per year and, in combination with non-resident programs, including distributed learning, and on-site training for Army Reserve Component attorneys, TJAGLCS educates an increasing number of lawyers and legal paraprofessionals annually, totaling over 18,000 students in FY 2010. In addition to teaching three Judge Advocate Officer Basic Courses for new Judge Advocates each year, TJAGLCS conducts the American Bar Association (ABA) recognized Graduate Course that awards a Master of Laws degree in Military Law to career Judge Advocates, and provides continuing legal education (CLE) in over 70 functional area courses.

The U.S. Army Litigation Division provides representation to the Army and Army officials in four areas of civil litigation: Military Personnel Law, General Litigation, Civilian Personnel Law, and Tort Litigation. The Army has approximately 925 active civil cases. During the first six months of 2011, Litigation Division received 170 new cases and successfully closed 162 cases. We continue to see a large number of cases challenging military personnel decisions, official decisions by government officials via *Bivens* suits, and government information practices. The nature of our practice continues to be highly complex as we face due process, First Amendment, and equal protection litigation, frequent filings for information under government information practices statutes, challenges to the *Feres* doctrine and the Department of Defense's Homosexual Conduct Policy, and complicated jury trials in employment discrimination law.

Army legal assistance services remain in high demand. During FY 2010, we opened 187,239 cases. Our largest areas of service remain in the area of Estate Planning (54,078) and Divorce/Separations (33,671). In assisting our clients, Army legal offices prepared a significant number of legal documents. Powers of Attorney

were the most frequently prepared document (324,272). In addition, our legal assistance offices prepared 41,482 wills and 2,969 separation agreements. They also provided 328,939 notarizations and referred 2,044 clients to civilian attorneys.

Army legal assistance personnel, together with unit tax advisors, temporary employees, and volunteers prepared and filed 121,834 Federal and 76,697 state income tax returns during the tax filing season. More than ninety percent of the federal income tax returns were filed electronically. The Soldiers, retirees, and Family Members who visited our Tax Assistance Centers saved over \$32,750,000 in tax preparation and filing fees last year. Every year, legal assistance services collectively save our clients substantial fees they would otherwise incur if purchasing the advice and services. Using average national costs of selected services provided by the ABA Standing Committee of Legal Assistance for Military Personnel, legal assistance offices saved our clients over \$86,250,000 in legal fees (including the above mentioned over \$32,750,000 in tax return preparation fees) in FY 2010.

Enhancing legal support to Soldiers processing through the Medical Disability Evaluation System (DES) remains an important focus area. In FY 2010, we had 26 counsels serving as Soldier's Physical Evaluation Board Counsel and 23 serving as Soldier's Medical Evaluation Board Counsel (SMEBC). They were supported by 36 paralegals. Of these, 27 counsel and 16 paralegals are Reserve Component Soldiers mobilized to support this critical mission. The recent establishment of the SMEBC function has been extremely successful. By providing counsel earlier in the DES process, we more clearly identify the medical conditions to be addressed in the process, ensure appropriate documentation of the conditions, assist Soldiers in better understanding the system and help them have reasonable expectations of the likely results of their case. This has resulted in more complete case files moving forward for adjudication, better results for Soldiers and a reduction in the number of formal Physical Evaluation Boards being requested by Soldiers.

The U.S. Army Claims Service (USARCS) and claims offices world-wide continue to vigorously examine and settle meritorious claims against the U.S. Army brought under the Federal Tort Claims Act, the Personnel Claims Act, the Foreign Claims Act, and other statutory authority. In FY 2010, USARCS oversaw payment of over \$8.6 million in claims to Iraqi civilians under the Foreign Claims Act, a \$31 million decrease from the previous year. In FY 2010, USARCS administered the payment of over \$3.1 million in claims to civilians in Afghanistan under the Foreign Claims Act, a significant increase from the previous year when less than half this amount was paid. Also during FY 2010, USARCS paid more than \$5 million in household goods claims and over \$21 million in tort claims. Army claims offices also processed a total of \$22.4 million in medical care recovery claims in FY 2010.

MILITARY JUSTICE

Military justice remains our core competency. During FY 2010, there were 620 trials by general court-martial and 454 trials by special court-martial. In addition, there were 667 trials by summary court-martial. The number of non-judicial punishments completed during FY 2010 was 36,624.

	FY06	FY07	FY08	FY09	FY10
General Court-Martial (CM)	750	811	674	631	620
Special CM	583	639	488	523	454
Summary CM	1160	1223	1279	1040	667
Total CM	2493	2673	2441	2194	1741
CM Rate Per 1000 Soldiers (Not incl SCM)	2.64	2.78	2.16	2.11	1.90
Nonjudicial Punishment (NJP)	43,813	45,239	46,063	35,210	36,624
NJP Rate Per 1000 Soldiers	86.69	86.66	85.60	64.37	64.70
Army Active Duty Strength	505,402	522,017	538,128	547,000	566,045

Although court-martial rates have remained relatively stable in recent years, with the exception of Summary Courts-Martial, the complexity of cases is increasing. We have invested considerable resources in training our Trial Counsel to better prosecute cases involving crimes of sexual assault. This has included the appointment of 15 Special Victim Prosecutors (SVPs), with an additional eight SVP positions recently approved, and five Highly Qualified Experts (HQEs). While much work clearly remains to be done in this area, I firmly believe we are now on the right track.

I am also committed to improving the training of U.S. Army Trial Defense Service (TDS) counsel so that our Soldiers receive the effective representation they deserve. Currently, more than 400 active and Reserve Component attorneys serve in TDS worldwide, to include over 20 in U.S. Central Command deployed to Iraq, Afghanistan and Kuwait and over 30 mobilized in support of defense operations worldwide. The Defense Counsel Assistance Program (DCAP) plays a centralized role in ensuring that defense counsel and paralegals have the necessary skills and knowledge base to represent their clients in an effective manner.

Finally, our appellate docket is carefully managed to ensure the timely disposition of courts-martial cases on appeal. The Army Court of Criminal Appeals (ACCA) post-trial processing systems and those of the Government and Defense Appellate Divisions are adequate to comply with the standards contained in the Uniform Code of Military Justice and applicable case law.

CONTRIBUTIONS OF OTHER MEMBERS OF JAG CORPS TEAM

The success of our legal operations relies heavily on the outstanding support of our warrant officers and enlisted paralegals. Their selfless dedication and commitment are truly impressive. I would also like to highlight the phenomenal work of our civilian attorneys and legal paraprofessionals who provide essential continuity and subject matter expertise in our home station legal offices.

CONCLUSION

In conclusion, the state of the Army JAG Corps is strong. Recruiting and retention are at all-time highs. Diversity is expanding as more women and minorities serve as Judge Advocates. Morale remains high in spite of the fact that the Army is now entering its 10th year at war. Commanders have great confidence in their Judge Advocates and value the contributions they make to mission accomplishment. We are a flexible and adaptive Corps. I am confident in our ability to meet the changing needs and requirements of our Army.

I would like to thank you again for the opportunity to appear before you today and your continued support for the Soldiers and Families of America's Army.