

HEARING TO RECEIVE TESTIMONY ON PROVIDING LEGAL SERVICES BY MEMBERS OF THE JUDGE ADVOCATE GENERALS' CORPS

WEDNESDAY, JULY 20, 2011

U.S. SENATE
SUBCOMMITTEE ON PERSONNEL,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:27 p.m., in room SR-232A, Russell Senate Office Building, Senator Jim Webb (chairman) presiding.

Committee members present: Senators Webb, Hagan, Blumenthal, Brown, Ayotte, and Graham.

Committee staff members present: Richard D. DeBobes, staff director; Leah C. Brewer, nominations and hearings clerk; and Jennifer L. Stoker, security clerk.

Majority staff members present: Jonathan D. Clark, counsel; Gabriella E. Fahrner, counsel; Gerald J. Leeling, counsel; Peter K. Levine, general counsel; and Jason W. Maroney, counsel.

Minority staff members present: Diana G. Tabler, professional staff member; and Richard F. Walsh, minority counsel.

Staff assistants present: Jennifer R. Knowles and Breon N. Wells.

Committee members' assistants present: Gordon Peterson, assistant to Senator Webb; Ethan Saxon, assistant to Senator Blumenthal; Charles Prosch, assistant to Senator Brown; Brad Bowman, assistant to Senator Ayotte; and Andrew King and Sergio Sarkany, assistants to Senator Graham.

OPENING STATEMENT OF SENATOR JIM WEBB, CHAIRMAN

Senator WEBB. The hearing will come to order.

And let me begin by apologizing for the delay here. We normally would have started much earlier. But this is a hearing that was requested by Senator Graham, and he has apparently been held up for a while. And I hope he will—I hope he will show up in all due time.

I didn't want to delay this hearing any longer by taking that risk. So we will go ahead and begin, and then hopefully, Senator Graham will be joining us soon.

The subcommittee meets today to receive testimony on legal services provided by members of the Judge Advocate Generals' Corps. We are holding this oversight hearing at the request of Sen-

ator Graham, as I mentioned. He has been a champion of the military legal community for some time.

As one who has a rich appreciation for the critical role that our uniformed members of the JAG community perform, I would like to express my appreciation to him for all the work that he has done and also for his requesting this hearing.

Many individuals outside the military associate JAG solely with military justice. JAGs do play a significant role in administering and supervising the military justice system, which is inextricably linked to a commander's responsibility for maintaining good order and discipline. However, this is not the only important function of judge advocates.

As the independent panel that reviewed the judge advocate requirements of the Navy and Marine Corps pointed out, and I quote, "The demand for judge advocate support will continue unabated, driven by the increasing complexity and intensity of the legal and policy environment in which commanders are required to operate."

In addition to military justice requirements, the panel examined substantial and increasing operational law requirements of the Navy and Marine Corps, the requirements for judge advocates with litigation experience to support military commissions charged with trying detainees for violations of the law of war, and the new requirements for judge advocate support for the integrated disability evaluation system.

JAG officers also are important players in addressing the legal complexities of defense contracting and acquisition programs that cost billions of dollars.

One motivation for this hearing is the committee's longstanding concern about a series of appellate court decisions critical of the post-trial processes of the Navy and Marine Corps, addressing the denial of due process for defendants in those cases. Despite assurances that these problems were being addressed, they persisted, culminating in the case of *United States v. Foster*. This case is perhaps the most egregious example of how bad a system can get without proper accountability.

Sergeant Foster was convicted of domestic rape in December 1999. His record of trial languished in the Navy and Marine Corps appellate process until February 2009, when the Navy-Marine Corps Court of Criminal Appeals overturned his conviction because the conviction "could not withstand the test for legal and factual sufficiency."

Sergeant Foster spent more than 9 years in confinement awaiting the automatic appellate review of his case, a review that ultimately concluded that the conviction was not supportable. The court described the evidence of rape as "anemic at best" and concluded, "We have determined that Sergeant Foster's conviction for rape was improper, as the Government did not establish his guilt. Therefore, the appellant has served nearly 10 years of confinement in part for an offense of which he should not have been convicted."

The court also said, "We find the delay in this case so egregious that tolerating it would adversely affect the public's perception of the fairness and integrity of the military justice system." In short, Sergeant Foster experienced a travesty of justice.

As a result, the committee concluded that it could no longer rely on promises from the Department of the Navy to improve its system and reacted by requiring the Department of Defense Inspector General to review the systems, policies, and procedures currently in use to ensure timely and legally sufficient post-trial reviews of courts-martial within the Department of the Navy.

The DOD IG report will be included in the record of this hearing.
[The information referred to follows:]

Senator WEBB. The DOD IG concluded that, “Serious post-trial processing problems persisted for at least the last two decades.” And found that, “Process failures occurred at almost every segment of the post-trial process as a result of inadequate leadership, supervision, and oversight.”

In addition to requiring the DOD IG review, the committee included a provision in the National Defense Authorization Act for Fiscal Year 2010 establishing an independent panel to review the judge advocate requirements of the Department of the Navy. The panel examined the functions of judge advocates in the Navy and Marine Corps and found that both Services had failed to increase judge advocate requirements to keep pace with the increasing requirements for legal support to commanders operating in an increasingly complex and intense legal and policy environment.

The final report of the independent panel to study the judge advocate requirements of the Department of the Navy, dated February 22, 2011, will be included in this record.

[The information referred to follows:]

Senator WEBB. Finally, today’s hearing will also consider efforts by the Secretary of Defense to reduce the numbers of flag and general officers. On March 14, 2011, Secretary Gates approved the elimination of 102 general and flag officer authorizations, 21 of which are Air Force authorizations. Three of these are Air Force judge advocate brigadier general positions that will be downgraded to colonel positions—the staff judge advocates for Air Mobility Command, Air Combat Command, and Air Materiel Command.

Senator Graham informed me that he has real concerns about this reduction, and right on cue, he enters the hearing. Welcome, Senator Graham.

Senator GRAHAM. I apologize.

Senator WEBB. As I mentioned before I started, we waited until a little bit after—quarter after and as a courtesy—

Senator GRAHAM. We got hung up with the Republicans, which is hard to believe.

[Laughter.]

Senator WEBB. Well, these are trying times. But you walked in just at the right moment. And I will continue and then—

Senator GRAHAM. Yes, sir.

Senator WEBB.—hand it over to you.

Senator Graham informed me he has real concerns about this reduction. We are discussing the reduction in flag officer authorizations in the Air Force JAG.

I have also collected data on the numbers of general and flag officers in each service, the number of judge advocate general and flag officers, and court-martial and discharge data. And I would like, actually, to take a little bit of time on this data.

And since it was passed out while people were waiting for us to begin the hearing, I am sure there has been a little bit of buzz about the information on it. But let me start with the first slide, and I would like to just kind of talk my way through it.

This slide was put together at my request, which goes from left to right, with the end strengths of each of the military services, then the number of general and flag officers in the service, a ratio showing how many general or flag officers per service member, an outline of the JAG positions—general flag officer positions—and a ratio, and the number of active duty JAGs in each military. It is a fairly interesting comparative chart, and I believe strongly that the best way to have policy discussions is to start with facts.

On this chart, you will see that the Army has 569,400 people, its authorized end strength. They have 315 flag officers, for a ratio of 1 general officer to every 1,800 soldiers.

The Navy has 328,700 people on active duty and a total of 257 admirals, flag officers, ratio of 1 to every 1,279.

The Marine Corps has 202,100 people in active duty, 86 general officers, a ratio of 1 to every 2,350.

The Air Force has 332,280 people on active duty, and 314 general officers, for a ratio of 1 for every 1,058.

You will see in this chart that the Air Force has presently 13 four-star generals, which is more than any of the other services. It has 43 three-stars, which is the same as the Army and the Navy, the Navy being almost identical in size to the Air Force, by the way.

It has 107 two-stars, compared to Navy's 74. The Army has 117, and it has 151 general officer brigadier generals, which is actually more than any other service.

And if you look at the JAG general flag officer positions, you will see that the Army has one 0-9, one 0-8, three 0-7s, or a total of six, and one 0-7 temporary position.

The Navy has one 0-9, one 0-8, and then three 0-6s that are temporary. So it has two flags.

The Marine Corps has one 0-8, one two-star, and one colonel position that has got a tombstone promotion.

The Air Force has six general officer flags as JAGs.

If you could get the second chart, please?

I actually asked for this data out of curiosity. As many of you know, I spent 5 years in the Pentagon. I am an old data dink. And I, again, believe that if you start—if you can go from the facts, you can have a better discussion of what the policy discussions should be.

I was curious—again, if we are looking at the number of JAGs in the military, it is a good starting point to look at the legal proceedings over the past couple of years, just to see what they look like service by service. I am not going to spend a lot of time going through each one of these numbers, but the most interesting point for me on this is that the numbers seem to be wildly disparate.

The Army doesn't have information available for the types of discharges that it ordered. If you read this chart, left to right, it is number of courts-martial, number of NJPs—nonjudicial punishments—the number punitive discharges as a result of courts-martial, the number of OTHs—other than honorables—due to adminis-

trative procedures, number of general discharges, and then the number of honorable discharges.

And several things jump out, and I am saying this to make a point, as the chairman of this subcommittee, not simply for the hearing today, but as a continuation of the concern that I have with the data that we have been able to receive from DOD in a number of different cases.

I asked, when the assistant Secretaries for Manpower were testifying here, if they could give us some data on percentages of discharges—how many honorables, how many generals, how many OTHs, et cetera. And there was a general response that they didn't know, which really stunned me, to be quite frank.

Now I have a chart here where the Army—with plenty of advance notice—doesn't have the information. The Marine Corps, in terms of honorable discharges, we had a chart 2 days ago, where they said they had in Fiscal '10 3,700 honorables, and then today we got a chart that said they got 39,862 honorables.

This kind of fits into a pattern. When I first started working on data to try to support the GI bill, when I introduced it, one of my questions was since the GI bill is principally designed to help people in their readjustment to civilian life after the military, how many—what percentage of people in the different services leave honorable before the end of their first enlistment? It took me a year to get that data.

We asked in one hearing how many contractors were in DOD? Nobody seemed to be able to give us an answer. I asked for historical data on the different commands and DOD headquarters units, and it took us over a month. I think it took us 3 months to get that data.

And just as someone who has done this for a long time, I have to compare that kind of reaction to when I was committee counsel up here in 1977, when we had some very complex legislation on what was called the Carter Discharge Review Program, the number of bad discharges that were given during the Vietnam era.

And at one point in these hearings, I asked DOD, can you give me the number of discharges by category, by year during the Vietnam era, by service? And I had it in 24 hours. I had a multiyear breakdown by service, by discharge in 24 hours from DOD.

I asked them the next week, can you give me the casualties in Vietnam, year by year, by service and by ethnic groups? I had that in 24 hours.

And I don't think the computer systems back then were any better than they are now, and I don't think people were particularly any less challenged than they are right now. So it just raises a huge question for me for how we are communicating between the Department of Defense and the U.S. Congress and whether DOD is tabulating this kind of data.

It is vital data. If you can't figure out where your discharges are, you really can't speak broadly to the nature of discipline in your services.

So I took some time to lay that out because it affects a lot of other things we are going to be doing on this subcommittee.

And with that, Senator Graham, you asked for this hearing, and I am going to just turn it over to you.

Senator GRAHAM. Well, thank you, Mr. Chairman.

And I appreciate you bringing this to our attention. Obviously, we need another hearing on why you can't provide information in a timely manner.

Senator WEBB. Well, we will just keep raising it until they start giving us answers.

Senator GRAHAM. Well, and I join with you in that regard.

But this hearing is about the role of the judge advocate in the 21st century. We have been deployed, our military has, since 9/11 almost continuously. I have had a chance to see in action on the ground judge advocates in Iraq and Afghanistan, doing things that didn't even exist 5 years ago.

I don't know about the court-martial load here. I hope it is down. I think it probably is because you got the most motivated, well-trained, highly educated force. So I would expect it go down.

But in terms of the workload of the judge advocate, it has just been amazing what the Navy and the Air Force has been doing to help our Army brethren over there with detainee review boards. The number of prisoners that have gone through military—American military custody in Iraq at one time was over 40,000, and all of them had to have some form of representation. And they have been producing law of war detention boards literally under fire.

So I am very proud of the Judge Advocate Generals' Corps who have provided great counsel and advice. And keeping these bad people off the battlefield is great for the warfighter because when the Marines roll them up, if they are getting out in a week, that is bad for morale. And quite frankly, when the Marines roll up people that shouldn't have been caught, it is bad for our ability to win over the population.

So we have had a pretty robust legal presence in the war on terror, unlike any time I have ever seen.

And Mr. Chairman, I really respect you. But I can tell you one thing that happened without any doubt, in my view, is that during the initial invasion of Iraq, people in the Pentagon were not listening as closely as they should about detainee operations and that the military legal community's voice wasn't as strong as it should have been.

And rank matters. You know better than anyone. And the reason that the Judge Advocate Generals today are three-stars is because now they are guaranteed a seat at the table. And when they were two-stars, their advice pretty well got canned. So it is pretty hard to ignore a lieutenant general.

But the independent panel we asked to be impaneled was to look at a Navy-Marine Corps manning problem. So, if I could, Mr. Chairman, can I just open it up to our witnesses and have them tell us, if you don't mind, their general findings? And maybe we can learn from their experience. Is that okay?

Senator WEBB. We can do that. Welcome the witnesses in the first panel, and I appreciate your patience in having sat through—

Senator GRAHAM. I apologize.

Senator WEBB.—a waiting period and my long intro. But just—

Senator GRAHAM. Yes, well, that is my fault. I apologize.

Senator WEBB.—first, Colonel Retired Daniel Dell'Orto, former Principal Deputy General Counsel for the Department of Defense,

and Lieutenant General Retired Peter Osman, who served as Deputy Commandant for Manpower and Reserve Affairs in the U.S. Marine Corps.

Gentlemen, welcome. Your report is a very comprehensive review, and we look forward to hearing your observations.

STATEMENT OF COLONEL DANIEL J. DELL'ORTO, JAGC, USA, RET., CHAIRMAN, INDEPENDENT PANEL REVIEW OF JUDGE ADVOCATE REQUIREMENTS OF THE DEPARTMENT OF THE NAVY

Colonel DELL'ORTO. Good afternoon, Mr. Chairman, members of the committee. And on behalf of Lieutenant General Osman, thank you for the opportunity to appear before the committee today.

We are here to discuss the congressional mandate contained in Section 506 of the fiscal year 2010 National Defense Authorization Act to "carry out a study of the policies and management and organizational practices of the Navy and Marine Corps with respect to the responsibilities, assignment, and career development of judge advocates for the purposes of determining the number of judge advocates required to fulfill the legal mission of the Department of the Navy."

In full compliance with the Federal Advisory Committee Act, the panel conducted five public meetings and posted more than 200 documents on a Web site for review by interested persons.

In addition to Lieutenant General Osman, the panel included a number of distinguished former public servants and former colleagues of mine who have served our Nation in the past and continue to serve in a variety of roles. They include the Honorable Judith A. Miller, former Department of Defense general counsel; Rear Admiral James E. McPherson, U.S. Navy, retired, former Judge Advocate General of the Navy; and William R. Molzahn, former deputy general counsel for the Department of the Navy.

Each of these persons volunteered for service on the panel and devoted considerable hours to the panel's work. They should be commended for stepping forward yet again to provide selfless service to our Department of Defense and to our Nation.

The panel received outstanding support from the Department of the Navy, including extremely professional administrative support from the Office of the Secretary of the Navy and the Office of the General Counsel of the Navy. The Navy provided the panel with a first-rate staff of Marine and Navy judge advocates, civilian attorneys, and administrative staff, all of whom are acknowledged in our report.

We received tremendous support and cooperation from numerous witnesses from both inside and outside the Department of Defense legal community. General David Petraeus; Vice Admirals Harry Harris, John Bird, and Robert Harward; and Marine Lieutenant Generals John Kelly and Richard Natonski provided invaluable insight into the critical role that judge advocates play in today's fluid operational environment in both regions of conflict and regions of apparent calm.

Vice Admiral James Houck, the Judge Advocate General of the Navy, and Major General Vaughn Ary, the staff judge advocate to the Commandant of the U.S. Marine Corps, provided the panel

with comprehensive testimony and other information regarding the organization, missions, and staffing of the uniformed legal community in their services.

The panel completed its 217-page report on February 22, 2011, and delivered it to Secretary Gates and to the

chairmen of the Senate Committee on Armed Services and the House Armed Services Committee.

The panel addressed each of the areas of review mandated by the statute. By way of summary, the panel believes that the demand for judge advocate support will continue unabated, as Chairman Webb has already indicated, driven by the increasing complexity and intensity of the legal and policy environment in which commanders are required to operate.

In addition, their contribution to good order and discipline, by supporting a just and functional military justice system, is equally noteworthy and essential to the overall well-being of the Navy and Marine Corps.

Military justice, from complex, high-profile general courts-martial to due process advice and representation during administrative proceedings, needs to remain an important and necessary core function for the Navy and Marine judge advocates. In the end, proper manning, resourcing, training, and retention of judge advocates in the Navy and the Marine Corps is both a necessity and a cost-effective force multiplier that contributes to the ultimate mission success of both services.

I would request, Mr. Chairman, that our report also be made a part of today's record.

Senator WEBB. It will be entered as a part of the record.

Colonel DELL'ORTO. And I would like to then offer General Osman the opportunity to add his comments. And upon completion of those comments, we are prepared to address your questions.

Senator WEBB. And let me also say at this point that your full statement, if it is different than what you gave, also will be entered as part of the record.

[The prepared statement of General Dell'Orto follows:]

Senator WEBB. General, welcome.

Colonel DELL'ORTO. It is the same, Mr. Chairman.

Senator WEBB. Thank you.

STATEMENT OF LT. GEN. PETE OSMAN, USMC, RET., PANEL MEMBER, INDEPENDENT PANEL REVIEW OF JUDGE ADVOCATE REQUIREMENTS OF THE DEPARTMENT OF THE NAVY

General OSMAN. Mr. Chairman, I can only echo what Mr. Dell'Orto has said with regards to the panel's activities and the support that we received. I can tell you that as a Marine infantryman and the only non-attorney on the panel, it was an honor and quite an education.

Senator WEBB. Lending dignity to what otherwise would have been a vocal brawl, I am sure.

General OSMAN. The Commandant had a reason for putting me there, I think, and I hope I fulfilled that for him.

Really, it was a pleasure and an honor to be able to serve on the panel, and I look forward to the questions that you may have for us, sir.

Senator WEBB. Thank you very much. And if you have a written statement, it will be entered in the record at this time.

General OSMAN. Sir, I think that Dan would agree this is our written statement right here.

Senator WEBB. Thank you. And it is a part of the record.

And Senator Graham, I am just going to let you go ahead and ask questions.

Senator GRAHAM. In a couple minutes, tell us what you concluded.

Colonel DELL'ORTO. I think if you look at the report—

Senator GRAHAM. And assume we are all infantrymen up here.

Colonel DELL'ORTO. Except for myself, who was an artillery man in my earlier days, Senator Graham.

I think we took a look at a wide array of issues, as the statute requested that we do—or directed that we do. I think certainly, as has already been mentioned, judge advocates today perform a much broader array of duty, legal duties, than perhaps at any point in their history.

I can certainly tell—say from my personal experience as a judge advocate for 20 years that the judge advocates of today, in this environment—and certainly, I don't limit that to the combat environment in which so many of them are serving—the nature of the issues, the variety of issues go well beyond the focus that I had as principally a military justice practitioner.

The people who preceded me and many of my generation focused much of their career principally on military justice, administrative law in the traditional sense, things of that nature. Today, when you look at Navy JAGs and all that they have responsibility for, with respect to maintaining their operational exercise areas free from litigation in our civil courts to what is being done on battlefields in Iraq and certainly now in Afghanistan with respect to rule of law, that goes well beyond purely legal practice.

The challenge is that—

Senator GRAHAM. Do you know how many Navy JAGs and Marine Corps JAGs have been deployed in Iraq and Afghanistan?

Colonel DELL'ORTO. There have been significant numbers, Senator Graham. I don't know the numbers. We certainly talk about the numbers who are performing and have been performing different types of duties with respect to, I think, rule of law functions, operational law functions, things like that.

I know on my own trips to the theater, when I was still in the department, I ran across a number of Navy and—Navy JAGs operating in support of either Marine units or serving in command elements as part of the legal staffs there. So, certainly, a number of them have been deployed.

I would say that certainly—so the variety of duty that they perform is far—much more broad than ever before. And I would say that I think the expectations that they will be able to deliver their advice very quickly in a—at a time when the information flow that commanders deal with, the information flow the senior leaders deal with is such a fast-paced environment that there is a premium on getting advice to commanders and senior civilian officials at an ever-increasing pace.

And I think that alone—well, that, in addition to the variety of work that they do, puts a premium on having great amount of expertise embedded in each and every JAG, when he or she is performing duties at any level of command, at any location.

Senator GRAHAM. In terms of numbers, do we have enough? Do we need more?

Colonel DELL'ORTO. Again, our mandate, Senator Graham, was to look at the Navy and the Marine Corps. We believe, at the moment and as we look into the near term, on the Marine Corps side, we believe that the Marine Corps has programmed billets for enough judge advocates to meet current and immediate future missions.

We have concerns on the Navy JAG side. If you assume that we will continue at the current pace of operations, the current pace of deployments for the fleet, if you look at the decision that has been made since the panel wrote its findings with respect to military commissions, we believe that you put all that together and the Navy program for the immediate 3, 4 years down the road, I would say, is probably about 200 attorneys short.

I think we forecast about 950 attorneys for the Navy, and I think they are at about 750 or plan to be at about 750. Whereas the Marines, I think, are looking at—we fixed the requirement at about 550, and we believe the Marines have planned for that.

Senator WEBB. Maybe you can clear up one thing for me, and then I am going to move to others who may want to ask a question. To what extent does the Foster case represent something that is endemic or was endemic to the system, and to what extent was that an anomaly?

Colonel DELL'ORTO. The Foster—I think the problem with—one of the problems with the Foster case, in and of itself, was that it followed on the heels of other episodes of like delay in the process associated with review of a court-martial.

I think my own experience as an appellate judge, as an appellate advocate in the Army would indicate that sometimes—I mean, things can happen, even in a system that is built to be as foolproof as we would like to think that these systems are. But I think the biggest problem for Foster is that we had a wakeup call in Moreno several years earlier, and one would have hoped that a case like Foster would not have suffered from the same fate.

I didn't look at the record of trial in Foster. My assumption is that it was principally a case in which there was testimony going back and forth between the defense and the prosecution. I doubt that there was much in the way of forensics. I am making an assumption. Perhaps I shouldn't.

But if you assume that—and I think the record of trial may have been 700, 800 pages or so. But again, in the absence of a highly complicated, science-based evidentiary issue—and it appears that there was not any—any, I would say, real esoteric law involved—it was a straight-up, factual—bust for factual insufficiency—it would seem to me that that is a case that should have been handled a little bit more cleanly.

Senator WEBB. In the normal circumstance, how long would that have taken?

Colonel DELL'ORTO. I don't know what the normal circumstance would be for the Marines, Mr. Chairman, and for the Navy appellate review authority or for the Navy-Marine Corps Court of Criminal Appeals. But we have multiple enlargements for the case once it gets to the appellate court. You know, at some point, someone has to say, you know, hold it. We have gone too long.

And I would have hoped that someone would have seen fairly early on in the appellate process that this was going to be a factual sufficiency case and that there was some chance that it might get overturned on review. But again, I can't talk to how systematic this problem is or was.

But we do know that we had at least one previous incident that members of this committee, we believe, were concerned about with Moreno, and yet Foster followed at some point on the heels of it.

Senator WEBB. Thank you.

Senator Brown.

Senator BROWN. Thank you, Mr. Chairman.

So, just for purposes of disclosure, I am a JAG and have been for a while. And I have recognized the old caveat that, you know, you never want a JAG until you actually need one, when your you-know-whats are in the wringer and you need some guidance as to whether to go or not to go.

And I think that is—especially in this ever-changing world of war and conflict that we are in, the problem can potentially be that if you don't get the proper guidance, you know, you are on the front page of newspaper, on CNN, and you have created an international incident.

So that is really where my head is at as to, you know, are we going to make some cuts to save some money, or are we going to make some cuts and potentially start another worldwide incident? And that is how basic it is for me.

And in your report, you spoke about the legal risks of failing to provide the right numbers of judge advocates with the right training and experience, and I reference especially in this complex legal environment. I guess the question for today is what effect precisely would result from lowering the number of operational lawyers, particularly in the Navy and Marine Corps?

And I can imagine—I know personally the effect I think it would have on individual servicemen, but can you comment on how it would affect our operations around the world, particularly with your perspective as a former infantry officer and commander?

That would probably be you, General, and then I will certainly refer back to the artillery man.

General OSMAN. Certainly, Senator Brown.

As Mr. Dell'Orto explained, once a lot of these things had come to light, I will coin a phrase that the Commandant used. He saw a "call to action" and began to take—through the Total Force Structure Division within the Marine Corps, take a look at the number of judge advocates that were needed.

It was determined to be 550, and as Mr. Dell'Orto said, the committee agreed with that number. And the Marine Corps has begun quite a ramp-up to get there. In fact, if you look, back in September, I believe they had 438 judge advocates. Today, they have

got 510. So they are moving very quickly to get to that 550. So that is good.

The Navy faces a challenge. Again, the panel had determined they needed about 950. I believe Vice Admiral Houck had figured somewhere around 925, something like that. And it looks like the Navy is on a glide slope to go down to as few as 750. That would be a concern for me.

The Navy does have a lot of lawyers involved in operational law, probably—certainly more than the Marine Corps has involved in operational law. If you look at the military justice piece, interestingly, the Marine Corps probably has a higher demand in that area than the Navy does. In fact, that may be one of the challenges that the Navy is going to face is ensuring they have the experienced litigators they need to address the military justice issue.

So there are challenges out there, Senator Brown. That is the bottom line. And watching these numbers closely and the concern that this committee has for that is probably well founded.

Senator BROWN. So do you think it would affect our operations around the world, the lack of proper counsel?

General OSMAN. Again, having listened to the testimony of Vice Admiral Houck, as well as a number of commanders in the field, the increasing requirement for lawyers in operational law is definitely there.

In fact, when I did my interview with General Petraeus, asking how many judge advocates he had on his staff, he said, "Not enough." And he had way more than he rated at that time, but nonetheless, he said he used them in a lot of positions that were out of the judge advocate community because, as he said, they are very good critical thinkers. And that is what he needed.

So the requirement is out there from the operational commanders in the field.

Senator BROWN. Well, that is interesting because my next question was, could you comment on how the general feels or felt, actually, about his lawyers? But do you know how he would feel about terminating active duty military lawyers, as the Navy apparently is planning on doing?

General OSMAN. Again, in the interview I had with him, he made it quite clear that he would take as many judge advocates as he could get to put on his staff. So, obviously, if there was a reduction in the numbers, he would not have liked that.

Senator BROWN. So when you were doing your report, have you spoken to the Navy and determined what the discrepancy is between your numbers and their numbers and what the reasoning is? And I know I am obviously going to ask the same question. What was your opinion on why? I mean, why do they think—is it just numbers driven? Do they need to save money or—

General OSMAN. I think that Vice Admiral Houck can probably better address how the Navy goes about determining the numbers that it needs of judge advocates.

Again, as I said, in the Marine Corps, they have a thing called a Total Force Structure Division that sits down as the honest broker and literally works the numbers and came out with the 550. And again, the panel, after reviewing it, said that made a lot of sense.

Senator BROWN. Well, I guess, Mr. Dell'Orto, just one final question. Can you comment on the relative strengths and weaknesses that struck you the most regarding how each service provides judge advocate support?

Colonel DELL'ORTO. Well, again, Senator, when you talk about each service, you are about the Marines versus the Navy?

Senator BROWN. Yes, each service. Those two services. So, yes.

Colonel DELL'ORTO. I think both are doing an awfully good job of providing support where their commanders believe they need support. I think when the Marines determined that they were going to put judge advocates at battalion and regimental level for their deployed forces, I thought that was a significant commitment on the part of the Marine leadership to ensure that commanders, I mean, at the lowest levels had access to legal advice.

I think the Navy certainly has, in terms of supporting the Marine Corps in some of the prosecutions that have taken place where the Marine Corps needed additional counsel in support of its freedom of navigation efforts and, as I alluded to earlier, some of the environmental battles they are fighting to maintain their ranges or their exercise areas, I think the Navy JAG community and the leadership has been doing a very good job in deploying their JAGs where they think they have some significant needs.

So I think they have been utilizing their JAGs correctly. And I think the question is, at least with respect to the Navy, whether they are going to have enough to do all that they are being asked to do.

Senator BROWN. Thank you, Mr. Chairman.

Colonel DELL'ORTO. May I add one additional comment in response to Senator Brown and General Osman?

We highlighted the number of general and flag officers who provided information to us and were interviewed by us. We didn't have to go soliciting that. One of the things that I think we found remarkable, they came to us. You know, they wanted to talk to us about the value that they find in the presence of their JAGs.

So, believe me, I mean, as great as it was to have General Petraeus come in and do that for us or Admiral Harris, whom I know well from the multiple assignments he has had, we didn't have to go beg them to do that. We didn't have to ask them. They just came to us because they—it was a testament to the value they placed on the role—they place on the role of JAGs in their responsibilities.

Senator WEBB. Thank you, Senator Brown.

And just as an observation from General Osman's comment about the different functions of the JAGs in different disciplinary environments in the service, if you look at this data sheet that we have here, the Marine Corps had six times as many courts-martial as the Navy did last year. And if you figure that the manpower is about two-thirds, that that force has about two-thirds, that means the Marine Corps had nine times the rate of court-martial as the Navy did last year.

Senator Ayotte?

Senator AYOTTE. Thank you, Mr. Chairman.

I want to thank both of you for coming here today. This is a very important issue. It is so important that we respect the rule of law

and that particularly those who serve are afforded the presumption of innocence.

It is a fundamental of our constitutional rights. And I think that the JAG Corps performs such an important function in our armed services. So I really appreciate the analysis that both of you have done.

Can you help me understand the Foster case, as understanding that that was just an egregious, egregious situation. Are there proper systems in place to avoid that happening again, in your opinions?

Colonel DELL'ORTO. I think the Navy and Marine Corps have certainly taken steps to correct the failures in that. We outlined several things that have—in the report that have already been done to take into account an administrative responsibility for watching these cases as they move through the system.

I think more is being done. The Navy, I know, is having a study done that will take a look at what the Army and the Air Force have done over the years with respect to tracking cases from cradle to grave, if you will.

I know my experience, when I was a trial counsel, I had a retired E-9 as my paralegal. And if we didn't—when I was the chief of military justice, if we didn't move a case quickly, he was getting a call from Washington and the appellate—the clerk's office about where this case is, why isn't it moving more quickly?

So even going back to prior to—you know, this was prior to a computer—you know, the computer age, with databases and systems that would automatically trigger a request for information. There were people literally looking at the reports and asking questions if a case didn't appear to be moving quickly.

As a military judge in Korea in the '90s, I had to file—fill out a report at the conclusion of every case I tried that triggered the tracking of that case back in Washington. And so, you had parallel paths for reporting of the cases taking place. Judiciary was tracking the case, and certainly, the command had responsibilities coming back into the Army Legal Services Agency for tracking a case.

And I always felt that that system held up pretty well. I am not sure—I can't say that the Army was immune from having a Foster-like case.

But I have commended that to Vice Admiral Houck, and I know they are—and his response to me is that they are already looking at that and looking at the systems in place in the other military departments and services to see whether they can learn from those and adapt some of those systems. Because there are systems that work, in my view.

Senator AYOTTE. Particularly, as you point out, in the Army and the Air Force and then also, obviously, on the civilian side of things, of how things are tracked. And how far off are they from implementing an actual system that would be similar or have similarities to what the Army and the Air Force have in place?

Colonel DELL'ORTO. Senator, as we point out in the report, certain things have already taken place. They are not necessarily tied to, I think, the assessment or review of what the other services are doing. That piece is under way right now, and I don't know how close they are to completing that assessment to determine whether

those systems are transferable into the Navy-Marine Corps situation.

Senator AYOTTE. Did you get a good sense of urgency? Because this seems like a very urgent situation, in my opinion.

Colonel DELL'ORTO. I did. But I will let General Osman speak for himself on that.

General OSMAN. As Mr. Dell'Orto said, both services have taken some initiative with respect to tracking. The Navy has their court-martial tracking and information system that they are utilizing now, and the Marine Corps has a case management system that they are using to help track cases.

I think the panel would say that both of those still need some work. They would not stand alone as they are. But nonetheless, the department is looking at what the Air Force, Army does, and so they are pursuing alternative case tracking systems that will assist them in this.

Senator AYOTTE. Can I ask you both about the military commission system? I am a strong supporter particularly of using the military commission system to try individuals at Guantanamo. And I am very pleased that the administration, for example, has changed their position on individuals like Khalid Sheikh Mohammed because I think it is important for the security of the American people.

What is your assessment of the litigation teams with respect to handling military commissions? And again, I want to also emphasize the importance of the military commissions points out the importance of having a robust and sufficient JAG Corps because it shouldn't just be the military commissions. It should be our soldiers who—we don't want our soldiers to be given short shrift because we have to focus all the resources there. Sufficient resources have to be there to cover all of this.

Colonel DELL'ORTO. As one who was there at the inception of military commissions and has been part of the effort to help get the right staffing in place for military commissions, I strongly support the view that we need to put first-class talent in those—the roles of prosecutors, defense counsel, judges. I similarly believe that for our courts-martial, regardless of the number, we need to ensure that we have first-rate lawyers as prosecutors, as defense counsel, as judges.

We face an interesting dilemma at this point. As the numbers that the chairman has requested are examined, you see that the numbers of cases that are getting tried—courts-martial that are being tried—continues to have declined. And certainly from my time as a prosecutor and defense counsel in the '70s and '80s, in both CONUS assignments and in European assignments, our numbers were significantly higher.

All of us who were military justice practitioners then tried a lot of cases. And our predecessors who served Vietnam and in Germany and Europe and overseas assignments during that era and immediately following tried even—tried far more cases than I did and my contemporaries.

You get better as a military justice practitioner the more you practice that craft, whether you are a trial counsel, a defense coun-

sel, or even a judge. And that is not to say every case you try needs to be a general court-martial to get better.

An Article 15 turndown where both sides are going at each other tooth and nail is a great opportunity to learn your craft as a trial counsel, whether you are trying or prosecuting or defending. And you learn that in series of plateaus.

You may try 20—your first 20 cases, and the bulk of them as a trial counselor are guilty pleas. And you go in there and you are sweating that that defendant is going to bust providency on that case, and you are scared to death you are going to have to try that case.

By the time you get to that 40th or 50th case—and I don't want to be cynical about this—but you are almost hoping that he busts providency because you can't wait to try that case.

And so—and, you know, as a defense counsel—and I will confess that I sort of went kicking and screaming to be a defense counsel. But once you get in the saddle and you get the hang of it, you appreciate, as you go through a series of plateaus in your development as a counsel and try—get significant numbers of cases under your belt, you gain a full appreciation for the importance of that role not only for the client, but also the importance of the role for that system, that system of justice.

So how do we handle this now? How do we handle the needs to have highly qualified, skilled counsel trying cases where there aren't that many cases to be tried?

How do we ensure that we have got the right set of trial counsel, defense counsel, and judges to be thrown into military commission mix, you know, when perhaps they are still not quite done developing that skill set in the court-martial realm?

We have struggled with that. We struggled through it the whole time, as post-9/11, post-November 2011, when the military—the President's order on military commissions came out. And it was a constant battle, particularly with the lurching back and forth about whether we were going to try cases at military commissions.

I know that Vice—we took testimony from Retired Vice Admiral MacDonald, who is now the convening authority for military commissions. And he told the panel that he has been assured by each of the Judge Advocates General that he will get first-rate counsel to fill those billets as we go forward, if and when the decision was made to go forward with military commissions, as that decision has since been made.

And he is also counting on support from the Department of Justice, where, presumably, you have people who have spent a little bit more time in the courtroom, who will also fill in and be part of the mix of attorneys on the trial counsel side, on the prosecution side.

Certainly, my experience, when I was there, the defendants were getting a lot of highly skilled lawyers from the defense bar stepping forward, as we expected and hoped they would, to step forward and defend people in the military commission.

So I don't know that we are—we will ever be completely satisfied that we have got all the right people, but I know a lot of commitments have been made to ensure that the right people are there.

Senator AYOTTE. Thank you.

Senator WEBB. Thank you, Senator Ayotte.

And gentlemen, thank you for appearing before us today. We appreciate your work on this vital area. And again, I apologize for having been late in opening this hearing.

I will now welcome our second panel, consisting of Lieutenant General Dana Chipman, Judge Advocate General of the Army; Vice Admiral James Houck, Judge Advocate General of the Navy; Lieutenant General Richard Harding, Judge Advocate General of the Air Force; and Major General Vaughn Ary, Staff Judge Advocate to the Commandant of the Marine Corps.

We look forward to your assessment of and response to the DOD IG's and the independent panel's review of JAG issues and your assessment of the manning and structure of your respective JAG Corps.

And without objection, again, your full written statements will be included in the record of the hearing. And we will ask each of you to make an oral statement of your choosing once you get seated.

General Chipman, we will start with you and move across the table. Welcome.

**STATEMENT OF LTG DANA K. CHIPMAN, JAGC, USA, JUDGE
ADVOCATE GENERAL OF THE U.S. ARMY**

General CHIPMAN. Thank you, Senator Webb.

Mr. Chairman, 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—both in deployed environments and at home station.

Before I begin, I would like to thank you and the members of this body for your support of the men and women of our armed forces. And I note that everyone in this room uniquely exemplifies our joint team commitment.

Sir, you served on active duty. We have got members of the Air Reserve, the Army Guard, the JAG Corps. We have got the military spouses, because we recruit individuals and yet we retain families.

And I would like to thank all of you for your service to our joint team.

The Army JAG Corps is comprised of about 1,900 judge advocates, 100 warrant officers, and 1,800 enlisted paralegals. Currently, we have in excess of 140 judge advocates—Army judge advocates—deployed to Afghanistan, in excess of 100 in Iraq, and 300 more serving in 19 other countries overseas.

We have five Active component general officers providing strategic oversight of our corps, while ensuring that the Army's most senior leadership receives the trusted and experienced counsel it demands. On a temporary basis, we have a sixth general officer. He serves in a joint billet in Afghanistan, providing support to rule of law operations.

In addition, we have two brigadier generals in the Army Reserve and one in the Army 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 their families.

Army commanders expect our judge advocates to be highly versatile and proficient in the core legal disciplines and, when deployed, to be fully competent in a variety of subjects ranging from detainee operations, foreign claims, to interagency collaboration in support of rule of law operations.

When they return to home station, the focus shifts, and our judge advocates are called upon to advise on such diverse matters as 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 cases, even at battalion level. Army judge advocates are committed members of the joint team. There is no doubt in my mind that serving alongside our colleagues from the Air Force, Navy, Marine Corps, and Coast Guard makes us more effective.

Military justice remains our core competency. Although our court-martial rates have remained relatively stable in recent years, with the exception of summary courts-martial, which have decreased substantially in the last year, the complexity of those cases we try is increasing.

We have invested considerable resources in training our trial counsel, our prosecutors, to better prosecute cases involving crimes of sexual assault. This has included the appointment of 15 special victim prosecutors, with another 8 on the way, and 5 highly qualified experts training, coaching, and teaching those SVPs. While much work clearly remains to be done in this area, I am firmly committed to believe we are now on the right track.

I am also committed to improving the training of our defense counsel to ensure that the soldiers they represent receive effective representation.

Finally, our appellate docket is carefully managed to ensure that we timely dispose of those cases, those courts-martial on appeal. The success of our legal operations depends heavily on the support of our warrant officers and our enlisted paralegals.

I would also like to highlight the phenomenal work being done by our civilian attorneys and paraprofessionals, who provide essential continuity and subject matter expertise to our home station legal offices.

In conclusion, the state of the Army JAG Corps is strong. Recruiting and retention are at all-time highs. Morale remains high, in spite of the fact that the Army is well into its 10th year of sustained combat operations.

Commanders have great confidence in their judge advocates and value the contributions they make to mission accomplishment. I am confident in our ability to meet the changing needs and requirements of our Army.

I am pleased to submit a more detailed written statement for the record. Again, thank you, and I would be pleased to answer any questions you may have.

[The prepared statement of General Chipman follows:]

Senator WEBB. Thank you, General. And your full written statement will be entered into the record at this point.

Admiral Houck, welcome.

**STATEMENT OF VADM JAMES W. HOUCK, JAGC, USN, JUDGE
ADVOCATE GENERAL OF THE U.S. NAVY**

Admiral HOUCK. Good afternoon, Mr. Chairman and Senator Graham, and thank you both for your interest in holding this hearing and your concern for our uniformed legal communities.

I would like to make—also thank the members of the 506 panel, Chairman Dell’Orto, General Osman, and the other members of the panel who dedicated pro bono hundreds of hours to the project, and we were very grateful for their support.

I would like to make three points briefly this afternoon. The first one being I think it is imperative that we get the right number of judge advocates in all the services, but in my case, in the Navy JAG Corps. And I think there are risks if we don’t. There is a risk if we have too many. In this climate today, I know that our Secretary and our CNO and many others are working very hard to reconcile a lot of competing demands.

Having said that, I think there are also risks in having too few. And I think the risks are relatively obvious, and I won’t belabor those. I see my job, as precisely and carefully as I can, to assess the requirement for judge advocates. And then as clearly and, when necessary, as forcefully as I can to articulate that requirement to decision-makers to make sure that they are aware of that.

I think the second area that I think really bears emphasis is not only the number of judge advocates we have, but the things that go into making up the health of our community—things like the recruiting and retention, things like the resources and time that we have to do education and training for our judge advocates, as well as—and as we in the Department of the Navy and as the committee may look at various structures for how we address the authorities and alignment for the provision of our legal services, that whatever option we adjust, that we make sure that we maintain a leadership structure in place that is adequate for a law firm the size and scope of our Navy JAG Corps.

I think the last thing I would like to touch on is to the imperative that we account for and adjudicate in a timely way all our court-martial cases, from the moment charges are brought to the very last day of the last appeal. We are doing that in the Department of the Navy today. We are doing that through case tracking systems that—I would echo General Osman’s comments—they are working for us today.

There are things we can improve in them, but the combination of these systems, as well as the focused, hands-on, eyes-on leadership at senior levels on these cases is—and to respond to your question, Senator, there is a sense of urgency to make sure that the debacle which was the Foster case never happens again.

We have also made great progress in the time in which we adjudicate cases. There are different ways—different metrics to look at this, but I think one which is significant is that in 2004, which was right before the Court of Appeals for the Armed Forces decided the Moreno case, it was taking the Department of the Navy over 800 days from the time somebody was convicted to the time their appeal was finished. Today, that number is just above 300 days, and

that is against a standard that is close to 700 days—about 690 days as established by the Court of Appeals for the Armed Forces.

So, from a variety of different ways, we could talk about the measurements of it. But the point that I want to make is that we take in the Navy, and I take personally as the Judge Advocate General of the Navy, our trusteeship of the military justice system seriously and personally, and we are very focused on it.

The—I guess by way of final note and to just respond to a couple of the questions that you all put to the panel that was here, I would note that we are looking very carefully at case tracking systems and have learned a lot from a study that was done for us by the Center for Naval Analysis. We are in the process of looking at options right now, but it is very much a priority for us to get a common case tracking system in the Department of the Navy. I know the Secretary is committed to it, and we are looking at it hard and moving forward on that front.

Our court-martial rate is obviously the lowest of the services. But I think the Foster case taught us, and I agree with Mr. Dell'Orto on this point, that it doesn't matter how—what number of cases that you have, if you don't handle one of them properly, and Foster is the best object lesson of that that we have seen, it casts a shadow over the entire military justice system. So, again, we have taken many steps, which I can respond to in the questions, to address this issue.

Thank you, Mr. Chairman.

[The prepared statement of Admiral Houck follows:]

Senator WEBB. Thank you, Admiral Houck, and your bold statement will be entered into the record at this point.

General Harding, welcome.

**STATEMENT OF LT. GEN. RICHARD C. HARDING, JAGC, USAF,
JUDGE ADVOCATE GENERAL OF THE U.S. AIR FORCE**

General HARDING. Thank you, Mr. Chairman.

Mr. Chairman, members of the subcommittee, thank you for the opportunity of testifying this afternoon.

I am very proud to lead the Air Force Judge Advocate General's Corps with over 4,000 outstanding judge advocate, civilian attorney, enlisted and civilian paralegals, and civilian support staff. Our mission is to deliver professional, candid, and independent counsel and full-spectrum legal capabilities to the command and commanders and to the warfighter.

The committee's invitation to testify today asked that I offer my opinion on the effect of the recent organizational changes eliminating judge advocate brigadier general officer, or O-7, billets in the Air Force. Therefore, I will offer my personal opinion regarding the 14 March 2011 OSD-directed elimination of three of our four Air Force JAG O-7 positions.

My opinion is identical to that of my service's chief of staff. We both believe that the three O-7 positions in question should be held by officers at the grade of brigadier general.

These three general officers support at a corporate leadership level three centers of gravity for our Air Force—first, the Air Force's logistics and maintenance complex; and second, its combat air forces; and thirdly, its mobility air forces. The three general of-

ficer positions are staff judge advocates for Air Force Materiel Command, Air Combat Command, and Air Mobility Command. Their job descriptions are contained in my statement, which was previously submitted to the committee.

These three 0-7s provide more than just routine administrative legal advice to their major command commanders. They provide corporate legal advice on weighty issues facing the Air Force in the three centers of gravity I mentioned earlier.

Their advice shapes strategy and planning at very high levels in the Air Force. They sit on their commanders' senior staffs, joining between 8 and 11 other general officers and civilian equivalents, depending on the major command, in corporate leadership settings. Their 0-7 rank assures they have a seat at the table during sensitive important deliberations of their commanders' senior staff.

Additionally, the three 0-7 positions provide professional supervision to over 1,500 JAG Corps personnel, delivering legal services to 300,000 total force personnel assigned to those three Air Force centers of gravity.

The effect of the G.O. cuts on the Air Force is significant. Career progression opportunities in the Air Force Judge Advocate General's Corps has been significantly degraded by the elimination of these three 0-7 billets. And as a direct consequence, the cuts will increase attrition among our best retirement-eligible colonels on whom we must rely to lead significant field legal operations.

As a result of the elimination of these three 0-7 billets, Air Force JAG colonels have noted that their chances of making 0-7 have been reduced by 75 percent, leaving behind a single 0-7 position to be selected every 4 years as the Judge Advocate General's and the Deputy Judge Advocate General's statutory tours end. And the incumbent brigadier general is likely selected for promotion, resulting in a single brigadier general vacancy.

If not selected for the single 0-7 billet, rather than wait another 4 years for another opportunity to compete for promotion, many of our best JAG colonels will elect to retire, leaving the Air Force without the legal leadership it needs and, frankly, deserves.

By having only a single brigadier general position remaining in the Air Force JAG Corps, the incumbent in the remaining 0-7 billet essentially becomes the TJAG in waiting, the heir apparent. Optimal force models are structured like a pyramid. They provide competition—

Senator WEBB. General Harding?

General HARDING. Yes, sir?

Senator WEBB. No offense, but let the record show that you personally don't like this new policy. Do you have any sort of official presentation to give us?

General HARDING. The official presentation was offered in my statement earlier, sir.

Senator WEBB. All right. Thank you very much.

Your official statement will be entered into the record.

[The prepared statement of General Harding follows:]

Senator WEBB. General Ary, welcome.

**STATEMENT OF MAJ. GEN. VAUGHN A. ARY, USMC, STAFF
JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE
CORPS**

General ARY. Good afternoon, Mr. Chairman. Let me turn on my mike first.

Good afternoon, Mr. Chairman, Senator Graham, distinguished members of the subcommittee.

Thank you for the invitation to testify this afternoon. I am happy to be here representing our corps and the over 1,400 remarkable men and women who make up our active, Reserve, and civilian Marine legal community.

In the summer of 2009, Congress expressed serious concerns about the Navy-Marine Corps legal community, directed the DOD IG to evaluate our post-trial processes and procedures, and directed the convening of the independent panel, the 506 panel.

The Marine Corps interpreted your concerns as a call to action. We immediately began a hard, honest assessment of our legal community, who we are, how we lead and are organized, and how we deliver legal services to commanders, Marines, sailors, and families.

Our assessment validated that the most effective legal model for our corps relies on Marine judge advocates and legal service specialists who are Marines first, fully integrated into the Marine ethos and culture. Our basic model for the provision of legal support is strong, but we identify challenges that needed to be addressed.

We continue to believe in a command-driven system, but recognized that complete decentralization poses unacceptable risk. To reduce that risk, we need unified direction for our practice, striking a balance between uniformity of policies and procedures and decentralized execution. We have chosen to emphasize efficiency, with a focus on institutional processes and supervision that will produce enduring results.

To accomplish this, we also needed to adapt our organizational leadership model. We accepted responsibility for what the DOD IG found to be “failures in leadership, supervision, and oversight at all organizational levels.”

For the Marine Corps, the SJA to CMC could no longer act simply as a staff judge advocate to a service chief. The billet had to take on a greater role leading the Marine legal community.

As part of assuming that role, my office published a strategic action plan in July 2010, setting a course to elevate the practice of law throughout the Marine Corps. We set five strategic goals: set standards, train to those standards, inspect to those standards, examine and adapt the force to achieve those standards, and memorialize what we have learned in doctrine.

Our goals were designed to achieve our essential mandate—to provide quality legal services to every commander, Marine, sailor, and family member and, in particular, to ensure that every Marine who enters our military justice system receives the due process to which they are entitled.

Over the past 18 months, the Marine Corps has implemented a number of initiatives that are designed to accomplish these five goals. There are four that best illustrate our direction: our case

management system, an enhanced inspection program, a military justice counsel assistance program, and doctrine development.

We first set out to guarantee accountability for each military justice case. We developed a case management system over the course of 6 months, at a cost of roughly \$60,000. We implemented it Marine Corps wide in February 2010.

Our case management system provides a secure, Web-based, real-time case tracking database that has produced immediate results by providing a common operating picture, with complete visibility over every case at every stage of the service level process and by eliminating gaps previously caused by a variety of incompatible systems.

To enhance transparency and accountability, we created a more robust inspections regime. We developed more exacting Article 6 inspection requirements, and for the first time, we instituted a legal office inspection program into the Commanding General's Inspection Program.

The CGIP inspections, conducted by subject matter experts, provide commanders and their staff judge advocates metrics by which to gauge the performance of their legal organizations. And by the end of this year, I will have personally inspected almost every Marine legal office worldwide.

We focused another initiative on strengthening our court-martial practice in our primary statutory mission. Declining numbers of special courts and competing operational demands have degraded this core competency as the complexity of the cases we are trying continues to increase.

Our chief defense counsel responded to this trend by leveraging technology to establish a worldwide virtual law firm and create a community of practice that has elevated the defense organization.

On the prosecution side, we followed suit, and by using the Army's TCAP as a guide, we stood up a Trial Counsel Assistance Program. Our TCAP provides training and resources to assist Marine prosecutors using a number of tools, including onsite training, video teleconferencing, and a SharePoint litigation support Web site.

Lastly, to ensure that we institutionalize the lessons learned and best practices in all legal services areas, we began the process of updating our doctrine for the provision of legal services in the Marine Corps. Concurrent with our assessment of legal services, we continued to assess our manpower requirements, including realigning and increasing structure and shaping and increasing inventory.

The independent panel recommended a target total active component inventory of 550 judge advocates. That includes both certified judge advocates and our student judge advocates.

Today, our total active component inventory of certified and student judge advocates exceeds the panel's recommended target and includes 508 certified judge advocates, the largest number we have ever had.

We have taken the initiative within the service to address deficiencies that required immediate attention. If these and other initiatives are to endure, I believe there must be institutional reform.

In the future, it should be clear who is accountable for supervising the provision of legal support in the U.S. Marine Corps, and

the accountable officer should be the SJA to CMC. This billet must be clearly assigned responsibility and authority for supervising the service legal mission.

In closing, I would say that the future of our Marine legal community is bright. The current generation of judge advocates and legal service specialists is 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 our commanders and Marines the best possible advice, representation, and legal services.

Based on the direction we are taking, 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.

I have submitted a more detailed statement for the record, and I look forward to any questions that you might have.

[The prepared statement of General Ary follows:]

Senator WEBB. Thank you very much, General. And your full written statement will be entered into the record at this point.

I appreciate all of your testimony.

General Ary, let me just start by asking if you could give us a rundown on this Foster case, I mean, the chronology of it, how it got so out of synch.

General ARY. I would say that it is hard to assess one single event. As you know, in most of these things, it is a cascade of events, and it usually starts with leadership and ends with leadership.

I can tell you that the U.S. Marine Corps, the service-level mission, from date of trial and the post-trial processing until arrival at the court, took 739 days, a completely unacceptable length of time.

Today, we are tracking 164 cases. We have total visibility of them in the post-trial process. There are 25 over 90 days, and none of those have exceeded 120-day timeline of the Moreno standard.

We also provide the Navy and Marine Corps appellate review activity with an account receivable of cases that are inbound to that court. And they have total visibility of cases from date of trial. So it is a push-pull system in the Department of the Navy, as far as the Marine Corps side in our case management system.

This is not hard, but it requires an attention to detail that just did not exist at the time Foster occurred.

Senator WEBB. I am going to just ask you as a former Marine. How did something like that get lost for 9 years? At least that is the word that we have here, that it languished for 9 years.

And was this systemic? Was it somebody sticking it in a drawer? I just don't understand it.

General ARY. I would not say that it was unique, sir. So I would not say—I would say that there was an institutional—I think the DOD IG was right on when they talked about failure of oversight at all levels, about lack of proper visibility and case tracking systems.

And we just lost sight of the accountability that we needed, and it was inexcusable, sir.

Admiral HOUCK. Sir, if I may join General Ary, because this was a—this wasn't an exclusively Marine Corps problem. This was a Navy and Marine Corps problem.

The problem, as he alluded to, started at the service level in the Marine Corps, but it continued when it reached the Navy-Marine Corps Court of Appeals.

And I think it is a—I agree with General Ary. I think it is—first and foremost, I think it was a management-leadership issue. I also think it was a resourcing issue. I think that the court was not adequately resourced at the time, and I think the people that were on the court did a poor job of managing the resources that they had.

We have today, as I mentioned earlier, by any measure, by several different measures, most of which are set by the Court of Appeals of the Armed Forces, we are meeting their gates and then some. And we have done that, I think, through three ways.

We have, first of all, it starts with the two of us. We are personally focused on this problem. We meet in a military justice oversight council once a month. The two of us are always there and with several of our assistants to talk about case tracking in the department.

We have also put good people—qualified, motivated military justice people—on our courts and within the system, I mean, from the appellate court to the trial level. The judges—the judiciary is no longer a place, as it was sometimes in the past the Navy and the Marine Corps, where people go because there is no other good place for them to go. We have a judicial screening board, and we don't pick everybody that applies to be a judge these days.

We, because of our small number of cases in the Navy, have set up a military justice career track, which is designed to ensure that for the cases that we have, that we get our experienced prosecutors and defense counsel on those cases, and that they continue to work cases so they can build their experience within the caseload that we have.

And so, there are a number of people in JAG Corps alumni that said we would never do that and never make that work, and it is working today. It is fully populated and operational.

So I think the third thing that General Ary has alluded to are systems that we have in place that we did not have and weren't overseeing adequately back in the day. So I just wanted to join in because—

Senator WEBB. Well, I thank both of you for your—refreshing to see people just kind of step up and accept responsibility. And I think the numbers that you both gave in terms of where you are now on timelines is really encouraging. So I thank you for that.

Senator Graham?

Senator GRAHAM. Mr. Chairman, I want to thank you for having the hearing because this—let it be said that Congress cares. We watch. We follow. And the Foster case was the reason for us to have the independent panel review.

We now have a better understanding of what the many requirements are for the Navy and the Marine Corps, and I think we have two people in positions of leadership for the Navy and Marines that are not going to let this ever happen again. And for that, I thank you.

From the Army's point of view, Lieutenant General Chipman, what happens? You know, we are trying to figure out what force we need, what we can afford, how the Defense Department fits in the overall budget woes of the country.

If we reduce the Army by 49,000 people, how does that affect the JAG Corps? Do you have any idea how this will affect your ability to perform?

General CHIPMAN. Senator Graham, I think it would affect us in a couple of different ways that I can identify in particular. First, many of our judge advocates now are embedded in the units they advise. So, for example, to the extent that we take down 49,000 soldiers in force structure, we will lose the corresponding judge advocate billets that accompany those formations.

And we have two judge advocates assigned to every brigade in the Army. When they deploy, typically, there is a third judge advocate because of the need to conduct rule of law operations, as you saw in your own deployments at CENTCOM.

Second, if we take down 49,000 soldiers overall, I see more focus on the headquarters-level functions to deal with how do we respond to surge requirements that may accompany different and evolving missions. BRAC has increased our legal workload. That turbulence in taking 49,000 soldiers out of our inventory, I can imagine, will generate another set of legal issues, as we figure out the authorities and the personnel actions needed to effect that reduction.

Senator GRAHAM. So we just need to know that as you draw down the Army, your workload probably goes up.

General CHIPMAN. Senator, I think that is an accurate statement.

Senator GRAHAM. Now, Admiral, I am very confident after this hearing, that you have got a grip on what needs to happen in terms of monitoring military justice activity, particularly appellate review. The 925, the 950 number, is that the right number, and are you going to get the people?

Admiral HOUCK. Sir, the way that I arrived at my estimate for the—I think it is the right number. It is close to the right number.

The way I arrived at my assessment last year before the 506 panel met was very simply to look at what I believe to be the needs of our base force for judge advocates would be, and that would be the people to do the traditional things that judge advocates do.

I also recognize that we have the missions right now of individual augmentees in the global war on terror that you spoke of earlier, as well as the Office of Military Commissions.

Senator GRAHAM. Do you know how many Navy personnel have been assigned to Iraq or Afghanistan as individual augmentees?

Admiral HOUCK. It is close to 500 judge advocates, active and Reserve. And our Reserve component has been spectacular in helping us meet these demands.

Looked at our base force, did a lot of shoe leather, a lot of phone calls, a lot of travel, a lot of discussions, and came to a number. And then adding on top of that base force number, which I judged to be and still judge to be about 820 judge advocates in the active component, add to that number those necessary to fulfill the IA and Office of Military Commission numbers.

Today, July 20th, that number adds up to be 925 people, by coincidence, as it was about a year ago. The Navy program for this year has us at 801. That delta between 925 and 801 is mitigated by a couple of things.

The first one is we are being allowed to over execute, which is to say we are allowed—we probably will carry about 30 extra attorneys beyond that 801 number by the end of the fiscal year. And we have done that 13 out of the past 20 years.

The second thing is our Reserve component, reservists that are mobilized, where they have come on for active duty for special work. That is about another 60 attorneys. So that begins to close that gap. And to be precise, it is 895 today versus what I believe is a requirement of 925.

Is there some risk that is still in that delta? I think there is. But I think it is—

Senator GRAHAM. Well, my question is, is it going to close?

Admiral HOUCK. Judging by the Navy program, the Navy program is designed to get lower over the next couple of years and then to build back up toward that number across the fiscal yearDP of 821. I think the delta is going to depend a lot on what we see real time in the demand for the IA mission and the Office of Military Commissions.

Senator GRAHAM. Okay.

Admiral HOUCK. And it is difficult for me to predict what that is going to be going forward.

Senator GRAHAM. Okay. Lieutenant General Harding, can you tell us what effect being a three-star has had in terms of your ability to do your job versus two stars?

General HARDING. Yes, sir. It has had a huge effect. Again, it is all about a seat at the table, and it has produced a seat at the table.

Now, I had not served earlier as a two-star, had served as a one-star and was promoted to three. I will tell you the difference between those two worlds is huge. It is galactic, and as is the difference between serving as a one-star and a colonel.

And progressively, you are in a situation, certainly as a judge advocate, where you can hear planning and strategizing ongoing. And if legal advice is required—and you may be the only one in the room that understands that there is a legal issue that has now been raised—you are present to do so.

So it is awfully important to have a seat at those tables.

Senator GRAHAM. Well, the efficiency review—and if we have got too many generals, I want to know about it. I want to make the Pentagon more efficient.

Mr. Chairman, the reason I wanted to have this hearing not only because of the Navy-Marine Corps problem, it is because I was—I have been in the Air Force, and consider my interest parochial, I can't imagine combat commanders at the level we are talking about not having access to general officer legal advice. I mean, it is just not the Air Force that I know.

And I guess I maybe am biased here. I just know what rank means when it comes to having entre. And I just wanted the committee to understand that this is a major change. I mean, this is

a fundamental, seismic change in terms how the Air Force delivers legal advice.

And I have a letter from the Air Force Chief of Staff and the Secretary of the Air Force, who recommended not to go this way when it came to replacing these three stars, and I would like to introduce that in the record.

And I just appreciate my colleagues listening. And with that, I will turn it over to anyone else.

Senator WEBB. Your letter that you want to put in the record will be put in the record at this point.

[The information referred to follows:]

[SUBCOMMITTEE INSERT]

Senator WEBB. And I, also for purposes of objectivity here, would like to emphasize the chart that we put together at the beginning of this hearing, where if you look at the Army with 569,000 active duty people, they have a total of 6 JAG general officers.

The Navy has 328,700. They have a total of two.

The Marine Corps has 202,000 people. They have one. He is sitting at the table.

The Air Force has 332,000 people, and they have got 6.

So, you know, General, I appreciate your adamant belief in this point. But at the same time, I think there is a decision that has been made over in the Department of Defense, and we will—at least from my perspective, it will take a lot to turn it around.

General HARDING. Yes, sir. May I comment about the chart, sir?

Senator WEBB. Is this your personal opinion again?

General HARDING. No, sir. This is, I think, documented in the 506 panel as well. I know for a fact it is.

Senator WEBB. All right. By all means.

General HARDING. To a degree, to ensure that we are comparing apples to apples, I think it is important to take a look at the various mission sets of those three JAG Corps. They are not coterminous. They are not equal.

For example, in the 506 panel, they depict the SES billets for the Army Materiel Command, which is separate and apart from the Army JAG Corps. In the Air Force, the Air Force Materiel Command is supported legally with one of those one-stars that we are talking about today.

If you take a look at the Navy side, you will see that their model is very different, far afield from the Army's and the Air Force's model. Their Navy Legal Services largely is run by their Navy general counsel. And in fact, there are 22 Senior Executive Services or SES equivalent positions there.

So I think it is important to look at mission as well as—

Senator WEBB. General, I take your point. I am sorry to interrupt, but, you know, you have taken a lot of time on this.

And for the record, let me just say I grew up in the Air Force. I know where you are coming from here.

Senator Hagan.

Senator HAGAN. Thank you, Mr. Chairman.

And I think this is very interesting, and I appreciate you all having this hearing today.

I just wanted to talk a little bit about the expansion of services. As many of our troops are returning home after deployment, after

a year's deployment, they are welcomed home to a life they didn't leave, that is very different from the year prior before they left.

Some of them are facing divorce. Some of them are facing custodial battles. Some are challenged by financial issues, such as bankruptcy. And these legal issues can also be the cause of so much stress and financial complications, which ultimately will be distracting to their ability to perform their mission.

And although military members can receive legal assistance on post, many military attorneys, from what I understand, are recent law school graduates who are licensed in States other than where they actually are assigned for duty. And understandably, the JAG Corps is not equipped to handle the scope and the breadth of attention for each of these personal matters.

I am from North Carolina, and our State bar association has a standing committee on legal assistance for military personnel, whose Web site, it is actually NCLAMP, which is North Carolina Legal Assistance for Military Personnel. And they have valuable legal information available for military service members.

And this initiative provides a network of legal assistance attorneys to provide prompt and professional advice. And since 1983, they have also produced handouts to educate clients and military legal assistance teams on the relevant areas of law, of North Carolina law. And the committee also keeps tracks of unique problems that are primarily military in nature to inform the North Carolina bar about these particular issues.

I believe this initiative offers a template for a successful integration between local and State communities around military installations, and I understand that many States have similar programs like this NCLAMP for military personnel.

Do you know if any evaluation has been done to look at formal partnerships at the local and State levels to complement gaps in legal care for our service members?

General CHIPMAN. Senator, I would like to start with that question.

Senator HAGAN. Okay.

General CHIPMAN. But first, I would like to say that Mark Sullivan is not just a North Carolina asset. He is a national asset, and he has greatly affected our legal practice nationwide with his devotion to legal assistance needs of our service members.

There are, in fact, partnerships. There are places where we have what is called an expanded legal assistance program. Georgia comes to mind. Texas, in particular, is very aggressive in supporting soldier and veterans' needs for legal assistance services.

I don't know of any formal institutional framework by which those have been pursued. But I can say that I and my colleagues will be in Toronto in a couple of weeks for the ABA convention, and it is certainly a topic we could raise with the LAMP Committee, as well as the Standing Committee on Armed Forces Law. And I think that would be a great topic to look at their expertise in.

Senator HAGAN. Great. Anybody else?

Admiral?

Admiral HOUCK. No, ma'am. I was just going to make the ABA point before General Chipman did. They have taken a pretty active

role in the pro bono business and in trying to get us linked up with local bar associations and pro bono efforts.

General HARDING. And I would throw my hat in the ring with the ABA. They have done superb work, and we have supported them wherever we can. They don't supplement, they augment what we do in our legal assistance program. So it is important that that program remain.

To the extent that we can expand legal assistance with our meager resources, we would. But, frankly, we are a little resource constrained on legal assistance.

General ARY. I might add that legal assistance has always sort of been viewed as a luxury, that that is where you put your excess capacity. Our Commandant has a priority that we keep faith with all Marines. And he has made that a priority. And that is the piece, the one piece, that we are concerned about.

And I know we have spent a lot of time talking about military justice, but we look at the legal community as an area in which we need balanced excellence across all of the areas. It is a bit of a challenge, especially when you have new missions, like the disability evaluation system. But it is something that we have to position the legal communities across the board to cover those and make sure that we execute in a proper manner.

So, thank you.

Senator HAGAN. Thank you.

Senator WEBB. Thank you, Senator Hagan.

Senator BROWN.

Senator BROWN. Thank you, Mr. Chairman.

So, General Chipman, so as the Army actually draws down, I agree the workload will definitely increase. The Guard seems to be a unique investment in today's force. Do you think the Guard will play an expanded role in helping reduce the actual workload?

General CHIPMAN. Senator, I do. As you may know, we have actually recently resourced a Guard trial defense service initiative. It is in its first year of operation. We have got about 100—in excess of 100 National Guard judge advocates performing trial defense service in support of that new team.

But we have more than 50 National Guard judge advocates mobilized right now in support of various requirements and have had that number over the last several years. In fact, we have nearly 5,000 individual augmentee and unit mobilizations since 9/11. So we have gotten great support from both the Army Reserve and National Guard.

And I certainly see the Guard assisting as we transition—whatever change we effect within the Army, I see the Guard playing an integral role there and not the least of which is their role in our civil support operations, which, as you know, we have got so many Guardsmen mobilized right now with the Southwest border mission and with natural disaster response.

Senator BROWN. And do you think that we have enough commissioned officers in the Guard who are qualified in the legal profession? Do you think there is a breakdown there at all?

General CHIPMAN. Senator, that is an interesting question, because I look at the relative size of our two components. For an Army Reserve of roughly 205,000, we have about 1,800 judge advo-

cates. For a National Guard of about 360,000 or a little bit more than that, we have around 800 National Guard judge advocates.

So I think there is perhaps some room to grow our Guard legal capacity more.

Senator BROWN. General Harding, do you have any thoughts on that?

General HARDING. We are 80 percent manned in our Reserve category B, those are our individual mobilization augmentees. We try mightily to get closer to 100 percent, but I think the economy has driven some of the folks to kind of stay at home.

Having said that, the rest of our Air Reserve component is very strong. In fact, they are taking a substantial part of the burden of deployment for JAG billets in the CENTCOM area of responsibility off the shoulders of their active duty brethren. And they are back-filling the home station and by way of home station support those that do deploy forward.

As a matter of fact, one of our brigadier generals is deployed forward in Afghanistan right now, has been there for almost a year, and backfilled with an Air Force reservist. So we rely on them heavily.

Senator BROWN. Thank you.

I am just trying to—Admiral, I am just trying to kind of wrestle a little bit with the report that was made about the number and then, you know, the fact that you are not near that number. And I understand you are talking about augmenting, and I am still not quite there, though, as to seeing if you—if the Navy actually has enough folks to, you know, cover their needs.

Can you maybe just talk a little bit more about that? I am not quite clear on it.

Admiral HOUCK. Yes, sir. I think two points to start with. My estimate, as I said earlier, is that we need about 925 judge advocates right now. I mean, I can't sit here and tell you that I have a computer or a calculator that gives me that number. It is my best estimate.

Senator BROWN. Right. But you only have 800 and something.

Admiral HOUCK. Yes, sir, 895 today.

Senator BROWN. So what is the plan, I guess, to get up to that number?

Admiral HOUCK. The Navy's—

Senator BROWN. By that I mean to say are you planning on getting up to that number?

Admiral HOUCK. The Navy's plan would be to—and going back to my description of our base force, about 820, which is what I need steady state right now, given our force. The Navy's plan reaches that, but reaches it in—at the end of the 5-year defense plan. So—

Senator BROWN. So, in the interim, you are going to be basically down a fair amount of JAGs?

Admiral HOUCK. Yes, sir. And the question going forward, I think, real time will be how much of that difference I make up through over execution, being allowed to keep more people on active duty than the plan calls for, as well as to augment it with reservists, to your earlier point.

If I was in an ideal world, I would have 925 full-time, steady-state, active duty judge advocates to meet that demand signal. I can't say otherwise. And—

Senator BROWN. I guess my next question would be then, that being said, I think the other question you need to ask yourself is, if you don't have a JAG when you need one, are you prepared to take the consequences of a poor decision by one of the combat commanders?

You know, I guess that is the balancing act that you have to do, not only—it is not dissimilar than our State district attorneys when they are understaffed or police forces back home who are, you know, being reduced and cut. At what point is it hurtful, potentially, to the mission and to the safety and security of our soldiers and also the political/legal ramifications of that?

I would just—I know you are wrestling with that. And certainly, if there is something that we can do in this committee to—is it a resource issue? I mean, do you need additional billets?

Is it—I mean, we are not just here to kind of throw bombs, I don't think, or get answers. We are here to find out how we can help, too, I think. Especially, you have two JAGs right here who kind of get it.

Admiral HOUCK. I think for our leadership, they are - - to state the obvious, they are trying to reconcile many demands. The Secretary of the Navy is a lawyer.

Senator BROWN. So that is the problem.

[Laughter.]

Admiral HOUCK. So he understands the value of legal services.

The Chief of Naval Operations has served with lawyers at all levels of command, and I have met with him many occasions. And I have complete access to him, and he understands the value of legal services.

I think all that I can say is that I see my job is to assess the requirement and then tell them what I think it is. And then they have got to reconcile and make the decisions based on the larger picture that they have.

I think that we will—in 99 percent of cases, we will provide a legal answer. I don't think having—I don't think we will not provide a legal answer.

I think the risks are a little more subtle. And I think they go toward the amount of time we are able to devote toward maintaining and attending to some of the legal program administrative requirements that come up. I think it goes to the amount of time we have to devote to education and training. And those are more subtle, but I think those are some areas where risk comes into not having enough people.

Senator BROWN. Just a final thought, so do you ever - - do you anticipate in this shortfall you are going to have of making the requirements cross-branch requirements, so the Army or Air Force, and getting that type of assistance? Is that something that happens at all?

Admiral HOUCK. We do some of that. I would—and my colleagues may want to comment on it—but we do it, particularly, obviously, with the Marine Corps. Less so with the Army and the Air Force.

We do it. We have some joint basing initiatives where we work together.

Senator BROWN. I would think, especially on the services in CONUS, obviously, when you are dealing with just legal assistance issues, I mean, those are pretty standard throughout. Take that pressure off.

I mean, that is really the first—I agree with you. Some of the most important and helpful cases I have worked on have been in the legal assistance field because that is when things are most dire.

You know, a husband and wife getting divorced. I mean, there is so much pressure. That is the pressure point. And that is the morale issue, quite frankly.

Take, you know, shift resources on those lower type of, you know, really not high-end appeal cases and technical cases. Just, you know, grind them out. Get them done.

Admiral HOUCK. We routinely see service members from the other services, and I know they do for ours as well. So that is a big area of cooperation for us.

Senator BROWN. Well, I can just make one final conclusion. One of the biggest challenges that many Guardsmen have is that—is the length of deployment, in that there are many soldiers in the Guard who would be happy to do backfill tours of 3 to 6 months voluntarily.

And is there any effort in that, to reach out to do those types of tours and say, “Hey, listen, we have a legal—We have a guy who has been deployed. He needs a break, and he needs 3 months.”

Do you send those feelers out to—because we don’t get them too much, I know, in our unit. Anybody can comment on that.

General HARDING. We have done that before, daisy-chaining a deployment link to send somebody over there for 90 days, in a succession of 90 days.

Senator BROWN. Well, even in CONUS, just to backfill here.

General HARDING. Oh, certainly. Certainly, yes, Senator, we do, you know, bring folks in, as I say, home station support to support legal offices that are a little shy because they have got some folks down range. But certainly. Certainly.

And for adjustable periods of time so they can certainly find a spot that is right for their employer as well. So we have done that.

Senator BROWN. Great. Well, thank you all.

Thank you, Mr. Chairman.

Senator WEBB. Thank you, Senator Brown.

And I would like to express my appreciation to Senator Brown and Senator Graham for their continued service in uniform, as well as here in the Senate, and Senator Graham for having recommended this hearing.

He is one of the great lawyers up here in the Senate. There is nobody up here who is better on law of war and those sorts of issues. Tremendous admiration and respect for Senator Graham, and it is a great pleasure to work with him.

Senator GRAHAM. Thank you, Mr. Chairman.

You have been terrific. It has been one of the few bipartisan areas left in the Senate, if I could put it that way.

[Laughter.]

Senator WEBB. And I would like to again thank all of you for your testimony today and for your continued service to our country. And again, I appreciate your having had the patience to wait for us, as we got a little bit of a late start.

But thanks again. This is very valuable testimony not only for the Senators who were here, but as you know, a lot of staff work goes into this, a lot of thought goes in from digesting what came out of this testimony. So it has been very valuable to this committee, and I thank all of you.

And this hearing is closed.

[Whereupon, at 4:00 p.m., the subcommittee adjourned.]