

NOT FOR PUBLICATION UNTIL
RELEASED BY THE SENATE
ARMED SERVICES COMMITTEE

STATEMENT OF

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JUDGE ADVOCATE GENERAL OF THE NAVY

BEFORE THE

SENATE ARMED SERVICES COMMITTEE

PERSONNEL SUBCOMMITTEE

20 JULY 2011

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Thank you for inviting me to testify before your committee on the requirements of the Navy Judge Advocate General's Corps, the status of implementation of the recommendations of the Independent Review Panel to Study Judge Advocate Requirements of the Department of the Navy ("the Panel"), and post-trial review processes within the Department of the Navy.

Over the past decade, the Navy JAG Corps has experienced an increased demand for our legal services. I believe this is consistent with the aggressive operational tempo of our force as well as an overall increased sensitivity to legal concerns. In the face of this increasing demand, the Navy must have enough judge advocates to meet the complete spectrum of legal missions it faces today. Without sufficient judge advocates, commanders run the risk of failing to have important legal issues recognized and addressed in a timely manner. There is also a risk that analysis will lack rigor and ingenuity because existing assets are spread too thin, and, that judge advocates will not have sufficient time to continue their education and training.

Based on the Navy JAG Corps' current missions, and, consistent with my testimony before the Panel last September, I believe the Navy requires a base force of 821 judge advocates, plus, the judge advocates necessary to meet the demands posed by assignments to Individual Augmentee (IA) missions and the Office of Military Commissions (OMC). Currently, 73 active component and 31 reserve component judge advocates are assigned to IA and OMC missions.

Today, there are 866 judge advocates on active duty. This consists of 835 active component judge advocates, plus 31 reserve component judge advocates serving under active duty orders in support of IA and OMC assignments. Under the current Navy program, the Navy budgeted for 801 active component judge advocates on active duty by the end of the fiscal year. This is based upon community endstrength as determined by the Chief of Naval Personnel through the budget process.

The Department of the Navy intends to increase the number of active component JAG Corps billets to 821 across the future years defense program (FYDP). This increase does not require statutory authority, only funding. In Fiscal Year (FY) 2011, the Navy's program of record was to decrease our JAG Corps officers from 801 to 745 by FY16. Navy leadership has now indicated an intent to fund, within the Navy's baseline budget, an additional 31 JAG Corps billets through FY15 which are currently detailed to the Office of Military Commissions at least through the end of FY12, and to provide the additional increases necessary to fund the 821 JAG Corps officers required to meet baseline requirements over the FYDP.

I realize that essential JAG Corps growth must be weighed against other important requirements, especially in the current fiscal environment. I believe that 821 is the minimum number of officers needed to meet emerging requirements and mitigate legal risk to the Navy. We continue to look for internal structure changes that will allow us to realign resources to meet demand. In addition, we have also begun to train enlisted members of the Legalman rating to obtain certification through the American Bar

Association as paralegals, which will gradually ease the administrative burdens currently levied on JAG Corps officers. To address the expanded rights to legal assistance for Wounded, Ill and Injured service members processed through the Disability Evaluation System, for FY12, we are hiring permanent civilian attorneys to ensure sustained legal support and assistance to our Wounded, Ill and Injured Sailors. These civilian attorneys will be augmented by reserve judge advocates in FY12, but we are working to fully civilianize the support over the next several FYs. We are focused on making a smooth transition and ensuring compliance with the law and Department of Defense direction.

The Panel commented that maintaining a strong judge advocate community will require continued focus on recruiting; continued support for Navy Judge Advocate Continuation Pay (JACP); and continued support for post-graduate education. Even in a challenging budget environment, Navy leadership has strongly supported all of these important programs.

The JAG Corps received \$70,000 in support from Commander, Navy Recruiting Command in FY11 and our applications for commissions have, since FY09, remained at historically high levels (over 900 annually). I also note that we ask our judge advocates to devote a considerable amount of time to personally participate in recruiting activities. Law school administrators—and, more importantly—law students, tell me our judge advocates are the best representation of our Corps.

The Chief of Naval Personnel approved funding for Judge Advocate Continuation Pay (JACP) at existing levels through FY12. In addition, the Navy will fund postgraduate education for 25 judge advocates in the 2011-2012 academic year at the very best law schools in the United States. I testified before the Panel that increases in JACP and providing postgraduate education opportunity for 30 judge advocates annually would be optimal. However, the amount of funding for these programs in FY12 is sufficient to meet our immediate requirements. Especially when viewed in the context of potential future Navy budgets, I believe the amount that will be funded in FY12 represents a strong commitment from Navy leadership to maintain a first-rate, mission-ready JAG Corps.

For years, we have stressed the value of obtaining Joint Professional Military Education (JPME). In the coming months, I intend to formalize JPME guidance through JAG Corps Instruction, placing emphasis on and strongly encouraging judge advocates to complete JPME Phase I as part of JAG Corps training requirements. Our approach will be geared toward meeting the Chairman's learning objectives as well as assisting Navy leadership in assessing the desire to formalize judge advocate participation in the joint officer management program and joint qualification system.

Our Navy JAG Corps has no more important mission than providing a fair, effective, and efficient military justice system for our commanders and personnel. Military justice is our statutory mission. We are intensely focused on upholding this special trust.

Within the Department of the Navy, effective court-martial post-trial processing is being fully achieved at the local level in Navy and Marine Corps legal offices, and at the appellate level in the Navy and Marine Corps Appellate Review Activity, and the Navy Marine Corps Court of Criminal Appeals.

Improvements over the course of the last several years in post-trial and appellate case processing have been institutionalized in standing. On 25 April 2011, the Secretary of the Navy approved Secretary of the Navy Instruction 5430.27D, “Responsibility of the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps for Supervision and Provision of Certain Legal Services.” The instruction formalized the requirement for the Judge Advocate General to provide an annual report to the Secretary of the Navy, the Chief of Naval Operations and the Commandant of the Marine Corps on the state of military justice within the Department of the Navy. This directive also institutionalized the Military Justice Oversight Council, which we initiated in November of 2009. The Council is chaired and convened by the Judge Advocate General and co-chaired by the Staff Judge Advocate to the Commandant of the Marine Corps. The Council meets monthly to evaluate the practice of military justice and the effectiveness of the military justice system. The Council monitors individual cases through reports about any case at risk to exceed processing guidelines promulgated by the Court of Appeals of the Armed Forces (CAAF). Likewise, we have reinforced this process with a series of uniform policies and standards to ensure consistency across the force.

Given the improvements in structure, operating procedures, case tracking and oversight, I am confident we have a military justice process that works as intended. The Navy and Marine Corps now consistently process cases within the CAAF guideline of 150 days from sentencing to docketing at Navy-Marine Corps Court of Criminal Appeals. Those few cases that have not met that guideline are individually tracked and the reasons for delay are documented for consideration by the appellate courts. At the Navy-Marine Corps Court of Criminal Appeals, no case in fiscal year 2010 exceeded the 18-month appellate processing timeline from docketing to decision by that court, and none of the cases decided or docketed and pending review in this fiscal year exceed that time.

As a result of the actions we have taken over the past several years, I am confident we know the status of all active Navy and Marine Corps court-martial cases in the trial and post-trial process. We are successfully tracking all our cases.

The Navy monitors its post-trial process at the local level through the Case Management Tracking Information System (CMTIS). The Marine Corps tracks post-trial processing of courts-martial using the Case Management System (CMS). The processing of appeals is a departmental mission. Both Navy and Marine Corps cases pending appellate review are monitored with CMTIS, which tracks each case throughout the appellate process, from docketing to final disposition. The overlap of CMTIS and CMS provides the department with visibility over all courts-martial cases from sentencing to appellate decision, but it is not optimal in that these systems do not provide a consolidated view of the status of all cases pending within the department.

The Secretary of the Navy has committed to development of a unified case-tracking system for the Navy and Marine Corps. A joint effort is currently underway to formally establish a new acquisition program in the departmental budget process for a common case-tracking system. On 4 November 2010, the Assistant Secretary of the Navy (Research, Development and Acquisitions) assigned the Program Executive Office for Enterprise Information Systems (PEO EIS) the program management and acquisition responsibility for development of a web-based information system that includes a single case tracking system. ASN (RDA) directed PEO EIS to work with stakeholders within the Department of the Navy to validate system requirements; establish roles and responsibilities; develop an acquisition timeline and activities; conduct market research in support of Business Case Analysis approach; and prepare the required acquisition documentation in support of the POM 13 budget cycle. I look forward to working with the Marine Corps and other stakeholders to achieve the Secretary's goal.

In summary, we need to ensure sufficient numbers and quality of our judge advocates so that we are able to fulfill all our missions effectively and efficiently. In particular, we remain steadfastly committed to ensuring that our military justice system operates to the highest standards. I thank the Committee for its continued interest in the legal practice within the Department of the Navy, your support of our men and women in uniform, and I look forward to taking your questions.