

1 MEETING OF INDEPENDENT PANEL
2 TO REVIEW THE JUDGE ADVOCATE REQUIREMENTS
3 OF THE DEPARTMENT OF THE NAVY
4
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6 Public Meeting
7 October 13, 2010
8 Marriott Residence Inn Arlington Pentagon City
9 550 Army Navy Drive
10 Arlington, Virginia
11 8:37 a.m. - 4:20 p.m.
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13

14 BEFORE THE INDEPENDENT REVIEW PANEL MEMBERS:
15 LT. GENERAL H. PETER OSMAN (USMC, RETIRED)
16 WILLIAM R. MOLZAHN (Acting Chair)
17 REAR ADMIRAL JAMES E. McPHERSON (USN, RETIRED)
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1	C O N T E N T S
2	STATEMENTS ON BEHALF OF:
3	OPERATIONAL LAW COMMANDERS' PERSPECTIVE:
4	By Vice Admiral Harry B. Harris, Jr., USN
5	Vice Admiral John M. Bird, USN
6	Lieutenant General Richard F. Natonski, USMC (Ret)
7	
8	OPERATIONAL LAW COMMANDERS' PERSPECTIVE:
9	By Lieutenant General John F. Kelly, USMC
10	OPERATIONAL LAW JUDGE ADVOCATES' PERSPECTIVE:
11	By Captain Stacy A. Pedrozo, JAGC, USN
12	Colonel John R. Ewers, USMC
13	Colonel Kevan Johnson, JAGC, USA
14	
15	MARINE CORPS JUDGE ADVOCATE CAREER PATTERNS:
16	By SES Michael F. Applegate
17	Colonel John R. Ewers, USMC
18	
19	DISABILITY EVALUATION SYSTEM PANEL:
20	By Mr. Robert C. Powers
21	Captain Michael I. Quinn, JACG, USN
22	Lieutenant Colonel Peter C. Faerber, USMC
23	
24	
25	

1 MR. PUTZU: Good morning. Welcome to the
2 October 13th public meeting of the independent
3 review of judge advocate requirements for the
4 Department of the Navy. I'm Frank Putzu, I'm the
5 designated federal officer for this panel.

6 This panel was established by statute
7 pursuant to Section 506 the National Defense
8 Authorization Act for fiscal year 10. It is a
9 nondiscretionary committee under the Federal
10 Advisory Committee Act, and in compliance with all
11 aspects of that statute. The panel has met all time
12 requirements established in law, including holding
13 its first public hearing within 60 days of the
14 establishment on September 1st. Second public
15 meeting was held on October 6, 2010. This is the
16 third public meeting of the panel.

17 In accordance with FACA, a notice of this
18 meeting was published in the Federal Register on
19 September 17th, 2010, and has met the 15-day notice
20 requirement under FACA. All documents are available
21 in this room on the table to my left in the front.
22 They are also available on the GSA Web site at
23 <https://www.fido.gov/facadatabase/logon.asp>

24 GSA is continuing its rather thorough
25 audit, and the Web site is not accepting new

1 downloads at the moment. We expect them to finish
2 their audit later this month. To expand public
3 accessibility, the 506 panel has continued to
4 download documents on a new Web site located at
5 <http://sites.google.com/site/506panel/documents>. Be
6 happy to share that with anyone interested in that
7 when I conclude.

8 The transcript for this September 1st
9 hearing is located on that Web site, the Google
10 Web site, and is also available for review in our
11 office at the Navy Annex. We will load the
12 transcript for the October 6th hearing, as soon as
13 it becomes available, on the new Web site.

14 Agendas have been distributed to anyone
15 interested, and there are more copies available from
16 our staff in the back. Please note that the panel
17 will be having an administrative meeting today in
18 accordance with the terms of FACA over the lunch
19 hour. There will also be a preparatory work meeting
20 the panel will be holding starting at the 10:00
21 hour.

22 Please note that we have three panel
23 members present today; Mr. Bill Molzahn is acting
24 chair, General Osman, and Admiral McPherson. We,
25 therefore, have a quorum of the panel and may

1 proceed with the business at hand.

2 Public is invited to make any comments or
3 present any questions. I do request that they come
4 through me as the DFO in accordance with FACA. If I
5 am not available for any reason, Mr. Michael
6 McGregor is the alternative DFO, and you may ask
7 him. We encourage all comments. Please note that
8 all comments, written or oral, will be summarized
9 and very likely posted on the Web site for public
10 accessibility.

11 In accordance with FACA, I plan to attend
12 this public meeting in its entirety. A court
13 reporter is present to render a verbatim
14 transcript. That too will be posted to the Web site
15 when it is available.

16 Mr. Chair.

17 CHAIRMAN MOLZAHN: Welcome admirals,
18 general. Our overall mission is to independently
19 review the requirements for judge advocates for the
20 Department of Navy, and, in particular, Congress
21 asked us to review the emergent operational law
22 requirements of the Navy and Marine Corps, including
23 requirements for judge advocates on joint task
24 forces in support of rule of law objectives in Iraq
25 and Afghanistan.

1 We're very pleased that you could come and
2 testify today on these subjects, and would hope you
3 can shed light on the subjects.

4 We have you down in order of Admiral
5 Harris, Admiral Bird, General Natonski. You can
6 start in whichever order you'd like.

7 This meeting is now open.

8 VICE ADMIRAL HARRIS: I guess I'll start.
9 I have a little statement because I didn't have a
10 chance to get it to you ahead of time. So if I may
11 read it, it takes about five minutes.

12 So it is good to be here with you and good
13 to see many of you again, and speaking personally,
14 I'm honored and gratified by this opportunity. This
15 will be an inappropriate time to start off with
16 lawyer jokes, so I'll dispense with those, but
17 thanks for the chance to begin with a small
18 statement.

19 When Chairman Dell'Orto invited me to
20 appear before you today, I welcomed this chance
21 because I knew it was important for this panel to
22 hear the perspective of an operational commander on
23 just how much we value our judge advocates.

24 Now, I spent almost my entire career in the
25 operations world. I've had five OPS officer jobs

1 from squadron to wing to member of fleet to current
2 office of the Navy headquarters in the Pentagon and
3 as a J3 director of operations in U.S. Southern
4 Command. I've commanded a squadron, a wing, and now
5 a fleet. But in 2006 the chief of Naval operations
6 nominated me to command the joint task force
7 overseeing the detention of enemy combatants in
8 Guantanamo Bay, Cuba. That was a shocker.

9 I freely admit that when I heard that I was
10 going to Guantanamo, I was daunted because I had
11 very little experience. I'll be truthful. I had no
12 experience whatsoever in detention operations.

13 Plus, as many of you know, Guantanamo at that time
14 was not portrayed well on any newscast. I knew I
15 had an enormous challenge ahead of me, not only to
16 execute the mission well but also to help change
17 public perception of Guantanamo, because we were
18 holding, in my opinion, enemies of our nation in the
19 right place for the right reasons and doing it in
20 the right way.

21 As I thought about that mission, I realized
22 how absolutely essential it was to continue to get
23 it right, and I use the word continue deliberately
24 because I believe my predecessors Major Generals Jay
25 Hood and Jeff Miller did a fabulous job here.

1 So I come before you today to tell you
2 truthfully that one of most fortunate assignments in
3 my career was that tour in Guantanamo. As difficult
4 as the job was, there are troops there from all the
5 services who serve with honor and distinction in a
6 dynamic, difficult, and dangerous place, and it was
7 there that I realized firsthand the value of our
8 uniformed judge advocates. It's no exaggeration for
9 me to say that I would not be here before you today
10 as a three star were it not for them.

11 Equally important, many of the over 500
12 detainees that have been released or transferred to
13 countries around the world were represented or had
14 as their advocates uniformed military counsel.

15 Now, beyond my own personal experience at
16 Guantanamo, I know our judge advocates have
17 successfully defended in the courts our Navy's
18 operations against challenges to midfrequency sonar
19 training. Our judge advocates argued why active
20 sonar is paramount for submarine detection, hence,
21 critical to national security. Our judge advocates
22 crafted the arguments why inflexible compliance
23 would interfere with meaningful training, and the
24 Supreme Court agreed.

25 Gentlemen, you cannot get that kind of

1 representation without a military perspective from
2 uniformed attorneys who have been there and done
3 that.

4 Now, today, my JAGs are part of my inner
5 circle. I consult with them on any and every
6 significant issue that I face. My demands of my
7 staff are high: Work hard, think logically, be
8 responsive, value integrity over loyalty, and write
9 and speak well. The JAGs hit that mark every time.
10 They advise me on how to get to mission
11 accomplishment legally or whether it's time to
12 simply say no. And I don't know a commander worth
13 his or her salt today who wouldn't value that
14 immensely.

15 As the complexity of operations of
16 engagement continues to increase in this post 9-11
17 world, so too has the demand for judge advocates.
18 Now, more than ever, operational commanders require
19 traditional and nontraditional counsel and advice.
20 Besides the emerging roles I've just mentioned, I
21 still need expert advice on traditional operational
22 law issues, such as rules of engagement, the law of
23 armed conflict, military justice, investigations,
24 admiralty law, status force agreements, and ethics.

25 So operationally savvy judge advocates

1 consider not just the letter of the law but also
2 policy implications and strategic communications.
3 Every operational commander I know wants all the
4 judge advocates he or she can get. So just as I
5 think the role of our JAGs has become much more
6 complex over the past decade, I hope we're ensuring
7 that we have the numbers we need. We must also
8 ensure our judge advocates have time for training
9 and advanced education. We rely on them to help us
10 get the mission done right, so we must continue to
11 invest in them so they're prepared to do that.

12 So I look forward to answering your
13 questions today, and I'll simply close with this.
14 George Orwell once said, we sleep safely in our beds
15 tonight because rough men stand ready to visit
16 violence on those that would do us harm. I would
17 add that this commander before you, me, this
18 commander sleeps soundly at night because I've been
19 fortunate, indeed, to have had and continue to have
20 great judge advocates as my advisors, helping me
21 make those important decisions that would otherwise
22 keep me awake at night.

23 Thank you, very much.

24 CHAIRMAN MOLZAHN: Admiral, I'd like to ask
25 you a question. You've had a number of operational

1 jobs, as you pointed out. In your view, have you
2 had the right number of judge advocates? Did you
3 need more? Did they come in to support you ready to
4 hit the ground running? In other words, were you
5 satisfied with the training and background they had?

6 VICE ADMIRAL HARRIS: Great question. In
7 Guantanamo, I had, principally, Army and Navy judge
8 advocates. And I had a lot of reserve lawyers come
9 into the fight down there, if you will. I believe,
10 to a person, they were highly trained, highly
11 qualified. Could I use more? Of course. But the
12 ones that the Army and Navy sent down there under
13 individual augmentation or mobilization orders were
14 highly trained and very expert. When I was at
15 Southern Command, I thought we were a little bit
16 skosh on the lawyers. We were doing operations in
17 Colombia, involved with the counter-FARC operations
18 down there and other things like that where the
19 gamut of operational law issues were resonant in
20 that experience. And today in Naples as a commander
21 of the Sixth Fleet, the deputy commander for Naval
22 Forces out there in Europe, I believe that I need a
23 few more lawyers, and I'll tell you specifically the
24 area that I think I need. I need legal advice and
25 counsel expertise in NATO. I don't have that

1 expertise out there. And in the NATO command
2 structure, there is not a single uniformed Navy
3 lawyer at SHAPE, at SEC. Not at EUCOM, but at SHAPE
4 and SEC there's not a single Navy uniform. I think
5 we need that. I could use that.

6 Am I satisfied with the quality of the
7 lawyers who work for me and have worked for me in
8 the past? Absolutely. I think all the services do
9 a great job. I say all the services, I don't have
10 much experience even in the joint or even working
11 with Air Force lawyers, but I do with Navy, Army,
12 and Marine Corps lawyers, I'm very satisfied with.
13 Could we use more, yes.

14 CHAIRMAN MOLZAHN: Are there, if you had to
15 speculate in the future in your current job, are
16 there areas where you see any challenges in the
17 future? You kind of named a gap where, with that
18 kind of background and skill, but in terms of future
19 operations, are there areas where you think you're
20 going to face challenges that need judge advocates?

21 VICE ADMIRAL HARRIS: I'll start with that,
22 I'll pass that off to Admiral Bird, who's just come
23 from a fleet in the West Pacific. Based on my
24 experience, I believe that, just as we can't predict
25 with precision the nature of the next fight, I think

1 we can predict with certainty that it will be as
2 complex as any fight we face today, and we need
3 lawyers that have that agility and flexibility to
4 meet that threat. We're dealing today with NATO
5 forces in Africa, that side of my house, we're
6 dealing with counterpiracy and counterterrorism.
7 Counterpiracy is a very interesting issue when
8 you're dealing with countries that you're trying to
9 get to try these folks, you're dealing with the MOTR
10 process, M-o-t-r, I don't know what it means. But
11 it's an acronym that people bandy about as if they
12 knew what they were talking about. But the MOTR
13 process, we're dealing with Homeland Security with
14 DOD and the Department of State back here, and the
15 disposition of suspected pirates and all that. So
16 these are areas that I never thought about when I
17 was coming up through the Navy. I never thought
18 about counterpiracy. Piracy, to me, was something
19 kids want to be. But piracy is serious business
20 when you're dealing with all these folks, 350 or so
21 seamen have been captured there waiting for ransom
22 and stuff like that, so it's a serious issue. And
23 we're dealing in issues like cooperative security
24 locations where the combatant commander wants
25 services, service components to establish small

1 foreign operating bases on the continent of Africa.
2 That's really interesting and important work. How
3 legal is it, what are the statute requirements, what
4 are our requirements as a service when compared to
5 the lieutenant commander's responsibilities and
6 goals, objectives.

7 So these are interesting areas that I think
8 that we're seeing more and more of, and I rely
9 heavily on counsel to get through each day with
10 those issues.

11 CHAIRMAN MOLZAHN: I do want to ask, I'll
12 ask everyone the same question when they finish
13 their remarks, but historically wherever we
14 distinguished between lawyers and other groups and
15 tried to define in some general terms -- direct
16 support as opposed to overhead -- orders that have
17 historically been considered overhead, and now we
18 sometimes more specifically talk about tail versus
19 tooth, and I guess what I'd like to ask is, is it
20 fair to put, frankly, anyone in any of those
21 categories or does it depend on the mission, whether
22 you're tooth or tail or overhead or direct?

23 VICE ADMIRAL HARRIS: Sir, it depends on
24 where you sit. I guess where you sit is where you
25 stand, right? In my view, the lawyers that come

1 forward, that were in Guantanamo, that are in
2 Afghanistan, that are in Iraq, that are in Naples,
3 that are at sea, that's tooth. You can't go to war
4 today, you can't fight, in my opinion, without
5 lawyers by your side. Public affairs officers also,
6 because it's all about, a lot of it is about
7 strategic communications. But lawyers, the
8 operational lawyers that are forward, I believe, are
9 clearly tooth, and you can't get enough of it. I
10 believe that the establishment back home, they are
11 simply preparing to go forward. So I'll view the
12 operational lawyer, like I view doctors and folks
13 like that, you know, are doctors tooth or tail? I
14 don't know. If you get your leg blown off in
15 Afghanistan, I think you'd be looking for that
16 tooth. So that's my opinion.

17 CHAIRMAN MOLZAHN: Thank you.

18 REAR ADMIRAL McPHERSON: I have a question
19 for the general. Just a couple. Thank you for
20 being here. I know we're taking time from important
21 meetings to attend here. I think it's very
22 important we hear you from because up to this date
23 it's been a bunch of lawyers talking about how many
24 lawyers, and it's nice to hear from a line
25 commander. I know General Osman is very relieved

1 there's some line people in the room, not just a
2 bunch of lawyers here.

3 Admiral Harris, you come from a unique
4 perspective in that in Guantanamo you were supported
5 by both active and reserves. I guess I want to ask
6 the reserve question. That is, are those reserve
7 JAGs coming in and serving, did you see a
8 requirement of rampup time before they could do the
9 job, did they come to you fully prepared? What was
10 your experience with regard to utilization of
11 reserves?

12 VICE ADMIRAL HARRIS: Admiral, I'll be
13 completely honest with you. I couldn't tell the
14 difference between reserve and active lawyer or
15 reserve and active Sailor and Soldier in
16 Guantanamo. We all wear these BDU uniforms, and we
17 don't have a big R on their forehead anymore. I
18 could not tell the difference. They served me
19 well. I'll give you one example. Army colonel
20 named Steve David showed up one day. He was there
21 for a six-month rotation. Steve David, he was, he
22 ended up being the deputy staff judge advocate, and
23 then he became the staff judge advocate for a few
24 months, as we were looking for replacement for the
25 active duty. He rolls back in there the next

1 year -- I was already gone -- he rolls back in as
2 the senior defense counsel for the detainees. So
3 now he's on both sides. He started out this side,
4 now he's the senior defense counsel for the
5 detainees. Did a fabulous job. He's a judge in the
6 State of Indiana, and he was just appointed two
7 weeks ago to the Indiana Supreme Court. That's the
8 quality of the reserve lawyers that we got in
9 Guantanamo.

10 REAR ADMIRAL MacPHERSON: I know it's
11 unwritten policy JAG has in place, before we detail
12 our JAG to a flag staff, it's a nominative process.
13 We hope to send you gentleman at least three names
14 along with supporting paperwork, and you pick.
15 What's been your experience when you've had the
16 opportunity to do that? What do you look for in
17 selecting a JAG to your staff?

18 VICE ADMIRAL BIRD: That policy, more or
19 less, remains in place, at least my experience both
20 in PAC Fleet and more recently in Seventh Fleet, and
21 I think it's a good policy. As you've seen my
22 statement, I obviously look at Seventh Fleet for a
23 lawyer who has experience in operational law, and I
24 look for someone who preferably has experience in
25 the Western Pacific sometime in their career. The

1 current JAG out there, Chris French, was such an
2 individual, but I think, more importantly, I checked
3 with previous commanders he's worked for and get a
4 sense of his capability, his approach to problem
5 solving, his logic, and his thinking. And after
6 reviewing that and taking those recommendations
7 aboard, especially from associates I've known who
8 have been in command, that's how I make any
9 selection.

10 VICE ADMIRAL HARRIS: In my experience,
11 it's a lot about who you know, so we have Lindy
12 Bund, who's a lawyer at NAVEUR. Kirk Foster, I
13 think was the lawyer that was inbound to EUCOM.
14 Within a week or two, he got pulled out to go to
15 Afghanistan. So that is a risk trying to find the
16 right lawyer. EUCOM zeroes in on Lindy Bund, and
17 before I could even say boo, she's gone. So I
18 needed a lawyer. So I didn't get a three lawyer
19 nominative package, but it didn't matter because Jim
20 Houck and I and Nan DeRenzi and I have known each
21 other for years, Nan and I worked in Southern
22 Command. Houck comes up and says, how about, I've
23 got this guy in Gordon Modarai. I wouldn't know
24 Gordon. But if Jim Houck recommends him, good
25 enough, and he's been on staff for a couple of

1 months. About as good as any lawyer I've ever had.
2 Personalities matter, but it's not so much
3 personality between me and the lawyer as it is the
4 personality relationship between me and the head of
5 the JAG Corps.

6 CHAIRMAN MOLZAHN: Admiral Bird, do you
7 have remarks for us?

8 VICE ADMIRAL BIRD: Yes, thanks for the
9 opportunity to testify and provide my opinion and
10 judgment on the importance of uniformed Navy JAGs
11 and Navy operation commanders. As you can tell or
12 will tell from my remarks and my prepared statement,
13 I'm a strong advocate of JAGs and in support of
14 operational Naval commanders. I provided a
15 statement. I hope you've had a chance to read it.
16 I'll highlight some key points and additional
17 points.

18 I recently left Seventh Fleet 10 September
19 of this year after a 26-month assignment. I can
20 tell you that each and every month or day the
21 assignment and the challenges faced out there in the
22 Western Pacific grew. I would argue that similarly
23 the world is as complex, if not more complex, from a
24 military perspective as any time in our history.

25 My bottom line up front, if I can use a

1 little military parlance, would be a couple key
2 points. One, we're a nation of laws. And our
3 military operations must, then, be based and
4 underpinned by law. International, acceptance,
5 transparent, based on fair equitable good
6 precedent. But that's key if you're going to be
7 legitimate and fairly judged and favorably judged in
8 our military operation.

9 Two, I think law and legal advice permeates
10 all phases of operations. As we say, from phase
11 zero in peacetime to completion of wartime
12 operations or phase five, so it's critical both in
13 peace and war. I would say that the phase zero,
14 phase one the peacetime can be most critical, and if
15 done right, will adequately prevent war. That's
16 true across the full range, but particularly on
17 legal advice.

18 The United States Navy has a cooperative
19 strategy, a maritime strategy, that we sign in
20 concert with the Coast Guard and the Marine Corps.
21 In there we list six strategic imperatives and six
22 core competencies. Legal advice is critical in each
23 and every one of those imperatives, and each and
24 every one of those core competencies, without a
25 doubt.

1 Three, JAGs play a critical role in
2 operation. Routine operation combined with partners
3 and allies, developments of plans and executions in
4 a myriad of the policies. We need the right
5 number. They have to be properly trained, and as we
6 say in the Navy, it's not only critical we have the
7 number to fill the slots, but they have to be the
8 right fit, the right experience, the right
9 training. Just like any other critical rating or
10 manpower in the United States Navy.

11 Four, and this is important, the PRC,
12 China, is currently executing a strategy of media,
13 psychological, and legal warfare, lawfare, in
14 particular, as they make excessive maritime claims
15 in the Western Pacific. Our Naval commanders,
16 obviously, then, must be armed with JAGs that can
17 deal professionally with issues and, in particular,
18 lawfare. If we don't have JAGs that understand what
19 is going on, we are going to lose in that endeavor.

20 So let me talk beyond my bottom line up
21 front about some general points regarding JAGs and
22 my interaction with them. It's not just about China
23 and the Western Pacific. There's a global range of
24 issues. Admiral Harris talked about some he's dealt
25 with. Certainly Iran, North Korea, the Horn of

1 Africa, disputes by multiple countries, friend and
2 not so friendly alike. You only have to look at the
3 South China Sea to see the overlapping and competing
4 claims all based on people's opinions of the law.
5 Goes to our freedom of movement, ability to have
6 free commerce and the like. This goes to an ally
7 like Australia who has certain constraints on
8 pilotage or excessive port fees by Malaysia. All
9 must be dealt from a legal basis and fairly.

10 Recently we conducted an ASW exercise in
11 the Yellow Sea or, from the Chinese perspective, the
12 International, or the West Sea, if you were looking
13 at it from a South Korean perspective. It was 30
14 nautical miles south of the northern limit line,
15 which has its own questionable legal basis, which is
16 based on coming out of the war that never really
17 ended between North and South Korea and the
18 armistice, which gives us a whole range of rules of
19 engagement. It took place four or five months after
20 the tragic sinking of the Cheonan by the North
21 Koreans and the loss of 46 lives. While ASW is a
22 core competency and one that you do need legal
23 advice on routine basis, when you're doing it in the
24 shallow water of the West or the Yellow Sea, when it
25 involves an ally, when it's getting close scrutiny

1 by the world or particularly the PRC, when it's in
2 the shadow of North Korea or involves the tragic
3 sinking of the Cheonan and 46 lives, you can see
4 it's going to involve a lot of law: International
5 law, domestic law, fiscal law about expenditure of
6 money, environmental law, Admiral Harris touched on
7 the idea of marine mammals, and all that comes into
8 play and involves a large number of ships from two
9 countries, and you need a team of lawyers that work
10 day in and day out to make sure you get it right
11 before you enter into that endeavor.

12 Today there are 75 ships and two strike
13 crews operating in the Western Pacific, that's the
14 Yellow Sea, the East China Sea, the South China Sea,
15 and then the overlapping claims, and they all must
16 be dealt and have a legal underpinning in order to
17 get it right.

18 Recently in another example, as you know,
19 Chinese fishing vessels, apparently deliberately,
20 collided with a Japanese Coast Guard vessels in and
21 around disputed islands of the western Pacific. In
22 order for an operational command to understand that
23 and the implications, again, they have to understand
24 international law, domestic law of the two
25 countries, and what they claim, have an

1 understanding of historically is happening,
2 including the hostile actions against the Impeccable
3 last year, one of our survey ships. They have to
4 understand U.S. policy with respect to the disputed
5 islands, and it's far from clear, it's very
6 ambiguous by its very nature. And all of that takes
7 good legal advice built on years of experience.

8 I was responsible for multiple plans and
9 associated planning in numerous exercises, and it is
10 a complicated legal environment when you go do those
11 exercises. There's got to be a legal understanding
12 of maritime battle space as well as an operational
13 one. Territorial seas, exclusive economic zones,
14 various states, rules of engagement, rights of
15 self-defense and enjoining doctrine all play into
16 executing those plans.

17 The JAG is as critical as any member of the
18 staff, and I would say maybe at times the most
19 critical, and I spent as much time with my JAGs as I
20 did any member of my staff. They not only oversaw
21 things like the PRC claims against our survey ships
22 in EZ, he administered freedom of navigation ops,
23 which are absolutely critical to our freedom of
24 movement, he had to have definitions and
25 understandings of international waters, innocent

1 transit passage, understanding of sovereign immunity
2 with when to reveal a crew list or not to foreign
3 governments. Flying foreign government's flags over
4 our vessels, was that okay or not. Excessive port
5 fees that I mentioned. He had to deal with ethics,
6 personnel law, admin law, environmental, fiscal law,
7 I mentioned. And he had work with foreign
8 governments and our Sailors who were on shore leave
9 or living overseas. So when they got in trouble,
10 convincing foreign governments that the U.S.
11 Military legal system could deal with it adequately
12 and cause our Sailors to be turned back over to us.
13 All of that is critical, and the lawyer must do all
14 of that.

15 My lawyer once said in giving an award to a
16 junior lawyer on the staff that the op law JAG would
17 not have his own slice of the pie. He had his
18 fingers in everybody else's slice of the pie. And I
19 think that's a fair characterization what he needs
20 to do.

21 So we need JAGs that are well trained,
22 experienced in the joint and in the Naval
23 environment, who understand and have lived
24 experiences within operations. And it's not too
25 different from any other Naval officer who becomes

1 senior. They have to have that breadth of training
2 and experience that makes them valuable as they get
3 more senior.

4 Talking with Jim Houck about my concerns
5 about the manning out in the Seventh Fleet led to my
6 appearance before this panel, and I am concerned
7 about some of the JAG manning, and I think Jim's
8 going to deal with it. In particular, Seventh Fleet
9 had six subordinate task force commanders, one and
10 two stars, to deal with integrated air missile
11 defense strikes, surface warfare, submarine warfare,
12 and amphibious warfare. And each are manned by one
13 O3 or O4 JAG who are doing great work. As I've
14 described, the breadth of areas they must deal with
15 and all the different laws, plus you have your own
16 training, your own travel, and your leave, it's not
17 enough. They need backup. And there's a certain
18 synergism achieved when you have two lawyers working
19 together and dealing with a problem as opposed one
20 in isolation. Not to say they couldn't reach up
21 echelon for advice, but think it's beneficial when
22 these commands are at sea that that's available.

23 I applaud the effort of the panel and in my
24 new assignment as director of the Navy staff, I look
25 forward to helping in any way I can. Thank you.

1 CHAIRMAN MOLZAHN: If I could ask a
2 question something like I asked Admiral Harris.
3 Were you satisfied that the JAG attorneys you did
4 get support from were adequately trained and ready
5 to hit the ground running when they started to
6 support you?

7 VICE ADMIRAL BIRD: In general, I have been
8 very pleased with my JAGs over the years. Honestly,
9 in some cases some were better than others. And I
10 thought in some cases it might not have been the
11 best detail because of the amount of experience and
12 training the lawyer had, given nature of the
13 assignment, and that goes to the question earlier
14 about the nominative process and getting the right
15 lawyer and the right fit. But in general, I've been
16 very pleased, and I think that goes to my statement
17 how strong I feel that we have JAGs and the right
18 number in these operational commands. In fact, one
19 of the lawyers I work very closely with, who's
20 absolutely outstanding, is appearing before this
21 panel today, Stacy Pedrozo. When I was in PAC fleet
22 when she and I spent innumerable hours together
23 working the marine mammal issue, and to what Admiral
24 Harris said, I have a few depositions that appeared
25 before the Supreme Court.

1 CHAIRMAN MOLZAHN: Admiral, I'd also like
2 to ask you the same tail versus tooth question about
3 where you think your operational lawyers were in
4 that division.

5 VICE ADMIRAL BIRD: I think your
6 characterization was right when you said, I guess it
7 could be a little bit of what particular assignment
8 they're doing, and that same question doesn't just
9 apply to lawyers, it applies to all staffs and all
10 personnel, if you will, depends on what you were
11 doing. I think Admiral Harris characterized it
12 correctly to the extent they are supporting staffs,
13 commands, that are forward or deploying, they are
14 absolutely tooth. To the extent I would say fairly
15 that you have lawyers who are involved in Navy
16 NLSOs, back in the states or working contract law
17 back in and around the Pentagon/Crystal City, while
18 their work is invaluable, I guess one could make the
19 case and the categorize of tooth and tail, they
20 might be tail and maybe you, while you couldn't give
21 up the service, you might outsource it. I know that
22 now is a bad word. You have to insource. You might
23 civilianize it, but then again, having worked in the
24 personnel business for a couple years, there's the
25 unintended consequences. We need to have

1 sea-to-shore rotation. We need to give all our
2 lawyers those various experience. So you have to be
3 careful any time you make cuts in the personnel
4 arena of the unintended consequences. But certainly
5 the forward deployed staffs and commands, they are
6 absolutely tooth.

7 CHAIRMAN MOLZAHN: Let me ask you, you're
8 obviously on a different assignment now, but since
9 this is a broader assignment with the department of
10 Navy, you're pretty clear about your belief that we
11 don't have enough judge advocates in the Pacific
12 region. Do you have a view on that more globally
13 about whether or not you see other areas that don't
14 have enough judge advocates?

15 VICE ADMIRAL BIRD: I don't. My
16 operational experience at a senior level has
17 predominantly been in the Pacific. I went out there
18 about six years ago and just returned, and my time
19 here as director of the Navy staff has been very
20 short. So I'm not really sure and I would have to
21 study that more.

22 CHAIRMAN MOLZAHN: Thank you.

23 Gentleman?

24 LT. GENERAL OSMAN: I'll waive. I never
25 learn anything asking questions. I usually learn

1 just listening to what other people say. So I'll
2 listen more.

3 REAR ADMIRAL McPHERSON: I have an unfair
4 question. Unfair only because you knew why you were
5 coming here today, that is operational law, but I'm
6 going to ask a military justice question and draw
7 upon your expertise way back when you were division
8 officer your first command with certain things.

9 General Natonski, you can rest easy because
10 the same question I'll direct at you, it's different
11 for the Marines. And I'll explain that in a minute.

12 One of the things we've been struggling
13 with is over the past ten years there has been a,
14 dramatic doesn't capture it well enough, drop in the
15 number of courts martial and masts done in the
16 Navy. Ten years ago JAG was doing almost 2,000
17 courts martial a year. This past fiscal year we
18 just broke 200. A precipitous drop. As a result,
19 the JAG is struggling with what to do with the
20 people who used to be doing a lot of courts
21 martial. Can we afford to ship them somewhere else,
22 are we going to return to the pre-2000 days of
23 having a couple of courts martial going on? What do
24 you think from your standpoint, and I'm sure that as
25 fleet commanders, you've watched this, the

1 statistics, as well as the misconduct that occurs in
2 your fleet. Any thought why we had this surely
3 dramatic unprecedented drop in military justice in
4 the past ten years?

5 VICE ADMIRAL HARRIS: Sure. I'll start
6 with that.

7 I believe it's a indication of the quality
8 of the Sailors that we're getting in the Navy today,
9 an all volunteer service but especially in the
10 economic climate and in the challenges that the
11 military offers our young men and women, the wars
12 that we're involved in, we can afford to be choosy,
13 and we can let people go for reasons that we could
14 not when I came in the Navy. My first job in the
15 Navy was in a squadron. I was the legal officer.
16 We had this thing called project upgrade where COs
17 could let people go simply because, at that time,
18 because they wanted to. Really, we were booting
19 people out like a county fair. But the quality of
20 our Sailors is great now. I'll speak just from the
21 Navy's perspective. So I'm not surprised that our
22 numbers of courts martial, admiral's masts,
23 captain's masts are down. I've never looked at it
24 from an overall Navy perspective, but I've done my
25 part to add to the statistic for the Navy of late,

1 but I'm not surprised by it.

2 So the JAG Corps has a challenge in front
3 of it. You know, we have all said, Admiral Bird and
4 I said, we need more lawyers in the operational
5 world. If there's a surplus of lawyers in the back
6 waiting, the tail part of it, waiting for this
7 influx of courts martial to be coming, send them to
8 me. Send them to Bob Harward in Afghanistan. Send
9 them to somebody in Iraq. We can use them out
10 there. Thanks.

11 VICE ADMIRAL BIRD: I was not aware of that
12 statistic. I'm pleasantly surprised and further
13 surprised that wasn't a headline on Navy Times, that
14 good news story. Seems like they pick up more mast
15 cases, not less. I think mast cases and courts
16 martial may not be related, and I'm not sure I agree
17 that a dramatic drop in mast cases is indicative of
18 all goodness. With respect to courts martial, I do
19 think it is. Like Admiral Harris said, I believe it
20 goes to the quality of Sailors, maybe the size of
21 the force. Those two things come together, and the
22 ability to recruit mostly highly qualified young men
23 and women. In the past we've had to grant waivers
24 and the like. So I think that's a good news story,
25 and like him, I agree that if we have excess, if we

1 have excess lawyers at these various NLSOs or
2 whatever waiting for courts martial to happen,
3 that's not a good thing, and we ought to move them
4 out and move them forward to support those deficits
5 we have in the operational law environment.

6 CHAIRMAN MOLZAHN: General?

7 LT. GENERAL NATONSKI: If you wouldn't
8 mind, I'd like to make a short opening statement.

9 Distinguished members of the panel, thank
10 you for the opportunity to speak to you today about
11 the operational law requirements of the Marine
12 Corps. Although it's anyone's guess what operations
13 the nation and the Marine Corps will be involved in
14 over the next few decades, the requirement for
15 Marine judge advocates is not going away. As it is
16 today with our current contingency operations, I
17 believe it will be essential for mission
18 accomplishment well into the future to have Marine
19 judge advocates in all wars in operational law.

20 The wars in Iraq and Afghanistan,
21 humanitarian operations in Haiti and elsewhere, and
22 the noncombatant evacuation operation of Lebanon
23 have all proved that JAs are essential to commanders
24 as well as force multipliers. At no time in the
25 history of warfare has the need for more timely and

1 accurate legal advice and opinions down to the
2 lowest tactical level been more important, whether
3 it's providing training on the rules of engagement,
4 guidance on handling detainees, investigating
5 possible law of armed conflict violations, or
6 providing basic legal assistance with wills, taxes,
7 or Powers of attorney. The Marine judge advocate is
8 a key member of the team.

9 I talk about legal assistance, let me just
10 throw out an example. Before we crossed the line of
11 departure into Iraq in 2003, we had two Marines from
12 Texas, both reservists, who wanted to get married.
13 Lawyers got back to Texas, determined laws, got the
14 proxy statements, and two days later when we crossed
15 the line of departure, both those Marines were
16 married by proxy. Those wives had the same benefits
17 that every other Marine did whose spouse was married
18 in person. But focusing and allowing a Marine to
19 focus on the mission rather than his personal
20 problems, be it a will or power of attorney or
21 elsewhere, is very, very important.

22 Back in 1975 I was a platoon commander
23 during the evacuations in Cambodia and Vietnam. I
24 must have appreciated lawyers, because I still have
25 my ROE card from back then. I was subsequently a UN

1 peacekeeper in the Middle East, battalion commander
2 for humanitarian operations involving Haitian
3 migrants, as well as contingency operations in
4 Somalia, Marine expeditionary unit commander for
5 operations in Bosnia and Kuwait, and I had the
6 privilege of commanding the task force follow-up in
7 the first Marine division during two tours in Iraq.
8 I was involved in a battle of Nasiriyah, the capture
9 of Fallujah, and also providing security during the
10 first Iraqi national election in 2005. I saw
11 firsthand the role of the judge advocate in action
12 on the ground during combat operations. Marine
13 judge advocates were utilized from the division
14 staff level down to the infantry battalion. Due to
15 the dispersed nature our JAs, it was crucial that
16 these Marine officers were not only competent as
17 judge advocates, as lawyers but also MAGTF
18 officers. They needed to understand everything from
19 a Marine infantryman's perspective to supporting
20 arms and how to interpret, simply, and teach
21 complicated collateral damage methodology to our
22 fighting personnel. That was really important
23 because CENCOM's ROE was a complicated document.

24 Having judge advocates that spoke the same
25 language and shared our culture proved essential to

1 success during all phases of our operations. The
2 battlefield is very dynamic, and the current fight,
3 despite the extensive training our Marines receive
4 prior to their deployments, unanticipated situations
5 always seem to arise. In a counterinsurgency, many
6 important decisions with strategic implications are
7 made not by generals but by our Marines at the tip
8 of the spear. An example I'm familiar with is the
9 mosque shooting in Fallujah in November 2004.
10 Having a Marine judge advocate on the ground down to
11 the battalion level can greatly assist Marines of
12 all ranks in understanding the legal and ethical
13 implications of their actions while they exercise
14 their initiative and take the fight to the enemy.

15 Thanks for the chance to be here today.

16 CHAIRMAN MOLZAHN: Thank you, general.

17 I'd like to ask you some of the same
18 questions I've asked. In part, you already answered
19 them. One is just a training question, whether or
20 not the judge advocates you've dealt in your career
21 you've felt like they were adequately trained for an
22 operational law mission, whether they hit the ground
23 running, that sort of thing.

24 LT. GENERAL NATONSKI: I would agree that
25 they are ready; however, it's just like an infantry

1 battalion. You don't send an infantry battalion to
2 Iraq or Afghanistan cold. They have a workup
3 period, and that SJA is part of that workup. Our
4 MAGTF staff start working up for their deployments
5 at least six months prior to the time they deploy.
6 They integrate that staff because it comes together
7 and that lawyer is a key member of that staff. Down
8 to the battalion level, they go through Mojave
9 viper, and put into rules of engagement issues, and
10 having that lawyer there with the battalion as they
11 work up prepares them for the time when they
12 actually get feet on the ground in the area they're
13 deploying to.

14 CHAIRMAN MOLZAHN: General, Marine Corps
15 judge advocates are unique in military services in
16 the sense they're strictly line officers, same
17 platoon, commander, training as everyone else does.
18 How important do you think that is in their role as
19 judge advocates, particularly when they're MAGTF?

20 LT. GENERAL NATONSKI: Absolutely
21 critical. Let me use an example. In combat, you
22 would prefer a Marine aviator, no offense, flying
23 close air support and dropping a bomb danger close
24 in front of your position than an officer from
25 another service. One, because that Marine aviator

1 has probably served with a guy that's calling that
2 air strike. Two, that Marine aviator understands
3 what's going down on the ground. It's really the
4 same with a lawyer. That lawyer can speak to an
5 infantryman. For example, on our deployment we
6 sailed from Camp Lejeune in January of 2003, for
7 Kuwait before we invaded. On the way over, our
8 lawyers were giving rules of engagement courses to
9 the Marines. They had to lower the level. As I
10 said, CENTCOM came up with some pretty elaborate
11 rules of engagement. They had to be able to
12 translate to those Marines, speak like a lance
13 corporal, and understand what a lance corporal faces
14 and then develop scenarios that a lance corporal
15 could understand.

16 I had my lawyers before we went into
17 Fallujah, I had six Iraqi battalions. I have to
18 tell you that the Iraqis probably didn't know what
19 rules of engagement were. Our lawyers developed ROE
20 cards in Arabic that we disseminated down to the
21 troops. We weren't, we probably knew that
22 80 percent of the Iraqi soldiers didn't read or
23 write, so they also went down and gave classes to
24 the Iraqi units on the rules of engagement because
25 they were fighting right alongside. Did it all

1 take? No. I mean, we saw Iraqi units that as they
2 were going through and clearing portions of the
3 city, looting, but their Marine would say, no, you
4 can't do that, but we were trying to instill, this
5 was 2004, really the birth of the Iraqi armed
6 forces. And a lot of these guys, I went down and
7 talked to them, I fought the year before in
8 Nasiriyah. They were now on our side and they saw
9 the winner, and we taught them how to behave and not
10 take personal possessions out of stores and homes in
11 Iraq. Having a lawyer that understands the culture,
12 that goes up with his counterparts is critical in
13 our culture and in the credibility of our judge
14 advocates.

15 CHAIRMAN MOLZAHN: General, let me ask you
16 the same question I asked everyone else which is, in
17 this division between tooth and tail, where do the
18 Marine Corps judge advocates fall?

19 LT. GENERAL NATONSKI: You talk about tooth
20 and tail. That's the first I've heard of it
21 recently. I guess it's another buzz word. Bottom
22 line is you need your judge advocates at the tip of
23 the spear and in operation. And things morph. When
24 we invaded Iraq, our lawyers were primarily at the
25 MAGTF in the major subordinate command level. After

1 we went back in 2004, with all of the investigations
2 required, things evolved, and the requirement
3 changed and the requirement grew, and we took
4 lawyers from home stations and we pushed them down
5 to the battalion level. That was critical.

6 Many a time in Iraq, not many a time, with
7 some frequency, we would have escalation of force
8 incidents or other incidents that required a
9 judgment as to whether there was a law of armed
10 conflict violation. For example, a car approaching
11 a check point, and then the Marines opening fire and
12 perhaps killing occupants of the vehicle. Well, we
13 would immediately send a lawyer down to investigate,
14 to do a preliminary investigation of that incident
15 to determine whether there was a law of armed
16 conflict violation. Misconduct doesn't stop because
17 you're at war. You still have larceny, assaults,
18 unfortunately, we had some mishandling of classified
19 material in the combat zone, and one of the worst
20 things, negligent discharges that led to either the
21 injury or death of fellow Marines. Those cases have
22 to be prosecuted.

23 Having a Marine judge advocate that
24 understands the system, the logistics, how do you
25 get NCIS into a mosque in Fallujah? Well, a Marine

1 lawyer would know how to do that. That mosque
2 shooting had to be investigated. A lawyer went down
3 to determine, and then we followed up with a NCIS
4 investigation. How do you logistically get a
5 defense lawyer for a court martial being held in a
6 negligent discharge that killed another Marine? But
7 a Marine lawyer understands how to work with his
8 staff. He understands how to read operational
9 reports, intel reports, to look for violations. So
10 that cultural aspect, the understanding that the
11 fellowship, the shared hardship, the deployments all
12 makes for a strong time in the Marine Corps with our
13 lawyers.

14 CHAIRMAN MOLZAHN: Thank you, general.

15 REAR ADMIRAL McPHERSON: One of the things
16 Congress asked us to do is look at the distinctions,
17 the differences between the Navy JAGs and the Marine
18 judge advocates, so we've been exploring various
19 areas. One of the areas that we did take a look at,
20 and General Ary testified about, as you know, in the
21 Marines, the judge advocates compete with their line
22 counterparts, they're all line for a promotion;
23 whereas, in the Navy it's a different staff corps
24 line or different. The statistics to date bore out
25 that the judge advocates are pretty competitive.

1 Their promotion rates are very similar to their line
2 counterparts with some anomalies now and then
3 throughout the years, particularly in the senior
4 ranks, O5, O6. I'd be interested in your thoughts
5 on having judge advocates compete with line
6 counterparts for both their fitness reports and
7 their promotions.

8 LT. GENERAL NATONSKI: I don't have a
9 problem with that. They're part of the team. I
10 wouldn't want someone who might be a great lawyer
11 but a substandard Marine at the same level as,
12 perhaps, a colonel or lieutenant colonel in the
13 Marine Corps. I've been blessed, I never had the
14 opportunity to pick my SJAs or judge advocates in
15 the Marine Corps. I usually inherited what I got.
16 I have been blessed with the caliber of lawyers that
17 I've had. But it's the same with infantry
18 officers. One of the things we did in Iraq, you
19 know, we relieved company commanders, captains, for
20 everything from cowardice to arrogance of power to
21 just poor leadership, and these are the individuals
22 that don't grow up to be lieutenant colonel,
23 battalion commanders, or regimental commanders. I
24 think you want the same process with a lawyer, and a
25 lawyer shouldn't be any different, and I know

1 promotion boards, having sat on them, look at the
2 overall Marine. Having command by a lawyer is an
3 asset because he understands the behavior of the
4 Marines in his command, and he can help a commander
5 when he's at a more senior level give that wise
6 counsel in a place that commander needs as a
7 commander.

8 REAR ADMIRAL McPHERSON: During the course
9 of your career, did you have the opportunity for a
10 subordinate command to be commanded by a judge
11 advocate, as they sometimes do?

12 LT. GENERAL NATONSKI: I've known many
13 lawyers who've had commands. I will tell you, I've
14 never known a lawyer that had an infantry battalion,
15 but they've had security board battalions,
16 headquarters battalions. I've used lawyers as
17 umpires during exercises. The way I look at
18 lawyers, he's an unrestricted line officer. If I
19 need someone to plug in, he's not busy doing
20 something legal related, I'm going to put him in.

21 I'm fully confident, because of his
22 training, his PME that he can resort and do whatever
23 he has to do.

24 LT. GENERAL OSMAN: May I?

25 General Natonski, you mentioned that when

1 you meant back to Iraq for a second visit, a lot of
2 lawyers were assigned at the battalion level. I
3 recognize you probably wouldn't recommend that we do
4 that as course of normal business, but how do you
5 see the Marine Corps being able to continue to do
6 that when necessary? How do we staff our lawyers to
7 make sure we've got the lawyers we need?

8 LT. GENERAL NATONSKI: A good question
9 because it goes to the heart of the issue I think
10 you're looking at.

11 Once again, in the Marine Corps, we task
12 organize for the mission. We determine the
13 requirement, whether it's EOD or lawyers, we needed
14 lawyers at the tip of the spear or tooth, I guess,
15 is what you call it, in Iraq and Afghanistan. Now,
16 when we come home, at some point in time in the
17 future, the war in Iraq and Afghanistan is going to
18 be over, and we're going to come home. Do we need
19 lawyers at that time to remain in the infantry
20 battalions? No. Do we need EOD to remain in an
21 infantry battalions or a truck battalion? No. But
22 at that point in time, we can transfer them adjust
23 them into LSSS.

24 You talked about the numbers of court
25 martial and reduction that we've seen. The same

1 thing has happened with caseloads in the Marine
2 Corps. One, I think it is attributed to the caliber
3 of the Marines that we're taking in today. You know
4 what? A Marine that joins the Corps today, he knows
5 he's going one place: Afghanistan. Whether he be a
6 lawyer, a pilot, or an infantryman, that's where
7 you're going. But I think the Marine Corps manpower
8 management system adjusts. It's just like the
9 Marine Corps grew to 202,000 as a result of
10 requirement and dwell time to ensure that our troops
11 try to get a one to two to dwelling, meaning for
12 every seven months they're gone, they're home for 14
13 months. We've adjusted our lawyers from previously
14 LSSS home staying base support because our caseloads
15 have increased, and we've also gained Marines as a
16 result of the requirement we face today. We've
17 activated reservists, mobilized reserve lawyers,
18 also increased our accession of lawyers. I think
19 there's a Mike Applegate that will be here this
20 afternoon that will be able to go into more
21 specifics on what the Marine Corps is doing from the
22 manpower's point of view to increase the number of
23 lawyers.

24 But just like I don't think we're going to
25 have 202,000 Marines maybe five years from now with

1 the decrease in conflicts overseas, I think the
2 number of lawyers will also drop. You don't want a
3 glut of lawyers when there isn't enough to keep them
4 gainfully employed. It really is requirement driven
5 by what is going on at the time with our reserve
6 force. Our total force, which has the capability,
7 just like we're using reserve forces in Afghanistan,
8 we're using reserve lawyers there, as well.

9 LT. GENERAL OSMAN: If I can ask the same
10 question I asked of General Natonski of Admiral
11 Harris and Admiral Bird, you just talked about the
12 use of lawyers principally in what I would call the
13 strategic level. At what level would you see judge
14 advocates being required? Should every ship have a
15 lawyer, you know, every base and station? Or is
16 there -- do you, again, do you see it as a subject
17 that requires a task organizer?

18 VICE ADMIRAL HARRIS: Sir, I think the task
19 organized approach is the best for the Navy. Every
20 ship does not have to have a lawyer. Should not
21 have a lawyer. Every squadron should not have a
22 lawyer. We have collateral Legal officers on ships
23 and squadrons, which is fine, as long as they have
24 reachback to a staff someplace that has a lawyer, I
25 think you're in a good place. I believe every flag

1 staffs, because of the nature of the business of
2 flag staffs, ought to have lawyers on that staff.
3 Probably TYCOMs, type commander staff will need
4 lawyers for all those issues the type commanders
5 have to deal with.

6 So if that's the answer to the question,
7 I'll restate that I believe that every ship,
8 squadron, and unit in the Navy does not need a
9 lawyer.

10 VICE ADMIRAL BIRD: I will agree with
11 Admiral Harris, but I will qualify and say that I
12 considered myself at the operational tactical level,
13 my task force commanders operated at the tactical
14 level. The COCOMs and Navy down to a fleet four
15 star commander would be operational to strategic, so
16 we do need lawyers at the tactical, the operational,
17 and strategic level. That would be a task force or
18 carrier strike force. But to Admiral Harris's
19 point, you don't need on every small ship,
20 submarine, aircraft squadron some of the big
21 carriers and some of the big decks, and the idea of
22 having reachback is necessary, and we have that
23 today.

24 LT. GENERAL OSMAN: If I could kind of
25 follow-up on something General Natonski mentioned.

1 That was the interpretation of the rules of
2 engagement, Admiral Harris, I know when you were
3 down in Guantanamo, that had to be a critical
4 concern that you had. Did you see the judge
5 advocates that you had there helping to interpret
6 various rules of engagement to those soldiers, for
7 those service members that actually had to deal with
8 the detainees?

9 VICE ADMIRAL HARRIS: Absolutely. They
10 were on the -- the lawyers were down on the
11 detention blocks on a regular basis. Meetings with
12 the company commanders, the battalion commanders,
13 down to the individual Soldiers and Sailors who were
14 doing the guarding, to make sure that they
15 understood the requirements of the DTA, the Detainee
16 Treatment Act, Army FM2-23 the Army field manual for
17 the interrogations piece, the intel folks, the
18 lawyers were critical in taking this -- no lawyer
19 jokes, but this amorphous body of law and translate
20 it so that the E3, E4, E5 Soldier or Sailor on the
21 blocks knew what the limits of their authority were
22 and what they could and could not do. We had a
23 requirement to follow to the letter Common Article 3
24 of the Geneva Conventions. That's a pretty
25 amorphous document. We had no requirement to follow

1 the Geneva Conventions because the Geneva
2 Conventions aren't afforded to these men who were
3 not a party to the conventions, but we had to follow
4 Common Article 3. What does that mean? What does
5 that mean to a young man or woman on the guard
6 blocks? So that's a good point. They were critical
7 on the execution of that mission both on the
8 interrogation side and on a guard force side.

9 LT. GENERAL OSMAN: General Natonski
10 articulated the Marine Corps' view with respect to
11 MAGTF officers and that they be able to, using Navy
12 vernacular, Navy line officers. Admiral Harris,
13 what would your thoughts or Admiral Bird, what would
14 your thoughts be with respect to the Navy moving in
15 that direction or the Navy allowing judge advocates
16 the opportunity to command?

17 VICE ADMIRAL HARRIS: Well, I'll speak
18 personally. I'll ask, what would you have them
19 command? Would you have them command a ship, an
20 airplane, have them be in-fight commanding, would
21 you have them command a submarine? I think not.
22 Could they command a division on an aircraft
23 carrier? Of course they could. But we're going to
24 have young men and women that are commanding, that
25 are division officers for the main space engineering

1 or plane who have no background in doing that.
2 Could they do that? Sure. Should they do that?
3 We're a product of our upbringing, and I like the
4 idea that we have a staff corps, and we have a line
5 corps. Now, a lot of that's merging. A lot of that
6 is getting fuzzy at the edges. As we move in to
7 where we're combining a lot of intelligence,
8 information technology ratings and officers are
9 specialists, but you know, would I want a -- would I
10 want a doctor to take time away from his or her
11 practice to run a reactor plant? I think not. So
12 in the Navy you can go from ensign to three star
13 admiral as a lawyer. We want, at the upper end, we
14 want our very best and brightest who have a huge
15 background of experience. I believe they need to be
16 joint, but have this huge background of experience
17 before they cross into flag rank. I don't know what
18 that is in the Marine Corps, I don't know if you can
19 have a three star Marine general who's a lawyer, or
20 a three star Army general that's a lawyer, but I
21 believe that our divisions in the Navy works well
22 for the Navy. So I'll stick with my lands there and
23 think we're good.

24 LT. GENERAL OSMAN: Great. And I think
25 this is key, believe me, this is key. I think the

1 panel's being able to deliver to the Senate a true
2 picture of what the judge advocate need to look
3 like. I realize we are dealing with two very
4 separate services that have very different views at
5 times with respect to what their expectations are
6 for judge advocates. I think it is healthy. I
7 appreciate your candor.

8 VICE ADMIRAL BIRD: I tend to agree with
9 Admiral Harris. I would not be comfortable with
10 using line officers as JAG officers. I prefer what
11 we have now. I do understand the difference with
12 the Marine Corps. JAG officers can command, but as
13 Admiral Harris pointed out, not for ships at sea,
14 aircraft squadrons, and submarines. I think we that
15 you have to draw a line where you need that
16 specialty, be it intel, be it JAG, chaplains,
17 doctors, versus a generalist or line officers who
18 get specialized training in there. I mean, even in
19 the Marine Corps they draw the line with chaplains
20 and doctors. They're not taking line officers and
21 teaching them medical skills or line officers and
22 teaching them to be chaplains, and yet I think those
23 officers are learning and understanding the culture
24 well enough to reach out to junior and senior folks
25 alike.

1 I think the same thing could be true in the
2 Navy, that is not in the Marine Corps for JAG
3 officers. Certainly the JAG officers that are
4 dealing with senior and complex operational staffs,
5 as I said in my statement, in my remarks, must have
6 the breadth of knowledge and experience to interact
7 properly. At the same time, though, I believe they
8 need that specialized underpinning, training, and
9 education that a JAG officer gets.

10 LT. GENERAL OSMAN: Thank you.

11 CHAIRMAN MOLZAHN: Any other comment?

12 LT. GENERAL OSMAN: I've got one more.

13 This one was not one I thought of ahead of
14 time. It's one that kind of surfaced based on what
15 Admiral Bird was describing with the Seventh Fleet.
16 As you talked about how your judge advocates were
17 involved in what appear to me to be very much kind
18 of international law at the strategic level, and I
19 don't know, maybe they already were, do your judge
20 advocates work closely with judge advocates at State
21 Department of Justice, because I can see some
22 tremendous overlap or potential, if you would,
23 conflicts between departments within our own country
24 if they weren't connected at the hip.

25 VICE ADMIRAL BIRD: That's a great

1 question, and while they don't, they watch it
2 closely, and their interface goes through the COCOM,
3 like PACOM, if you take something like FON ops,
4 Freedom of Navigation, which is both international
5 law and policy, those things go right to the joint
6 staff and across the river to the state department,
7 who votes on it, and there is heated debate about
8 the value, efficacy, et cetera, of freedom of
9 navigation against a whole host of countries, friend
10 and not so friendly countries. So my lawyer had to
11 have an in depth understanding of policy and
12 international law, and I might add that just because
13 it comes down from on high doesn't mean it's a good
14 decision, as we all know, based on international law
15 and with where the U.S. sits with UNCLOS, rather
16 difficult situation, all the more reason that the
17 lawyers have been clear in their understanding of
18 treaty obligations and international law which is
19 based, by and large, not only on treaties but on
20 historical precedent, so they have to be very
21 attuned, but their interface is through the COCOM in
22 general, sometimes directly when we're dealing with
23 embassies, out in the field, if you will, dealing
24 with SOFA issues and dealing with Sailor
25 interaction. But for the larger piece of things go

1 through the COCOM.

2 LT. GENERAL OSMAN: Do you support having
3 attorneys for state or justice serve the COCOM
4 level?

5 VICE ADMIRAL BIRD: We certainly have
6 interagency players at the COCOM level, interagency
7 groups from state, CIA, and others. Whether or not
8 they have to be lawyers, I'm not sure. I would have
9 to think about it. But the interagency play at the
10 COCOM is called out in joint doctrines, certainly
11 wanted and absolutely necessary.

12 LT. GENERAL OSMAN: Thank you.

13 CHAIRMAN MOLZAHN: Gentlemen, I don't think
14 we have any other questions. Do you have any
15 further comment?

16 Thank you, very much. We very much
17 appreciate your time.

18 (Pause in proceedings 9:46 a.m. to
19 12:20 p.m.)

20 MR. PUTZU: We are reopening the public
21 hearing at this time at 12:20. The panel wishes to
22 deliberate on some events this morning.

23 LT. GENERAL OSMAN: I just, an observation
24 from Vice Admiral Harward that I thought dovetailed
25 quite nicely with what was said this morning and

1 that is, he mentioned that each one of the service
2 judge advocates, you know, essentially brought
3 something different to the table, and that they saw
4 great goodness in that, and I guess, you know,
5 again, this morning, based on what the admirals said
6 and General Natonski, again, that resonated on how
7 not only did the judge advocates maybe perform
8 differently, but there's goodness to it, and the
9 commanders tend to appreciate that fact.

10 Another thing I noticed was that in morning
11 the two admirals, of course, were viewing their
12 judge advocates through the lens of a service,
13 service lens, if you will, and that they had had, I
14 guess, problems they experienced serving as Navy
15 commanders; whereas, Admiral Harward had a different
16 perspective as a joint commander and saw the
17 importance of lawyers serving in different billets,
18 particularly in serving in different billets and
19 make them roundabout better players? I thought
20 those were two interesting observations.

21 The other thing was the fact they sure
22 could use at the strategic level, particularly in
23 the joint as well as the combined operations,
24 lawyers from state and justice, that might be
25 something we might want to wrap in our Congress

1 decision.

2 MR. PUTZU: Mr. Chairman, before we
3 continue, just a brief announcement. Admiral
4 Harward that General Osman referred to was
5 interviewed this morning in a preparatory work
6 session by members of the panel in which we elicited
7 facts to support the panel commission.

8 Excuse me, Mr. Chair.

9 CHAIRMAN MOLZAHN: And I would like to add
10 that Admiral Harward mentioned that he had about
11 41 judge advocates working for him right now. He
12 could use another 30 more, and that he thought the
13 mission for judge advocates would go beyond the need
14 for shooters, that the rule of law mission would
15 continue on for obviously, he wasn't intending to be
16 a specific date, but certainly through the decade.

17 MR. PUTZU: Close the record for a moment.

18 (Thereafter a discussion was held
19 off the record.)

20 CHAIRMAN MOLZAHN: General, welcome. We
21 very much appreciate your being before this panel.
22 As you know, it's our job or task to review of the
23 judge advocate requirements for the department of
24 Navy and, in particular, one of the things that
25 Congress asked us to look into was review of

1 emergent operational law requirements of the Navy,
2 Marine Corps, including requirements for judge
3 advocates on joint task forces in support of the
4 rule of law objective in Iraq and Afghanistan and
5 operational units, and you certainly contribute to
6 that kind of review.

7 LT. GENERAL KELLY: Certainly. Happy to be
8 here. I don't know if I was supposed to make a
9 statement, but my statement is that my background in
10 this, I guess, goes all the way back to 9-11 or
11 actually 2003, when we first went to war with Iraq.
12 Since that time, the three separate tours, very
13 different tours in Iraq, all of them as a general
14 officer. The first two as the assistant division
15 commander, the third one as a commanding general of
16 all the U.S. forces and Iraqi forces in the western
17 part of Iraq, Al Anbar Province. So three very
18 different tours for a total of 33 months.

19 I kind of, I guess, for the purposes of the
20 panel, saw the growth and the certainly the growth
21 in the number of attorneys and, in some cases,
22 growth in the need for attorneys. To say the least,
23 we went in kind of the normal in 2003 with kind of
24 normal contingent of lawyers, and that was primarily
25 at the higher headquarters level, but soon enough

1 they started to proliferate, to say the least, down
2 lower and lower and lower. Some of the reasons for
3 that, some of them would sign up, and I would say
4 they had good reasons and other ones not so good
5 reasons. Not bad reasons, just not so good
6 reasons. I would go with that and answer any
7 questions you might have.

8 CHAIRMAN MOLZAHN: You did talk about the
9 expansion of judge advocates in support of their
10 mission. Could you kind of give an idea how that
11 kind of manifested itself. What kind of needs did
12 you see them filling and how did those needs grow
13 over the time?

14 LT. GENERAL KELLY: Well, when we first got
15 to Kuwait and again the process of building up in
16 preparation to invade Iraq, as I say, we had kind of
17 the normal number of judge advocates sprinkled
18 around the division in headquarters, we could say
19 the Marine expedition headquarters. One kind of
20 datapoint, it was interesting at the last minute, we
21 were about to attack into Iraq and take the country
22 over, and we still didn't have any rules of
23 engagement that had come out of Washington. Kind of
24 at the last minute, John Ewers could probably
25 correct me, but I think we had 38 pages of rules of

1 engagement from the Department of Defense.
2 Commander of the First Marine Division, we read it
3 separately. Then got together, and he said to me, I
4 just read the rules of engagement. I said, yes,
5 sir, I did, as well. I said, but I can't figure out
6 who we can kill. It was that complicated. I got to
7 think, I'd like to think there was some military
8 lawyers that were involved in the writing of them,
9 and they all tried to die in a ditch to make them
10 simpler than they were.

11 John Ewers, who I think is in the room
12 right now, was the division lawyer. His name, I
13 believe went back with a recommended change to the
14 34 pages, I think ultimately came to was about eight
15 pages of rules of engagement. The key point is that
16 the young man, particularly the young infantryman
17 who is out there doing what needs to be done, has
18 got to have a very simple set of rights and wrongs,
19 if you will, dos, and don'ts on the battlefield.

20 My two tours in Iraq, I had the opportunity
21 to -- I don't want to get off the subject, but the
22 average American kid understands the right and
23 wrong. We never got too much into teaching them,
24 certainly with the use of lawyers, teaching them
25 rules of engagement or law of war is a better way to

1 put it because essentially it's what's wrong and
2 what's wrong, who you can kill, who you can't kill,
3 and restraining force and all that. That was the
4 easy part.

5 The rules of engagement, then, which is a
6 kind of operational thing, then became harder
7 because what we were trying to do in all phases of
8 the Iraq war and certainly Afghanistan to try to
9 control the violence for operational purposes, and
10 that tends to be complicated. Takes the law of war
11 and makes it more restrictive. We did not use judge
12 advocates to do that training. We used lieutenant
13 commanders and company commanders, that kind of
14 thing. It's more of an operational thing.

15 But to answer your question, particularly
16 after Baghdad fell, and we settled in, if you will,
17 for what everyone thought was going to be the
18 summer, and then we go home, it became more and more
19 of a requirement to investigate things. Things
20 that -- events that in the past you could just chalk
21 up to this is the kind of thing that happens in
22 war. Maybe something as simple as a tank going
23 through a village, cut a turn too tight and clips
24 off the side of a house. Quite naturally, at the
25 time, we did that damage, and we'd go and work with

1 the owner of the house and come up with some amount
2 of money, and then pay them for the damage.

3 But as the summer went on, that turned into
4 a, well, you need to investigate that as opposed to
5 send someone out there to just try settle the
6 claim. Then the bureaucracy just became more and
7 more involved. As bureaucracy became more involved,
8 you had to bring more and more lawyers to feed the
9 bureaucracy beast. Some of it was -- some of the
10 increase of attorneys was very, very important to us
11 because we started doing detainee ops, as an
12 example. We wanted to do that right and within the
13 law of war and within our own laws, and no one knows
14 the law better than an attorney, naturally, so that
15 was a good use of attorneys. As the attorneys, the
16 numbers increased, that was a very, very worthwhile
17 increase in men and women that knew the law. But,
18 as I say, an awful lot of, I think, growth
19 requirement was as a result of this
20 bureaucratization of what we were doing. The longer
21 we stayed on the ground, the more it became
22 bureaucratized, if you see what I'm getting at.
23 Things like even the death of a Marine or Soldier,
24 whatever, that typically in combat is covered by a
25 casualty report. Over time, we started getting

1 pressures to investigate those things, 15-6 or judge
2 advocates, there was no indication by the commander
3 on the ground that was a requirement. I don't know
4 why the generals in Baghdad, even here in Washington
5 thought that was a good thing.

6 As pressures became more, we did more and
7 more of those investigations. Frankly, as we had
8 these very capable Marine officers first and lawyers
9 second, as we had them available, we started
10 shifting functions that were more or less the law or
11 associated with the law to them because they were
12 staff officers who could do that. But at the end of
13 the day, they were also, much of what they were
14 doing would normally be done by any Marine officer,
15 MAGTF officer who was available to do initial
16 inquiry on JAG investigations.

17 LT. GENERAL OSMAN: As a spinoff on that,
18 General Kelly, when the judge advocate found himself
19 drifting, if you will, from a legal position to
20 doing other kind of staff work, performance, how was
21 it?

22 LT. GENERAL KELLY: You know, not to clang
23 the bell here, and it sounds look a loaded question,
24 but they did very well. I mean, certainly my
25 experience in this war, the Marine officer, the

1 Marine JAG, if you will, coming through the process
2 that we put every Marine through, every Marine
3 officer through, that guy or gal is first and
4 foremost an officer, MAGTF officer. Unbelievable as
5 it may sound, but a graduate of a basic school,
6 whether it's infantry officer or an attorney, is
7 fundamentally better trained than an infantry
8 officer was during the Vietnam war that went
9 directly to Vietnam. That man or woman is a basic
10 functioning rifle platoon commander, and the
11 expectation is that they could fight a group of
12 Marines. Fight them in a sense. It's not optimum
13 but they are fundamentally a well trained basic
14 platoon commander, and they go off and they
15 specialize like any Marine officer would in supply
16 or tanks or aviator or attorney. So they, the
17 Marine Corps, consequently they could do any staff
18 work of any kind that we asked them to do. So we
19 frequently asked them to do other types of things,
20 particularly if they weren't completely involved on
21 a day-to-day basis with doing courts martial or
22 investigation or something like that.

23 When I was a commanding general, I didn't
24 assign investigations to the JAs, unless it was
25 something that was complicated enough that had to do

1 with the law that they needed to look into it. Many
2 times -- well, not many times but several times in
3 the course of sending a Marine officer out who
4 happened to be a lawyer out to look at a house that
5 we may have run over or unfortunately may have
6 killed someone's child, wife, or cow, all very
7 important in that society, not equally, obviously,
8 but in the process they got in gunfights, and the
9 expectation was because they were trained infantry
10 officers, basic infantry officers, they could get
11 out and do what needed to be done in violent
12 situation.

13 I had a lot, in my last tour in particular,
14 had a lot of Navy officers with me. Did a very,
15 very good job, but I was not going to have them go
16 outside the wire, so to speak. They traveled
17 outside their bases but by helicopter, go to
18 functions at other bases, but I wouldn't typically
19 put them on the road just because if they hit an
20 ambush or something like that, they weren't trained
21 to deal with that.

22 But I don't know that answers your
23 question, sir, but they could do any kind of staff
24 work as well as they do the primary job as an
25 attorney.

1 CHAIRMAN MOLZAHN: You rang the bell quite
2 well.

3 REAR ADMIRAL McPHERSON: I was going to ask
4 you about, somebody already asked you this question,
5 in a manner that hadn't been answered prior to
6 today. One of the things the Senate -- Congress
7 asked us to look at is just that. What makes a
8 Marine judge advocate different than the other
9 services, the Army, Navy, Air Force, and they are
10 first, as you put it, a capable Marine officer
11 first, second an attorney. Why is that important to
12 the Marine Corps? Why couldn't they be like the
13 doctors, the chaplains, nurses, who are staff
14 officers in the Navy who happen to be assigned to a
15 Marine Corps unit. You touched upon that, General
16 Ary answered that question in a very particular
17 matter, but at the end of the day that's one lawyer
18 talking to other lawyers, with the General Osman on
19 the end, who we are going to make an honorary
20 attorney at the end of this proceeding, I guess I'm
21 coming full circle when I say you really touched
22 upon that when you got to the Navy JAGs that were
23 assigned to your units in the field, and there were
24 certain limitations of that because they weren't
25 staff officers, line officers. I'd like to hear

1 more about that.

2 LT. GENERAL KELLY: If we did it
3 differently with our attorneys, and they were more
4 like the chaplains or the medical corps or
5 something, then they'd be just like the chaplains or
6 the medical corps, not particularly usable in the
7 full sense of at least what the Marine Corps thinks
8 an officer should be used.

9 It's interesting the medical people that
10 come into the Marine Corps, particularly the
11 corpsmen, are very, very different corpsmen than the
12 corpsmen we send on ships. In a sense, we make them
13 Marine corpsmen. So from our perspective, our sense
14 is that you can't always bet that you won't get
15 attacked or overrun or something like that in the
16 theater, and just like I said in the case of a
17 couple of our attorneys that we sent out to go do
18 some evaluation and payment on some damage done to a
19 house, when they did get hit, I had no second
20 thought. I would have not sent a Navy lawyer.

21 Why is it important to us? You never
22 know. In the later days of my last tour, my last
23 yearlong tour in Iraq, we had, around our large
24 bases, we had Marines guarding the bases, not
25 infantry Marines, every Marine rifleman, every

1 Marine officer, a platoon commander, basic. So that
2 Al Asad Air Base, is an example, and Tacata Air Base
3 were guarded by Marines that in the course of the
4 day were admin clerks, were legal clerks, were
5 attorneys, were general engine mechanics, and they
6 would work five or six, ten, 12 hours on the line,
7 whatever they do, and then would take their turn on
8 the fence, so to speak, and we could turn that,
9 those responsibilities over to staff officers, and
10 if that happened to be a judge advocate, never had a
11 hesitation to do that. Would never have done that
12 with Navy guy. That's not a negative comment. It's
13 just that they're not trained to do that.

14 That's our perspective on it, anyway. It's
15 not that their bad people, naturally, and they're
16 competent attorneys, it's just that they don't have
17 the training, obviously, would be immoral and
18 unethical to send them out to a do job they don't
19 know how to do. That said, once they got their feet
20 under them, the Navy JAGs wanted to do more that
21 just sit around doing the things we were doing and,
22 consequently we would usually fly them places, and
23 then they'd go to the other end and do
24 investigations. Frankly, just to get them out of
25 the staff thing, but let them go. Flying them from

1 point to point was also fairly dangerous too or
2 bring them up into other places where we would set
3 up very austere place for no real purpose other than
4 to get them out and get them dirty for a few days,
5 let me give them the full Marine experience. I
6 don't know if that answers your question.

7 We don't have to, you know, think twice
8 about sending any Marine to do a tactical mission.
9 Now, within limits, as I say, infantrymen do certain
10 things in combat, and all Marines, not infantrymen,
11 can do many, many things but not the infantrymen's
12 primary role, which is go out and hunt, look for
13 trouble, so to speak. We don't have to hesitate,
14 whether it's the young enlisted kid that does admin
15 or a judge advocate, you don't hesitate to send them
16 on missions so long as the mission isn't to take Iwo
17 Jima. That's an infantryman's job.

18 CHAIRMAN MOLZAHN: General, were you always
19 satisfied with the level of training, all of the
20 expertise that the judge advocates, were they able
21 to hit the ground running, for example?

22 LT. GENERAL KELLY: Absolutely, within
23 their primary MOS, absolutely. I mean, you're
24 talking with somebody who doesn't know much about
25 the law, so they could have been fooling me. One of

1 the things, I don't know if it's been mentioned,
2 about one of the things a commander get out an
3 attorney or JAG, judge advocate, is not just,
4 frankly, his or her expertise in the law, but they
5 also have very different way of looking at,
6 objective ways of looking at things. I probably had
7 more conversations with my attorneys about things
8 that weren't really specifically about the law,
9 just, you know, what do you think about this? This
10 just happened out there, and I'm an infantryman, and
11 I'm thinking it was this. Does this pass your kind
12 of intellectual standards? There's a lot more of
13 just pushing these guys and gals, oftentimes
14 anyways, and I don't know any commander that has not
15 done this. Of course, you do this with other people
16 too that you trust and have maybe a clearer, you're
17 looking for that objectivity, I guess I'm saying.
18 You'll never get better objectivity than from an
19 attorney, whether it's a Marine attorney or a Navy
20 attorney. So in the law, absolutely. I felt as
21 though they were very, very capable and, as I say,
22 but there's another side that certainly relied --
23 I've always relied on my attorneys to provide.

24 LT. GENERAL OSMAN: General Kelly, one of
25 the challenges that we face is coming up with some

1 thoughts with regards to the numbers. As you have
2 an opportunity to reflect on where you were seeing
3 the judge advocates operating, I don't know if you
4 went down as far as battalion level, once we get out
5 of that environment, what would be your thoughts
6 with regard to what levels should we have judge
7 advocates assigned?

8 LT. GENERAL KELLY: I think probably back
9 to where they were before. I mean, as I say,
10 multiple reasons why they've gone as low as they
11 have. As I say, some of it is good, some of it is
12 simply bureaucracy, more and more demands for
13 investigation, which I think has somewhat gotten out
14 of hand. But at the end of the war, and this is a
15 different kind of war, and the next war may not be
16 like this war, probably to let them snap back to
17 where they were before.

18 I would just give you a quick example on
19 that, whole another MOS, but the explosive ordinance
20 disposal guys. In peacetime we need 110 of them.
21 That's what we've had for decades, 110. In wartime,
22 we need 900, and we need 900 more or less today. If
23 the war ended, we'd need about 110 again. So what
24 do you do with those, and it takes a long time to
25 train them up, just like it would take a long time

1 to recruit and bring in additional judge advocates
2 if you needed them. One of the solutions we look at
3 is a good healthy reserve component. In one of my
4 two jobs I'm the Marine commander of all Marine
5 reserve forces. There is about 300 judge advocates
6 in the reserves. Some of them are pretty, not to
7 say that the active duty judge advocates are not
8 talented, but some of them are very, very talented,
9 U.S. attorneys, assistant U.S. Attorneys, my aide,
10 who is in the room, was a judge advocate when he was
11 on active duty. He's a special agent with the FBI,
12 very talented guy, just happens to be on active
13 duty. It's very common. I read an investigation
14 once on adultery, which is usually a pretty straight
15 forward investigation, when I read it, it was not
16 only a good, great, investigation, probably best I'd
17 ever read, in terms of details, it was kind of
18 great literature. I asked, who was this lieutenant
19 colonel who has done this investigation? They said,
20 oh, it was one of your JAGs. By the way, he's a
21 U.S. attorney with one of the largest cities in
22 America. So my point is, if you don't need as many
23 when the war starts to wind down at least
24 temporarily, then reserve, the vast majority of the
25 attorneys in the Marine Corps reserve have served at

1 least once in this fight. Probably would have
2 relied on even more. Many even, by the way, have
3 served many times served overseas, not as attorneys
4 we just needed a staff officer to do something in
5 Baghdad or Kabul, these guys are, I'm a MAGTF
6 officer, I can do that. And off they'd go, and they
7 never hold a law book.

8 We probably would have relied a lot more on
9 our reserve, but I know just before I left the
10 Pentagon before I went over and the took command,
11 the CNO asked the Commandant if there was any way
12 that he could integrate as many Sailors as he could
13 in support of the fight. He made the same offer to
14 the joint world, as well. So in my headquarters, in
15 the last time was there, I probably am guessing, but
16 I probably had maybe ten Navy JAGs with me. All of
17 them great and they did great work. I'm not sure I
18 needed them but that was an initiative by the CNO,
19 Michael Mullen at the time to get the Navy guys and
20 gals there. I think it was very successful. I
21 think at the high point in Iraq he had 13,000
22 Sailors ashore and in Afghanistan and Iraq doing
23 what you could probably argue are nontraditional,
24 with exception of the Seabees, nontraditional Navy
25 functions.

1 LT. GENERAL OSMAN: Let me ask one last
2 question, John. In a previous life you served in
3 OLA, you know the reason for this panel. Any
4 guidance for the panel with respect to the report
5 we're going to submit?

6 LT. GENERAL KELLY: Don't give them what
7 they want. Give them what they deserve to get, and
8 that is an honest appraisal of whatever question
9 they ask. I would say this, though, and when I took
10 this job a year ago and got promoted, and I know all
11 the staffers very well on both sides, and I was
12 asked about the number of Marine Corps, do you have
13 enough JAGs in the Marine Corps, I said, I don't
14 know. Why don't you ask the Commandant that? He
15 said, we have repeatedly, and we haven't got much of
16 an answer. I suspect that's where this page came
17 from. My experience, based on my leadership, was,
18 based on a lot of experience at Capitol Hill, when
19 they ask you the question a lot, you're not
20 answering the question, so you need to do
21 something. It might be something as simple as
22 you're right, so we're going to get ten more, or it
23 might be you take a look at it and say, no, we need
24 a hundred more. But if they ask you the question a
25 lot, you better answer it; otherwise they'll answer

1 it for you. Usually when they answer for you, it's
2 done with only limited understanding of the problem,
3 yet they're going to pass the law anyways, and
4 you're going to live with it. So, clearly, the
5 people that I know that are asking this question,
6 particularly in the SASC, have got an answer in
7 their mind already, and it's probably worth, if I
8 was sitting in a hearing room over there, and they
9 asked me about whether the Marine Corps needs more
10 attorneys, as an example, I would very definitely
11 fall -- and I think it's an unmined resource -- so I
12 would be talking about this issue of the reserves.
13 The nice thing about reserves is you only pay them
14 when you use them. So if you've got a backlog of
15 things that you need to have looked at, you bring 20
16 reservists on board, whether they are from the Army
17 Navy, Air Force, doesn't matter. Law is the law.
18 You bring them on for three months, six months, send
19 them home when they get the backlog done. As I say,
20 the average attorney in the reserves has got a whole
21 other life that's pretty impressive, whether they're
22 U.S. attorneys or multimillionaire tax attorneys,
23 and do this because they just love being Marines.
24 I'm not sure, you may want to look at that as an
25 option. Look into the -- obviously my counterpart

1 in the Navy and find out how many attorneys he has
2 and how they use Navy attorneys. If it's simply, do
3 we need more or should we have more, the answer is,
4 really, the question we're asking is should we have
5 more capacity to do legal type stuff even after the
6 war is over, and I would argue probably the first
7 place you ought to look is in the reserves because
8 there's a lot of capacity, and if it's a matter, as
9 I say, just putting a target time together and
10 assaulting a backlog of cases, they're ready to do
11 that, they like to do that. That's how I'd answer
12 the question.

13 CHAIRMAN MOLZAHN: Thank you, general. We
14 really do appreciate your remarks.

15 LT. GENERAL KELLY: Thanks.

16 (Thereafter a discussion was held
17 off the record.)

18 MR. PUTZU: Mr. Chairman, we will continue
19 with the next panel on operational law judge
20 advocates' perspective.

21 CHAIRMAN MOLZAHN: Welcome. Captain,
22 Colonels. As I mentioned before each group, our job
23 and our task is to independently look at what is
24 required for judge advocates in the Navy and Marine
25 Corps and in doing that Congress has specifically

1 asked us to review the emergent operational law
2 requirements for judge advocates on joint task
3 forces in support of the rule of law objective in
4 Iraq and Afghanistan and in operational units, and
5 we hope you'll be able to contribute to that, and we
6 appreciate you're appearing before us today.

7 You can choose which one of you wants to go
8 first.

9 COLONEL JACOBSON: Colonel Kevan Jackson,
10 and I'm director of the legal center in
11 Charlottesville. So we're happy to provide our
12 perspective.

13 I'd just like to make a few general
14 observations about our experience with organization
15 to deliver operational law service, if you will. We
16 have seen over the last 20 years, the post-Cold War
17 era, an increase in the complexity, legal complexity
18 of operations worldwide. Old Cold War model,
19 international conflict between nation states was
20 relatively simple. Its legal character at least we
21 anticipated has proven no longer to hold true.

22 In the last six to eight years the Army, as
23 you well know, has undergone some significant
24 attempt at transformation and reorganization. We
25 have tried to stay ahead of that power curve with

1 respect to our legal structure, and would like to
2 think we've had some success in doing that. The old
3 paradigm had our judge advocates concentrating
4 mostly at the division and corps level and above.
5 We still had legal officers at those echelons and
6 higher, for that matter. The great change that
7 we've seen take place in recent years with
8 modularization, is to imbed organic legal assets at
9 the brigade in some cases down to the battalion
10 level. The model right now is in our brigade combat
11 teams, and that team, if you will, legal team there
12 is comprised of a major, typically, a captain, and
13 one senior paralegal NCO, sergeant first class.
14 That team is distributed across all of the brigade
15 combat teams and similar teams, although not
16 necessarily the same, on functional brigades,
17 whether it's a ADA brigade or engineer brigade,
18 et cetera, has some similar structure. We pushed
19 down some judge advocate assets to battalion level.
20 That's typically in the special forces world where
21 today in special forces battalions there is an
22 organic judge advocate, typically a captain, there.
23 All of these officers we find, have been heavily
24 engaged in operational law.

25 Indeed, the experience over the last nine

1 or ten years at war have taught us when we deal with
2 a brigade that's a land-owning brigade in theater,
3 that commander, of course, looks to provide
4 stability, security, kind of full spectrum U.S.
5 support in these failed states. We wouldn't be
6 there but for the fact that they're failed, which
7 implies that their institutions and legal structures
8 failed, as well. We found that that team I've just
9 described, the two officers and NCO is very much
10 challenged on the one hand to carry, to cover our
11 six traditional areas of practice which include
12 international and operational law, but then also to
13 take on what we can generically call a rule of law
14 mission where brigade commanders look to provide a
15 very broad spectrum of support. Typically brigade
16 commanders have asked for an additional judge
17 advocate so there would be a major and two captains,
18 and we've striven to provide that.

19 For the past couple of years, in an effort
20 to document that need, we have asked that commanders
21 follow a formal system through their operational
22 offices up to the DA level. So the system today is
23 such that a commander, if he wishes to be augmented
24 by an additional judge advocate, he'll ask for
25 another nonjudge advocate position in his table of

1 organization, and we have that vacant in lieu of
2 filling it with an additional judge advocate either
3 out of the active force or reserve. Just
4 anecdotally, this goes over about the last 18 months
5 with requests we've filled from 24 deploying brigade
6 combat team commanders for that location.

7 COLONEL JACOBSON: We are working, in my
8 organization, to formally document that and on our
9 force structured community which is, largely, a
10 training and doctrine command to institutionalize
11 that requirement at the brigade level in order to
12 meet that need. We find that that commander when
13 he's looked to to meet that challenge informally
14 calls it cops, courts, and corrections. All of
15 those intersect in the commander's eye with, okay,
16 that's legal, that's my lawyer. And we tend to get
17 involved with that mission very heavily in addition
18 to standard fares of our practice. That's what's
19 really driving that.

20 We are reorganizing our reserve component
21 to make them more modular, as well. They have kind
22 of endured in a Cold War-like large scale
23 organizational structure, and we're approaching the
24 final stages and breaking down in what we call legal
25 operational teams, smaller units, teams, that

1 identify as teams and accounted for as such so that
2 they can be deployed as a team and meet some of
3 these needs to augment the active force while
4 deploying.

5 To summarize, we have found an increased
6 need, a demand for operational law, services, in the
7 field of deployees, and we've had some success in
8 building structure to do that. Numbers wise,
9 roughly, we have gone over the last six and eight
10 years about 120 authorizations of both captains and
11 majors, most of that is reflected by imbedding those
12 assets down to the brigade level where we had not
13 historically. Some of that cost of drawing down the
14 division judge advocate are fewer attorneys there
15 than there once was, and that holds true to some of
16 the more senior headquarters, as well.

17 CHAIRMAN MOLZAHN: Colonel, how, if you
18 wanted to project forward, not asking you to
19 speculate, but that's all you can do, but where do
20 you see them in the future, what kind of future does
21 somebody face for the need for lawyers?

22 COLONEL JACOBSON: Yes, sir. I think it is
23 likely to remain much as it is. We can't foresee
24 the exact nature of the conflicts, but I think in
25 the name of the conflicts we see in both Iraq and

1 Afghanistan do foreshadow the degree of complexity,
2 uncertainty, and ambiguous circumstances that I
3 think we will face across our national security
4 structure. So we think that the demand is likely to
5 continue at least some ebb and flow, depending on
6 the nature of forces and sizes deployed. It's
7 difficult for me to conceive of a circumstance where
8 operations will become less legally intensive and
9 complex in time.

10 CHAIRMAN MOLZAHN: Let me ask another
11 question. How do you handle reachback in the Army?

12 COLONEL JACOBSON: Yes, sir. Reachback is,
13 I think, a sounder theory than practice. We found
14 that, though we do practice that, obviously, and
15 pride ourselves in building institutions, with me
16 today here is Lt. Colonel Rodney LeMay, who runs our
17 center for law and military operations, very
18 aggressive and assertive in gathering certain legal
19 lessons learned and maintain databases that judge
20 advocates worldwide can reach back to, but by the
21 same token, we found that there's not a better
22 substitute for lawyers than having forward with
23 ready access to the commander, situational awareness
24 of what's going on there, particularly down at the
25 brigade level where it really requires a boots on

1 the ground perspective to best understand what is
2 going on and the needs of the human commander and
3 plus a great deal of interaction with the local
4 nationals.

5 REAR ADMIRAL McPHERSON: Colonel, you
6 indicated that one of the ways you fill that command
7 coming from the brigades that you have moved bodies
8 out of the division and other headquarters.

9 COLONEL JACOBSON: Yes, sir.

10 REAR ADMIRAL McPHERSON: Are you able to
11 move the billet as well or just the bodies? In
12 other words, is there now a gap at headquarters?

13 COLONEL JACOBSON: Yes, sir. In the
14 billets really have migrated in many instances, and
15 it's the body, as well.

16 REAR ADMIRAL McPHERSON: Difference is,
17 then, for the Navy I know that Admiral Houck now has
18 80 plus attorneys in Iraq and Afghanistan in what
19 are called individual IAs.

20 COLONEL JACOBSON: Yes.

21 REAR ADMIRAL McPHERSON: But that's not the
22 model you use.

23 COLONEL JACOBSON: We certainly have
24 deployed any number of individual augmentees, if you
25 will, who have been subject to worldwide tasks, so

1 in a given headquarters, you're going to have a
2 joint manning document that's prepared in theater,
3 and a lot of those positions are identified, and
4 those tend to filled, in the Army, we'll deploy a
5 large headquarters, corps of headquarters, for
6 instance, which will take many of its organic
7 aspects, for instance, fill half or a third of those
8 positions and just various depending on mission.

9 LT. GENERAL OSMAN: Any thought with regard
10 to assigning judge advocates outside the legal
11 community in staff positions other than legal
12 positions?

13 COLONEL JACOBSON: We do that very rarely,
14 sir. We find that there is sufficient demand for
15 MOS skills, that is done pretty much on an exception
16 basis. In my own, I've been in business for 20
17 years, I can think of a handful of times where
18 that's done for any length of time. Given our
19 relative few numbers, I mean, we are about 1,800
20 activity duty officer positions across the Army, and
21 given the legal demand, we tend to concentrate.
22 Now, we pride ourselves on being efficient,
23 effective, very competent staff officers who on any
24 given day may be called upon to go beyond the strict
25 limits of legal advice, Kelly just testified along

1 that very line, at least as far as formal
2 assignments, we tend to remain in billets.

3 CHAIRMAN MOLZAHN: Thank you.

4 CAPTAIN PEDROZO: Gentlemen, what I'd like
5 to do, with your permission, is go through the
6 questions that were posed to me in the letter that
7 you sent in a logical fashion. There were eight
8 questions, so basically some summary remarks at the
9 beginning, and then at the end, and then go through
10 the questions so that it's somewhat organized. Then
11 I can leave that PowerPoint slide show behind. I'll
12 try to augment that with examples that don't go into
13 as much detail on the slide to put it in context for
14 you.

15 The first thing I'd like to cover is how
16 our emerging operational law requirements have
17 proliferated as the cooperative maritime strategy
18 came out. I think all of you are familiar with the
19 cooperative maritime strategy and the fact that for
20 the first time it was a joint product of the
21 Commandant of the Coast Guard and the Marine Corps
22 and the Navy, and you know, the Commandant of the
23 Marine Corps have stayed aligned with that
24 cooperative maritime strategy but focused on the
25 emerging requirements across the spectrum of

1 operations that will last beyond the two wars that
2 we have going on in Afghanistan and Iraq.

3 The two other major things that I see a
4 change for the Navy in terms of demands on Navy
5 operational judge advocates is the shift of the Navy
6 to the maritime operational concept. Essentially,
7 the Navy has lagged behind the other services in
8 terms of setting up operational command centers. So
9 over the last four years the CNO has instituted a
10 shift from all number fleet staffs and Navy
11 component staffs to what's called a maritime
12 operational construct. These are command centers
13 that operate 24/7, and they operate in a joint
14 doctrine structure, so there's boards and cells that
15 integrate judge advocates across the spectrum of the
16 boards and cells. So whereas we used to work in
17 very functional lines on these staffs, and we had N1
18 and N2 and N3, N7, N4, everybody was segregated in
19 their little puka, if you will, into that line that
20 only went vertically. Now that the maritime
21 operations MOC construct, what we've gone to is more
22 of a horizontal structure, so you have future ops,
23 future plans, current ops, strategic coms working
24 group, information operations working group, so the
25 structure of Navy operational planning has changed,

1 and because of joint doctrine and Navy doctrine
2 there is a demand for judge advocates across all
3 those boards and cells, so these boards and cells
4 that do operational planning function on 24/7
5 schedule, the maritime operations center is open
6 24/7, much like a battle watch on the ship, and the
7 demand for JAGs is for each board and cell. So,
8 obviously, the judge advocates can't be everywhere
9 all at once.

10 The other nuance is a lot of Navy
11 operational commanders have been dual hatted as
12 joint task force commanders. Specifically, as an
13 example that I can give is the Pacific Fleet
14 Commander is also hatted as a Commander of Joint
15 Task Force 519, and I can't get into a lot of detail
16 here because it's classified, but it's the only
17 standing four star joint task force in the world.
18 It's responsible for major theater war plans and
19 oversight of another major theater war plan and his
20 JMDs basically function with 150 core staff members
21 including two JAGs full time, and that's in addition
22 to his PAC Fleet commander duties so that has
23 another draw on his personnel and staff, in
24 particular those two judge advocates that are dual
25 hatted.

1 The other thing I think that has changed a
2 lot in the terms of the emergent operational
3 requirements which General Kelly alluded to because
4 we have realtime communication, every tactical event
5 that might have a legal aspect to it could become a
6 strategic event. By that, when you look at the
7 demands to rule of law and the demands from human
8 rights NGOs, and the demands the CNN and the Monday
9 morning quarterbacking, I think that's what caused
10 what General Kelly alluded to, this glut of lawyers,
11 this need for lawyers, but from my perspective, it's
12 become a demand signal because you have to answer
13 the mail because we live in that type of realtime
14 environment where, you know, a Marine who happens to
15 get in trouble or a Navy guy who happens to murder
16 somebody in Yokosuka, suddenly becomes a barrier to
17 a long lasting strategic relationship with Japan.
18 So that demand signal for lawyers to answer RFIs and
19 to answer queries about the status of forces
20 agreement or the visiting forces agreement has
21 become more pressurized, and therefore, the work has
22 been spread thin among all the lawyers that have
23 demands for the maritime operations concept, the
24 joint task headquarters, and then this realtime need
25 for information and flow back. That ties into a

1 little bit later on, I'll talk about the concept of
2 law and how the certain NGOs are using that in
3 certain ally countries.

4 Next slide.

5 The first question that was posed in the
6 letter that Mr. Dell'Orto sent was how legal and
7 ocean policy matters affect joint combined maritime
8 component commanders and their forces, and when you
9 look at sort of the emergent operational law
10 requirements and demand signals on both the
11 command -- combined forces maritime component
12 commander and the JFM, joint forces maritime
13 commander, you'll see that this mission set really
14 spans a huge area from high end war fighting in
15 effect to Iraq, challenges in Pakistan trying to
16 support the war in Afghanistan to what I call the
17 more soft power aspect of humanitarian assistance
18 and disaster relief. Equally important, obviously,
19 to commit enough legal assets to support the wars in
20 Iraq but also to support the soft power to make sure
21 we do that within the bounds of the law or else it
22 really backfires. There's no point using soft power
23 if you're not doing it legally and with sound
24 strategic policy as well as foreign policy.

25 At each step of these different mission

1 sets, there's a command signal for lawyers. At the
2 high end war fighting you're talking about
3 interpreting rules of engagement. Note that I say
4 interpreting, not being responsible for because
5 those are a line officer's job, but outline the rule
6 of law, supporting detention ops so we don't end up
7 with another Abu Ghraib or things like that. The
8 new emerging technologies like the use of unmanned
9 systems and the really strategic consequences those
10 have had when you look at tactical actions of
11 unmanned systems, and then the pushback we're
12 getting from all the human rights groups that twist
13 and spin the law and try and say that those are
14 unlawful and violate international humanitarian law
15 because they overlay their human rights law law
16 enforcement model over that. So we see not only the
17 tactical challenges in how to employ these new
18 systems, but then we see a manipulation of the law
19 by these NGOs that want to use this to create some
20 strategic pressure on us to change our operations or
21 our strategy.

22 Humanitarian assistance and disaster relief
23 with the cooperative maritime strategy, what we
24 refer to as affirmative humanitarian assistance,
25 which is the missions like Africa Partnership

1 Station and Pacific Partnership where we go out at
2 the request and with the consent of various
3 governments who need engineering support, medical
4 support, dental support, and we do these affirmative
5 HCA missions to basically serve as theater security
6 cooperation efforts and gain, really win the hearts
7 and minds of some of these really deep seated beds
8 for some of the extremists that we see. That
9 originated with the tsunami relief which we did in
10 Indonesia, which was actually a disaster relief
11 effort and HCA, but they had a huge demand signal
12 for legal assets to do that correctly. At the other
13 end we have disaster relief as we saw in Haiti,
14 Pakistan, Philippines mud slides, Bangladesh, and I
15 could go on, and there's more detail in the slide
16 later for take away. Obviously those are some of
17 the issues that we deal with.

18 Next slide.

19 I think one of the biggest demand signals
20 that we're going to see is with cyber warfare. As a
21 legal community, we know very, very, very little,
22 and I don't know mean as a judge advocate community,
23 I mean as a legal community, we know very little
24 about cyber warfare and the legal aspects of cyber
25 warfare because we're not that sophisticated yet.

1 We don't have any legal training in the legal
2 aspects of cyber warfare, and there's arguments
3 across the board, law schools, LLM programs,
4 postgraduate schools, on when can we use cyber as a
5 method of warfare and then if we do, how can we use
6 it in war. So I think legal issues with that will
7 just get greater and greater.

8 Unmanned systems I talked on.
9 Counterparts, piracy, human trafficking, and counter
10 proliferation, we'll get into that in the later
11 slides when I go into the maritime security
12 challenges for the 21st century.

13 Next slide.

14 And these are some of the other areas I'll
15 touch on in response to your specific eight
16 questions; in particular, the competing maritime
17 claims issues environmental regulations.

18 Next slide.

19 Okay. We talked about this. Essentially,
20 the boards in joint doctrine that require the
21 presence of a judge advocate are the executive
22 steering group, so that's a basically what used to
23 be our big department head meeting across
24 functional, but that's always the senior judge
25 advocate, which is generally a Navy component staff,

1 either an O5 or O6; O5 in a numbered fleet and O6 at
2 a component command. Then in your current ops,
3 future ops, future plans, joint effects control
4 board is your targeting board. Some staffs still
5 call it a targeting board, some call it a JCB. That
6 requires by instruction both the classified and
7 unclassified instruction have a judge advocate sign
8 off on every single target so you have to have a
9 judge advocate embedded there.

10 Strategic communications working group we
11 found out the hard way, not a good idea to run one
12 of those things without a JAG because PAOs tend to
13 say things that might not be exactly legally
14 correct, so there needs to be a check and balance of
15 the talking points that the strategic talks working
16 group is going to come out with and also because
17 there's a significant IO, information/operations
18 portion of that that needs chopped.

19 Every single PSYOPS package that goes out
20 either on the ground or as part of an HCA mission
21 requires a legal chop for obvious reasons, and the
22 example I like to give on that one is we were
23 playing psychological operation and one of the
24 PSYOPS planners who happened to be an Army guy
25 decided it would be a great idea to capture some

1 folks and then march them from one area to the other
2 without their shirts on, and to use this as a form
3 of coercion. What they failed to realize is that in
4 doing so, it was like the equivalent of 12 degrees
5 outside, and some of them were female. So some of
6 it is a sanity check with regard to the law of armed
7 conflict, and actually having somebody on staff as a
8 valve to say, no, this not only makes no sense, but
9 it also violates some of the principles law of armed
10 conflict.

11 Next slide.

12 As an example of some of the MOC planning
13 efforts, this is the MOCs at Fourth Fleet, Second
14 Fleet, and Fleet Forces Command were stood up 24/7.
15 Each of those legal staffs was augmented by
16 reserves, and all three still, all three of those
17 staffs said they couldn't answer all the legal mail
18 that was coming through the door. They working
19 24/7, 12 on and 12 off, in some cases 18 on, 6 off,
20 and they were worked five weeks straight at Fourth
21 Fleet without having any down time, and really were
22 getting overwhelmed by the volume of the disaster
23 relief effort without sufficient augmentation.

24 Another example of MOC planning during the
25 sonar litigation, PAC Fleet set up an

1 interdisciplinary team and the chairs from the PAC
2 Fleet N3 and the PAC Fleet JAG had to meet daily
3 because at the time these lawsuits were, as
4 Mr. Molzahn knows, were demanding pretty much 24/7
5 ops. It was like being on the ground somewhere
6 because of the number of queries, the number of
7 declarations we had to file, the amount of
8 classified information we had to produce to support
9 the national security argument and eventually it
10 involved one of the cases going all the way to the
11 Supreme Court, and we were required to draft the
12 declarations to be signed by folks like CNO, Vice
13 Admiral Bird, and others, so that was a huge demand
14 signal. We ended up having to augment the staff
15 with a ADSW reservist full time, and she gained such
16 great expertise that we actually recalled her to
17 full time active duty after that.

18 Next slide.

19 Those are just other examples that I'll
20 leave you to take away in terms of when you stand up
21 operational planning teams that require JAG
22 support.

23 Next slide.

24 Lawfare. The second question that was --
25 or third question, I guess we're on now that was

1 posed was the one about lawfare, and what we've
2 seen. I think Admiral Bird alluded to this earlier,
3 but the Chinese are masters. I've been working with
4 them since the EP3 incident, and they're masters at
5 using the Law of the of the Sea Convention and the
6 laws arguments within the law of the Law of the Sea
7 Convention to manipulate their tactical actions. So
8 what we see with the Chinese is that their tactical
9 actions always support their legal rhetoric. So,
10 for example, they started way back when during the
11 EP3 incident saying that we couldn't fly
12 reconnaissance flights over their exclusive economic
13 zone because we were violating their security. That
14 argument didn't fly real well with them and
15 obviously they had the accident that happened, and
16 then they took our crew. But they iterated that
17 legal argument later on to start saying, your
18 actions with special mission ships in our exclusive
19 economic zone are interfering with our fish and our
20 marine mammals. They said this at the defense
21 policy talks, they said this at the military
22 maritime consultative agreement talks, which are
23 negotiations with the Chinese, but then they matched
24 their rhetoric, legal rhetoric, with action by
25 actually positioning fishing vessels in the way of

1 our special mission ships and then claiming that we
2 were interfering with their fishing. So they're
3 very clever that way, and this type of lawfare is
4 hugely effective when you combine their legal
5 rhetoric with their tactical action because then it
6 invokes a response either politically or
7 strategically or tactically, and for them it
8 resulted in us having to draft, I think, 12
9 demarches over the course of three years because of
10 their interference with our operations.

11 As you can see, lately, they've been
12 causing other incidents like that one in the East
13 China Sea with the Japanese. They recently stated
14 that they have indisputable sovereignty in the
15 South China Sea, which has involved a whole lot of
16 legal briefs and legal action for the policy folks
17 with regard to trying to sort out their maritime
18 claims in the South China Sea.

19 The other place where we've seen lawfare
20 being used more and more frequently is the NGOs and
21 some of the human rights activists that believe that
22 humanitarian -- human rights law should supersede
23 international humanitarian law, and this is a long
24 standing debate amongst along international borders,
25 what applies, human rights laws, which is more like

1 law enforcement control, or international
2 humanitarian law, which is the law of armed
3 conflict. What we've seen NGOs do very effectively
4 in Afghanistan and particularly now in Pakistan is
5 use that argument that we should be applying human
6 rights law to invoke a political strategic reaction
7 on the part of the United States and our allies. So
8 the pressure to not use drones, for example, the
9 pressure to limit casualties or damage to property
10 beyond what's required by the law of armed conflict,
11 is sometimes caused by this lawfare campaign on
12 behalf of NGOs that are sometimes sponsored by
13 misaligned or nonaligned actors.

14 Next slide.

15 The next question dealt with 21st century
16 security challenges. If you talk to anybody at
17 NAVCENT, and I think Admiral Harris was here earlier
18 today. I don't know if he touched on counterpiracy
19 ops. But that's, whether or not you believe that's
20 something we should be doing, the bottom line is
21 we're doing it. And if you talk to anybody at the
22 international maritime organization in London, they
23 want us to do it. They think we need to do it, and
24 they put a high value on coalition operations in
25 support of counterpiracy to keep the pressure up on

1 the pirates. I think there's a frustration that the
2 insurance companies are selling us down the river
3 with regard to some of actions we can take, but
4 that's a different debate.

5 Navy JAGs are involved in every aspect of
6 counterpiracy. There's a lieutenant deployed right
7 now on the ship that's being commanded by the
8 Turkish officer, which is very interesting since
9 there's also the Greeks involved. There's a lot of
10 issues dealing with the collection of evidence, the
11 prosecution of the pirates, the rules on
12 interrogation and how you handle these people once
13 they're detained and then understanding the
14 memorandum of understanding with the very few
15 countries that we have that have agreed to prosecute
16 these people. So that's become a huge demand signal
17 on Navy JAGs.

18 Strait of Malacca is a success story in
19 that JAGs were involved in that from the beginning.
20 Basically getting in with the C2 center in
21 Singapore, working out in the MOU in Singapore so
22 that we can share information, and then outlining
23 the different rules on sovereignty, law of the sea,
24 maritime boundaries, because of the number of
25 overlapping claims there.

1 Next slide.

2 The other transnational crimes that we see
3 Navy JAGs dealing with all the time, trafficking in
4 persons. There was actually a Navy JAG working
5 group to develop that protocol. Recent example
6 where the Tamil Tigers had some asylum seekers who
7 went from Sri Lanka to Canada, and the JAG had to
8 work legal issues associated with tracking them down
9 with their Canadian counterpart. SOUTHCOM,
10 obviously very involved in countering illicit drugs
11 and dealing with the rules of engagement, rules for
12 use of force.

13 We've seen a lot of shallow and ineffective
14 actions with regard to expanded maritime
15 interception operations and maritime counter
16 proliferation initiatives, those are two major
17 operations that are based in UN Security Counsel
18 resolutions with little teeth. So basically we have
19 EXORDS to do these things, but we can't do very
20 much. Whether or not we can do much, lawyers are
21 always involved in interpreting exactly what the
22 UN Security Counsel resolutions say, what the rules
23 of engagement should be, and how we should actually
24 execute those.

25 Illegal fishing is sort of the new maritime

1 security mission in vogue. Again, we can have the
2 debate whether we should be doing that or not.
3 There's international pressure to do it, and we have
4 new MOUs between Oceania and Africa to help train
5 people in illegal fishing, obviously with the
6 permission of the coastal nations. What's important
7 there is the argument that the IMO is making that
8 it's important for us to be involved in that because
9 it's their only avenue for revenue, and if you don't
10 help them get money, then they're not going to have
11 their own Coast Guard. If you don't help them stop
12 the illegal fishing, then they'll never be able to
13 fund their own Coast Guard. So there is a
14 roundabout way we get involved in those, as well.

15 Next slide.

16 We already talked about that. Pandemic
17 influenza caused a lot more legal issues than we
18 anticipated, particularly with regard to sovereign
19 immunity challenges, inspectors trying to come, on
20 board quarantine issues both on the ship and in
21 port, and JAGs were involved in every aspect of
22 that.

23 Next slide.

24 As I alluded to earlier, the recent
25 flareups over resources may seem recent. They've

1 actually been going on for at least 15 years or so,
2 but I think we're going to see more of this. The
3 economy being the way it is, the rise of China, and
4 the tension between China and Japan, we're going to
5 see renewed emphasis on both the East China Sea and
6 the South China Sea, all of which require action by
7 the judge advocates and the operational planning
8 teams, both operational planning as well as legal
9 briefs and responses to queries from all the folks
10 in DC, et cetera.

11 The Arctic, although we don't think it's
12 going to obviously be any sort of consistent method
13 of passage till probably 2050, there are lot of
14 competing claims in the Arctic, and we already see
15 the presence of Chinese icebreakers up in the
16 Arctic. We see the Canadians trying to put prior
17 notice regimes in effect that are a violation of the
18 law of the sea convention, and Navy JAGs involved at
19 headquarters and out in the field trying to counter
20 some of those illegal claims.

21 EUCOM has started a war games series that
22 starts off as a bilateral Arctic war games series
23 that will eventually move to a multilateral wargames
24 series so that they can be prepared with plans to
25 deal with some of these competing claims.

1 Next slide.

2 Probably something that will get worse
3 before better, when you look at emergent
4 requirements for operational lawyers, is this notion
5 of environmental encroachment. What we've seen both
6 domestically and internationally, there's a huge
7 demand for increased environmental regulation that
8 impacts freedom of navigation and Naval operation.
9 In particular, efforts of international maritime
10 organizations putting environmental regimes in
11 place, establish huge areas of ocean and close them
12 off as politically sensitive sea areas, and then as
13 we alluded to, sonar restrictions that led to the
14 environmental challenges.

15 Let me give you an example about the
16 environmental litigation. In 2001 we were sued over
17 low frequency active sonar, and at the time I don't
18 think we realized how important it was to have
19 operational lawyers involved in the litigation, so
20 we tended to use just environmental lawyers, not
21 lawyers that have been assigned to deploying strike
22 groups that understood the purpose of SURTASS-LFA.
23 That backfired on us because we had a team that
24 negotiated an agreement that basically says if your
25 marine mammal mitigation equipment breaks down on

1 the ship, you stop your operation. Not training,
2 you stop your operation. So if you're prosecuting a
3 North Korean submarine that wants to sink a South
4 Korean ship, and marine mammal equipment breaks
5 down, this negotiated agreement says you stop that
6 prosecution of that submarine.

7 Quite frankly, that's ludicrous. That
8 makes no operational sense, makes no legal sense to
9 negotiate something like that, but the people
10 involved, although well intentioned, didn't
11 understand ASW operations. They didn't understand
12 how strike groups maneuver, and they didn't
13 understand how we prosecute enemy submarines.
14 Because we learned that lesson from the SURTASS-LFA
15 litigation the hard way, for the midfrequency active
16 sonar litigation we got a team together that had
17 operational lawyers, international lawyers,
18 environmental lawyers with operational experience,
19 and some very good litigators on the General Counsel
20 side working with the Department of Justice to try
21 and shape the litigation in a way that made more
22 sense for Naval operations. We were somewhat
23 successful. I say somewhat in that we challenged
24 two of the most egregious training restrictions all
25 the way to the Supreme Court and actually won on

1 national security grounds, but that was only after
2 years of classified declarations and input that
3 drove us to a result that ultimately was helpful.
4 The problem is that that was just one lawsuit, and
5 once there's a final agency action on other
6 environmental documents, we can be challenged
7 again. So the end is never in sight with regard to
8 environmental litigation.

9 Energy reform and noise issues are the
10 newest environmental challenges, and those are going
11 to basically result in challenges to encroachment
12 issues from windmills and solar farms as well as
13 noise encroachment from our new air frames that are
14 obviously going to result in probably more
15 litigation.

16 Domestic initiatives 13 EISs over the past
17 several years, each of those are multimillion dollar
18 documents probably about that high when you look at
19 the hard copy document and involve legal review at
20 every step from folks that understand Naval
21 operations and Marine Corps operation. The
22 President just initiated a new ocean council that's
23 run out of Council For Environmental Quality, so
24 it's already located in the wrong place, in my
25 opinion. It's located with the folks that are

1 really watching the environment, but it has freedom
2 of navigation challenges, and therefore, we have a
3 JAG embedded in that counsel.

4 Next slide.

5 I've touched on this with the pandemic flu,
6 the H1N1 issues, sovereign immunity is a big deal,
7 and in all numbered fleets we've seen an increase in
8 sovereign immunity challenges just because of the
9 scare with H1N1 and other pandemic flus. Also, the
10 proliferation of excessive claims. Most recently
11 what we've seen is following the President's
12 announcement of the Northwest Hawaiian Islands
13 National Monument and the Guam Marianas National
14 Monument which are huge swaths of ocean. The Hawaii
15 one is 100,000 square miles. We had a military
16 activities exemption in those monument designations
17 which protects military activities, supposedly, but
18 we see nongovernmental organizations challenging our
19 ability to operate in those areas. In particular a
20 problem with the Marianas because that's where we
21 train in conditions similar to what we see in the
22 South China Sea and the East China Sea. And the
23 other nations look at those monuments as an example
24 of what they can do to close off their own areas of
25 the ocean. So within a span of a few months of the

1 President declaring our national monuments we saw
2 whale estuaries out off the coast off South America,
3 which involved the rhetoric rampup in the Southeast
4 Asian area about the Coral Triangle.

5 Next slide.

6 Finally, education and training.
7 Operational requirements clearly with these boutique
8 areas of practice, cyber, some of the legal issues
9 with unmanned systems, and some of the challenges of
10 environmental law, the need to have lawyers training
11 with advanced degrees, I think, has increased,
12 particularly in those areas that are listed there.
13 And using, taking advantage of our opportunity to go
14 to the Army JAG school to get a degree, go to senior
15 war colleges, and to really take advantage of
16 postgraduate education to make sure that we're able,
17 legally, to meet those challenges. Ideally, I think
18 we might want to come up with a better plan on how
19 to assign and train JAGs. That's my own personal
20 opinion. Not endorsed by anybody in my community,
21 but I think we grow operational lawyers by placing
22 them in the right successive jobs, both policy jobs
23 in the Pentagon and in OSD in the joint staff and
24 combine that with actual operational jobs, ESGs,
25 task force, and other places that they'll be more

1 effective once they become joint task force
2 lawyers.

3 That should be it.

4 CHAIRMAN MOLZAHN: Captain Pedrozo, this is
5 not intended to be tongue in cheek at all, but I'll
6 say it anyway. You went through a number of what
7 you consider 21st century security challenges and
8 kind of demand signals, and you know, trying to
9 figure out is there any demand signal or security
10 challenge that won't require more judge advocates?

11 CAPTAIN PEDROZO: You know, sir, I think
12 that's a great question. I think the combination of
13 the mission areas that we're involved in, coupled
14 with the competition for resources and then coupled
15 with the fact that we're always going to be at sea
16 is going to mean that demand signal stays steady
17 state and increases with realtime communications.
18 So I think it's a combination of all those things,
19 the strategic pressure of realtime communication,
20 the need to get it right the first time legally so
21 that we survive the scrutiny, for lack of a better
22 term, and the fact that with increased disputes over
23 resources, the Navy's always going to be looked at
24 as a source of stability and as a strategic asset
25 for national security.

1 CHAIRMAN MOLZAHN: What if the Navy took
2 your advice about training and assigned Navy JAG
3 attorneys to those kind of jobs? I assume that
4 would also increase the number of judge advocates
5 we'd need in order to make sure we have enough of
6 them to actually do the legal assignments.

7 CAPTAIN PEDROZO: Sir, I think it's a
8 nuancing of numbers, putting judge advocates in the
9 right places in the right numbers. So I don't see
10 the number, the demand signal for numbers
11 decreasing, but I do see the demand signal for JAGs
12 involved in operational requirements increasing;
13 whereas, the demand signal in other practice areas
14 might not be increasing. I certainly think in
15 operational law it's increasing. So looking at the
16 numbers and make sure we're putting the JAGs in the
17 right places, I think, is critically important. And
18 giving Vice Admiral Houck and eventually Admiral
19 DeRenzi the ability to put Navy JAGs into places
20 with the greatest demand signal is very important.

21 CHAIRMAN MOLZAHN: You mentioned that is an
22 improvement. Are you satisfied with the level of
23 training operational lawyers are getting now, for
24 example, when you were with PAC Fleet, were you
25 satisfied with the lawyers you received in terms of

1 their experience and background, or did they have to
2 learn on the job?

3 CAPTAIN PEDROZO: Sir, I think a lot of
4 them had to learn on the job. I think some of them
5 were very well trained, and you tell the difference
6 in particular those lawyers that had JPME, either
7 their own or as resident war college students, those
8 lawyers that had gone to Army JAG school and had
9 taken a lot of operational courses and those lawyers
10 that had an international law or environmental law
11 degree were great assets. The ones that came to us
12 without that, weren't prior line officers so they
13 weren't LEPs, had no PG school, and had never had a
14 strike group or ESG or even a deployment on an
15 HA mission were harder to integrate into the staff.
16 The Navy has helped that a little bit. There's a
17 five-week maritime staff operator's course that they
18 run out of the War College now, and it's
19 specifically designed to train staffs to be members
20 of the MOC, so we certainly saw a huge difference in
21 staff integration if those folks had gone through
22 what we called the MSOC course, that five-week
23 course.

24 LT. GENERAL OSMAN: There's no question
25 what you just led me through which was a real

1 education for me. I had no idea of the number of
2 areas that the Navy JAG advocates become involved
3 in. But it also seemed to me that there are other
4 agencies in our government that have responsibility
5 here as well. Do you get any support from them, and
6 what your thoughts on that?

7 CAPTAIN PEDROZO: Yes, sir. That's a great
8 question. we get a lot of support from Coast Guard
9 lawyers in the interagency. We get some support
10 from State Department lawyers in the interagency,
11 but it's an iterative process where, I'll take the
12 Chinese interference with our activities, for
13 example. If they interfere with our Navy ships,
14 then we generate usually at the operational level,
15 say the PAC Fleet level, a draft demarche that then
16 goes up through Navy headquarters, joint staff, and
17 OSD, then eventually makes it over to state, and
18 then it gets to the White House.

19 LT. GENERAL OSMAN: If you snooze, you
20 lose.

21 CAPTAIN PEDROZO: Exactly. That's a great
22 point, sir. And if you don't get it out quickly,
23 and then it's not very effective, and they beat us
24 at our own war of words, so to speak.

25 So I think one thing that might be a good

1 idea is to get more efficient within the Department
2 of Defense. Certainly we all need to be satisfied
3 with the language, but when each organization sits
4 on a document for five days, then it's old news.
5 But I don't think the State Department has the same
6 perspective as the lawyers in the Department of
7 Defense. They don't have the same mission,
8 obviously, and I know that President Clinton -- I
9 mean, not President Clinton, Secretary Clinton and
10 Secretary Gates have talked about this common budget
11 as one of their new ideas. We could probably have
12 another panel to debate that, but there's a
13 different perspective in what we want to see in a
14 document that comes out and what the State
15 Department might want to have it say as a nuance.

16 LT. GENERAL OSMAN: Isn't it just plain the
17 difference between a operational judge advocate and
18 one that deals with sea mammals, and great example
19 you showed there, to me you're going back to the
20 table, not necessarily running the show.

21 CAPTAIN PEDROZO: Yes, sir. Actually,
22 another great example of that particular issue, the
23 Department of Justice is the one who has to
24 represent us in court, and the Department of Justice
25 assigns environmental litigation cases to their

1 environmental division. All of those folks are
2 very, very smart, very competent, but they know
3 nothing about Naval operations, nothing. So when
4 you try and tell them, hey, you can't negotiate with
5 this NGO to shut down our sonar in a particular
6 place because then we have no picture to detect
7 enemy submarines, they look at you like you're
8 speaking a foreign language. And so we have to
9 educate them. And the other problem is that they
10 don't usually get any active classified information,
11 and once you get them a clearance, they don't have
12 any context for that classified information. So
13 best example I can come up with is when we were
14 challenged, when were taking a case to the Supreme
15 Court, there were 12 or so restrictions the Court
16 had put on us at the appellate level and upheld.
17 There were two in particular that CNO and at the
18 time Admiral Keating, who was the PACOM commander,
19 who said we can't live within these two
20 restrictions. The Department of Justice lawyers,
21 who were very savvy and very good, said, I think we
22 can succeed if we just challenge one. If we just
23 challenge one restriction, we can succeed because
24 obviously the judge is more likely to give us a
25 negotiated settlement, and the Supreme Court will

1 rule in our favor if we challenge one thing and not
2 two. But they didn't understand that if you didn't
3 challenge both of these training restrictions, you
4 might as well not challenge anything because of the
5 operational necessity to have both of these
6 capabilities.

7 So I think what came home to us is that
8 without somebody who had worked in a strike crew and
9 understood strike group operations and the
10 prosecution of submarines and ASW as a problem, a
11 war fighting problem, we would have challenged
12 something that made no sense. And so it would have
13 been a hollow victory.

14 REAR ADMIRAL McPHERSON: Let's pretend a
15 world in which three weeks from today partisan
16 politics took a vacation, and the Senate advised and
17 consented to the Law of Sea Convention. Would you
18 anticipate that the demand signal for JAGs would go
19 up, down, or remain the same?

20 CAPTAIN PEDROZO: Personally, sir, this is
21 me, speaking as me not on behalf of the Navy, I
22 think demand signal would remain the same because we
23 have so many countries that are parties to the law
24 of sea convention that don't follow the provisions
25 that we're going to still have to counter all of

1 their maritime claims, whether we're a party or
2 nonparty. In particular, China, India, some of the
3 South American countries are all parties, and they
4 violate the provision of the law of the sea
5 convention every day. To me, the biggest benefit of
6 becoming a party of the law of the sea convention
7 really is the sovereign immunity provision with
8 regard to environmental regulation because that's
9 hard verbiage that we can throw down on the table
10 and say, no, right here in Article 236 it says we
11 have to operate with due regard for the environment
12 but only to the extent that it doesn't impede
13 operations or operational capability. So that's
14 actually been a provision that we've been able to
15 use with allies who try to curb our operations for
16 environmental reasons and nonallies like China.

17 CHAIRMAN MOLZAHN: Thank you.

18 COLONEL EWERS: Gentleman, good afternoon.
19 I'm the Deputy SJA to the Commandant. I work for
20 General Ary. I find that I'm covering some plowed
21 ground here. You've heard the legal perspective
22 from General Ary, and you've heard the commander's
23 perspective, of course, from General Natonski and
24 General Kelly.

25 I did provide some information, and the

1 panel's been provided with a bunch of information on
2 our Ops law requirements. I provided a couple
3 additional slides here. That is just raw data of
4 our operational law billet structure and the
5 increases since 2001 and our active duty
6 deployment. To the extent that they show any
7 trends, in my mind, given the speculative nature of
8 future demands, those trends are probably perishable
9 as we've talked about here on any number of levels.

10 But I do agree with Colonel Jacobson and
11 Captain Pedrozo that the legal aspects of operations
12 are going to grow more complex and more important,
13 particularly in light of these instantaneous news
14 stations.

15 So beyond that, I just wanted to stand by
16 to answer the panel's questions, and I'm prepared to
17 do so. Before I do, that just a couple quick
18 thoughts on the takeaways for us.

19 As you've heard from a couple of commanders
20 and from General Ary, our use of lawyers has
21 increased. Our use has always been based on that
22 mission analysis and past organization, and we have
23 a capacity doing that in the Marine Corps. Just by
24 way of example, I was running the LSSS prior to what
25 became OIF 1, and we put together the legal plan for

1 the MEF, for 1MEF, and of course we went through the
2 process of how closely we should hold the lawyers
3 and sort of parse them out as we went or should we
4 disburse them. But it never occurred to me that we
5 would push them down to the battalion level. And
6 General Kelly talked about that summer 2003 when we
7 went from phase 4 to basically stability operations,
8 and the demand just went right through the roof in a
9 hurry. It's not a new subject. I think that what's
10 changed for us is, and it's probably an unusual good
11 news story from Marine lawyers who, despite our
12 status as MAGTF officers is we're the red headed
13 stepchildren. I have a red headed son. I love red
14 heads.

15 But it's demonstrated that the commander,
16 we've developed an appetite in our commanders for
17 lawyers. They like having Marine lawyers around.
18 One of the challenges for us at the headquarters
19 level is the competing missions, trying to separate
20 out what is really nice to have and I want to have a
21 lawyer from what we really need down here and I
22 think General Natonski pointed out this morning, we
23 certainly don't need battalion judge advocates in
24 garrisons. The question is what kinds of operations
25 and kind of what kind of maneuver battalions,

1 whether we just restrict them to maneuver battalions
2 or we look for some other alternative. Again, the
3 problem that we have there now is it's hard to tell
4 a commander you can't have a judge advocate once
5 you've created that crack habit. That's a ongoing
6 challenge for us, particularly as we look at the
7 other requirements on judge advocates.

8 With that, gentlemen, I'll leave it and
9 answer your questions.

10 CHAIRMAN MOLZAHN: Colonel, when I look at
11 the page of this brief that you handed out that
12 talks about operational law billets, it seems fairly
13 consistently going up.

14 COLONEL EWERS: Yes, sir.

15 CHAIRMAN MOLZAHN: 2000, 18; 2012, 42. Do
16 you see the same trend after 2012?

17 COLONEL EWERS: Again, sir, depends on
18 how -- the interesting aspect of that is the
19 structure. We seem to be creating more structured
20 billets or filling more structured billets. Those
21 include Billets that we fill. Clearly, I think the
22 trend is going to continue to go up. The actual
23 demands will diminish, I think, as our operations go
24 down, assuming that they do. Again, I don't think
25 that there's -- I see nothing out there that signals

1 to me a reduction in the operational law
2 requirement.

3 CHAIRMAN MOLZAHN: Do you consider from
4 your perspective that there's adequate training
5 going on today?

6 COLONEL EWERS: Yes, sir. I think that we
7 do, I think that Naval Justice School, with the BOLT
8 program that's now been incorporated into that and
9 the training that we get sort of ad hoc, we do, of
10 course, the buildups as we're getting ready to go
11 into deployment we send our judge advocates the
12 training that's available to TJAGLCS, and the other
13 places, but by and large I think the training is
14 fine.

15 One of the questions that was in, I think
16 it was in this RFI that came out was where we
17 thought that the resources should be poured, and in
18 my opinion, and I'm sure that the LLM programs are
19 terrific, but in my opinion training a Marine judge
20 advocate, the best bang for the buck is TJAGLCS, I
21 don't think we can do better than the programs
22 they've got out there, just to prepare a Marine
23 major a Marine senior captain to do operational
24 law. But by and large, yes, I think the training is
25 fine.

1 LT. GENERAL OSMAN: John, you said that you
2 see no reduction in operational law requirements.
3 Do you see any places in the Marine Corps JA
4 community where we could have a reduction in
5 resources?

6 COLONEL EWERS: You know, sir, I'm going to
7 have to say no. Clearly our numbers are going down
8 in military justice although not as dramatically as
9 I think in the Navy, and I think that that's
10 probably going to change as our operations go down,
11 as has been referred to a couple of times during the
12 panel. I don't think military justice is going to
13 go so low. In fact, in my mind, and I think General
14 Ary agrees with me on this one, I think the legal
15 assistance requirements are going to significantly
16 go up. I think that the DES, for example, the
17 requirement to provide legal assistance to wounded,
18 ill, and injured Marines, Sailors, Soldiers, and
19 Airmen is going to -- I think that's going to sort
20 of usher in a growing consciousness on the part of,
21 I think commanders already have it, but I think on
22 behalf of a lot of people that we need to provide
23 more assistance to all our servicemen. So I just
24 think the legal system has always been kind of done
25 on a, this is probably the wrong term, but the space

1 available type basis or capability available. I
2 think we're going to start doing that a lot, so I
3 don't see anything going down.

4 LT. GENERAL OSMAN: Let me make it real
5 hard, then, John. Being a MAGTF officer, probably
6 having seen and lived the goodness of that and
7 probably also having the opportunity to serve in
8 billets outside the legal community, how do you
9 bring this together? Interest rates are going to go
10 down, dollars are going to go away. How do we make
11 this work or can we?

12 COLONEL EWERS: Sir, is this where I talk
13 about the Marine Corps' reputation for austerity? I
14 mean the truth is that we do try to do more with
15 less, and I think that one of the things that we
16 turn to in anticipation of this panel and because of
17 a lot of things that we were looking at, we realized
18 that we had to meet certain challenges, and we
19 figured that there were two things that needed to be
20 done. One is we're obviously, if you look at our --
21 there's no secret in our efforts over the last
22 decade to try to increase our numbers, and we think
23 that the Marine Corps has responded to that. You're
24 going to hear more on that from Mr. Applegate in a
25 few minutes. You've heard plenty on that already, I

1 think.

2 But in addition to that, we realized that
3 we need to get better at what we do, and we need to
4 look for efficiency. We need to look for a better
5 way to do business. But I don't think that there's
6 anybody's been around the Marine Corps for more than
7 ten years that hasn't felt like they had to do more
8 with less. So I'm not sure that's a great party
9 line, but I think we're just going to have to figure
10 out how to do it.

11 LT. GENERAL OSMAN: We can have our cake
12 and eat it too?

13 COLONEL EWERS: I think we can, sir. We've
14 managed.

15 REAR ADMIRAL McPHERSON: First of all,
16 Colonel, it's been my experience whenever a document
17 is signed by general flag or officers, there's
18 usually a colonel and several majors and captains
19 who actually wrote it. We received a couple
20 documents that General Ary signed off that were
21 simply outstanding, so I just want to put to you and
22 to your staff, job well done. Those were very good
23 documents.

24 COLONEL EWERS: Thank you, sir. I haven't
25 been there that long.

1 REAR ADMIRAL McPHERSON: Pass that along,
2 please. I was very impressed by them.

3 Now I'm going to put you on the spot a
4 little bit since I gave you a compliment.

5 General Kelly spoke about a program I was
6 involved in. I'll try and shorten this up. General
7 Sandkuhler came to me one day said, I'm really
8 hurting for boots on the ground to go at the
9 battalion level to Iraq. I've got Marine judge
10 advocates that are going on their third rotations.
11 Can you give me some lieutenants that could do the
12 job? And so I did. I was very proud of the
13 lieutenants that volunteered for that. I had -- he
14 wanted four or five people; I had 40 hands in the
15 air, and we sent them to Camp Pendleton they got
16 some training, and they deployed to Iraq right
17 alongside with your O3 judge advocates.

18 It was interesting to get General Kelly's
19 feedback, because I hadn't heard on that and how
20 that worked, but I heard him saying, and I think you
21 were here, I heard him saying they were great, but I
22 hesitated to put them in certain positions because
23 they were not a MAGTF officer. I guess my question
24 to you is, I'm not suggesting or inviting you to
25 contradict General Kelly, not at all, but from your

1 perspective, how do you think that worked? Do you
2 think that putting those Navy JAG lieutenants out in
3 the field like that was effective or not?

4 COLONEL EWERS: I won't contradict General
5 Kelly, although he's got a very strong view of it,
6 clearly. And incidentally, sir, I should mention
7 that I had sort of the -- I had the O6 level, but
8 General Kelly was telling a story about how Admiral
9 Mullen went and offered some Sailors to the
10 Commandant. I had the O6 call me and said, hey,
11 Admiral MacDonald wants to give you some lawyers to
12 send out, and I was putting together the 1MEF that
13 was going out, and I said, how many can you give me,
14 and how fast can you get them here? So we never
15 look a gift horse in the mouth.

16 I think the point that General Kelly was
17 making is that by training we are supposed to be
18 prepared to do the kinds of things that we do as
19 Marine officers, and it's not that, as individuals,
20 Sailors can't do it, and it doesn't -- it's not to
21 suggest that there's something spectacular that we
22 do out there. We're not Audie Murphy, all of us,
23 but by training there's an assumption you can make
24 about a Marine officer and the capability he brings
25 on the battlefield. Again, whether he's a lawyer or

1 something else. And while certainly you can do
2 everything you can to bring an officer who hasn't
3 had that training and background up to speed and get
4 him to that leave or her to that level, it's not
5 optimal. I think that's what I heard General Kelly
6 say. I may have taken a more charitable view than
7 you did.

8 But I think it worked out fine. My
9 experience with the Navy judge advocates who I
10 served with has been uniformly superb. Great
11 officers did a great job. We were careful, this was
12 as much to do with what we anticipated down in the
13 battalions than having anything to do with an actual
14 shortcoming, but one of the questions, again, that
15 was in the panel's RFIs was at what level of command
16 do you think that Marine judge advocates are best
17 operationally suited? In my mind, it's clearly the
18 battalion, because being able to operate at the
19 lance corporal level, the staff sergeant level, I
20 think it's important to be a Marine.

21 General Jones, we got those digital
22 uniforms several years ago because General Jones
23 wanted you to be able to spot a Marine at 50 paces,
24 and there's an assumption that's made in spotting a
25 Marine at 50 paces, and I think that's what General

1 Kelly was referring to.

2 But in short, I think, if it's not too late
3 for that, I think that the Navy, the Naval officers
4 that I served, the Navy officers that I served with
5 were superb.

6 LT. GENERAL OSMAN: If I could just add
7 something to do that. This is based on my
8 experience when I had war plans on the joint staff,
9 and this was just before the Iraq war began,
10 Secretary Rumsfeld and particularly Secretary
11 Wolfowitz, looking at where they were making
12 shortfalls apparently, there was going to be a
13 shortage of drivers for the Army and the Marine
14 Corps, and their solution was, why don't we just
15 take some from the Air Force and give them to them,
16 and we quickly realized that putting that Air Force
17 driver in a difficult situation and they get into
18 the battlefield or gets in an ambush and doesn't
19 have a clue what to do, because that's not what he
20 is trained to do; whereas, every Soldier or Marine
21 does. It's not matter of driving skills, it's the
22 matter of other training he got that would enable
23 him to succeed.

24 CHAIRMAN MOLZAHN: Thank you. Appreciate
25 your comments.

1 (Pause in proceedings.)

2 MR. PUTZU: We can resume.

3 CHAIRMAN MOLZAHN: Welcome. We appreciate
4 your coming here to share some comments. Colonel
5 Ewers, you're doing double duty.

6 COLONEL EWERS: I must seem familiar.

7 CHAIRMAN MOLZAHN: The Marine doing more
8 with less.

9 As you know, we're here independently
10 looking at the requirement for judge advocates in
11 the Navy and Marine Corps. That's our overall
12 mission, a numbers mission, but I'll just repeat a
13 couple of things. They also asked us, the Congress
14 did, to review career patterns for Marine Corps
15 judge advocates, in order to identify and delegate
16 assignments to nonlegal billets, require
17 professional development and promotion, and one of
18 the things, I know you'll probably address it, in
19 the course of it, just gives us more context, but
20 just a history of legislation that set up this
21 particular panel said, among other things, the
22 committee has questioned the Marine Corps' decision
23 not to create additional judge advocate billets or
24 increase judge advocate manning as part of its
25 overall growth in active duty in strength of 27,000

1 since 2007. The committee is concerned that
2 proposed near-term solutions such as immediate
3 termination of the assignments of judge advocates to
4 career enhancing nonlegal billets will adversely
5 affect professional development and promotions of
6 midlevel Marine Corps judge advocates and urges a
7 more deliberate response.

8 So that's kind of the background to this
9 and so with that, you'll be able to add value to
10 that discussion.

11 MR. APPELEGATE: Thank you. Mike Applegate,
12 SES director of manpower planning and policy MRA in
13 sunny Quantico, Virginia, where it's very brisk
14 today.

15 I think I can address those. What I passed
16 out, I think each of the three of you should have
17 this in front of you. We can start with that, that
18 little one pager in there can help, I think. The
19 top bullet there talks about the inventory of the
20 4402, judge advocate generals, it's about 94 percent
21 of our requirements now, couldn't resist using our
22 acronyms like GAR, that's a grade adjusted
23 recapitulations. In a nutshell, that's basically
24 the product that my office produces. That
25 determines how many individuals of a certain rank

1 and MOS we need to produce in the Marine Corps to
2 meet the full requirement. That takes into account
3 those that will be in the training, PCSing in the
4 hospital, those sorts of things, even in the brig.
5 That takes all of that into account, how many will
6 be in various B billets or nonprimary MOS billets,
7 how many will be in command, how many will be in PME
8 school. All of that, so it just doesn't take into
9 account the 4402 lawyers' billets, it also adds into
10 that how many lawyers are we going to have or need
11 to fill all these other billets that they'll either
12 be in or because we'll have that set of lawyers who
13 are not assignable because there's going to be three
14 probably in a hospital or here there or elsewhere in
15 PME school, that sort of thing. So that's a pretty
16 healthy number right now, 94 percent of our
17 requirement. You see that's up almost 20 points
18 from where it was almost a year ago. That's a recap
19 where we are today.

20 The bulk of the slide on the second bullet
21 really talks about what we're doing to answer
22 Congress' questions and the first thing we're going
23 to say is that last year, '09, Marine Corps decided
24 to add 34 official lawyer structure to the Marine
25 Corps structure requirements. That, in itself,

1 ultimately will allow the Marine Corps to solve the
2 lawyer shortage problem that we've had. We did that
3 in the structure review that was conducted last
4 year. There's been four Marine Corps wide structure
5 reviews since '04. The FISRG in '04 and then the
6 CAG, I can't remember the acronym for the CAG, that
7 we did in '06, the two 2 S and Ks in '07, and then
8 structure review we did last year. The one we did
9 last year was where they decided to add the 34
10 lawyer structure.

11 In all four of those, the only MOS where
12 we've actually decided to fix a particular MOS
13 officer shortage was in the review last year with
14 the 34 lawyer billets. The problem the Marine Corps
15 had going all the way back to OIF in '03 is to
16 continue the IA billets. There's hundreds and
17 hundreds and thousands of them. And the decision
18 the Marine Corps made and stuck with all the way
19 till last year was the lawyer example is that we
20 would eat those IA billets out of pocket. We would
21 not create extra structure and increase officer MOSs
22 across the board. There are 43 officer MOSs,
23 including the 4402. The only one now that's getting
24 a structure increase is 4402. The other 42 MOSs are
25 still eating the IA billets out of pocket.

1 I think General Kelly talked a little while
2 earlier about that we're a total force, and we're
3 trying the help solve some of problems that way. We
4 are, we have normally 1,000 to 1,500 IRR reserve
5 Marines that will come on duty as retired retained
6 Marines come on, and that is the primary thing we've
7 used to try to help offset the contingency IA across
8 the Marine Corps. It's helped, it's reduced the
9 pain, but it hasn't solved the problem entirely.
10 Where we have in those four structure reviews since
11 '04, added structure, it's almost been entirely been
12 towards unit capability, three companies of recon,
13 one of the FISRG additions, and one or two
14 battalions of this, those sorts of things. So we
15 focused primarily on the operating forces and adding
16 unit capability primarily in the structure reviews
17 instead of trying to go after the IA contingency
18 requirement across all 42 or 43 officer MOSs.

19 So I just can't emphasize enough the fact
20 that the Marine Corps finally did add structure to
21 4402s to help offset the IA issue is huge in helping
22 us finally have enough lawyers to fill all of the
23 requirements, the TR requirements and the none TO IA
24 requirement, which is what really caused the
25 shortfall for the last several years.

1 Nos. 2 through 6 on the page here are
2 really the steps we're taking with the manpower to
3 try to increase the inventory of 4402s to meet the
4 new requirements and starting off with No. 2, we've
5 increased the annual accession requirements.
6 Recently it was 45 a year, we've increased that to
7 60. A couple of years ago that requirement was only
8 45. So it's gone up quite a bit since '08-09 to try
9 to increase the inventory. As an incentive, we've
10 increased by 50 percent the law school's education
11 debt subsidy from \$30,000 to \$45,000, and that will
12 have a positive impact on getting more of our lawyer
13 officers to remain in the Marine Corps.

14 This year in FY10, actually last year in
15 FY10 we conducted two return to active duty boards,
16 again to get back to some of things General Kelly
17 talked about, and both of those boards we only went
18 after one MOS of all the MOSs, just 4402 MOS, and
19 total out of both boards offered return to active
20 duty to 12 return officers to the active board, and
21 they accepted, they're on board. So that's helped a
22 shot in the arm to get the inventory up.

23 We have gone back this year, actually,
24 beginning FY10 we went back to career designation
25 board which is similar to the old augmentation board

1 we did years ago when most officers came in as
2 reserve officers, and for four or five years they
3 could compete, and we would take up usually quite
4 often a very small group of officers and allow them
5 to join the regular force and remain. Now that all
6 officers are coming out as regular officers to begin
7 with, we don't have to go through that anymore. But
8 what we are doing is we are taking a look at all
9 officers at the four-year mark and basically
10 deciding to based on the health of the Marine Corps
11 MOS end strength all of those constraints, we're
12 evaluating them and deciding how many can stay.

13 For the ground officers this year the
14 opportunity was 85 percent. Of every hundred
15 officers, we looked at 85. We offered career
16 designation to them, which allowed to remain on
17 active duty. The 15 percent that we had to turn
18 down had to separate from active duty. For lawyers,
19 we set the precept, and the opportunity at 100
20 percent, so you know, more of the lawyer officers
21 that competed in this process were granted career
22 designation and given the opportunity to stay.

23 And the last thing we've done for the last
24 three years since '08-09, we precepted the majors
25 internal promotion board. Before that, promotions

1 to major, lieutenant colonel, and colonel was not
2 all that high. It's been above the Marine Corps
3 average, basically since then. The FY12 board
4 results aren't out yet, but from what we understand
5 that's probably going to be very healthy also.

6 But if I can just recap, I think that the
7 huge thing is that in '09 we agreed to increase
8 lawyer structure by 34, that's about the number of
9 lawyers we normally had filling these non-TO
10 contingency IA billets, which meant that lawyer
11 billets back home were empty, you know, and the only
12 way, and we didn't get enough lawyers in through the
13 reserves to help backstop those on a yearly basis,
14 so last year we decided to increase the structure,
15 and we're doing a number of things to increase the
16 inventory. We're increasing inventories as quickly
17 as we possibly can so we'll able to fill both the TO
18 lawyer billets and the non-TO lawyer billets.

19 Also like to stress that in the inventory
20 build that we produced, we account for the fact that
21 we're going to have X number of lawyers, like this
22 year six lawyers are in command billets. We've
23 factored that in, we've built that into inventory to
24 account for that. So if we have a Marine lawyer in
25 a command billet, one of our PME schools, a

1 nonlawyer PME billet, that doesn't mean that we have
2 a lawyer billet going short. We've built that into
3 the inventory.

4 We consider lawyers MAGTF officers that are
5 well rounded officers. The experience we see is
6 that by having all of our officers, including the
7 lawyers, fill both primary MOS and non MOS, billets,
8 you get a more rounded experienced officer across
9 the board. He's been there, he's been on the other
10 side of the street. We think that pays big
11 dividends. And we're not shorting ourselves by
12 doing that because we're building the inventory from
13 the get go enough lawyers to be able to have a X
14 number of lawyers a year serving outside of their
15 MOS.

16 CHAIRMAN MOLZAHN: I have a couple
17 questions.

18 What is the billet 34 initial structure
19 that you added? About how much inventory does it
20 require to sustain the 34 structured billets?

21 MR. APPLEGATE: We have 406 today, we had
22 366 about a year ago. With T2P2 and the fact that
23 we'll have one or more these 34 nonassignable, the
24 way the math is worked out from year to year, you
25 can probably assume it's going to take 36, 37 actual

1 lawyers to have these 34 billets filled.

2 CHAIRMAN MOLZAHN: How long do you think it
3 will take to finish this?

4 MR. APPELEGATE: These TO billets actually
5 come on line FY15. We started the build, we will
6 have the inventory built for all this, including
7 this requirement, by FY14, easily, and I think as
8 long as we have the success we did this year with
9 the return to active duty boards, I think we'll get
10 better retention with the \$45,000 LSEDs, with the
11 career designation rate a hundred percent. It's
12 very possible we'll be there by 13, which is a
13 fairly short period of time to try to increase the
14 health of any MOS.

15 CHAIRMAN MOLZAHN: Let me ask you, when
16 General Ary testified earlier, and he mentioned also
17 the 35 increase in structure to suggest it had been
18 approved a couple of times, but it was on hold one
19 more time because there was going to be another
20 review. Could you let us know where we are. Is
21 this a done deal here, or is there some additional
22 review?

23 MR. APPELEGATE: This is a done deal. There
24 is another FISRG going on right now that's reviewing
25 the structure of the entire Marine Corps. This is

1 one of the ones that's a done deal. There's a few
2 others like that also where, you know, must pay the
3 bills that we have to deal with, cyber is one.
4 We're going to put a few more extra officers into
5 the Naval Academy, there's a few other must-pay
6 bills like that, and lawyer bill is one of them.

7 CHAIRMAN MOLZAHN: I want to go back to one
8 of the concerns about Congress. I guess General Ary
9 testified on this, as well, concern that somehow the
10 Marine Corps might solve some of the demand signals
11 for Marine judge advocates by simply not assigning
12 them to billets that weren't lawyer billets. That's
13 certainly not what you've said. Also sounds like
14 you also said the Marine Corps is committed to an
15 officer that has a broad experience.

16 MR. APPELATE: Yes.

17 CHAIRMAN MOLZAHN: Do you have any idea
18 where Congress came up with that concern that
19 lawyers, where that might be a consequence?

20 MR. APPELATE: If we took the lawyers
21 that, say, out of the command billets to the
22 nonlawyer billets?

23 CHAIRMAN MOLZAHN: Yes. In order to solve
24 the problem of not having those judge advocates
25 simply by not assigning them to anything but legal

1 billets.

2 MR. APPLGATE: Where that ultimately
3 wouldn't work in the way we do business is that
4 right now I have six in command and 22 in PME
5 schools and 43 in nonlawyer billets, which adds up
6 to 700. If we stop doing that, I would reduce the
7 inventory by 70 lawyers. I wouldn't make 70 extra
8 lawyers because I wouldn't need them. The lawyer
9 requirement has to go up for me to build more
10 lawyers to fill lawyer billets because I'm already
11 building enough lawyers to have the inventory to
12 fill the nonlawyer billets. So if we can say that,
13 and I haven't done the math, but looks like 71, I
14 guess, is what that adds up to, 642 and 43, say that
15 adds up to 71. On average we're going to build
16 about 71 of our 406 lawyers a year to have enough
17 available to fill these nonlawyer billets. If we
18 stop doing this, I'd reduce the inventory from 406
19 down to 330 or so. So one of two things has to
20 happen. We either have to quit putting these
21 lawyers in nonlawyer billets but continue to build
22 the number of lawyers we have or increase the lawyer
23 requirement and build more lawyers so we can
24 continue producing these MAGTF well rounded
25 officers. That's what we decided to do, we're gong

1 to increase the structure requirement and increase
2 the inventory so that we can continue using,
3 utilizing lawyers the way we have and giving those
4 the experiences base that we appreciate and think
5 makes them better SJAs to begin with.

6 REAR ADMIRAL McPHERSON: You may have
7 answered this as part of your testimony thus far,
8 but I just want to come back to it for the record.
9 One of the provocative questions that the staff
10 presented in the introduction of this legislation is
11 that over the number of years, Mr. Molzahn mentioned
12 those statistics, there has an increase in the end
13 strength of Marine Corps but not an increase in the
14 number of judge advocate billets. Why is that?

15 MR. APPELEGATE: That is in corps structure
16 reviews we did going back in '04, we have focused on
17 creating more unit capability. Right now looking at
18 O4 FISRG we built three reconnaissance companies and
19 two in the course of time and X number of platoons
20 of EOD units. We primarily focused on things like
21 that. We did increase some specific skills like
22 intel across the board, but that was officer
23 enlisted that we would put in operational use. We
24 focused on creating unit sets primarily in almost
25 all of these structure reviews and poured almost all

1 of it into the operating courses.

2 In the 202 K build we did build maybe 1,500
3 or so structures that went to the supporting
4 establishment. So 1,200 of that went to the
5 training command to increase the number of
6 instructors we were going to have in PME MOS school,
7 and the other 300 or 400 went to recruiting command,
8 and that was primarily because the expectation was
9 the accession mission was going to skyrocket from an
10 average of about 32,000 a year to well over 43 to
11 48,000 a year. So we needed more recruiters out on
12 the street, and we were going to need more
13 instructors at boot camp and MOS schools to push all
14 those new recruits through.

15 The only part of the supporting
16 establishment that really got a structure increase
17 came in the 202 K, and that was for recruiting and
18 training command. The rest, if we look at under
19 CAG, the CAR, the first FISRG, 202 K, we built
20 battalions, we built companies, we built
21 capabilities like that, we increased the regimental
22 headquarters so that it can do 24/7 seven day a week
23 combat ops for an RCT. We were building things like
24 that and really didn't look at any of the other 42
25 officer MOSs and said, gee, we need a couple more

1 combat engineer officers because some of the combat
2 engineer officers we have are filling out IA
3 billets. That's why we didn't do across the officer
4 ranks until the '09 CAR. We said, okay, the IA
5 problem is hurting us enough in the lawyer field
6 that deal we do need to have structure for that and
7 that alone officer MOS.

8 LT. GENERAL OSMAN: I'll ask the question,
9 what drove that decision to increase by 34? Was
10 there indication in the Senate, or did the Marine
11 Corps do it unilaterally?

12 MR. APPELEGATE: I think it was a
13 combination of both. We recognized that we had to
14 do it, and there was interest that we knew about
15 very much so from the Senate from the SASC, I talked
16 to the SASC personally myself in the last couple of
17 years about this, and they were continually asking
18 me about it. I gave them the answer, well, the
19 decision we're not going to take care of the officer
20 IA shortfalls. We're going to eat that out of hide,
21 and I walked away with the clear message that my
22 answer is not cutting it. So we recognize there was
23 concern there, and we recognize that due to the
24 one-on-one nature of the lawyer officer, this is not
25 one that we can avoid. We're not getting joy from

1 the reserves coming on duty for a year or two
2 filling billets. If they already are a member of a
3 MOS, that reduces the IA pain a little bit, but we
4 certainly understood there was pressure there, and
5 we understood there was really no way we can solve
6 it adequately without taking this step to end this
7 pressure.

8 LT. GENERAL OSMAN: Do you have retention
9 issues with the fleet?

10 MR. APPELATE: Overall, I don't believe
11 so. I think our retention is on par, the average is
12 about similar to the rest of the Marine Corps and,
13 again, we think increasing the LSEDs will increase
14 the number of them over the top.

15 CHAIRMAN MOLZAHN: Either of you can
16 respond to this. I notice that you said the law
17 school education debt subsidy increased by 50
18 percent in fiscal year 11 from 30,000 to 45,000. I
19 could be wrong, but I believe that's still less than
20 the other military services. Is there a study into
21 that number as opposed to just matching with the
22 other military service is doing?

23 MR. APPELATE: I think it's lower than the
24 other service.

25 CHAIRMAN MOLZAHN: Yes, it is lower.

1 MR. APPLEGATE: They have 50 or 60,000,
2 which is cap. Part of it was we don't feel we need
3 that much more. Retention is fairly good. We think
4 that we -- increasing to 45,000 could be more than
5 enough. It's also running into a time when I cut my
6 enlisted selective re-enlistment bonus by 70 percent
7 from its high in '08 to what we're going into in
8 '11. So I'm reducing the dollars we're giving
9 enlisted Marines by 70 percent. It's a hard pill to
10 swallow to explain why are we increasing the dollars
11 we're giving to officers. We also decreased this
12 year the money we're giving to pilots on the
13 aviation continuation pay, ACP budget. We reduced
14 that this year also, which is interesting to do to
15 aviators. But I mean, those are tough pills to
16 swallow when we're taking money away from our
17 pilots, we're taking money away from our enlisted
18 Marines for selective re-enlistment bonus, and
19 enlistment bonus, we reduced that by 50 percent.
20 Saying we need to increase one is a hard sell across
21 the force.

22 REAR ADMIRAL McPHERSON: Are you seeing
23 problems with the numbers of either recruiting judge
24 advocates or retaining judge advocates?

25 MR. APPLEGATE: No, sir. I don't believe

1 so. Again, we increased the accession mission 45 to
2 60. That will help a great deal. We think we can
3 make the recruiting demand work with us on that. We
4 are confident that they can get that many. We saw a
5 small return to active duty on the return to active
6 duty boards this year. They were unwilling, and we
7 were finding over the years just to come on for a
8 year or two just to help backstop IAs without a
9 longer term commitment. Offering them they can come
10 back into the active component, we got what we
11 needed there. I don't believe we're going to have a
12 problem with the accession mission. Again, with the
13 retention they were pretty much on board anyway, now
14 increasing LSEDs to 45,000 will help.

15 REAR ADMIRAL McPHERSON: Is the return to
16 active duty board an applied-for board, an officer
17 applied for the board and then is selected?

18 MR. APPLEGATE: Yes. We look at the
19 inventory throughout the MOS every year, and we can
20 decide which fields need some help. During 202 K
21 increase in '89, we brought back still under
22 30 officers total. Normally it's around 10 to 15,
23 because the officer corps is pretty much up to
24 speed, up to strength, even like the lawyers was
25 officially up to strength, so we increased the

1 requirement. Where we do see we have a shortage,
2 that requirement can be intelligence, you know,
3 specific fields where we say we have shortages,
4 we'll go out and advertise and reservists can apply,
5 and we hold a board and select the best qualified,
6 offer them to return active duty. This year, FY10,
7 we have held two boards, the lawyers were the only
8 MOS we were going after and brought back 12.

9 COLONEL EWERS: I have a couple remarks,
10 but I wanted to, if I could respond to your question
11 about the source of the fencing, idea. I may be
12 playing rumor control officer here as I understand
13 it, but here comes a fact free anecdote.

14 As I understand it, there was a discussion
15 with either the staffs or in the Senate with the
16 manpower director, and they were talking to him
17 about the problems with judge advocates strength,
18 and off the top of his head he said something like,
19 well, we could possibly fence them. I think that's
20 the extent of the entertainment of this idea. I
21 mean it's antithetical to everything that we do,
22 everything we ever talked about with regard to all
23 43 MOSs, so it's not -- but think that's the source
24 of it. Just was the idea came up off the top of his
25 head in a bad place in the Senate Armed Services

1 committee. I don't know if it's helpful or not or
2 if it's true or not, but it's a good story.

3 Sir, just a couple points. I provided the
4 panel with some slide here. Gentlemen, the first
5 slide simply is we start the MAGTF officer thing
6 from jump street so nine months they get before they
7 go to Naval Justice School, so our Marine judge
8 advocates start their time as MAGTF officers. The
9 part I really want to get is really about Judge
10 Advocate Division, participation in the assignment
11 process and the career process, and I can't tell you
12 that we've got this thing down to a science within
13 the Judge Advocate Division, but the advantage is we
14 have the lawyers in the process as the OCC field
15 sponsors, and we do have a very good working
16 relationship with manpower with the monitors down at
17 MMOA.

18 As can you see there on the slide entitled
19 JAD career management involvement, the dialogue
20 between us as the OCC field sponsor and MMOA
21 produced in 2010, 100 percent of the recommendations
22 for assignments, which we presented them a slate,
23 and they basically said, sounds good to us, which I
24 think is unusual among the OCC field sponsors. I
25 think that we probably have a little bit more

1 success than some of the other occupational field
2 sponsors.

3 The B-Billet slide here is a little
4 misleading. I provided it there to show you, let me
5 go back for a second to the 20-month thing. We told
6 you, I think General Ary told you back on the 1st of
7 September that we did a informal study to determine
8 how much time the average judge advocate in the
9 20-year career spent outside of the MOS. And the
10 result that we had, and we did a polling of the
11 lieutenant colonels and the colonels who have been
12 around 20 years, so it's about as exact science as
13 you can get in that regard. So the average is about
14 20 months out of a 20-year career.

15 Rather than trying to add more science to
16 that, I think it's a useful benchmark because it
17 gives you some indication that it's really not that
18 huge an amount. On the other hand, the thing I
19 think that's telling about it is there are some who
20 don't spend any time after basic school out in the
21 MOS and some who spend, I think, six years out in
22 the MOS. I remember that because I was at six
23 years. But the point is that it begins the nine
24 months that we spend at OCS basic school, doesn't
25 require there to be a huge investment of lawyers

1 doing nonlawyer things. It's just the opportunity
2 to do that, and we take advantage of those chances.

3 As you can see from this B-Billet slide,
4 there's only about ten percent of us who are outside
5 of the MOS at any given time. I also should note,
6 as you see in the asterisk, there are some billets,
7 and you'll see some, I'll give you some examples on
8 the next page, that are 80-06 billets, but people
9 filling those billets are actually performing legal
10 duties. If you look at the next page, it's just an
11 example. Mr. Applegate refers to we have six COs
12 right now. I've only got five listed because I
13 think we've got two headquarters and service
14 battalion commanders. One of those is duplicated.
15 But the series commanders that you see down there,
16 MCRD Parris Island bound and MCRD San Diego, those
17 officers serve in 8006 billets. They'll go down and
18 do a year at the recruit training regiment, and then
19 they'll come back to the law center and work with
20 the trial counsel for a year so there's some flip
21 flopping back and forth. That's a great place for
22 us to go because it gives us a lot of flexibility.
23 Again, those are examples of the time we spend out
24 of the MOS.

25 The next slide talks about schools. We're

1 getting ready to hold, I think it's called the
2 college degree program that includes selection for
3 both our SEPS program, which is our special
4 education program for LLMS and civilians
5 institutions and our selections for TJAGs down
6 there. We all know it's Judge Advocate General
7 School and Legal Center now. There are five 4402s.
8 I think the senior member of the board that year and
9 two other officers come out of the Judge Advocate
10 Division. Two other 4402s from other places are
11 lawyers from other places, then we have two
12 nonlawyers that sit on the board for the college
13 degree portion of it.

14 We only send about two students a year to
15 the Expeditionary Warfare School and the Command
16 Staff College, and then TLS is also board selected,
17 and that's kinds of hit and miss. We occasionally
18 have a couple officers, particularly if they're
19 coming out of the lieutenant colonel command,
20 they'll get a TLS opportunity, but I think we
21 probably compete pretty well with the other MOSs in
22 terms of TLS opportunities.

23 I wanted to give you an idea in the next
24 slide about the percentage of officers that we have
25 who have an LLM either from the Judge Advocate

1 General School or the Army or from civilian
2 institutions, and the totals over there on the
3 right-hand side. 76 percent of our colonels have
4 LLMs. I have to tell you it's not something I've
5 ever thought about before. I think it's interesting
6 in two regards with respect to our colonels. One is
7 we do a pretty good job of getting a lot of our
8 colonels LLMs. On the other hand, not having an LLM
9 doesn't mean you're not going to make colonel.
10 Interesting, I'm not sure what inference you draw
11 from that.

12 Mr. Applegate referred to the promotion
13 rates. I've provided that to you in the next
14 slide. We clearly took some hits in the colonel's
15 boards back in '07 to '09. I think we rallied
16 significantly in '10. Did pretty well in '11, at
17 least 50 percent. I think as Mr. Applegate pointed
18 out with the precept that we got on the '12 board,
19 think we're going to see our numbers do pretty
20 well.

21 I have some other comments on that that
22 I'll mention to you in a slide or two.

23 REAR ADMIRAL McPHERSON: Can I jump in a
24 moment. I'll come back to a couple other slides,
25 but I just wanted to jump on this quickly. Part of

1 which I suspect is the rule of small numbers, as
2 well.

3 COLONEL EWERS: Yes, sir.

4 REAR ADMIRAL McPHERSON: Just had one or
5 two more promotions, that percentage would have
6 jumped up considerably, probably matching what the
7 average was, but I may be speculating, I don't know
8 what research has been done, but those fail selects
9 particularly in those anomalous years, do you think
10 those fail selects were based on that officer did
11 not have a B-Billet during their career?

12 COLONEL EWERS: You know, sir, I don't have
13 the answer to that. My guess is there's probably an
14 equal opportunity cut. I don't think that it had
15 anything to do particularly with that. Again, by
16 way of analogy, I'm not sure how successful it is,
17 but I was just looking back in addition to looking
18 at all our current colonels who have either been or
19 not been TJAGs, and there were a goodly number of
20 officers on the list who had been, who didn't get
21 promoted for one reason or another. I don't really
22 think it falls down neatly. That is something we'll
23 look at. We can get an answer quickly, and we'll
24 get back to the panel.

25 REAR ADMIRAL McPHERSON: I'm just curious

1 whether or not the career advice is to an O3 if you
2 want to make this a career and make O6 some day, you
3 better get yourself a B-Billet in the next couple of
4 years; otherwise, you won't promote.

5 COLONEL EWERS: Again, sir, I can tell you,
6 having sat on the lieutenant colonel screening board
7 this past summer, particularly for the lawyers, time
8 out of the MOSs is viewed very favorably by a lot of
9 people. I would say of the 20 officers on the
10 board, 17 colonels and three general officers, I was
11 the only lawyer. Whatever MOS, time out of the MOS
12 is considered good.

13 The next just shows some advanced training
14 board results. I wanted to make a couple
15 observations. I think, as you've heard in the two
16 subjects that we've covered today, at least that
17 I've watched today about ops law and career
18 progression, I really think that our -- the
19 employment of judge advocates has validated the
20 MAGTF officer approach. One of the things that I
21 think is very interesting and may change the playing
22 field a little bit for our junior officers, but I
23 think in their favor that once you get into the
24 combat environment, it doesn't really matter whether
25 you're operating outside the legal field anymore.

1 If you're there as a battalion judge advocate, it
2 gives you that credibility. It's a MAGTF service.
3 It gives you the same credibility working in that
4 environment, assuming that you're doing all the
5 things that battalion judge advocates do. And I
6 think the best way for me to illustrate that is that
7 I think that a guy zoned for major, you've got two
8 guys zoned for major, and one's a series commander
9 and one of the MCRDs 12 months, and the other has
10 been a battalion judge advocate or regimental deputy
11 judge advocate for 12 months, I'm guessing that that
12 battalion judge advocate is going to have the
13 advantage over the series officer.

14 This other comment comes from the
15 experience I've referred to just a moment ago, and
16 that is sitting on the command screening board.
17 Maybe it's because we're good writers, but we do,
18 our records look pretty good. We had 44, I think,
19 lieutenant colonels that were in zone for selection
20 to command, along with, we go in, and there's some
21 statistics, all of which I won't cover, but are in
22 the backup slides. We go in with the PAOs, the
23 3302s ask public affairs officers and financial
24 management guys, 3404s. Of those 44, the briefings
25 in the command screening board are done on a scale

1 of one to six, six being a water walker. Fully a
2 third of the Marine lawyers were rated as water
3 walkers by the brief. And I got a lot of comments,
4 you guys really have some good fitness report
5 writers, but more importantly, I think, good fitness
6 reports written from general officers who aren't
7 lawyers, which is advantageous and, I think, speaks
8 well. That's why I think, I'm not a very good tea
9 leaf reader, but I think we're gonna do very well on
10 the colonel's board this year. Again, I think it
11 validated the approach.

12 And that's all I have, gentlemen, subject
13 to your questions.

14 REAR ADMIRAL McPHERSON: I do. There was
15 one slide that bothered me, with a small (B), just a
16 bit. That's back to assignments JAG career
17 management involvement.

18 COLONEL EWERS: Yes, sir.

19 REAR ADMIRAL McPHERSON: When I was a JAG,
20 one of the things that I jealously guarded was my
21 ability to assign my JAGs where I thought they
22 should be. To me, that was the touchstone of being
23 the JAG. Quite frankly, I assumed General
24 Sandkuhler did the same thing. It surprises me to
25 learn that he didn't, although, as you say, you

1 enjoyed a hundred percent acceptance rate, that's
2 not driven by any rule, regulation, requirement, I
3 mean if they wanted, they wanted a break from
4 General Ary's recommendation, they could.

5 COLONEL EWERS: Yes, sir, they could. I
6 think, obviously, this flows out of Article 6, the
7 JAGs and every other service as that assignment came
8 by the authority; in our service, the Commandant
9 does. Manpower is the Commandant. My guess is
10 obviously, if Captain Smucately is going to Parris
11 Island instead of San Diego, General Ary is probably
12 not going to raise issues, but if General Ary
13 decided that a colonel ought to go somewhere, and
14 the monitor for some reason said, no, I want to send
15 him here, at least becomes a three star issue. So I
16 understand, and I know that based on my limited
17 observation Admiral Houck appears to guard that very
18 jealously, as well, I don't think there's a conflict
19 there. Certainly not a conflict we can't solve.

20 MR. APPLGATE: I'd like to jump on that,
21 sir, coming from Manpower. In my job, I don't make
22 the assignments, but a division within M&RA which I
23 work with all the time does make the assignments. I
24 think this goes to a Marine culture, this thing,
25 because, again, that one subdivision of M&RA makes

1 the assignments for all Marines across the entire
2 Marine Corps. I think that's something that the
3 Commandant and manpower would jealously guard.
4 That's part of what makes the Marine Corps', our
5 ethos and culture. I have been a monitor, before
6 and what they said is not unusual, because I know
7 the monitors rely heavily on all the OCC field
8 sponsors, so all 43 MOSs, because I had one MOS, I
9 monitored a number of different MOSs, I didn't know
10 a lot about the particulars in those other MOSs.
11 That's where the advice you get from the OCC field
12 sponsors is invaluable. It leads to good dialogue
13 and ultimately good decisions.

14 The monitors do also have, I think the
15 knowledge and the Marine Corps wide view to make
16 sure that we play fair with all the Marines because,
17 quite often, you'll have OCC field sponsors say, I
18 want Captain Jones to go here. And we'd say, you
19 know what, according to fairness to the rest of the
20 Marine Corps, it's really time for him to go
21 overseas to for a year or two. And monitors play
22 that role. I think the way we do it across the
23 Corps for all the MOSs, including the 4402s, by
24 having that one division, the M&RAs, making the
25 assignments, which, obviously, General Ary can go

1 straight to those monitors and go straight to
2 General Salinas, who runs that division, straight to
3 General Zilmer or above, if necessary. That option
4 is always there. I think for fairness, especially
5 to the rest of the Marine Corps, it is part of our
6 ethos, that division makes the assignments with the
7 tremendous help they get from OCC field sponsors.
8 It's a system that's not broken, it's not part of
9 the why we have the problem with the lawyers. We
10 didn't have structure that was big enough. That had
11 nothing to do with the assignment piece.

12 REAR ADMIRAL McPHERSON: Thank you.

13 CHAIRMAN MOLZAHN: Colonel, let me follow
14 up on that.

15 I think you both said that there's a
16 hundred percent of the recommendations were accepted
17 in 2010. I'd like to ask, what about earlier
18 years? Has it always been pretty close to a hundred
19 percent or at least for the last ten years, for
20 example? Has it been close to a hundred percent or
21 a hundred percent, or is this the one year anomaly
22 to make it seem like there's no problem?

23 MR. APPELEGATE: Yes, sir, I don't have the
24 statistics on that. The answer is that it didn't
25 jump from 70 to a hundred. It probably jumped from

1 98 to 99 to a hundred. I'm trying to think off the
2 top of my head. I think the more contentious ones
3 are done at the senior level. I can think of a
4 couple officers who over the years wanted to go out
5 to do what we would call adventure assignments, and
6 outside agencies and the Judge Advocate Division
7 said, I don't really think this guy really needs to
8 stay in that assignment or go to that assignment.
9 And the monitor said, he's going to that
10 assignment. It's usually because the other agency
11 had nothing to do with that. Anecdotally, I can
12 tell you there were probably disagreements about
13 particular assignments. I can't think of one in my
14 25 years where, to the extent I became aware of, I
15 probably didn't become aware of it till I was a
16 major or so, where there was an assignment that they
17 need the 1MEF SJA, the SJA to the Commandant
18 disagreed with the manpower in the 1MEF SJA, and the
19 SJA to the Commandant lost. I would be very
20 surprised if that happened.

21 LT. GENERAL OSMAN: John, let me just ask
22 one question. If we decided for us or if we decided
23 unilaterally to do away with judge advocates serving
24 in B-Billets, or not B-Billets but command, what
25 impact would it have on the community?

1 COLONEL EWERS: It would fundamentally
2 change what it is that we do and, again, I realize
3 that it's a delicate balance, and I know you get
4 caught up in what's wrong with being a Navy judge
5 advocate, what's wrong with being an Air Force judge
6 advocate, but the reason that the guys and gals come
7 to the Marine Corps to become a Marine officer, to
8 be a member of the gun club. It's not a matter of
9 just sitting around, talking about how great it is
10 to be a Marine. It's part of why you choose to
11 serve and what you choose to do. So it would
12 completely change the complexion of the way that we
13 look at the Marine Corps and the people that we
14 attract.

15 LT. GENERAL OSMAN: Impact on morale?

16 COLONEL EWERS: I think it would be
17 devastating to morale. I don't want to use the
18 slippery slope argument, but I just don't think it
19 would be -- it just wouldn't make any sense to join
20 the Marine Corps.

21 MR. APPLEGATE: If I could add to that,
22 they wouldn't be considered Marines, they wouldn't
23 be looked at as equals as MAGTF officers, why have
24 them as Marines? They could be civilians or
25 something to that effect.

1 CHAIRMAN MOLZAHN: Thank you, gentlemen.

2 (Pause in proceedings.)

3 MR. PUTZU: Before we continue with the
4 testimony, just a reminder, this is the last panel
5 of the day. Any members of the public are welcome
6 if they care to make comments on the record. Thank
7 you.

8 CHAIRMAN MOLZAHN: Welcome, gentlemen. As
9 you know, we're here to independently review the
10 requirement for judge advocates in the Navy and the
11 Marine Corps, and one of the things that Congress
12 asked us to review specifically was new requirements
13 in support of the disability evaluation system for
14 members of the armed forces, and I'm sure you can
15 add insight into that particular review. So with
16 that, I'd like the first witness to start.

17 MR. POWERS: Good afternoon. Robert Powers
18 for the Department of Navy physical evaluations
19 board. I currently serve as the president there,
20 and my brief is in line with Captain Quinn's,
21 actually I consider it back up for Captain Quinn and
22 as well as Lt. Colonel Faerber.

23 Basically, I'd just like to go through and
24 just talk about the importance, the up front
25 conclusion based on the PEB, the administrative law

1 board, whose essence is that we believe that it
2 would be important to support our mission, that we
3 have five DES attorneys actually do the formal
4 hearing and then two additional attorneys be
5 provided to the PEB in direct support of the PEB's
6 mission, so overall seven attorneys. In essence,
7 PEB's purpose is to adjudicate cases in a fair and
8 timely manner. Fair, basically, is measured by the
9 VASRD, 38 CFR, which is an extremely complex Code of
10 Federal Regulations, really almost requires a
11 medical degree, and it certainly takes a lot of
12 experience for the DES attorneys to be able to
13 master and be able to appropriately counsel service
14 members. And timely is measured by the decision in
15 less than 30 days.

16 With the new DOD VA pilot, which has now
17 integrated its vetting evaluation system, we are in
18 a massive transformation on how we are adjudicating
19 cases. New timelines have been imposed, additional
20 requirements that were seen both at the initial
21 level with the MEB and very much so at the physical
22 evaluation. So the brief really focuses on the fair
23 and especially the timely manner.

24 The next slide, as you can see, the DES
25 attorneys, there's been a substantial expansion

1 requirements for legal counsel.

2 The next slide is talking about the basic
3 skills required. What's important about this slide
4 is there's five basic levels that the DES attorneys
5 need to be prepared to have an understanding of.
6 Obviously, the MEB process, the MEB rebuttal
7 procedures, disability evaluation advice, which Lt.
8 Colonel Faerber will talk about in greater detail,
9 over to the right, service requirement, service
10 regulation, separation, retirement regulations.
11 Obviously, the formal hearings, appellate process
12 and then unique aspects such as line of duty,
13 existing prior to service, misconduct. All those,
14 again, I talked about the VASRD, VA rating schedule
15 for disability. That in itself is a substantial
16 training requirement skill.

17 The next slide just talks about the
18 complexity of the process and really the next slide
19 really talks about what's the phases. Basically,
20 this talks about when a service member has a
21 permanent injury or condition, that is triggered
22 when a physician meets with another physician,
23 basically another informal adjudication, and they
24 meet, and he or she decides to refer them into and
25 conduct a medical evaluation board report. The

1 highlight is there are 32 Naval clinics and
2 hospitals, big eight hospitals, but there are 32
3 clinics where anyone can initiate a MEB and what the
4 PEB sees is there's about 6,900 MEBs that are
5 conducted yearly that we see. This is actually what
6 we can measure. I would proffer that there may be a
7 percentage out there that actually don't go through
8 and are signed off by the convening authority of the
9 FTS and is referred to the MEB, which would reflect
10 there's a heavier caseload for DES counsel at each
11 MTF that they'll be dealing with, as well.

12 From the PEB's perspective, here's a
13 cartoon for simple minds here, but basically that's
14 representing that we're one location we receive
15 about 6,500, 6,600 cases. Incidentally, just for
16 general knowledge, we used to receive about 8,000
17 over the years. We've actually seen a slow down
18 because it's taking longer to produce these cases,
19 both at the MEB level and at the PEB level, because
20 it's a more complex process, specifically what's
21 been involved is we're preparing the case to go to
22 VA, as well, so there's a compensation and pension
23 exam which is a more, again, more comprehensive
24 exam, takes longer, more holistic review so the
25 process is delayed. As a result, there's more

1 information to make an adjudication on both of the
2 MEB level and specifically at the PEB level.

3 And then, of course, the appeal process,
4 which is they don't really reflect that the DES
5 attorney responsibilities used to really get focused
6 on the formal one. They've been expanded now to
7 informal adjudication and really at the appellate
8 process. From my, you know, layman's interpreting
9 of the disability evaluation manuals, it may not
10 stop at BC only. The fact is you've started this
11 relationship. So certainly at the appellate level
12 in the Corps and maybe assistance at the board of
13 Naval records.

14 The next, really, there's simple slide to
15 talk about, there's five functions that are required
16 legally. Obviously, personal counsel to the service
17 members, counsel regarding medical evaluation board
18 report, and the sufficiency of the medical
19 evaluation board report, the DES DTM, directive type
20 memorandum, is required that we have a more
21 comprehensive medical evaluation board report, so
22 there's aspects that the attorney needs to
23 understand to make sure it's sufficient. And of
24 course, the three procedures that we really see at
25 the PEB are informal adjudication, formal

1 adjudication, and then the appellate.

2 In order to do our mission right now, we
3 have two judge advocates that are assigned to NLSO,
4 and if I may just add, NLSOs do an incredible job
5 supporting us. Their attorneys are, without
6 question, providing due diligence in their zealous
7 representation of service members, but we're seeing
8 a growing backlog, and the PEB actually just now is
9 getting ready to expand. Right now our current
10 legal organization is there's two JAGs assigned at
11 the Naval legal service organization, and they
12 provide primary formal hearing counsel. That's all
13 they do for us, formal hearings. They rotate, and
14 obviously Colonel Faerber will talk about the DES
15 counsel at the AMCS.

16 Within the PEB itself to support our
17 hearings and really legal advice in compliance with
18 Department of Navy policy and regulations, we have
19 one JAG assigned. That JAG is clearly overworked in
20 that his function right now is to provide counsel
21 and also provide the initial review and draft
22 involving these legal opinions that we do. The
23 primary roles in the PEB, there's really two roles,
24 adjudicators and administrators. Administrative law
25 judges and clerks, so to speak. The adjudicators,

1 senior and line officers, Navy captains, Marine
2 colonels, they don't have a law background, they are
3 line officers. Half of the adjudicators do have
4 medical degrees, but they're medical degrees. What
5 is so unique about the disability evaluation system
6 is you really do see a convergence of three major
7 theories: Medical theory, the manpower theory, and
8 the legal theory, and that one single JAG is putting
9 those in an opinion for either the audience of the
10 federal court or, of course, the service member
11 himself. Then, of course, over the PEB counsel
12 review boards where directly under them they serve
13 as our field office for them. We have one Office of
14 General Counsel Roger Clausen assigned there to
15 provide overall guidance and conduct the appellate
16 process.

17 The next slide is really the key slide,
18 gentlemen. This talks about our caseload. This is
19 really the analysis that this whole belief is
20 focused on. We have seen a 15 percent, actually a
21 five percent increased number of formal boards since
22 just last year. Basically, if service members
23 become more informed as by DES Counsel Houck and the
24 MTFs and become more aware of the privileges and
25 rights they have available under Chapter 61, they're

1 exercising their right for due process and
2 hearings. So we've seen an increase. What that
3 represents, it's a clear trend, it actually goes
4 further back, that the, as you can see, we're
5 adjudicating in September far right, 15 cases per
6 month, and the process time right now there's
7 basically a 140-day backlog. The most favorable
8 interpretation of the 2008 DES TCM is we should
9 adjudicate cases under the IDES in 120 days. Least
10 favorable says that when a service member requests a
11 formal board, their hearing must be conducted within
12 30 days. So I haven't given the numbers of what
13 would I believe is an ideal situation we should
14 have for JAG supporting formal boards. It's not 120
15 days old, that's basically represented in the next
16 slide, that the ideal is that there would be a joint
17 DES practice with five JAGs basically, three legal
18 services PEB and FPEB, and the appeal. The joint
19 representing right now Navy legal service has Navy
20 JAG there. There's no -- we haven't had Marine JAGs
21 actually conduct formal board hearings. There may
22 be value added by having Marines there. The fact is
23 it almost needs to be a DES practice because of the
24 complexity of the VASRD. There is almost a question
25 whether they almost should have an expert medical

1 opinion or advisor there stationed there as well to
2 develop their skill but nonetheless, the primary,
3 you're almost looking at the DES practice. The
4 ideal is, of course, we're saying it should be five
5 JAGs, the MTFs address at their level. For the PEB
6 itself I've highlighted three JAGs, the reason being
7 is to enable to adjudicate these cases and write
8 according to 10 USC 1222 an orderly systematic
9 opinion, we're basically writing formal opinions, we
10 need to be able to specialize, and that is the
11 adjudicators are conducting the hearings. They need
12 legal support to draft their opinions. Right now I
13 believe that three would enable us to do it in a
14 timely manner within 120 days.

15 And, of course, PEBLOs just represent,
16 they're almost, the PEBLOs, to highlight that,
17 they're really, I don't want to say paralegals, but
18 these DES counselors, not in the legal sense of the
19 word, but they do give counsel and advice under
20 services and options available to them.

21 So the highlight is for most legal
22 reorganizations, five at NLSO, hopefully a joint DES
23 practice and then, of course, two additional. I
24 would only add is from the PEB's perspective,
25 doesn't necessarily have to be uniform JAGs. It

1 certainly, DES civilian attorneys could fill those
2 roles, those three JAG positions.

3 The next slide really talks about the
4 details, I hope I haven't gone too much in detail,
5 why do we say five? Because of the unique aspect of
6 the practice. Right now, again, part of the reason
7 we have the backlog is just that where 251 days is
8 because we're only conducting two hearing days
9 presently. We conduct formal board hearings on
10 Tuesday, and we conduct formal board hearings on
11 Thursday. That enables DES counsel or the formal
12 board hearing where they meet with their service
13 member, their client, the day before, so they're
14 meeting with their clients on Monday, one team and
15 the other meeting with their clients on Wednesday.

16 We just now got an additional, we are
17 getting an additional board member. We flexed to
18 bring in reservists, active duty special works, so
19 bringing in additional two PEB board so that we
20 actually have the manpower, the adjudicators and
21 administrators to actually go to three hearing
22 days. So this is a little premature to NLSO because
23 we're just now establishing the manpower request of
24 three hearing days. But, in essence, this is the
25 way we would see it fall out is you would have a

1 five workday schedule, three hearing days, two
2 basically, it's in teams of two. Two attorneys
3 would be taking care of four clients per hearing day
4 because we believe more than four, and that's
5 talking to different attorneys and their
6 understanding, so four on Tuesday, meanwhile, the
7 other team are meeting with their clients, and then
8 obviously, the work through. So essentially
9 explaining the obvious. But you would see two teams
10 of two attorneys. The fifth is really to provide
11 the surge capacity and spell of those team members
12 as they would rotate through.

13 The last thing is the number of off at the
14 far end right, whereas you are requesting another
15 five percent increase in requests for formal
16 hearings. Right now we had 881 service members
17 request a formal hearing. Now, not all went to a
18 formal hearing. Actually, only 271 went to a
19 hearing, but there was a lot of basically, I don't
20 want to say settlements, but they repropose new
21 information, so without question the biggest burden
22 on the physical evaluation board are these
23 hearings. The manpower is substantial, and that's
24 why when you start going to third hearing day, it's
25 going to be a big impact on everybody. So the

1 number of 925 is reflected in another number.

2 And then the next two slides are just
3 providing stats. I would like to add is the actual
4 statistics are actually embedded into the PowerPoint
5 to support it and the MTF PEB stats are provided.

6 I have the last slide, one last slide,
7 gentlemen, before questions, is after questions I
8 just provided that for general knowledge. That is
9 the integrated disability evaluation system phases
10 because we are in a transformation. It used to be,
11 you know, bottom line is why are we seeing such a
12 change is because we're also sending, we're doing
13 double the adjudication, to be honest with you. We
14 adjudicated at the Department of Navy physical
15 evaluation board, then we also sent it to the VA to
16 assign a VA rating. It comes back, we marry it up.
17 That's done at both the informal and informal
18 level.

19 If I could go back to the question.

20 Slide.

21 CHAIRMAN MOLZAHN: Couple of questions.
22 One is just a clarification. When you talk about
23 you need this many more JAGs, where does the Marine
24 Corps fit in? Are you referring to them as JAGs, as
25 well? Are these all Navy JAG attorneys that you're

1 questioning here? And if that's true, where does
2 the Marine Corps judge advocate fit in?

3 MR. POWERS: From my perspective, sir, it's
4 just attorneys. We believe it would be sufficient
5 if we had somebody qualified and licensed. I can't
6 say from my perspective, I've seen competent
7 representation by all the Navy JAGs, so if it was
8 Marine JAGs, I'm sure it would be just as
9 competent. From our perspective, it's clearly
10 licensed attorneys, being able to interpret the
11 VASRD and its represents at the hearing.

12 CHAIRMAN MOLZAHN: Where do you get support
13 now for lawyers? Is it from the Navy JAG
14 attorneys?

15 MR. POWERS: Yes, sir. From the Navy Legal
16 Service Office North Central, stationed in
17 Washington Naval Yard.

18 CHAIRMAN MOLZAHN: I wanted to ask this,
19 and I may have it wrong, so I'm relying on all three
20 of you to get me right here. I think I read this,
21 and I also heard it, I think, from the first day's
22 testimony, that the regulations in this area require
23 all the services to treat the -- to handle the
24 process in the same way and kind of provide the same
25 level support, and that the Navy was looking at the

1 processes starting at kind of -- by the Navy, I
2 don't mean the Department of Navy but the U.S. Navy,
3 was looking as if the process started at a certain
4 stage, and the Marine Corps perhaps, and other
5 services were treating the process as if it started
6 earlier and would need legal support earlier.

7 Is any of what I said correct, and can one
8 of you translate it, please.

9 CAPTAIN QUINN: Yes, sir. In fact, I'll
10 cover that in one of my slides. I've actually
11 preprinted some of the language from the
12 instructions there, as well, to address that
13 specific point.

14 LT. COLONEL FAERBER: I will go over that,
15 as well.

16 CHAIRMAN MOLZAHN: Thank you. Glad to
17 wait.

18 LT. GENERAL OSMAN: Could these judge
19 advocate positions be filled by somebody not in a
20 uniform but maybe having had experience as a
21 uniformed lawyer?

22 MR. POWERS: I believe so, sir.

23 LT. GENERAL OSMAN: What would your view be
24 on doing that?

25 MR. POWERS: Again, from our perspective,

1 sir, I think the fact is that there's a couple
2 issues. The one issue is that we talk about the
3 phasing. Obviously does the service member feel
4 that he's getting unbiased representation? In fact,
5 what I'll hear in the field sometimes is that even
6 though the Department of Navy has 17 fully assigned
7 physical evaluation board liaison officers that
8 actually fill the role of telling them the findings
9 of all their options in a unbiased manner, there is
10 a sense of mistrust. So when you have an attorney
11 talking to you, I think there's a greater trust by a
12 service member, at least from an anecdotal
13 perspective, that they're not just for the Navy or
14 Marine Corps; they're for the service member. So I
15 think when they have an attorney, I think when they
16 have an attorney talking to them, whether it's a
17 Marine attorney, Navy attorney or civilian attorney,
18 there's a sense of trust that's created
19 automatically, and that's the big part.

20 The second element is obviously, you know,
21 the ability to focus on the VASRD. The DES practice
22 disability law is really a unique aspect in itself
23 because of the complexities of the process and the
24 VASRD. Really what's unfortunate about the VASRD,
25 38 CFR, is that it's hard for a lawyer just to pick

1 it up and start reading it and interpreting it.
2 It's a sad commentary, actually. You have to refer
3 to the medical officer. We could fix that if you
4 rewrote the VASRD, in my opinion, and had lawyers
5 working with medical officers. So there's that
6 second element of understanding the VASRD, which I
7 think does require at it least a legal
8 understanding.

9 Then the third part is being able to
10 present at the hearing and understanding due
11 process, understanding what notice and opportunity
12 means. That, I think, can be fulfilled by an
13 attorney.

14 LT. GENERAL OSMAN: You said the word for
15 the service member to feel is fair, in my
16 estimation, is the most important thing. Feels it's
17 fair regardless of whether the attorney is a Marine,
18 Navy officer in uniform or civilian, actual
19 attorney, that's the important thing.

20 MR. POWERS: Well, sir, I think you can
21 almost make an argument, BCNR all civilian. The
22 fact is, if you have a civilian attorney talking to
23 you about the system, there may even be a greater
24 sense of fairness that it's not a uniformed
25 counsel. There's not the aspect that, you know,

1 they're merely just an extension of the formal
2 board.

3 LT. GENERAL OSMAN: Thank you.

4 CAPTAIN QUINN: Gentlemen, good afternoon.

5 Thank you for inviting me here today. I'm
6 Captain Mike Quinn, the Assistant Judge Advocate
7 General for Civil Law. I appreciate this
8 opportunity to address the panel on the issue of
9 recent requirements for judge advocates to support
10 the disability evaluation system.

11 If I can jump right into the presentation,
12 Mr. Molzahn, I think goes to some of your questions
13 about what are the requirements both by statute and
14 by OSD policy memorandum about trying to ensure some
15 sort of general level of legal support for Soldiers,
16 Sailors, Airmen, Marines, Coast Guardsmen and going
17 through the disability evaluation process.

18 What I've laid out here, I think, is really
19 the operative statutory language from the FY2008
20 NDAA, and also the OUSD policy memo that came out in
21 October of 2008 that provide for the rules regarding
22 provision of counsel in the DES. Just looking at
23 the statutory language, there really are three
24 things from Section 1612, uniformity across the
25 military departments for the provision of legal

1 counsel; number two, uniformity regarding the roles
2 and responsibilities of the judge advocates assigned
3 to people going through the DES; and three, uniform
4 standards on the maximum number of cases that
5 counsel can be assigned at any one particular time.

6 So the Congress gave the broad outlines of
7 this particular area, then we got the policy
8 guidance from P&R in October 2008. Looking at the
9 first sub bullet, there's both a mandatory and a
10 discretionary provision in here in the first sub
11 bullet. Government legal counsel shall be available
12 to consult by telephone or otherwise regarding a
13 service member's rights and elections following
14 their receipt of the decision of the informal
15 physical evaluation board. So that's a particular
16 trigger at a particular time that counsel shall be
17 available at that time. I've got a picture of this,
18 as well, hopefully will bring it out in the next
19 slide.

20 The second part of that first bullet is the
21 discretionary part of this, military departments may
22 make legal counsel available earlier in the
23 process. So there's a mandatory part and a
24 discretionary part, and that's where you, I think
25 you've heard, sir, that the services are a little

1 bit different in how they're approaching this. I'll
2 tell you what the blue-suited side of the Department
3 of Navy is doing. I've also got some information on
4 the Army and let the colonel talk on the Marines, as
5 well.

6 The second bullet is the requirement to
7 also provide legal counsel upon their election to
8 the formal board. That is another mandatory
9 requirement. So we go on to the next slide now.

10 To boot strap on something Mr. Powers said,
11 we've always provided legal counsel to those service
12 members, Sailors, and Marines going through the
13 formal PEB process. That's not anything new. What
14 is new are the 2008 requirements that now we start
15 inserting counsel and providing service members
16 access to counsel earlier in the process. So what I
17 tried to, perhaps, show through some sort of picture
18 where at least in the blue suit side of the house
19 we're doing this right now.

20 If you follow the process, as Mr. Powers
21 mentioned, you start with the doctors looking at
22 your case, and the medical evaluation board, if your
23 illness or injury is such that you might be unfit
24 for service, you're going to be moving into the
25 informal PEB process, and once that particular board

1 has gotten together and issued their decision under
2 the OUSD policy memo, they have to be afforded
3 counsel right then and there. That's the place
4 where you have to provide counsel.

5 And that's where in the department of --
6 excuse me, in the United States Navy we've kind of
7 set up the trigger. It's at that point where you
8 get your IPEB decision that we'll make a judge
9 advocate available to you to consult. If people
10 have questions earlier in the process and want to
11 consult with counsel, they may go to their Naval
12 Legal Service Office for legal counsel, or they may
13 ask their PEBLO, can you explain this to me. Our
14 counsel can at that point step in and provide that,
15 but that's a space available upon request. We're
16 not going out and affirmatively seeking that
17 business or trying to get that; whereas, some of the
18 other services are. And I'll talk about why we're
19 doing that. It comes down to resources.

20 But when you get to the IPEB decision, and
21 the counsel, excuse me, the member at that point has
22 to make a decisions, do I want to challenge this
23 result? Do I want to go to a formal board? That's
24 when we're going to make sure that counsel is
25 available to advise them what their rights are, how

1 to move forward, what the process is, and we do that
2 currently through activation and reserve judge
3 advocates. The current numbers, we're not currently
4 at 10 Navy, we've got 8, but we're adding two in the
5 next couple of months. When this first came down in
6 January 2009, we had 14 counsel and will be back to,
7 I think, 14 total between Navy and the Marine Corps
8 within the next couple of months. But we will make
9 those IPEB clients at that point link up with their
10 counsel.

11 I think it's important for me to note, too,
12 that the last substantive bullet in that particular,
13 that first blue box talks about 12 civilian attorney
14 billets have been authorized for FY12, and I'll come
15 back to that but, it's in the POM process from some
16 of the reasons that Mr. Powers mentioned about the
17 specialty that's required in this area and looking
18 at what are our requirements, we've gone forward to
19 Big Navy and said that we think that the right thing
20 to do is civilianize this function and 12 is the
21 right number to handle the caseload. And I've got a
22 subsequent slide that will take us through the math
23 of how we got to that.

24 So that's when the OSD mandatory attorney
25 support kicks in at the issuance of that IPEB

1 decision. If the service member requests to go to a
2 formal PEB, be it Sailor or Marine, that counsel is
3 going to be assigned from the Naval Legal Service
4 Office North Central at Washington, DC. They're
5 representing, Navy judge advocates that currently
6 represent both Sailors and Marines before the formal
7 PEB.

8 We have currently 14 active duty Navy judge
9 advocates, although we have two that are doing that
10 full time. We have all 14 available to pick up the
11 caseload, so if we need a surge to bring down the
12 backlogs, the judge advocate support is there to do
13 that and we will support.

14 And then we will also make sure those
15 counsel are there to advise the member and assist
16 them in the appeal process. We do not follow,
17 though, over post discharge. When they go before
18 the Veterans Administration, we do not provide
19 counsel at that particular point, although there are
20 civilian counsel, and there are veterans
21 organizations that are very proactive in that
22 particular area, and our counsel do know how to tap
23 into those resources as well.

24 REAR ADMIRAL McPHERSON: Can we talk about
25 this slide for a second.

1 CAPTAIN QUINN: Please.

2 REAR ADMIRAL McPHERSON: At the green box
3 space available and first blue box, both boxes
4 required that the contact with the attorney be
5 initiated by the client.

6 CAPTAIN QUINN: It really does, yes, sir.

7 REAR ADMIRAL McPHERSON: The advice the
8 client is giving them is just their rights and their
9 election. Do they get into the merits of the case?

10 CAPTAIN QUINN: There was a JAG opinion
11 issued about a year ago, sir, where we authorized
12 our IPEB counsel to go ahead and form a limited
13 attorney-client relationship, so they can discuss
14 the merits. It's not just a straight Booker type,
15 this is your right, you can turn down an informal
16 IPEB and elect a formal PEB. We will talk to the
17 individual about their case, about the system, about
18 things that they can do to enhance, about the way to
19 build their own administrative record, how to
20 assemble the evidence, make sure, if you're going to
21 your medical appointments, make sure you get on the
22 doctor's calendar in time for the particular
23 hearing. That type of advice will, coming back to
24 your first point, given resources, we're focused on
25 the IPEB decision because of resources. We will

1 only do that if it's space available, we're not
2 really doing any outreach of any significant amount
3 to try and drum up business.

4 REAR ADMIRAL McPHERSON: Then once the
5 service member at that juncture makes the election
6 to go to the formal PEB, then they're assigned to
7 counsel?

8 CAPTAIN QUINN: They're then assigned
9 counsel here in DC.

10 REAR ADMIRAL McPHERSON: That counsel will
11 reach out to them?

12 CAPTAIN QUINN: Absolutely, and they'll do
13 so upon publication of the PEB document.

14 REAR ADMIRAL McPHERSON: That's full
15 attorney-client relationship, merits of the case?

16 CAPTAIN QUINN: Absolutely.

17 If I can go to the next slide, please.

18 This gives a representation of where we
19 have the IPEB counsel. If you remember what I --
20 when they -- when the congressional statute and the
21 OSD policy came down and said, you need to start
22 providing counsel earlier in the process, that came
23 us to as an unfunded mandate, and at that time the
24 way that we handled that was we went to dedicated
25 reservists that we have in both the Navy and the

1 Marine Corps and activated reservists to come on
2 board and be these counsel. we've been extremely
3 fortunate to have such dedicated professionals who
4 come on board and committed with us and have
5 developed this expertise, and that has really been a
6 lifesaver for us. And this is how we have basically
7 distributed those particular attorneys. It won't
8 really come, I think, as a shock to notice that they
9 are strategically dispersed within the Navy's major
10 military treatment facilities and where we have, the
11 Marines have their own -- is it the Wounded Warrior
12 regiments?

13 LT. COLONEL FAERBER: The Wounded Warrior
14 regiment is the umbrella, and we have the two
15 battalions on the coasts.

16 CAPTAIN QUINN: So, not surprisingly,
17 that's where we have the IPEB attorneys, those that
18 are giving the initial advice to people going
19 through the IPEB process.

20 From these locations, we will have our IPEB
21 counsel give us the greater geographic location for
22 which they are responsible.

23 Next slide, please.

24 This is how we reach out and communicate to
25 these people once we hit the trigger, that IPEB

1 decision, and we're required to provide counsel at
2 that point. This is actually one of the notices,
3 this notice is used by all the IPEB counsel, and
4 this happens to be the one that has Captain Glen
5 Chidester's name on it who is down in Pensacola, but
6 this is actually handed out to the Sailor by the
7 PEBLO, when he or she receives the findings of their
8 informal PEB. It's got the contact information for
9 the trained IPEB attorney that services that
10 particular area, and as I said, this particular
11 example refers Sailors residing in the south central
12 area to Captain Glen Chidester in Pensacola. And,
13 again, just to repeat myself, for those that
14 actually elect the formal PEB after their
15 consultations or they can waive their consultation
16 and just go straight to election of formal PEB.
17 Their counsel for the formal process will be
18 assigned out of here in Washington, DC.

19 Maintaining proper lines of communication
20 with people going through the DES is vitally
21 important and something we have to constantly be
22 attentive to. Our IPEB counsel will establish
23 connections to the PEBLOs out in the fleet. There
24 are concerted efforts by all elements of the DES to
25 provide timely, accurate information regarding the

1 disability evaluation system. And this includes pre
2 and post-mobilization briefings for reservists, and
3 our counsel, our IPEB counsel have actually provided
4 instruction at several PEBLO training conferences,
5 as well.

6 Next slide, please.

7 This slide goes to what are the training
8 certification requirements. There are some specific
9 things contained in the OSD directive type
10 memorandum and that 2008 policy memo makes the
11 service JAGs primarily responsible for providing
12 sufficient training on all of those sub bullets
13 under the training programs and to actually certify
14 counsel that they are competent for their duties
15 within the disability evaluation system so there is
16 a formal process.

17 Next slide, please.

18 This is how we go ahead and try and satisfy
19 that training certification requirement. It all
20 starts at Naval Justice School. All accession judge
21 advocates, Navy and Marine Corps, receive
22 orientation briefings on the disability evaluation
23 system. This is really focused on an orientation,
24 help them issue spot, help those new to the service,
25 understand what the disability evaluation system is,

1 and be able to know where to reach out for expertise
2 when they're presented with those particular types
3 of -- those particular types of issues. I think
4 their first duty station, most likely, would come up
5 in a legal assistance type of context if someone was
6 looking for information or potentially if they're in
7 an SJA's office a commander might have a question
8 about a particular Sailor or Marine going through
9 the process and what does it mean, and how we can
10 support them. So we start that training at Naval
11 Justice School for all judge advocates. Then we
12 focus down to those that need the training because
13 they're going to be involved in the process. The
14 IPEB counsel, they get one week of dedicated
15 training at NLSO North Central. We've actually got
16 some turnover going on right now, some of reservists
17 are leaving us, and we're having some others report
18 in. Next week we're actually doing a one-week
19 training here in Washington, DC. We've gotten
20 tremendous support from agencies including VA,
21 Bumed, PEB coming over and spending significant
22 amount of time trying to bring our counsel up to
23 speed, provide them the backgrounds that they need
24 to go out and be effective IPEB counselors out in
25 the field.

1 Then for the formal PEB counselors, Navy
2 judge advocates assigned here in Washington, DC, to
3 do the formal representation. They're actually
4 mentored and trained by the people that are actually
5 doing it. They spend a period of time doing second
6 chair's work so it's a -- they actually have a
7 dedicated officer that's the de facto department
8 head that monitors the DES caseload, makes all the
9 assignments, makes sure the training is properly
10 done.

11 Next slide, please.

12 So what do we hope to have out of all
13 this? I think this is the goal. We want all judge
14 advocates to be prepared to competently identify
15 issues, know how to reach back to the experts on the
16 DES process, we want those IPEB counsel out in this
17 field to be competently prepared to advise members
18 of their rights and elections, how to start
19 preparing Sailors and Marines for going through
20 formal PEB if that's what they elect. For the
21 formal counsel, we want them to be a competently
22 performing representation duties here in DC before
23 the formal board to include appeal.

24 There was a mention in Mr. Powers' brief
25 about case limits, legal counsel are not supposed to

1 have more than ten cases per week formal PEB
2 hearings. We don't have any particular issues with
3 that at this particular time. If we need to ramp
4 up, that's something, again, we can look for
5 additional manpower within NLSO North Central that
6 meets that and stays within those limit.

7 I have one other billet that I think it's
8 important for the panel to understand, as well. We
9 have responsibilities to our most severely injured
10 and ill Sailors. We have within the Navy something
11 called Safe Harbor. It's a particular office within
12 the Bureau of Naval personnel that keeps active
13 track of active duty and people in the TDRL and the
14 PDRL that are our most severely injured Sailors.
15 It's not necessarily all combat. Many, of, these
16 things that we're talking about are, I hate to say
17 it's the garden variety motor vehicle accidents or
18 basketball injuries, but regardless of how you got
19 your injury, if you're in our most severe category,
20 you're going to go to the Safe Harbor program, and
21 we're going to monitor that. We're going to assign
22 you individual case managers, this is Navy right
23 now, not necessarily JAG Corps. But we're actually
24 monitoring to make sure that their transition, their
25 rehabilitation, all of those things are going on

1 smoothly. We in the JAG Corps support that as
2 well. These Sailors may be dispersed all over the
3 country. We have through the Naval Legal Service
4 Command and the Legal Assistance departments
5 actually assigned individuals to maintain lines of
6 communication with Safe Harbor so we can assess and
7 support any of these particular Safe Harbor Sailors
8 that may need extra legal attention to include
9 traveling to wherever they are particularly located
10 to make sure that they are supported. So that's
11 another thing that we are doing in this particular
12 area.

13 Next slide, please.

14 As promised, I said I'd come to the
15 workload computations, how did we get to that figure
16 that I had provided earlier that we had submitted a
17 POM request for 12 civilian attorneys in this
18 particular area. We took the information that we
19 had in the spring of 2010 and I think the numbers
20 that we received from the Corps were in FY09 that we
21 had that many Sailors and Marines go through the PEB
22 process either informal and/or formal from NLSO
23 North Central. Although not everybody gets to their
24 formal hearing, we determined that approximately of
25 that number 24 percent somehow entered into the

1 formal PEB process, at least they wanted more
2 information and may have elect it. In fact, our
3 counsel will tell Sailors and Marines, if you have
4 any doubts, elect the formal board because you can
5 always accept the IPEB determination later. So long
6 as you don't actually get before the formal boards.

7 So applying workload assumptions, we went
8 out to the practitioners and said, how much time are
9 you averaging on a particular IPEB client and
10 averaged that across. How much average time is
11 spent on a formal PEB client. We did the math and
12 came out applying the OPM standards of a typical
13 work year being 1,776, and I actually have the
14 spreadsheet that I'll provide to the staff, it came
15 down to approximately 12 man years, 12 work years.
16 And our thought was that, as Mr. Powers said, this
17 is a very complex process. It takes a lot of time
18 and energy to get up to speed. You want to keep
19 that corporate knowledge, and we're not sure that
20 this is the right thing for judge advocates to be
21 flowing through, given the rotational nature of
22 judge advocates do. They're here for a couple years
23 to get experience and then to move on, and this is a
24 very specialized practice that it makes sense to
25 civilianize this. So in the POM process we have

1 asked for 12 civilian attorneys to do that.

2 I think most important that gives you an
3 approximate attorney-client ratio of approximately
4 one attorney to 500 Sailors and Marines going
5 through the PEB process. That does not include that
6 space available earlier in the process. That was
7 not part of our calculus because it is not yet a
8 requirement. Obviously, if the Navy changes and
9 says we are now going to exercise that discretion
10 and provide counsel earlier in the process at the
11 member level or if OSD or the Congress were to come
12 and say, you're going to do it uniformly, then we
13 would have to adjust those resources upward to
14 reflect that there is a much higher percentage of
15 cases going through the MEB process that we would
16 have to resource and accommodate.

17 I thought it might also be helpful to give
18 you a comparison to how the Army is approaching
19 this. I would say, and I'll let the colonel talk
20 about the Marine Corps because I think the Marines
21 are going down the same path as the Army. The Army
22 is very proactive in this particular area. They
23 have many more counsel assigned to their formal PEB
24 office of soldiers' counsel, so their ratio of
25 attorney to clients is much lower than ours under

1 those particular calculus. And also, most
2 importantly, they have resourced and MEB outreach
3 program. They're trying to get to those Soldiers
4 earlier in the process, and in a briefing that I
5 attended in July, they indicated that they had 42
6 civilian counsel and an equal number of paralegals
7 that are going out to do specifically nothing but
8 outreach, trying to get to those Soldiers earlier in
9 the MEB process to provide them information. By one
10 of the briefing sheets that we received at that time
11 in 2009 they had briefed 18,000 Soldiers. That is a
12 significant difference in the way that we are
13 approaching this particular issue.

14 I'll go ahead and conclude at this time.
15 Thank you for your time. Thank you for the
16 invitation. Thank you for your continuing support
17 of our Sailors and Marines. That is my contact
18 information. If there's any further questions that
19 I can either try to answer now or subsequently.

20 CHAIRMAN MOLZAHN: Captain, do you, I
21 guess, two related questions on the earlier part of
22 it, the MEB, medical evaluation board, do you have
23 any kind of estimate about how many additional
24 orders that might take to do that process and if you
25 have to go earlier with lawyers in the process,

1 would it be the same approach? Would you simply
2 hire more civilians to do this?

3 CAPTAIN QUINN: I think, sir, going back a
4 slide, we tried to at least provide some sort of
5 order of magnitude. At one point we received a CORB
6 estimate, and as Mr. Powers mentioned, some of these
7 are invisible to us at the headquarters levels
8 what's going on in MTFs, but there may be as much as
9 9 to 15,000 total MEB/PEB cases, and if we were
10 going to try to assert ourselves earlier in the
11 process, you would think that we would have to
12 increase 40 to 50 percent our estimates of what the
13 resource would be required to serve the staff. I
14 think civilian counsel makes sense, sir. They'd be
15 practicing under the cognizance of the judge
16 advocate general, but our judge advocates here in
17 town do a wonderful job. They come up to speed,
18 likely because we have wonderfully talented smart
19 people coming in, but they're only going to do it
20 for a year or two at most, then they're going to go
21 off to a fleet job, and we've lost that investment.

22 It will help them develop attorney skills
23 and understand their clients, but if we're looking
24 at an efficient operation here supporting DES and
25 PEB, it seems like civilian counsel with corporate

1 knowledge and continuity is probably, at least that
2 was our thought, of a better way to go, that it
3 would be better to go for civilian counsel than to
4 ask for increased military manpower.

5 CHAIRMAN MOLZAHN: The 12 attorneys that
6 you mentioned, they are part of the 2012 budget at
7 this point?

8 CAPTAIN QUINN: My understanding is that
9 our request has survived the request at this point.
10 I can't see the department backing away from it.
11 This is a mandate. We have to do this for our
12 injured and old Sailors and Marines.

13 CHAIRMAN MOLZAHN: Thank you, captain.

14 LT. COLONEL FAERBER: Gentlemen, good
15 afternoon. I'm Lt. Colonel Pete Faerber. I'm one
16 of the Marine Corps' Wounded Warrior counsel. I'd
17 like to say this is the best for last, but it's
18 actually this is the shortest brief, I believe.
19 That's why I'm the last.

20 We do have Wounded Warrior counsel.
21 There's me, Lt. Colonel Fritz Milkie, Lt. Colonel
22 Karen Warsaw, and Major Pete Maddox. We intend to
23 make it more difficult for me to rattle off all the
24 names at once by expanding. The reason for that is
25 that we believe we do need more people dedicated to

1 this mission in order to best take care or even
2 better take of our wounded injured Sailors and
3 Marines.

4 We at the Wounded Warrior counsel, we do
5 integrate ourselves into this at all phases of the
6 program. We do not desire to wait until findings of
7 the IPEB. We actually are injecting ourselves into
8 the process all the way down to the development of
9 the medical evaluation board level.

10 We assist with nonmedical assessments, we
11 assist with command liaison. The reality, in our
12 perspective, is that having a successful outcome
13 through the disability evaluation system process
14 begins down at that battalion and squadron command
15 level. If we can get in there and shape it
16 properly, then that's how you'll see our best
17 benefit.

18 Right now we have one Wounded Warrior
19 counsel on each coast: Myself down at Wounded
20 Warrior Battalion East; Lt. Colonel Morris Rowe,
21 Wounded Warrior Battalion West. We have one in
22 training who will be going out to Balboa, and then
23 there's one at Headquarters Marine Corps,
24 Lt. Colonel Milkie, who's in charge of helping us
25 grow this program, make sure that we get it done in

1 a coordinated fashion.

2 We are looking right now to expand to as
3 many as 13 uniformed currently reserve judge
4 advocates and up to seven enlisted support personnel
5 to help us with this mission.

6 Next slide, please.

7 Our purpose, first and foremost, of course,
8 is to meet with requirements with the NDA. As the
9 first bullet pretty much paraphrases, we do provide
10 that counsel as mandated once they've received their
11 IPEB findings. What we do, though, is we believe we
12 actually get a faster result for our client and for
13 the service by getting in faster and shaping the
14 battlefield as it develops.

15 So from our perspective, the focus of the
16 system should be for us at the MEB level so we can
17 steer, that will lead to fewer appeals. That will
18 lead to shorter timelines, both for our individual
19 clients and for the service as a whole. Sometimes
20 up to about nine months if they have new unfit
21 conditions. That can be a difference of an entire
22 workup cycle if you have a sergeant who's trying to
23 integrate in with a platoon, the command can get a
24 replacement for that guy that much faster.

25 Gentlemen, those are really the fundamental

1 differences between the way the Marine Corps is
2 looking at this in the future and the way the
3 Department of the Navy as a whole is running this
4 program.

5 As I said, this is the shortest. The next
6 slide is for questions. If you have questions for
7 me at this time, I'm more than happy to answer any
8 questions that you have.

9 CHAIRMAN MOLZAHN: Obviously, as you've
10 told us, the Marine Corps doing it with judge
11 advocates. Have you considered civilian attorneys
12 working in the area, as well?

13 LT. COLONEL FAERBER: Right now, sir, we're
14 looking at the immediate future, which is within the
15 next year or so. We have heard that the Department
16 of Navy is considering these 12 civilian hires.
17 We're not sure how those will be distributed, but we
18 don't believe that 12 civilian hires operating
19 between the Navy and the Marine Corps would
20 adequately represent our interests with the
21 individual service members as they are running
22 through, so we do believe that having some uniformed
23 judge advocates at least in the short-term is the
24 best way to get us to a more permanent, a more
25 stable legal structure for the institution.

1 CHAIRMAN MOLZAHN: I believe this is a
2 little unfair to ask you at this point, but if we
3 let the manning people go and everyone else, but
4 we've been told that the Marine Corps' judge
5 advocates will have the increased structure of
6 34 increased inventory. Are these numbers included
7 in the current, what the judge advocates believe
8 that they will be getting in the future?

9 LT. COLONEL FAERBER: We're actually
10 looking at filling this right now with reservist
11 individual augmentees. Once we have the individual
12 augmentees in place we have our base line, and
13 suppose we got all 13 plus seven. We'll be better
14 able to assess. Right now, we have sort of a volume
15 detection issue. We know that there are Marines out
16 there that need assistance. Right now they're
17 trying to run through with a total of four Wounded
18 Warrior counsel from the Marine Corps. We don't
19 have any good way of assessing how many more people
20 are out there in need of our assistance because
21 we're already at capacity. We intend to expand our
22 capacity to adjust as required. If we can draw it
23 back somewhat or if we can civilianize it to be more
24 efficient, certainly the Marine Corps is mostly
25 about efficiency, but right now we're not

1 necessarily doing the best thing for our Marines and
2 the Sailors that we do service, as well, with the
3 four that we have. We want to expand so that we can
4 make sure we're not losing anybody until we can
5 absolutely be certain that we have the right
6 numbers.

7 LT. GENERAL OSMAN: I guess I need a little
8 education. Wounded Warrior regiments, does it
9 include Marines that have sustained or suffered
10 injuries that were not in combat, kind of like the
11 Navy's Safe Harbor?

12 LT. COLONEL FAERBER: Sir, I can give you
13 my understanding. I can't give you a definitive
14 Wounded Warrior regiment answer to that. I believe
15 it is combat related, sir. This evaluation system,
16 the Wounded Warrior counsel we do not restrict
17 ourselves to those wounded in war. We deal with
18 wounded, ill, and injured, so car crash, diabetes we
19 cover them all.

20 LT. GENERAL OSMAN: Thank you.

21 REAR ADMIRAL McPHERSON: Do you have any
22 sense as to how many service members hire civilian
23 counsel to represent them at any level?

24 MR. POWERS: Yes, sir. Anecdotally I don't
25 keep track of it. Probably one to two a month that

1 will have a civilian. They'll actually retain
2 counsel on their own. If they're smart, they
3 actually have, and that's the thing that Captain
4 Quinn talked about. If they're smart, they actually
5 keep NLSO attorneys as first chair and second
6 chair. We're seeing poor advocacy when they hire a
7 civilian attorney, and they just come in, and they
8 have no DES practice background. There's a couple,
9 just for general knowledge, there's a couple
10 attorneys that we see on a regular basis, basically
11 two that rotate that have a solid firm practice and
12 representation. So I mean, we do know civilian
13 attorneys can do it effectively.

14 LT. COLONEL FAERBER: Sir, to that point, I
15 know, at least in the Marine Corps' standpoint, the
16 Marines appreciate seeing a Marine in front of
17 them. They appreciate the uniform. And that
18 civilian attorney that they may have retained to
19 help them out, they're not going to be able to
20 effectively integrate themselves into the command
21 structure at the battalion level. Hi, my name is
22 Jim Smith, and I'm a attorney out in town, and I'd
23 like to find out where my client's nonmedical
24 assessment is. That's going to get lost very
25 likely. When Lt. Colonel Faerber calls and says,

1 hey, Captain, I'm waiting on this, and I've got to
2 for his PEB, where is my medical assessment? And it
3 happens much faster. Due to the fact that they have
4 a uniformed judge advocate down at that pre-IPEB
5 level.

6 CHAIRMAN MOLZAHN: If there's no other
7 comments? Thank you, very much.

8 MR. PUTZU: No members of the public have
9 come forth to make any comments this afternoon, but,
10 of course, they're always welcome to file anything
11 in writing to the panel.

12 CHAIRMAN MOLZAHN: Pete or Jim, do you have
13 any additional comments you want to make at this
14 point? I don't either. With that, the meeting is
15 closed.

16 (Whereupon the proceedings
17 adjourned at 4:20 p.m.)

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CERTIFICATE OF COURT REPORTER

I hereby certify that the foregoing meeting of independent panel to review the judge advocate requirements of the Department of the Navy was taken at the time and place herein named; that the foregoing is a true record as reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer, which I then personally proofread. I further certify that I am not interested in the outcome of the said action, nor connected with, nor related to any of the parties in said action, nor to their respective counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of October, 2010.

(SIGNED ELECTRONICALLY)

TRACY E. BARKSDALE, RPR