



THE SECRETARY OF THE NAVY
WASHINGTON, D. C. 20350-1000

November 5, 2010

Mr. Daniel J. Dell'Orto
Chairman, Independent Review Panel
2 Navy Annex (Room 1520)
Washington, DC 20370

Dear Mr. Chairman:

This letter responds to your letter of September 27, 2010, which requested the Department of the Navy's position on potential regulatory and legislative changes concerning the role and functions of the Judge Advocate General of the Navy (JAG) and the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC).

Having reflected on the questions you pose, I have concluded that both regulatory and legislative action is warranted to enhance efficiency, effectiveness, and accountability for the mission performed by this Department's uniformed legal officers. I will take regulatory action to meet these objectives immediately and propose legislation to ensure that the improvements endure and that the SJA to CMC reports directly to me in addition to continuing to support the CMC.

I have directed that the JAG and the SJA to CMC complete their cooperative effort, with the Department's General Counsel, to revise Secretary of the Navy Instruction 5430.27C to clarify the roles and functions of the JAG and SJA to CMC, and, to the extent necessary, the General Counsel. This revision will reflect assessments conducted within the Department of the Navy and the Department of Defense Inspector General's draft report on post-trial processing within the Department of the Navy.

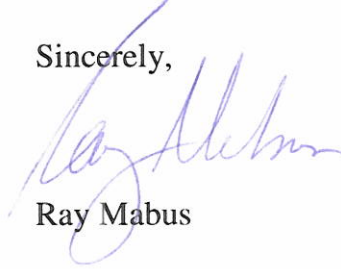
In addition, I will propose legislation that will establish a direct relationship between the Secretary and the SJA to CMC and provide the SJA to CMC with the authority to supervise the administration of military justice and legal assistance in the Marine Corps. Concomitantly, accountability will be enhanced through the legislation by clarifying that the SJA to the CMC is the uniformed judge advocate within the Marine Corps responsible for these functions. I believe that the proposals are consistent with past Congressional action codifying the responsibilities of each service's senior uniformed attorney, particularly as those responsibilities pertain to military justice.

Importantly, the legislative proposals will not alter the Commandant's Title 10 responsibilities with regard to assigning Marine Corps judge advocates, and will permit the SJA to the CMC to set and maintain standards for the provision of uniformed legal services in the Marine Corps, consistent with the JAG's existing Title 10 authorities.

Congressional enactment of the proposals will further institutionalize our regulatory efforts to close gaps in authority and accountability, particularly with respect to post-trial processing of courts-martial and management of the Marine Corps judge advocate community, and elevate the already high caliber practice of law within this Department.

As you requested, I am forwarding the Service perspectives of the Chief of Naval Operations and the Commandant of the Marine Corps. I appreciate being afforded this opportunity to provide comments. I look forward to receiving the Panel's overall findings and recommendation upon the conclusion of your review.

Sincerely,



Ray Mabius

Enclosures: 1. Chief of Naval Operations letter of October 21, 2010
2. Commandant of the Marine Corps letter of October 21, 2010

Copy to: Chief of Naval Operations
Commandant of the Marine Corps



DEPARTMENT OF THE NAVY
CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, DC 20350 2000

OCT 21 2010

MEMORANDUM FOR INDEPENDENT REVIEW PANEL TO STUDY THE JUDGE
ADVOCATE REQUIREMENTS OF THE DEPARTMENT OF THE
NAVY

THROUGH: SECRETARY OF THE NAVY

SUBJECT: Role and Authority of the Judge Advocate General

The Independent Review Panel has solicited from the Secretary of the Navy the Department of the Navy's position on matters related to its review of judge advocate requirements of the Department. The Panel also stated that it would welcome my perspective and that of the Commandant. This memorandum provides my perspective.

Clarifying Roles Through Regulation or Statute

The Panel stated the Judge Advocate General of the Navy (JAG) and the Staff Judge Advocate to the Commandant (SJA to CMC) agree on the need to clarify and strengthen the role of the SJA to CMC with respect to military justice within the Marine Corps. The Panel noted that JAG and SJA to CMC are preparing a draft revision to SECNAVINST 5430.27C for approval, but disagree on the need to amend title 10, United States Code, to provide an independent statutory basis for the changes.

As the proposed changes are intended to strengthen military justice within the Marine Corps, I defer to the Secretary of the Navy on the manner in which changes are implemented. However, I would like to review specific proposals before they are finalized in order to ensure that delivery of legal services within the Navy will not be affected.

Perceived Departmental Imbalance

Paragraphs four and five of Attachment 2 to the Panel's letter describe a potential concern of the Marine Corps that having Navy officers serve as JAG and Deputy JAG has resulted in an "historic imbalance" in Marine Corps representation in the Department of the Navy, and that this may have led to delays in the case of U.S. v. Foster.

Having a Marine judge advocate serve as JAG or Deputy JAG would change what I regard as a logical and efficient construct that has served the Department of the Navy and the U.S. Navy extremely well. The potential impact of this issue on the Department and the U.S. Navy warrants more detailed comments from me. The following points pertain:

- *Within the Department, the U.S. Navy holds the preponderance of effort by measures such as force structure and bases; it makes sense that the Judge Advocate General advising the Secretary be a Navy judge advocate.*

For example, the Navy has approximately 328,000 uniformed personnel, and an organizational and basing structure that has resulted in a JAG Corps of 828 active-duty judge advocates. In comparison, the Marine Corps has approximately 202,000 uniformed personnel, and an organizational and basing structure that has resulted in 435 active-duty judge advocates (a request for additional judge advocates is pending decision).

- *I strongly disagree with the notion that having Navy officers serve as JAG and Deputy JAG has thrown the Department "out of balance" from a legal perspective.*

Recent JAGs have been vocal advocates of having all three legal organizations in the Department (led by the General Counsel, JAG, and SJA to CMC) coordinate activities and draw on the strengths of each organization. The previous JAG was the driving force behind the 2009 completion and publication of "One Mission, One Team," which laid the foundation for increasing cooperation throughout the Department.

Recent JAGs have consistently engaged with the SJA to CMC on matters of Service and Departmental interest, always seeking to draw Marines in and never trying to keep them out. For example, efforts such as increasing the numbers of appellate division counsel and appellate court judges were made in coordination with the SJA to CMC. The significant progress in military justice administration over the past few years came too late to prevent the delays in *Foster*, but further success hinges on recognizing potential problems and a willingness to take coordinated action rather than on whether a Marine Corps judge advocate happens to serve as JAG or Deputy JAG.

Organizations in the Secretariat do not measure effectiveness primarily by comparing the number of senior Navy officers to the number of senior Marine officers assigned, or consider the organization "imbalanced" if the former exceeds the latter. Similarly, giving the Navy and Marine Corps equal footing within the Department has never implied that an identical number of Navy and Marine Corps officers is required for a particular office, task or function. If additional Marine Corps representation is desired to support the Secretary, Attachment 2 of the Panel's letter already reflects that the JAG would welcome assignment of additional Marine officers to the Office of the Judge Advocate General (OJAG), where Marines currently serve in significant numbers only in the military justice section. And if balance is the concern, it is worth noting that the current ratio of general/flag officers to uniformed attorneys is approximately 1:400 within both the Navy JAG Corps (two flag officers) and the Marine judge advocate MOS (one general officer).

- *The Department gains efficiency from the Secretary assigning JAG additional duty as a Special Assistant to CNO.*

This assignment allows JAG to utilize manpower within OJAG to directly support two of the three senior principals in the Department. Other duties traditionally assigned to the JAG reinforce the strength and versatility of the current model; for example, JAG involvement with the National Ocean Council, JAG service as DoD Representative on Ocean Policy Affairs, and the role JAG plays in operational environmental matters including sonar litigation, all areas of vital interest to the Secretary

and Chief of Naval Operations. Importantly, the Secretary may seek advice from the SJA to CMC whenever he desires a Marine judge advocate perspective.

Splitting OJAG into a "Departmental" branch and a "Service" branch, and the inevitable personnel increase this would require, brings neither effectiveness nor efficiency at a time when the Department is looking for both.

Finally, any proposal that would restrict the JAG to a Departmental-only role warrants careful review for potential inefficiencies.

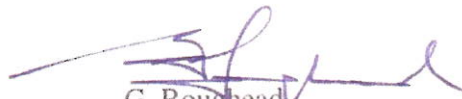
- *The Navy benefits from having the most senior officer in the JAG Corps serve as the leader of that Corps.*

As the senior Navy judge advocate, the JAG serves as the chief of the Navy Judge Advocate General's Corps and leads the 2300-strong Navy JAG legal community (active, reserve, and civilian). In addition, the current model allows the Deputy JAG to lead Naval Legal Service Command, support the JAG in serving the Secretary and Chief of Naval Operations, and at the same time learn from the JAG how to manage the complexities associated with leading a community.

The JAG must have an intimate knowledge of the JAG Corps community and its personnel to properly exercise his statutory responsibility for judge advocate assignments in the Navy. Further, familiarity with the annual budgeting process and the Navy personnel system is critical to securing the resources needed by the JAG Corps. An officer from outside the JAG Corps, or even a newly-appointed flag officer, does not have the knowledge to execute well the full scope of these responsibilities.

Conclusion

It has long been within the Secretary's statutory authority to restrict the non-Departmental functions of the JAG and to allow selection boards to consider Marine judge advocates for JAG and Deputy JAG. I recommend against that approach, and believe any such proposal should be assessed in light of the factors noted above and the fundamental issue of whether the Department as a whole will be better served.


G. Roughhead
Admiral, U.S. Navy

cc:
CMC



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3000 MARINE CORPS PENTAGON
WASHINGTON, DC 20350-3000

5800
CMC
October 29, 2010

Mr. Dan Dell'Orto
Chairman, Independent Panel
2 Navy Annex (Room 1520)
Washington, D.C. 20370

THROUGH THE SECRETARY OF THE NAVY

Dear Mr. Chairman:

This letter responds to your 27 September 2010 request for the Department of the Navy's position on potential regulatory and legislative changes concerning the role and functions of the Judge Advocate General of the Navy (JAG) and the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC). I thank you for the invitation to provide the Marine Corps' perspective on these issues.

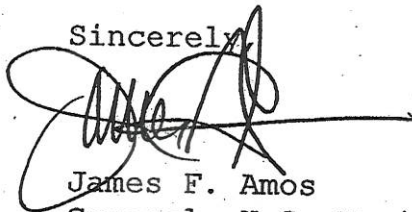
I consider the execution of uniformed legal functions an essential service-level mission, as reflected in our commitment to fielding a legal community of Marine judge advocates who share the Corps' unique ethos and culture. A Marine officer responsible to the Commandant should supervise our uniformed legal community in accomplishing that mission. The SJA to CMC is the appropriate officer for this role and should be given the responsibility and authority necessary to carry out this function within the Marine Corps. I also believe that the SJA to CMC should advise the Secretary directly on military justice matters that impact the Corps. As to the means for accomplishing these goals, I note that the senior uniformed legal officers of our sister services are assigned duties by statute. Thus, statutory change to clarify the role, duties, and authority of the SJA to CMC would appear appropriate.

As an equal partner, we are also committed to ensuring that the "Navy-Marine Corps team" remains strong and relevant. Accordingly, I am determined that the Marine Corps play a more consistent and institutionalized leadership role at the Departmental level. With respect to the DON legal mission, in 1970 and again in 1994, my predecessors recommended that, consistent with the statutory framework, the Secretary of the Navy consider both Navy and Marine Corps judge advocates when

appointing the JAG and the Deputy JAG. Yet, only in 1996 were Marine judge advocates offered the opportunity to compete for the JAG and DJAG. I am strongly in favor of Marines competing for these and other Departmental leadership positions. Leaving aside the benefit that would likely accrue to the Marine Corps, I believe that such competition can only make the Department a stronger and better integrated team.

Again, allow me to express my thanks to you and the other Panel members for your service and attention to this critical review of our legal community.

Sincerely,

A handwritten signature in black ink, appearing to read 'James F. Amos', with a long horizontal line extending to the right.

James F. Amos
General, U.S. Marine Corps
Commandant of the Marine Corps