

MEMORANDUM

Subj: USMC RESOURCE ASSESSMENT OF THE MILITARY JUSTICE IMPROVEMENT ACT

1. The Marine Corps provides the following resource assessment in response to the Office of the Secretary of Defense (OSD) Office of Cost Assessment and Program Evaluation's (CAPE) request for input. After reviewing the Marine Corps resources and planning for the potential implementation of Senator Gillibrand's pending floor amendment (MJIA), it is clear that shifting this number of senior people to the mission set the MJIA requires will impact the throughput and capacity of our system.

This memorandum is organized into three sections based on guidance from OSD General Counsel: the first provides general information on Marine Corps judge advocate structure and inventory; the second provides specific information on the MJIA requirement for a colonel judge advocate to make the initial disposition decisions for a significant number of offenses; and the third provides specific information on the MJIA requirement for a new Office of the Chief of Staff on Courts-Martial and new O-6 or higher general court-martial convening authorities (GCMCA), who are outside the chain of command.

2. General information on Marine Corps judge advocate structure and inventory:

a. Current requirements/authorizations (structure in the Marine Corps) for judge advocates (JA), by grade.

- i. O-1/O-2: 12
- ii. O-3: 190
- iii. O-4: 123
- iv. O-5: 55
- v. O-6: 31 - Includes one billet that is not permanent structure but is an operational requirement (Staff Judge Advocate for II Marine Expeditionary Force (Fwd)) and one planned billet based on Secretary of Defense's Special Victim Advocacy Program (Officer in Charge of Victims Legal Counsel Organization)

b. Current inventory of judge advocates by grade.*

- i. O-1/O-2: 64
- ii. O-3: 245
- iii. O-4: 144
- iv. O-5: 74
- v. O-6: 34
- vi. O-8: 1

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* Sec. 506 of the FY10 NDAA established an "Independent Panel to Study the Judge Advocate Requirements of the Department of the Navy" (506 Panel). After careful review and consideration of judge advocate mission sets, Marine Corps manpower systems, previous manpower studies, testimony by senior commanders and JAs, and the assessment of the Staff Judge Advocate to the Commandant of the Marine Corps, the Panel concluded that there was a requirement in the Marine Corps for a target inventory of approximately 550 active-duty JAs.

* The 506 Panel made its conclusions after studying the current and projected operational requirements and mission sets for Marine Corps JAs. Additionally, the 506 Panel studied the requirements for Marine JAs, as unrestricted officers, to fill a fair share of quotas for non-legal billets (including opportunities to act as commanding officers through the rank of colonel) to validate the target inventory of 550 active-duty JAs.

* These numbers also include prisoners, patients, trainees, and transients (P2T2).

3. The requirement for a colonel judge advocate to make the initial disposition decision for a significant number of military offenses:

a. Total number of cases considered for disposition in a year. Over the last two fiscal years (FY11 and FY12), the Marine Corps Legal Services Support Sections (LSSSSs) and Legal Services Support Teams (LSSTs) received an average of 2567 requests for legal services (RLS) per year from commanders in the Department of the Navy. Of the 2567 RLSs, the Marine Corps averaged 151 general courts-martial (GCM) and 387 special courts-martial (SPCM) per year over the past two fiscal years. The Marine Corps also conducted 768 administrative separation boards (AdSep Board) and 58 Boards of Inquiry (BOI) in FY12. Additionally, Marine Corps units conducted an average of 8748 NJPs per year over the last two fiscal years. Some of these NJPs resulted from alternate dispositions after submission and processing of an RLS, but most did not begin as an RLS. Lastly, the Marine Corps conducted 1289 summary courts-martial (SCM) in FY11 and 608 SCM in FY12.

GCMs, SPCMs, SCMs, AdSep Boards, NJPs, and BOIs, which begin when a command submits an RLS, only represent a fraction of the initial disposition decisions commanders make. Many initial disposition decisions do not require the commander to submit an RLS (commander decides to take no action, to take administrative action, or to dispose of the case through nonjudicial punishment (NJP) or summary court-martial, etc.).

b. Number of these cases that would be required to be considered by the colonel judge advocate (Felony IDA) under the Gillibrand proposal. The Marine Corps analyzed the offenses in all GCMs and SPCMs that were tried in the last two fiscal years and determined that approximately 82% of GCMs and 46% of SPCMs would require a disposition decision by the Felony IDA. Using those percentages, under the

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Gillibrand proposal, an average of 124 GCMs and 178 SPCMs per year would require a disposition decision by a Felony IDA.

The number of cases that actually went to trial does not fully represent the number of cases that would require Felony IDA involvement. On average, the LSSSSs receive 2567 RLSs per year that result in an average of 538 GCMs and SPCMs (302 of these courts-martial requiring a Felony IDA decision). That leaves 2029 RLSs that the LSSSSs review but that do not end up at a GCM or SPCM. The Marine Corps does not have the ability to accurately count what offenses were initially listed in each RLS, but it is very likely that a significant number of those RLSs initially contained Felony IDA-level offenses that would have required Felony IDA case review and analysis. After that review, there are multiple reasons why those cases might not end up as Felony IDA GCMs or SPCMs, such as: not enough evidence for trial on the Felony IDA offense; a guilty plea to non-Felony IDA offense; or alternate disposition at a lower forum.

c. Resource allocations to staff the new office for the Felony IDA. The Marine Corps would organize its new Felony IDA offices along a regional construct that aligns with our Legal Services Support Areas (LSSA - East, West, Pacific, and National Capital Region). To implement this requirement, the Marine Corps would place two Felony IDAs within each LSSA, one to handle cases within operational commands (i.e., Marine Expeditionary Force) and one to handle cases within the Marine Corps Installations (MCI) Command. Two Felony IDAs are needed per region to comply with the MJIA requirement for the Felony IDA to not be in the chain of command of the victim or the accused. **The total Marine Corps requirement, therefore, would be eight Felony IDAs** to handle all cases involving an offense requiring a Felony IDA decision. The existing Regional Trial Counsel (RTC) offices' structure and personnel in each region would provide the Felony IDAs with investigation review, command liaison, and legal research support.

The Marine Corps does not currently have eight O-6 experienced judge advocates not assigned to validated billets and would require an increase of eight additional O-6 billets to meet the Felony IDA requirement. The current colonel LSSS Officers-in-charge (O-6 judge advocates) would remain in place to supervise trial support for cases that do not require GCMCA action, legal assistance, civil law, and review. GCMCA SJAs would also remain in place (commanders' requirement to have a legal advisor on many different legal issues remains).

The mission placed on the RTC offices to support the Felony IDAs creates a supervisory void for the remaining trial counsel in each region that would handle the non-Felony IDA cases (case analysis/preparation, liaison with the convening authority). The RTC is currently responsible for all training and supervision of these

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trial counsel. **To fill this responsibility, the Marine Corps would need one O-4 judge advocate in each region (four total) to act as the OIC for the remaining trial counsel in the region, and one O-3 judge advocate per region (four total) to act as the OIC's deputy.**

4. Requirement for a new Office of the Chief of Staff on Courts-Martial and new O-6 or higher GCMCAs, who are outside the chain of command.

GCMCAs have four duties in their capacity as CAs: to convene courts-martial, to appoint members, provide access to witnesses and evidence for the parties, and the post-trial process. None of those duties are currently accomplished at the headquarters (or regional) level. The MJIA would require the services to establish two separate GCMCA entities: (1) the Office of the Chief of Staff on Courts-Martial; and (2) Service Secretary-appointed GCMCAs in the grade of O-6 or higher, who can only act in cases when they are outside the chain of command of the victim and the accused. The MJIA is silent on how the Services will implement these two new types of GCMCA entities and assign responsibilities between them.

The Marine Corps currently has the following GCMCAs and caseload:

a. Current inventory of GCMCAs: 38.

b. Current requirements/authorizations for GCMCAs: 38.

c. Current caseload of those GCMCAs. On average each GCMCA will convene 4 GCMs per year ($151/38=3.97$). However, the major operational commands in each region, where the Felony IDAs would be located, average approximately 15 GCMs per year. As mentioned in paragraph 3.b, these courts-martial do not fully represent the full level of Felony IDA involvement in the military justice process.

d. Number of cases that involve non-exempt (as outlined in the legislation) offenses. Of the 151 GCMs the Marine Corps prosecutes on average each year, about 124 of those GCMs involved "non-exempt" offenses. Of the 387 SPCMs the Marine Corps prosecutes on average each year, about 178 of those SPCMs involved "non-exempt" offenses. Once again, these numbers do not include cases that the Felony IDA reviewed but did not take to trial, or those cases that did not have an RLS and which were disposed of through a means other than court-martial.

e. Costs of setting up new GCMCA offices. In order to ensure responsive convening authority action in pending courts-martial under the MJIA, the Marine Corps would appoint new GCMCAs at the MEF and MCICOM region levels. Under the MJIA, these GCMCAs would only be allowed to convene courts in cases where the victim and accused were outside their chain of command. These new GCMCAs would therefore have

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working relationships with the newly created Felony IDAs, and the GCMCAs in each region would convene the courts-martial of the other unit (i.e. MEF GCMCA will convene MCI cases, MCI GCMCA will convene MEF cases) to satisfy the "outside the chain of command" requirement. If a case arose where both GCMCAs were not able to act (e.g., MEF accused and MCICOM victim), the case would be referred to the HQMC-level Office of the Chief of Staff on Courts-Martial.

The MEF and MCICOM general officers who are reappointed as GCMCAs would already have O-6 staff judge advocates (SJA) in place and would not require new judge advocate billets. **However, they each would require additional support staff in the form of one E-5/6 NCO/SNCO and two E-3/E-4 clerks to handle the additional administrative workload** (8 new GCMCAs handling cases that 38 GCMCAs currently handle).

Additionally, the Marine Corps would establish an Office of the Chief of Staff on Courts-Martial at Headquarters Marine Corps. This office would serve as a back-up GCMCA in cases where the regional GCMCAs were conflicted out (e.g., a MEF accused and an MCICOM victim), and also serve as the GCMCA for deployed military justice cases. **The new billets required for this central officer are as follows:**

- i. (1) O-6 Director
- ii. (1) O-4/5 Deputy
- iii. (1) CWO-2/CWO-3 Legal Administrative Officer
- iv. (2) O-3 Judge Advocates
- v. (1) E-7 Chief
- vi. (1) E-5/E-6 NCOIC
- vii. (2) x E-4/E-3 Legal Services Support Specialists
- viii. (1) 1 Civilian

5. Summary of new judge advocate and legal services support specialist billets required to implement the MJIA:

- a. (9) O-6 (Felony IDAs and head of HQMC court-martial office)
- b. (1) O-4/5 (Deputy at HQMC court-martial office)
- c. (4) O-4 (New OICs of non-Felony IDA trial counsel in each region)
- d. (6) O-3 (New regional deputies and HQMC court-martial office)
- e. (1) E-7 (HQMC court-martial office)
- f. (9) E-5/6 (HQMC and regional GCMCA support staff)
- g. (18) E-3/4 (HQMC and regional GCMCA support staff)
- h. (1) civilian (HQMC court-martial office)

6. The point of contact for this matter is Captain Jason P. Brown, jason.p.brown1@usmc.mil, 703-693-9275.