STRATEGY RESEARCH PROJECT

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MORE JOINTNESS IN MILITARY LEGAL SUPPORT: HOW MUCH IS ENOUGH?

BY

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ABSTRACT

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In 1993, Colonel Fred Bryant, then a War College student, examined the many complexities of creating a Joint Legal Services Agency. He undertook this examination partially in response to a challenge by former U.S. Senator Samuel Nunn, who urged the Services to streamline certain staff functions, including the consolidation of legal support. Colonel Bryant enumerated many reasons why a Joint Legal Services Agency would not best serve the interests of the Department of Defense and the various Services. After a thorough analysis, he recommended more jointness only in the area of operational law. In the seven years since Colonel Bryant's review of legal jointness, much has changed in the perception and appreciation of the benefits of jointness. Accordingly, it is time to re-examine some of the more relevant issues of jointness in legal operations and provide a different perspective on whether more jointness is desirable.

TABLE OF CONTENTS

ABSTRACT IIII

LIST OF ILLUSTRATIONS VII

MORE JOINTNESS IN MILITARY LEGAL SUPPORT: HOW MUCH IS ENOUGH? 1

INTRODUCTION 1

CURRENT STRUCTURE FOR PROVIDING LEGAL SUPPORT WITHIN DOD 1

ARMY GENERAL COUNSEL'S OFFICE 2

ARMY JAG CORPS 2

NAVY GENERAL COUNSEL'S OFFICE 4

NAVY JAG CORPS 6

JOINT LEGAL SUPPORT TODAY 8

BENEFITS TO BE DERIVED FROM MORE JOINTNESS 9

GREATER EFFICIENCY 9

GREATER EFFECTIVENESS 10

COMPLIANCE WITH CONGRESSIONAL WILL 11

REASONS MITIGATING AGAINST MORE JOINTNESS 11

SERVICE-UNIQUE ISSUES 11

DIFFERENCES IN DOCTRINE 12

SERVICE CULTURE 12

CONSEQUENCES OF NOT GOING JOINT 13

LIMITED JOINTNESS: IS THAT THE RIGHT ANSWER? 14

CONCLUSION 15

ENDNOTES 17

BIBLIOGRAPHY 23

LIST OF ILLUSTRATIONS

FIGURE 1 - ORGANIZATION OF OFFICE OF GENERAL COUNSEL 2

FIGURE 2 - HEADQUARTERS, OFFICE OF THE JUDGE ADVOCATE GENERAL 3

FIGURE 3 - TYPICAL ARMY OFFICE OF STAFF JUDGE ADVOCATE 4

FIGURE 4 - HEADQUARTERS, NAVY OFFICE OF GENERAL COUNSEL 5

FIGURE 5 - NAVY GENERAL COUNSEL'S OFFICES IN THE UNITED STATES 5

FIGURE 6 - NAVY GENERAL COUNSEL'S OFFICES OVERSEAS 6

FIGURE 7 – HEADQUARTERS, OFFICE OF THE NAVY JUDGE ADVOCATE GENERAL 7

FIGURE 8 - NAVAL LEGAL SERVICE COMMANDS 8

FIGURE 9 - OFFICE OF THE JUDGE ADVOCATE, UNITED STATES EUROPEAN COMMAND 9

MORE JOINTNESS IN MILITARY LEGAL SUPPORT: HOW MUCH IS ENOUGH?

INTRODUCTION

Without a doubt, more jointness among the military Services is a desirable goal. In the past, lack of jointness was blamed for less than desirable results in military conflicts and operations such as Korea, Vietnam, and Desert One.[1] Conversely, greater jointness was credited with winning results in operations such as Just Cause in Panama, Desert Storm in the Middle East, and the peacekeeping operation in Haiti.[2] Today, no one disputes that these operations were greatly enhanced by the jointness imposed on the Services by the Goldwater-Nichols Act.[3]

This paper concedes the benefits of jointness as it pertains to warfighting. Such benefits have been proven to the point of being without contention. It is these very benefits and successes that raise the issue of whether there should be more jointness in areas other than warfighting operations. This paper looks critically at one such area: military legal support. The objective of this critical review is to evaluate whether the benefits of operational jointness should be carried over to the area of legal support. In other words, should legal support be more joint?

To examine this issue, we must first review the current structure for providing legal support within DOD. Accordingly, this paper reviews and analyzes the Army and Navy's legal support organizations.[4] It then looks at legal support in unified commands as an example of more jointness. It also looks closely at some of the anticipated benefits of more jointness in legal support. Further, it evaluates key reasons mitigating against more jointness, and it considers the consequences of failing to pursue more jointness. Finally, this paper looks at "limited jointness" as a possible "right" answer to the question of whether the Services should be more joint in providing legal support.

CURRENT STRUCTURE FOR PROVIDING LEGAL SUPPORT WITHIN DOD

Currently, each of the Services has its own organization for providing legal support.[5] Each has a civilian and a military component. The civilian component is headed by the General Counsel. The General Counsel serves as principal legal advisor to the service secretary. The military component is headed by the service Judge Advocate General, who is responsible for that Service's JAG Corps, which is the uniformed component of the legal structure. The General Counsel as well as the Judge Advocate Generals (hereinafter referred to as TJAGs) are answerable directly to their respective Service chiefs. Coordination with other Services is not required, nor is it routinely sought.

The legal organizations for the various Services have many similarities, but they also have many differences. While each Service's legal structure is unique and worthy of review, this paper discusses only the structures of the Army and Navy as representative of all the Services.

ARMY GENERAL COUNSEL'S OFFICE

The General Counsel is the chief lawyer of the Army, ultimately responsible for determining the Army's position on any legal question. The General Counsel serves as legal advisor to the Secretary, Undersecretary, five Assistant Secretaries, and other members of the Army Secretariat. The General Counsel also exercises technical supervision over the Office of The Judge Advocate General, the Office of the Command Counsel (Army Material Command), and the Office of the Chief Counsel (Corps of Engineers). The General Counsel and Principal Deputy General Counsel are executive appointees.

The Office of General Counsel (OGC) is located at the Pentagon, and it consists of civilian and military attorneys. It has no field offices. To fulfill its mission, OGC is divided into four substantive practice areas: (1) Acquisition; (2) Civil Works and Environment; (3) Ethics and Fiscal law; and (4) Operations and Personnel. The following organizational chart illustrates the structure of OGC:[6]

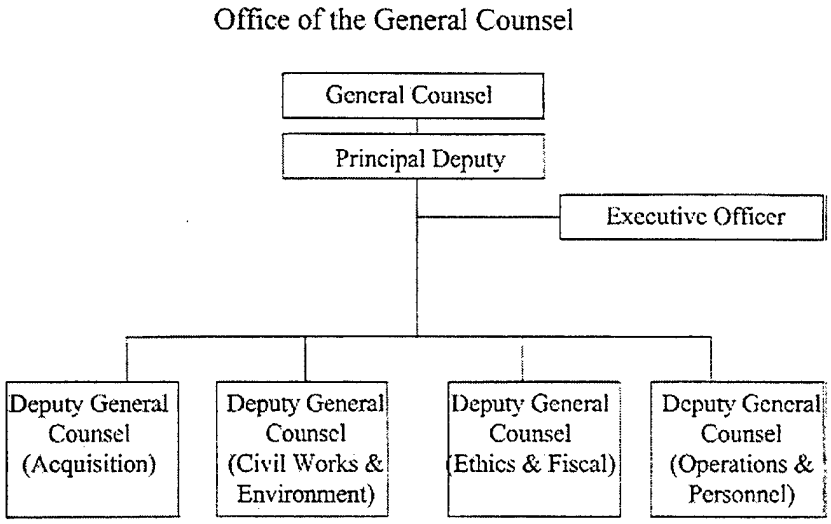

FIGURE 1 - ORGANIZATION OF OFFICE OF GENERAL COUNSEL

ARMY JAG CORPS

The Army JAG Corps consists of active and reserve component officers, enlisted personnel, civilian attorneys, and support personnel. The JAG Corps is headquartered in Washington, D.C., but most personnel work in field offices, commonly known as Staff Judge Advocate (SJA) Offices. The SJA Offices serve various Army commands and installations worldwide.

The Army Judge Advocate General (TJAG), a major general, heads the Army JAG Corps. His principal deputy is The Assistant Judge Advocate (TAJAG), also a major general. There are three Assistant Judge Advocate Generals (AJAGs), brigadier generals, who assist TJAG in managing the JAG Corps. The headquarters of the Office of The Judge Advocate General (OTJAG) is divided into several major divisions and three field operating agencies: U.S. Army Legal Services Agency,[7] U.S. Army Claims

Service, and The Judge Advocate General's School. The following organization scheme illustrates the organization of Headquarters, OTJAG:

HEADQUARTERS, OFFICE OF THE JUDGE ADVOCATE GENERAL

HEADQUARTERS OFFICE
The Judge Advocate General
The Assistant Judge Advocate General
The Executive Officer
Warrant Officer of the JAG Corps
Sergeant Major of the JAG Corps
Personnel, Plans & Training Office
Standards of Conduct Office

U.S. ARMY LEGAL SERVICES AGENCY
Commander, USALSA
U.S. Army Court of Criminal Appeals
U.S. Army Trial Judiciary
Government Appellate Division
Defense Appellate Division
HQ, U.S. Army Trial Defense Service

MILITARY LAW & OPERATIONS
AJAG for Military Law
Contract Law Division
Administrative Law Division
Criminal Law Division
International & Operational Law Division
Labor and Employment Law Division
Legal Assistance Policy Division

CIVIL LAW & LITIGATION
AJAG for Civil Law & Litigation
Contract Appeals Division
Litigation Division
Procurement Fraud Division
Environmental Law Division
Regulatory Law & Intellectual Prop Div

THE JUDGE ADVOCATE GENERAL'S SCHOOL
Academic Department
Center for Law & Military Operations
Criminal Law Department
Administrative and Civil Law Department
International & Operational Law Department
Contract & Fiscal Law Department

U.S. ARMY CLAIMS SERVICE
Torts Claims Division
Personnel Claims & Recovery Division

FIGURE 2 - HEADQUARTERS, OFFICE OF THE JUDGE ADVOCATE GENERAL

Army JAG Corps field offices are located at Army commands and installations worldwide. These field offices are headed by Staff Judge Advocates, generally in the grade of colonel or lieutenant colonel. Smaller command and installation offices are headed by Command Judge Advocates or Officers-in-Charge, generally in the grade of major or captain. These field offices are generally divided into four divisions: criminal law division, administrative law division, claims division, and legal assistance division. Larger offices and overseas offices will often have an international law division. The following

organization scheme illustrates the structure of a typical Staff Judge Advocate Office:

OFFICE OF THE STAFF JUDGE ADVOCATE

Management Office
Staff Judge Advocate
Deputy Staff Judge Advocate
Legal Administrator
Chief Legal NCO

Administrative Law Division
Labor Law
Contract Law
Military Personnel Law
Fiscal Law
General Administrative Law

Criminal Law Division
Military Justice

Legal Assistance Division
Income Taxes
Personal Legal Advice

International Law Division
Operational Law
Law of Peace

Claims Division
Personnel Claims
Tort Claims
Affirmative Claims

FIGURE 3 - TYPICAL ARMY OFFICE OF STAFF JUDGE ADVOCATE

NAVY GENERAL COUNSEL'S OFFICE

> The Navy General Counsel is the Chief Legal Officer of the Department of the Navy. He provides legal advice, counsel, and guidance to the Secretary of the Navy and the other Civilian Executive Assistants and their staffs on any issue or matter involving the Department of the Navy. The General Counsel provides legal services relating to general legal issues, litigation, business and commercial law, real and personal property, civilian personnel law, environmental law, patent law, and procurement of services, including the fiscal, budgetary, and accounting aspects for the Navy and the Marine Corps.[8]

The Navy Office of General Counsel (OGC) is headquartered in Washington, D.C., and has field offices worldwide. The following chart depicts the organization of the headquarters office:

OFFICE OF THE GENERAL COUNSEL

HEADQUARTERS

General Counsel
Principal Deputy General Counsel
Associate General Counsel (Management)
Associate General Counsel (Litigation)

SYSTEMS COUNSEL

Counsel, Naval Sea Systems Command
Counsel, Naval Air Systems Command
Counsel, Space & Naval Warfare Systems Command
Counsel, Naval Supply Systems Command
Counsel, Naval Facilities Engineering Command

ASSISTANT GENERAL COUNSEL

Counsel, Commandant of the Marine Corps
Assistant General Counsel (Financial Management/Comptroller)
Assistant General Counsel (Manpower & Reserve Affairs)
Assistant General Counsel (Installation & Environment)
Assistant General Counsel (Research, Development & Acquisition)
Counsel, Office of Naval Research
Counsel, Military Sealift Command

FIGURE 4 - HEADQUARTERS, NAVY OFFICE OF GENERAL COUNSEL

The following charts depict OGC locations in CONUS and overseas:

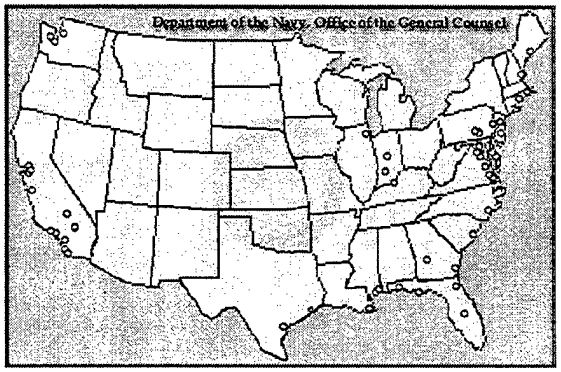

FIGURE 5 - NAVY GENERAL COUNSEL'S OFFICES IN THE UNITED STATES.[9]

FIGURE 6 - NAVY GENERAL COUNSEL'S OFFICES OVERSEAS[10]

NAVY JAG CORPS

The Navy JAG Corps is headquartered in Washington, D.C. Its senior officer is The Judge Advocate General (TJAG), a rear admiral, who is also a Staff Assistant to the Secretary of the Navy. He commands the Office of the Judge Advocate General, and serves as Special Assistant for Legal Services to the Chief of Naval Operations. His principal assistant is the Deputy Judge Advocate General, also a rear admiral, who serves as the Commander of Navy Legal Services Command (NLSC).

The Office of the Judge Advocate General (OJAG) consists of three major divisions: Civil Law Division;[11] Military Law Division;[12] and Office of the Commander, Naval Legal Support Command (NLSC).[13] There are five field activities that report directly to TJAG: Naval Civil Law Support Activity;[14] Navy-Marine Corps Appellate Review Activity;[15] Navy-Marine Corps Trial Judiciary;[16] Director of Operations/Vice Commander;[17] and the Navy-Marine Corps Court of Criminal Appeals.[18]

The Navy JAG Headquarters is organized as follows:

OFFICE OF THE NAVY JUDGE ADVOCATE GENERAL

HEADQUARTERS DIVISION
Judge Advocate General
Deputy Judge Advocate General
Command Master Chief

COMMANDER, NLSC
Dir of OPS/Vice Commander
Executive Administration
Finance and Civilian Personnel
Information Resources
Management and Plans
Military Personnel

MILITARY LAW
AJAG Military Law
Military Justice
Navy/Marine Corps Court of Criminal Appeals
Appellate Defense
Appellate Government

CIVIL LAW
AJAG Civil Law
Administrative Law
Admiralty & Maritime Law
Claims, Investigations & Tort Litigation
Environmental Law
General Litigation
International Law
Legal Assistance
Special Programs

FIGURE 7 – HEADQUARTERS, OFFICE OF THE NAVY JUDGE ADVOCATE GENERAL

The Navy Legal Service Command (NLSC) is the JAG field organization. Its primary mission is "to provide legal services to support fleet operational readiness."[19] NLSC is comprised of Naval Legal Service Offices (NLSOs), Trial Service Offices (TSOs), the Naval Justice School (NJS), and their subordinate activities.[20] "Each NLSO and TSO is assigned primary responsibility for the provision of specified legal services in a specific geographic area of responsibility."[21] NLSOs provide legal services to individual service members and their dependents in the functional areas of court-martial defense, personal representation, claims, legal assistance, and command administration.[22] TSOs provide legal services to command and staff in the functional areas of criminal prosecution, command services/administrative law, court reporting, international law (overseas TSOs), ethics counseling, and command administration.[23]

The chart below graphically depicts the organization of the Navy Legal Support Command, including the locations of NLSOs and TSOs throughout the Navy:[24]

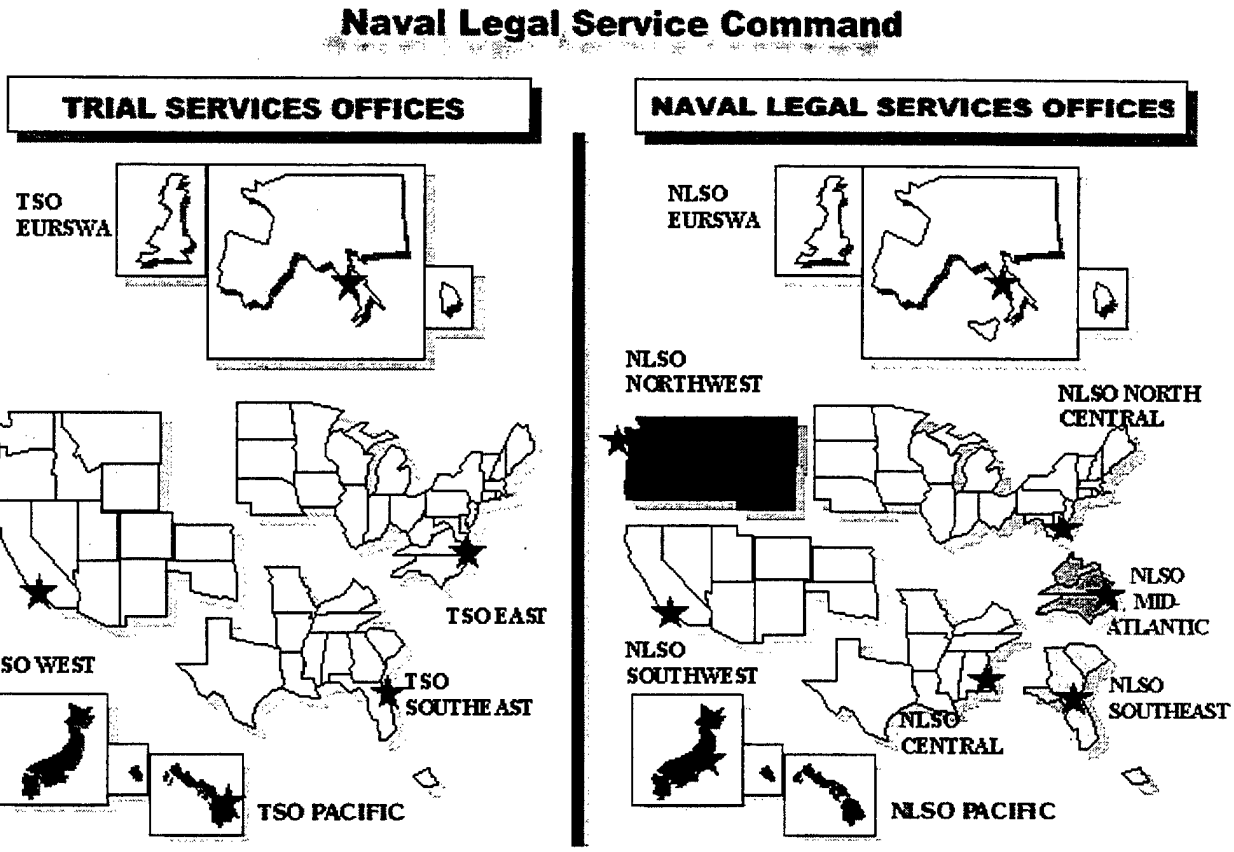

FIGURE 8 - NAVAL LEGAL SERVICE COMMANDS

JOINT LEGAL SUPPORT TODAY

Currently, joint commands are the only regular providers of joint legal support in the military. Each unified and sub-unified command[25] has a joint legal office composed of military personnel from all branches of service. Unlike single-Service legal offices, joint command legal offices answer to their joint commands, not to any particular Service. The Judge Advocate (chief lawyer) of these commands can come from any of the Services.[26] Each joint office is organized to best support the legal needs of its command. The Judge Advocate Office, U.S. European Command, is a good example of how these joint offices are organized:

Attorney Staff

Title/Area of Responsibility	Rank/Name (bios)	Branch
Staff Judge Advocate	COL Vincent L. Faggioli	USA
Deputy Staff Judge Advocate/Operational Law Advisor	Lt Col Tony Montgomery	USAF
Ethics Counselor	CDR Ralph Corey	USN
Military and International Law	LTC Christopher Detoro	USA
Administrative Law and Military Engagement	Maj David Jividen	USAF
Operational Law	Maj Brian Palmer	USMC

FIGURE 9 - OFFICE OF THE JUDGE ADVOCATE, UNITED STATES EUROPEAN COMMAND[27]

BENEFITS TO BE DERIVED FROM MORE JOINTNESS

Because of the military's limited experience with joint legal support, any discussion of the benefits of joint legal support will be somewhat speculative. Nevertheless, it is a discussion worth conducting if there is to be a thorough examination of the merits of more jointness in legal support.

GREATER EFFICIENCY

Even a glancing look at the current military legal support structure reveals that all of the Services provide essentially the same legal support. Each has headquarters offices that provide support to Service component headquarters, and each has field offices that provide legal support to commanders and military personnel in the field. All of the Services have both a civilian component (OGC) and a military component (JAG Corps), each complimenting the other. A key question is whether it would be more efficient to consolidate any of these legal organizations.

A good argument could be made that more jointness at the headquarters level would reduce duplication of legal services and administration. As an example, the claims system of each Service operates essentially under the same basic rules for compensating claimants.[28] Yet we have a separate claims system for each of the Services.[29] Combining claims systems at the headquarters level would, at a minimum, eliminate some of the duplicative administrative costs,[30] and may reduce some of the

duplication of legal services.[31] Costs savings would occur because of the efficiencies achieved through reduced personnel, supplies, physical structures, and other administrative costs. Of course, this presumes that a consolidated claims system would require fewer resources than the current separate systems.[32] Logically, this is true. Whether it would happen in fact would have to be determined through an economic cost-benefit analysis. Similarly, legal structures such as litigation centers, appellate courts, appellate advocacy, trial judiciary, contract law, military justice, operational law, environment law, labor and employment law, and others could be consolidated as joint organizations.[33]

In considering greater jointness, one could even argue for consolidation between OGC and the JAG Corps. Does each Service really need both an OGC and a JAG Corps? Consider all the administrative cost that would be saved by eliminating separate structures? Perhaps the JAG Corps could merge with OGC and act as its military arm. Alternatively, OGC could be subsumed as an arm of the JAG Corps. Another option is to merge the Service OGCs with DOD OGC.[34] The Service OGCs could become branches of that joint organization. Again, this presumes that the merged organizations would be equally as effective as its separate components.

Another legal organization that could benefit from more jointness is the military system for educating JAG officers.[35] Currently, each Service has its own JAG School,[36] and each school has its own curriculum for educating its officers.[37] Not surprisingly, the curriculums are similar, with significant overlap in legal training.[38] A joint JAG School could have "tremendous impact on resources and costs by consolidating facilities and support requirements."[39] A single-Service location could achieve cost efficiency by reducing staff and faculty, physical facility needs, and administrative costs.

Of course, there are drawbacks to a joint JAG School. Seating capacity, current building structures, and contracts now in being could make it difficult economically to make this happen in the short term.[40] Nevertheless, this option should be considered for the long-term benefits.

GREATER EFFECTIVENESS

Centralization and consolidation of personnel, resources, and services could also enhance overall quality and effectiveness of military legal support. As an example, concentration of legal talent would allow all the Services to share important legal expertise. The sharing of new and innovative ideas would enhance overall quality of support, allowing all the Services to take advantage of the talents of our "best and brightest" legal minds. At the same time, critical shortages in expertise, manpower, and support would be better tolerated by a more consolidated support system. Any personnel shortages would be spread over a larger legal organization, thus reducing the strain on any particular legal office (or person), and increasing the chances of uninterrupted service to clients.

Another area where overall effectiveness would be increased is in a joint JAG School. Such a joint organization would allow all the services to take fuller advantage of certain teaching expertise now found only in one of the schools.[41] It would allow the strengthening of faculty and staff by selecting only the very

best of the merged staff and faculty. It would encourage a greater exchange of ideas and methodologies among the services, which would improve the quality and delivery of legal support throughout the military. The end result would be an unparalleled world class joint institution.

COMPLIANCE WITH CONGRESSIONAL WILL

Such a merger would also be consistent with Congressional intent to ensure more efficient use of defense resources, enhance the effectiveness of military operations, and improve management and administration within DOD.[42] Former Senator Sam Nunn was particularly vocal in advocating more jointness in legal support, even going so far as to suggest consolidation of legal services under a DOD organization.[43] As for the prospect of creating a joint JAG School, for years Congress has advocated more jointness in military education, even going so far as to suggest consolidation of the Service academies and Command and General Staff Colleges.[44] Arguably, it would be wiser for the Services to react now to Congressional nudging on jointness rather than procrastinate and risk Congressionally mandated jointness. By heeding the warning now, the Services can decide themselves how to best increase jointness in legal support. Otherwise, a Congressionally mandated joint legal structure may not be best suited for the Services or its clients. Should Congress act without input from the Services, it could take years to refine the structure, a structure that the services now have the opportunity to create themselves.

REASONS MITIGATING AGAINST MORE JOINTNESS

Now that we have considered some of the possible benefits of more jointness in legal support, we must consider reasons mitigating against more jointness. The three principal reasons often cited in opposition to more jointness are: (1) Service-unique issues that only a same-Service legal structure can adequately address; (2) differences in Service and legal doctrine; and (3) Service cultural differences.

SERVICE-UNIQUE ISSUES

It cannot be disputed that there are issues, legal and otherwise, which are unique to each Service. For example, the Army and Marine Corps have a greater interest in matters related to ground combat, while the Navy and Marine Corps have sea-related issues of no particular relevance to the Army. Similarly, the Air Force and Navy have issues related to air combat and space, matters of lesser interest to the Army. The Navy and Coast Guard have issues related to interdiction of sea vessels, issues of little concern to the other Services. Each Service has developed its own set of rules and regulations to address these matters, and more importantly, has developed doctrine, expertise, and training to address these matters.

Can these Service-unique issues be competently addressed by a joint legal office? Are Service-unique issues best addressed by same-service legal offices? Logically, the greater the expertise in a given area, the greater the capacity to provide competent legal advice. Hence, Air Force legal offices can better address Air Force-unique issues; Navy legal offices can best address Navy-unique legal issues,

etc. But this raises a larger question. How many legal issues are truly Service-unique? Most legal issues are generic. Criminal law, for example, has very few, if any, Service-unique issues since all Services operate under the same Uniform Code of Military Justice.[45] Civil litigation matters, tort claims, environmental law, government contracts, and many other legal areas have few, if any, Service-unique aspects. Consequently, a joint office could address most legal matters as competently as a same-Service legal office.

Interestingly, many same-Service offices already have joint responsibilities. Virtually, any legal assistance office of any Service will handle personal legal matters regardless of the client's branch of Service.[46] For years, military claims have been processed using an Area Claims Authority structure. Under this concept, a legal office of any branch of Service can be designated to receive and process area claims filed against any of the Services.[47] The Service JAG Schools have joint service responsibilities for certain continuing legal education courses.[48]

Some would argue that a thorough knowledge of Service regulations can only be achieved within a single-Service legal office. The truth is that Service regulations are so voluminous that lawyers have a working knowledge of only a few at any given time. Most legal issues must be researched in order to provide proper advice. Research can be done as competently by a joint office as by a single-Service office. And as for those issues that are truly Service-unique, such as maritime law and admiralty, there is certainly a need for such expertise within legal offices. However, the required legal expertise can be developed in a joint office as easily as in a single-Service office. It is simply a matter of training and experience.

DIFFERENCES IN DOCTRINE

The lack of a common doctrine is another reason commonly given in opposition to more jointness.[49] Each of the Services has its own Service doctrine, specially tailored to the needs of the Service.[50] But, joint doctrine is alive, well, and growing in the operational art.[51] Clearly, Service doctrine takes a back seat to joint doctrine today.

Legal doctrine is not so well established. The Army has formally stated its doctrine in FM 27-100,[52]which embodies doctrine for all legal services provided by the Army Judge Advocate General's Corps.[53] The other Services have no signature document that embodies their doctrine. Rather, one has to look to other Service documents to discern their doctrine.[54] Importantly, the Services have collectively recognized the need for legal doctrine and are currently working on a formal joint doctrine for the delivery of legal support by all JAG offices. Given the less than cohesive state of military doctrine for legal support, it becomes difficult to use differences in doctrine as a cogent reason against more jointness.

SERVICE CULTURE

Some would argue that Service culture is the biggest challenge to successfully implementing more jointness in legal support. Despite passage of Goldwater-Nichols, each Service still has its own

separate and distinct Service culture: military priorities, social environment, Service language, way of operating, etc. As a result, Service culture, including inter-Service rivalry and parochialism, continue to be alive and well.

The extent to which Service culture would actually hinder jointness in legal support is speculative.[55] However, there are certain aspects of Service culture that could impact and be impacted by more jointness. Legal advisors need to understand the language of those they serve, whether the client is an individual or a commander. Much of military language is Service-unique. For example, the names of various parts of ships could be considered Service-unique. Similarly, there are many common expressions within each of the Services that are not so common or even understood by the other Services. Legal clients and commanders alike expect their legal advisors to understand these terms. And in terms of Service priorities, it is well known that the Air Force tends to place a higher priority on quality of life issues than the other Services. Should a commander have to explain this to his joint legal advisor, or should the legal advisor already know it? These are but a few examples of the nuances of Service culture and how such nuances impact legal operations.

The counter-argument is that a joint legal office is capable of learning and appreciating the cultures of the various Services. One does not have to be a member of a particular Service to understand its Service culture. These matters can be taught, and once learned, can be incorporated into the quality of legal advice given. Even those commanders who insist on having a legal advisor of the same Service would be impressed over time by a legal advisor who knows what he or she is doing and who consistently gives sound, well informed legal advice.

CONSEQUENCES OF NOT GOING JOINT

Currently, there does not appear to be any groundswell of support for making changes toward more jointness. No initiatives are ongoing, and no important actor within the legal system has declared his or her support for greater jointness. However, there are certain indications that external factors could eventually mandate a change toward more jointness. In 1992, former Senator Sam Nunn called on the Services to completely review roles and functions with a view toward reducing duplication.[56] "Senator Nunn did not tell the Services what to do. Rather, he provided a clear mandate—either study, propose, and be prepared to implement an approach to consolidated legal services or be included in a Department or Defense organization, such as ...[a] Congressionally mandated Defense Legal Services Agency."[57] To date, there has been no significant movement by DOD toward consolidated legal services, and Congress has made no serious follow-up overtures toward a mandated Defense Legal Services Agency.

If Congresionally mandated consolidation is not likely in the near future, what about the impact of ever-tightening resources? Is that condition likely to force greater jointness as a cost-saving measure? It would seem unlikely. Throughout the protracted period of budgetary cut-backs of the 1990s, only a couple of serious studies were done with a view toward consolidating legal support. In the Fall of 1990, a DOD study proposed the consolidation of claims headquarters into a single DOD agency under an

Assistant Secretary of Defense.[58] There was also a proposal for the consolidation of certain headquarters functions.[59] However, after objection by the Services, neither proposal got off the ground.

Unlike some other military support organizations, no deficiencies or shortfalls have been attributed to legal operations due to lack of jointness.[60] Accordingly, in the absence of Congressional pressure or budgetary constraints, there are few, if any, negative consequences to maintaining the status quo in military legal support.

LIMITED JOINTNESS: IS THAT THE RIGHT ANSWER?

While there is little or no reason to believe that more jointness in legal support is likely in the near future, it is, nevertheless, important to consider the best course of action to achieve the most efficient and effective organization possible. Toward that end, I will review the idea of limited jointness as the best means of delivering military legal support.

First, it is worth noting that joint commands are experiencing no problems with their joint legal offices. To the contrary, the Judge Advocate slots in those offices have become highly sought after as upwardly mobile positions, and are considered excellent stepping-stones toward flag rank. Similarly, joint legal offices at Joint Task Forces (JTFs) have worked well during the many joint operations of the past 10 years.[61]

Second, joint legal offices should work well at locations where military installations are close in physical proximity.[62] For example, Ramstein Air Force Base and Headquarters, 21st Theater Support Command (TSC), are located approximately 10 miles apart in western Germany. Some Army personnel actually live and work on Ramstein, while some Air Force personnel live and work closer to the Army installation. Each installation operates a large single-Service legal office. Each has a large physical facility, a full management team,[63]a courtroom, a criminal law division, an international law division, an administrative law division, a labor counsel, a legal assistance office, and appropriate support personnel. Consolidating legal support at these two commands/installations (and others in close proximity to each other) would reduce the costs of duplicate legal services at both locations. Any problems caused by Service-unique issues, service culture, and differences in doctrine would be lessened by the close association of the two facilities. Moreover, proper legal training and experience could eliminate any remaining barriers to joint legal support.

Third, other legal areas that appear to lend themselves to more jointness are Claims and Legal Assistance. These legal services operate under the same general rules and regulations (or can easily be made to do so). In each case, the basic legal authority is the same. There are few if any Service-unique aspects to these operations. Service culture is of little or no significance in these two areas, and doctrinal differences can be easily resolved. In fact, any differences are policy ones, which can be easily changed.[64] In addition to cost savings, consolidation of Claims and Legal Assistance could also have the effect of massing the highly talented personnel and various innovative programs of the services, resulting in even greater quality service.

There are other areas that might benefit from more jointness,[65] but those cited above are the ones that most easily lend themselves to consolidation.

CONCLUSION

There is an old axiom that says, "don't fix what ain't broken." Military legal support today "ain't broken." However, it could benefit from greater jointness.

At a time of multi-billion dollar shortfalls in funding, our military Services must take advantage of every opportunity to reduce costs. More jointness in military legal support would save money by reducing costs of manpower, facilities, and support requirements. It would eliminate wasteful duplication of programs and consolidate resources in a more efficient manner. There could even be a windfall benefit achieved through combining the "best and brightest" legal talent of the separate programs.

Those areas that should be targeted first for jointness include the Service JAG Schools, Claims programs, Legal Assistance operations, and installation legal offices in close physical proximity to each other. Eventually, headquarters functions should be analyzed to determine whether more jointness at that level would be beneficial.

Following up on these results, studies should be conducted to verify expected benefits of even greater jointness in legal support. This should include an economic cost-benefit analysis to ensure such mergers make economic sense as well as organizational sense. The overall goal of these studies should be to ensure that only those programs most likely to benefit from greater jointness are consolidated.

There is another axiom that says "nothing ventured, nothing gained." The services should venture now to determine and capitalize on the benefits of more jointness. It is far better to make this venture now than to procrastinate. The cost of procrastination could include future Congressionally mandated jointness (perhaps, under less than ideal terms for the Services), and substantially higher economic costs to consolidate. So how much jointness is enough? Only time will tell, but more jointness in legal support is clearly merited at this time.

WORD COUNT = 4982

ENDNOTES

[1] John N. Petrie, ed., Essays on Strategy XI (Washington, D.C.: National Defense University Press, 1994), 7.

[2] Douglas C. Lovelace, Jr., "Unification of the United States Armed Forces: Implementing the 1986 Department of Defense Reorganization Act," Strategic Studies Institute (Carlisle Barracks: U.S. Army War College, August 6, 1996), 2.

[3] Goldwater-Nichols Department of Defense Reorganization Act of 1986, United Stated Code Congressional and Administrative News, 99th Cong, 2nd sess, 1996 (St. Paul: West Publishing Co., 1996), vol 4, 2168-2329.

[4] The Army and Navy legal organizations are analyzed as representative of the legal structures of all the services.

[5] The Marine Corps differs somewhat from the other services because it is subordinate to the Navy. It has no Judge Advocate General, but it has a civilan Counsel for the Marine Corps Commandant and a military Staff Judge Advocate (SJA) to the Commandant. The SJA holds the rank of brigadier general.

[6] "Organization of the Office of General Counsel," linked from Army General Counsel at "Organization Chart," available from <http://www.hqda.army.mil/ogc/>; Internet; accessed 15 February 2000.

[7] The Commander, U.S. Army Legal Services Agency (USALSA), is a brigadier general. He manages the everyday operations of USALSA, an umbrella command responsible for numerous legal activities. Among these are the U.S. Army Court of Criminal Appeals, U.S. Army Trial Judiciary, Government Appellate Division; Defense Appellate Division, U.S. Army Trial Defense Service, Contract Appeals Division (contract litigation); Litigation Division (civilian personnel, military personnel, tort, and general litigation), Procurement Fraud Division (contract fraud litigation), Environment Law Division, and Regulatory and Intellectual Property Division.

[8] "Mission of the Office of the General Counsel," linked from Department of the Navy Office of the General Counsel at "Mission of OGC," available from <http://www.ogc.secnav.hq.navy.mil>; Internet; accessed 15 February 2000.

[9] "Offices in the U.S.," linked from Department of the Navy Office of the General Counsel, available from http://www.ogc.secnav.hq.navy.mil>, Internet; accessed 15 February 2000.

[10] "Offices Overseas," linked from Department of the Navy Office of the General Counsel, available from http://www.ogc.secnav.hq.navy.mil>; Internet; accessed 15 February 2000.

[11] "AJAG Civil Law," linked from Navy JAG at "Headquarters," available from <http://www.jag.navy.mil/index.htm>; Internet; accessed 15 February 2000. Civil Law Division includes the following substantive law areas: administrative law; admiralty and maritime law; claims, investigations and tort litigation; environmental law; general litigation; international law; legal assistance; and special programs.

[12] "AJAG Military Law," linked from Navy JAG at "Headquarters," available from <http://www.jag.navy.mil/index.htm>; Internet; accessed 15 February 2000. Military Law Division includes the following substantive areas: military justice; Navy-Marine Corps Court of Criminal Appeals; appellate defense; and appellate government.

[13] "Dir of OPS/Vice Commander," linked from Navy JAG at "Headquarters," available from <http://www.jag.navy.mil/index.htm>; Internet; accessed 15 February 2000.This division includes the following offices: executive administration; finance and civilian personnel; information resources; management and plans; military personnel; and reserve affairs.

[14] "OJAG Organization," linked from Navy JAG at "Welcome," available from <http://www.jag.navy.mil/>; Internet; accessed 15 February 2000. "[P]rovides headquarters-level field support in substantive legal areas."

[15] Ibid. "[P]rovides counsel and case management for appellate review of Navy and Marine Corps courts-martial."

[16]Ibid. "[P]rovides certified military judges for Navy and Marine Corps courts-martial."

[17] Ibid. "[S]upervises the Deputy Assistant Judge Advocate Generals within the Operations and Management organization; additionally, the Director is also assigned as Vice Commander, Navy Legal Services Command."

[18] Ibid. "[C]onducts appellate review of Navy and Marine Corps courts-martial, as required by the Uniform Code of Military Justice."

[19] "TSO West," linked from Navy JAG at "Field Offices," available from <http://www.jag.navy.mil/>; Internet; accessed 15 February 2000.

[20] Ibid.

[21] Ibid.

[22] "NLSO West," linked from Navy JAG at "Field Offices," available from <http://www.jag.navy.mil/>; Internet; accessed 15 February 2000.

[23] TSO West.

[24] "Navy Legal Support Command," linked from Navy JAG at "Field Offices," available from <http://www.jag.navy.mil/>; Internet; accessed 15 February 2000.

[25] The joint commands are, U.S. Central Command, U.S. Pacific Command, U.S. Joint Forces Command, U.S. Southern Command; U.S. European Command, U.S. Transportation Command, U.S. Special Operations Command, and U.S. Space Command. U.S. Forces Korea is a sub-unified command.

[26] These Judge Advocate slots are usually rotated among the various services. More specifically, service TJAGs nominate officers to fill Judge Advocate vacancies. The CINCs make their selections from among the nominees.

[27] "Office of the Staff Judge Advocate," linked from United States European Command at "The Command," through "Special Staff," and "Staff Judge Advocate," available from <http://www.eucom.mil/>; Internet; accessed 15 February 2000.

[28] Department of the Army, Claims, Army Regulation 27-20 (Washington, D.C.: U.S. Department of the Army, 31 December 1997); Department of the Army, Claims, Department of the Army Pamphlet 27-162 (Washington, D.C.: U.S. Department of the Army, 15 December 1989); Department of the Air Force,

Medical Law, Air Force Instruction 302 (Washington, D.C.: U.S. Department of the Air Force, 1 December 1995); Department of the Air Force, Tort Claims, Air Force Instruction 501 (Washington, D.C.: U.S. Department of the Air Force, 1 May 1996); Department of the Air Force, Personnel and Government Recovery Claims, Air Force Instruction 502 (Washington, D.C.: U.S. Department of the Air Force, 1 March 1997); Department of the Navy, Administrative Processing and Consideration of Claims on Behalf of and Against the United States, JAGMAN Instruction 5890.1, (Washington, D.C.: U.S. Department of the Navy, 13 January 1991).

[29] Ibid.

[30] For example, a consolidated organization would need only one receptionist, one budget office, one chief, one deputy chief, etc., rather than four of each as now exists. I realize this does not always hold true, but efficiency is a logical result of consolidation.

[31] For example, if you were to combine the tort operations of the various services, you would logically benefit by not having to duplicate specialization and expertise for each service. The combining of claims systems would avoid this needless duplication and thereby save money.

[32] Creating a joint Claims system also presumes that the joint system would be equally or more effective as the current separate systems.

[33] *See generally*, Fred E. Bryant, A Joint Legal Services Agency and a Joint Operational Law Practice: The Services' Judge Advocates and Lawyers Move Toward the Next Century, Study Project, Carlisle Barracks: U.S. Army War College, 5 April 1993. Although COL Bryant does not believe that wholesale consolidation of legal support is warranted, he does argue persuasively for more jointness in operational law.

[34] "Office of General Counsel," available from <http://www.defenselink.mil/dodgc/>; Internet; accessed 30 March 2000. "The Office of General Counsel is headed by the General Counsel of the Department of Defense (DoD). Appointed by the President with the advice and consent of the Senate, the General Counsel is by law the Chief Legal Officer of DoD. The General Counsel provides legal policy oversight and direction throughout the Department. He or she oversees, as appropriate, legal services delivered by the military and civilian attorneys in all DoD components. In addition, the General Counsel provides legal advice to the Secretary of Defense, the Deputy Secretary of Defense and other senior DoD officials. The Office of General Counsel, under the General Counsel's direction, delivers legal services to the Office of the Secretary of Defense (OSD) and, as appropriate, other DoD components."

[35] The need for a review of the military's education system has been recognized as a deficiency that must be addressed if we are to prudently develop the classroom of the 21st century. One commentator eloquently addresses the need for joint education as follows:

> There is no DOD or joint agency charged with integrating resources, manpower, and academic programs for the efficient and cost-effective operation of the educational system. Though this system has served the military well, it may not be suited for the tremendous changes that education will face in the next century. Technological advances, budgetary constraints, and enhanced jointness will call for new ways of doing business. We require a vision of education based upon unity of command, a joint learning environment, and consolidated assets. Education, like other aspects of preparing for war, should be accomplished in a joint setting. Robert B. Kupiszewski, "Joint Education for the 21st Century," Joint Forces Quarterly (Spring 1995): 73.

[36] The Army JAG School is in Charlottesville, Virginia; the Naval Justice School is in Newport, Rhode Island; and the Air Force JAG School is at Maxwell, Air Force Base, Alabama. Marine Corps lawyers attend the Naval Justice School.

[37] *See,e.g.* Department of the Air Force, Air Force Judge Advocate General School Annual Bulletin, (Maxwell Air Force Base: Air Force Judge Advocate General's School, 1998 – 1999; Department of the Army, The Annual Bulletin of The Judge Advocate General's School (Charlottesville: The Judge Advocate General's School, 1999-2000.

[38] Ibid. On the other hand, there are a few continuing legal education courses that are taught exclusively at only one of the three JAG Schools. For example, the Contract Attorneys Course is taught only at the Army JAG School, and advanced environmental law is taught exclusively at the Air Force JAG School.

[39] Kupiszewski, 74.

[40] Ibid., 74.

[41] For example, the Air Force Judge Advocate General's School has special expertise in environmental law, while the Army Judge Advocate General's School has special expertise in government contract law.

[42] *See generally*, Goldwater-Nichols, 3. *See also*, Bryant, 1.

[43] Congress, Senate. Floor Speech by Senator Nunn, "The Department of Defense Must Thoroughly Overhaul the Service Roles and Missions," 2 July 1992.

[44] Kupiszewski, 73.

[45] Uniform Code of Military Justice, U.S. Code, vol 10, sections 801- 946 (1951).

[46] *See, e.g.* Department of the Army, Legal Assistance, Army Regulation 27-3 (Washington, D.C.: U.S. Department of the Army, 10 September 1995), 4. Some military clients even seek out other service's legal assistance offices in order to get access to services not offered by their own branch of service.

[47] *See, e.g.* Army Regulation 27-20, 1-2.

[48] For example, the Army JAG School exclusively offers the Contract Attorneys Course, while the Air Force JAG School exclusively offers courses in environmental law.

[49] *See* Bryant, 2-6.

[50] *See, e.g.* Department of the Army, Operations, Army Field Manual 100-5 (Washington, D.C.: Department of the Army, 14 June 1993).

[51] Joint Chiefs of Staff, Joint Warfare of the Armed Forces of the United States, Joint Pub 1, Washington, D.C.: U.S. Joint Chiefs of Staff, 10 January 1995); Joint Chiefs of Staff, Doctrine for Joint Operations, Joint Pub 3-0, Washington, D.C.: U.S. Joint Chiefs of Staff, 1 February 1995) .

[52] Department of the Army, Legal Support to Operations, Army Field Manual 27-100 (Washington, D.C.: Department of the Army, 30 September 1999.

[53] FM 27-100 does not cover OGC doctrine.

[54] Bryant, 20-29.

[55] *See generally*, Carl H. Builder, The Masks of War (Baltimore: The Johns Hopkins University Press, 1989) Chapter 2-3.

[56] Bryant, 1. "In a floor speech on July 2, 1992, Senator Nunn specifically challenged the Services to streamline and consolidate, to eliminate needless 'administrative elements,' and to provide an end product which is 'best for America." citing Floor Speech by Senator Nunn.

[57] Ibid.

[58] Department of Defense, Defense Management Review Decision 992, "Consolidating Military Claims Headquarters Offices," (Washington: U.S. Department of Defense: 16 October 1990).

[59] Department of Defense, Defense Management Review II, Phase 3 Initiatives, "Centralized Management of Officer Career Specialists," (Washington: U.S. Department of Defense: 14 September 1990).

[60] *See, e.g.* Arthur M. Smith, "Joint Medical Support: Are We Asleep at the Switch," Joint Forces Quarterly, (Summer 1995): 102; and Arthur M. Smith, "Integrated Medical Support In Joint Operations: A Question of Commitment," Naval War College Review XLVIII (Summer 1995): 32. Captain Smith criticizes medical support as lacking in jointness that could have adversely impacted military operations and patient care.

[61] For example, currently, there is a very smooth-running Combined and Joint legal office in Sarajevo, Bosnia, serving the multi-national force in Bosnia-Herzegovina.

[62] For example, Fort Lewis/McChord AFB, Fort Richardson/Elmendorf AFB, Fort Bragg/Pope AFB, Fort Carson/Peterson AFB, Fort Sill/Tinker AFB, Fort Shafter/Hickam AFB, Fort Sam Houston/Randolph & Lackland AFBs, Hampton Roads (VA) Army, Navy, and AFB installations, installations in the Washington, D.C. area, and 21st Theater Support Command/Ramstein AFB overseas.

[63] At least a Staff Judge Advocate, Deputy Staff Judge Advocate, and Chief Legal NCO.

[64] For example, the Air Force policy on legal assistance services is more restrictive than army policy. Formulating a joint policy to cover all branches of service would be easy, assuming the services could agree on what the policy should be.

[65] See discussion in earlier portions of this paper.

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