



INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
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ARLINGTON, VIRGINIA 22202-4704

**ACTION MEMO**

June 28, 2004

**FOR: AIG, OFFICE OF COMMUNICATIONS AND CONGRESSIONAL LIAISON**

**FROM:** [REDACTED] Jr., Director, Defense Hotline

**SUBJECT: Response to Chairman of the Total Force Subcommittee, House Armed Services Committee**

- Attached for your signature are a response to the Chairman, Total Force Subcommittee, and a referral memorandum to the Navy Judge Advocate General (TAB A).
- In a facsimile dated February 23, 2004 (TAB B), Ms. Lynn W. Henselman, Subcommittee staffer (and [REDACTED] IG DoD employee), forwarded more correspondence from Mr. Norbert Basil MacLean III, the complainant in Hotline case number 88736 (TAB C). Based on the response received from the Navy Judge Advocate General (JAG) (TAB D), the Hotline (with OGC coordination) responded to Mr. MacLean on November 21, 2003 (TAB E). At that time, we advised Mr. MacLean that further inquiry into his Article 32 illegal subpoenas issues was not warranted because it was among several issues he was pursuing before the Navy-Marine Corps Court of Criminal Appeals (NMCCA) in *MacLean v. United States*, case number 9202821. On December 22, 2003, the NMCCA issued an opinion that denied Mr. MacLean's petition; however, the NMCCA opinion did not specifically address the alleged illegal subpoenas issue, and Mr. MacLean continues to focus on this matter.
- There is no question that UCMJ Article 32 pretrial investigations lack authority to compel production of civilian witnesses, records, or documents by means of subpoenas. We contacted the Navy JAG, and determined they had not provided a response to Mr. MacLean, or his attorney, subsequent to the White House Counsel's referral over on January 23, 2004 (TAB F). Under the provision of 32 CFR part 776 (TAB G), the issue is one of "professional responsibility" that needs to be addressed by the Navy JAG directly.

**RECOMMENDATION: AIG, OCCL sign letter and referral memorandum at TAB A.**

OGC Coordination [REDACTED]

Attachments  
As stated

6/30/04

Prepared By: [REDACTED] (703) 604-[REDACTED] (2003-155 [REDACTED])

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