

MARINE CORPS LEGAL SERVICES STRATEGIC ACTION PLAN 2010-2015



“Professions that cannot change themselves from within, cannot respond to the needs of their clients, and cannot enforce standards of behavior so as to maintain the confidence of their constituencies while also inspiring the admiration and loyalty of their own members are in trouble.”

Richard H. Kohn

“Marine Corps Legal Services” as used herein, denotes all Marines serving in the Military Occupational Specialty of 44XX and civilian support personnel attached to Marine legal offices. It does not include civilian attorneys working for the Counsel for the Commandant.

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SOURCE DOCUMENTS (POSTED AT SJA TO CMC WEBSITE)

Tab 1 CMC General Van Ryzin, Marine Corps Legal Services Study (May 1969)

Tab 2 MARINE CORPS CENTER FOR LESSONS LEARNED, LEGAL SERVICES SUPPORT TO OPERATIONAL COMMANDERS (3 May 2006)

Tab 3 CMC General Gray, Jr, Legal Services Support Master Plan 1990-2000 (21 Dec 1989)

Tab 4 Draft U.S. DEP'T OF NAVY, SEC'Y OF THE NAVY INST. 5430.27D, RESPONSIBILITY OF THE JUDGE ADVOCATE GENERAL OF THE NAVY AND THE STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE CORPS FOR SUPERVISION AND PROVISION OF CERTAIN LEGAL SERVICES

Tab 5 U.S. Marine Corps, Operational Handbook 4-10, Legal Services Support (31 Jan 1984)



Staff Judge Advocate to the Commandant

This Strategic Action Plan sets a course to improve the delivery of legal services to our Commanders, Marines, Sailors, and families. In setting that course we re-analyze the legal mission, and the means by which we can best accomplish it, mindful of our historical foundation and evolutionary trajectory.

The current Marine Corps model for delivery of legal services was established in 1969 and its only significant revision came in 1983 when we consolidated our military justice assets within the operating forces to ensure greater effectiveness and responsiveness for combat operations. The model reflects the basic principles of the Marine Corps' organizational ethos: the primacy of the Commander in ensuring good order and discipline; the seamless integration of judge advocates as unrestricted officers; and the use of organic assets to provide legal support.

This basic model has served the Marine Corps well for over four decades, and its underlying principles remain valid. However, the changing operational landscape over the last decade, the growth of the Marine Corps, and recent developments in military justice have coalesced to raise the question: how can we adapt legal services to more effectively and efficiently support Commanders in accomplishing the mission, in taking care of Marines, Sailors, and their families, and in protecting the institution?

This Strategic Action Plan provides a roadmap to answer that question. The answer is founded upon our Marine Corps ethos and history of decentralized execution, but recognizes that a unified vision and common operational picture is equally essential, particularly in an age in which any legal issue may have instantaneous strategic implications. Accordingly, this Plan strikes a balance between uniformity of policies and procedures, and decentralized execution.

The intent of this Plan is to address current and emerging Marine Corps legal challenges with Marine solutions. The plan assesses our capabilities, focusing on our expeditionary ethos and cultural strengths. It examines the threats confronting us and the opportunities presented. Ultimately, it provides the direction in which we have already begun to move to accomplish our objective: providing legal services on a par with the warfighting capabilities for which our Corps has long been famous.

V. A. ARY
Major General, U.S. Marine Corps



MARINE CORPS LEGAL SERVICES

Mission

The mission of Marine Corps Legal Services is to provide timely, efficient, and appropriate legal advice and support to commanders, Marines, Sailors, and their families to promote the readiness of the force and contribute to Marine Corps mission accomplishment.

Vision

The Marine Corps legal services community will provide the highest quality legal advice and support to our commanders, Marines, Sailors, and family members. We recognize that quality organic legal support is essential to mission success at the tactical, operational, and strategic level, and we are dedicated to helping the Marine Corps fight and win our Nation's battles. We will consistently strive to improve the provision of legal services by setting standards, elevating the quality of our practice and our practitioners, harnessing technology, and ensuring all members of the Marine legal community are trained, organized, and equipped to meet the emerging and increasingly complex legal requirements of our Marine Corps now and in the future.

Strategic Goals

- ❖ Standardize functional areas, procedures, and technology to foster a common operating scheme throughout the community of practice;
- ❖ Develop and maintain critical capabilities necessary to execute core competencies and improve the professional training, education, and performance of the legal services community;
- ❖ Create and implement a formalized and Commander-based inspection program to facilitate transparent oversight of the readiness of all Marine legal offices;
- ❖ Evaluate and, as appropriate, adapt organizational structure to right-size the legal community and achieve maximum efficiency with limited resources; and
- ❖ Capture, memorialize, and promulgate legal services doctrine to exploit lessons learned and improve the delivery of legal services.

INTRODUCTION: EVOLUTION OF MARINE CORPS LEGAL SERVICES

The enactment of the Uniform Code of Military Justice (UCMJ) in 1950 required the armed forces to re-examine their military justice practice. Further Congressional changes in the Military Justice Act of 1968 and the 1969 Manual for Courts-Martial prompted the Commandant of the Marine Corps to order a study evaluating the “most practicable procedures” for the provision of legal services in the Marine Corps.¹

The 1969 Marine Corps Legal Services (MCLS) Study considered several models for the provision of Marine Corps legal services.² Of significant note, the option the Commandant selected was the model in place in 1969 and the model still in place today: using Marine line officers who are also judge advocates to provide legal services for the Marine Corps.

The underlying rationale for selecting this model remains as relevant today as it was then, when the Commandant and his general officer study group deliberately committed to a legal system that would maintain the primacy of the Commander in meeting the good order and discipline requirements of our Corps. The 1969 MCLS Study reasoned that “[i]n execution of the responsibilities of leadership, Marine Commanders will be better able to accomplish this function so vital to the Marine Corps by advice from Marine lawyers who think, are trained, and have experienced field hardships throughout their careers, the same as their Commanders.”³ This statement reflects an understanding that Marine Commanders are likely to be more receptive to legal advice from a fellow Marine officer who has an understanding, not only of the specific legal issue, but also of the overall context of the challenges facing the Commander.

¹ CMC General Van Ryzin, MARINE CORPS LEGAL SERVICES STUDY, (May 1969) [hereinafter 1969 MCLS STUDY] (Tab 1).

² Five Options presented to then-Commandant General Leonard Chapman by the 1969 study group were:

1. Continue present system for providing legal services to the Marine Corps (*option selected by Commandant and still employed today);
2. Utilize only Navy lawyers for providing legal services to the Marine Corps;
3. Establish judge advocate duty only corps of Marine lawyers;
4. Maximize use of Navy lawyers, but continue having Marine lawyers provide military justice legal services; or
5. Modify present system by designation of limited group [military judges] of Marine lawyers for law duty only. *Id.* at 64.

³ *Id.* at iii.



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Finally, the 1969 MCLS Study concluded that by continuing the current model of using Marine line officers who are also judge advocates, the Commandant's decision ensured the delivery of legal services in a manner that mirrored the Marine Corps' organizational ethos:

It minimizes the appearance of a 'special corps' within the Corps. It supports the Marine Corps family concept of taking care of its own. It ensures that the person who is providing this most essential and vital service, considers himself and is actually committed to complete involvement in the military community for whom he serves.⁴

This complete integration of Marine judge advocates in the Marine community continues to be "reflective of the highest order of public service that is expected of the Bar in supporting the communities of our American society."⁵

Of course, in the four decades since this study, the Marine Corps has evolved and so too has the Marine legal mission. A key to the Marine Corps' durability in the face of change is the fundamental principle that we must adapt to improve capabilities or we will find ourselves unequal to emerging challenges.

In keeping with this principle, our community must progress and reevaluate our capabilities in order to meet the emerging and increasingly complex requirements for the provision of legal services. The military justice system continues to mature as the complexity of cases increases. Heightened scrutiny, both within the Marine Corps and in the media, increases the time, effort, and skill required from our judge advocates. Simultaneously, the military conflicts over the last decade have increased demand for operational law support and legal assistance. The operational judge advocate has been an integral and proven requirement of Marine infantry battalions and regiments deploying to Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF)⁶ and has become a de facto manning requirement for future combat deployments.⁷ In addition, Commanders continue to insist that Marines and their families receive full-service legal assistance, particularly surrounding deployments, and

⁴ *Id.* at 67.

⁵ *Id.*

⁶ MARINE CORPS CENTER FOR LESSONS LEARNED, LEGAL SERVICES SUPPORT TO OPERATIONAL COMMANDERS (3 May 2006) [hereinafter MCCL LEGAL SERVICES REPORT] (Tab 2).

⁷ Anecdotal information and statistical analyses from OIF and OEF have indicated that despite a smaller number of personnel at a CONUS base or station, the overall CONUS legal requirements do not diminish significantly during large deployments.



that Marine Corps Legal Services meet the unique demands of our wounded warriors. Supporting our forward-deployed Commanders, Marines and Sailors will continue to be our number one priority, and helping care for our wounded warriors is part of that priority. Thus, the lesson for the community, reinforced by recent experience from the “Long War,” is in part the need for balance and flexibility to meet a wide range of competing legal requirements.

In our Command-driven legal system, Marine judge advocates operate independently, providing legal advice and support to the Commander. Despite the many advantages of this decentralized approach, gaps have developed over the years. These include the absence of unifying legal doctrine, the lack of a common operating picture, and a substantial variance in the procedures for providing legal support. This inconsistency in legal processes and practice has created challenges in training, apportionment of resources, quality assurance, and transparency. Additionally, this inconsistency has proven to be an obstacle to maintaining common professional standards.

The task at hand for the Marine Corps legal services community is to adapt to meet current legal requirements and emerging challenges while continuing to produce Marine judge advocates who are Marine Air Ground Task Force (MAGTF) officers for an expeditionary Marine Corps.⁸ This plan emphasizes uniformity of policies and procedures, consistent with the Commandant’s intent,⁹ to promote a unified voice and focused effort, while maintaining decentralized execution to allow rapid, flexible, local initiative, action, and response.

PART I – OVERVIEW OF MISSION, ROLES, AND ORGANIZATIONAL STRUCTURE

The mission of Marine Corps Legal Services is to provide timely, efficient, and appropriate legal advice and support to Commanders, Marines, Sailors, and their families to promote the readiness of the force and contribute to Marine Corps mission accomplishment.

⁸ The MAGTF is the Marine Corps’ principal organization for all missions across the range of military operations. MAGTFs are general-purpose air-ground-logistics forces that can be tailored to the requirements of a specific situation. Each MAGTF has four core elements: a command element, ground combat element, aviation combat element, and combat service support element. See U.S. MARINE CORPS, MARINE CORPS DOCTRINAL PUBLICATION 3, EXPEDITIONARY OPERATIONS 69-70 (16 Apr 1998). “What is needed then are officers sufficiently familiar with the capabilities, limitations, issues, procedures, and terminology of all of the MAGTF’s elements so that they can function as effective members of the integrated command elements staff . . .” MAGTF Officers. Lieutenant Colonel T.A. Caughan, USMC, *Educating the MAGTF Officer*, ART OF WAR STUDIES (2008) (citing U.S. MARINE CORPS, FLEET MARINE FORCE MANUAL (MCDP) 1, WARFIGHTING (20 Jun 1997) [hereinafter MCDP 1 WARFIGHTING]).

⁹ See CMC General James T. Conway, MARINE CORPS SERVICE CAMPAIGN PLAN 2009-2015, 2 (9 Dec 2009).

A. THE MARINE LEGAL COMMUNITY AND OUR PRACTICE OF LAW

The unique mission of the Marine Corps as our Nation's expeditionary force in readiness drives our law practice and our approach to developing and assigning judge advocates and legal service specialists. Our Corps is committed to the principle that every Marine officer is a complete MAGTF officer and every Marine a rifleman. This commitment requires a balanced career progression to develop judge advocates and legal service specialists who are not only generalists from a legal standpoint, but also have a broad understanding of our Marine culture, ethos, and operational focus.

Without a MAGTF officer background, our judge advocates would be less effective in their primary roles as command legal advisors, military justice practitioners, and operational law advisors. As with all unrestricted officers, the Marine Corps demands that judge advocates fill a variety of billets outside their primary military occupational specialty (MOS). This integration in the overall Marine officer community allows judge advocates to become better Marine officers and legal advisors.

Our Command-driven legal system also relies on the support of enlisted legal service specialists and a cadre of highly trained chief warrant officers, designated as legal administrative officers (LAOs). Consistent with our Marine Corps ethos that every Marine is first and foremost a disciplined warrior, our legal services specialists maintain the same balanced career progression inherent to the MAGTF concept. Likewise our LAOs, while few in number, are a critical force-multiplier to our legal mission.

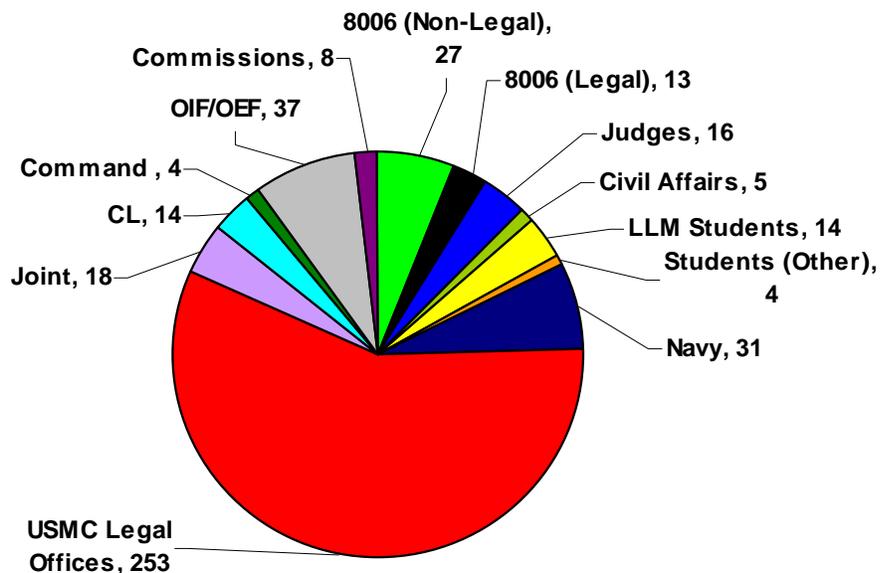
The generalist preference and its underlying MAGTF officer requirement are reflected in promotion opportunities and have implications for career development. Unlike the Army, Navy, and Air Force JAG Corps, which have separate promotion boards for lawyers, Marine judge advocates compete head-to-head as Marine officers against their peers from other MOSs. Other than the standard precept language requiring selection of those "best and fully qualified"¹⁰ from all MOSs, there is no tailored precept or quota on a Marine Corps promotion board for judge advocates. Likewise, for enlisted legal service specialists,

¹⁰ 10 U.S.C. § 5947.

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promotion boards pay particular attention to performance in career broadening tours such as drill instructor duty or recruiting duty and select those who are best and fully qualified. Accordingly, our career progression reflects a movement between legal and non-legal assignments in the Marine Corps.

In accomplishing the legal services mission, Marine judge advocates fill two basic roles: Command Legal Advisor and Legal Service Support Provider. The mission of command legal advice is accomplished through the Staff Judge Advocate (SJA), who provides independent legal advice to Commanders on all issues, including military justice, operational law, and installation law.¹¹ As a supporting arm, Legal Service Support Sections (LSSS) and law centers provide legal service support to Commanders, individual Marines and Sailors, and their families. This general support includes military justice services (prosecution, defense, and review), personal and family legal assistance, civil law/ethics, administrative law, and claims. In addition, to accomplish the broad missions of the Marine Corps, the Department of the Navy and the Department of Defense, Marine judge advocates fill a variety of joint, departmental, and non-legal billets. Our career patterns reflect these assignments. The following pie chart reflects the assignments of the 444 Marine judge advocates on active duty as of June 2010 (the distribution also generally applies to the assignment of legal service specialists):



¹¹ Beyond our primary areas of practice: military justice, operational law, and legal assistance, Marine SJAs work, often in conjunction with the offices of the Counsel for the Commandant (CL), on a broad range of administrative and civil law issues.

1. Command Legal Advisors

a. Staff Judge Advocates – We assign our senior and most experienced judge advocates as SJAs to our Marine Forces, Marine Expeditionary Forces, Marine Corps Installations, and our major subordinate commands. These assignments reflect the priority these billets have in the Corps and the role these SJAs have in advising senior Commanders, planning legal support of operations, and supervising the military justice process for their commands. As a key member of a Commander's staff, the SJA provides advice and guidance to the Commander on all legal issues, including operational law, military justice, and, in conjunction with the offices of the Counsel for the Commandant (CL), ethics and installation law, both in garrison and in deployed environments. The relationship between SJAs and their Commanders is statutorily protected from outside interference.¹² Accordingly, this Strategic Action Plan does not seek to infringe upon the SJAs' statutory prerogative to provide independent, substantive legal advice.

b. Regimental/Battalion Judge Advocates – The regimental/battalion judge advocate is a relatively new and developing role.¹³ To meet the demand for legal support during combat operations, Marine judge advocates have been assigned on an ad hoc, but continuous basis to deploying regimental and battalion-level commands. These assignments demonstrate the flexibility of the Marine legal services community to effectively task-organize to support our combat forces.¹⁴ As special staff officers, these judge advocates perform a wide range of legal and non-legal functions within the unit. Similar to higher headquarters SJAs, command judge advocates are intended to be the resident experts and primary advisors to the Commanding Officer on such issues as the Law of Armed Conflict, Rules of Engagement, Detainee Handling, Sensitive Site Exploitation, Targeting, Military Justice, and Preventive Law. These temporary billets are not accounted for on any table of organization and since their inception in 2003 have been sourced

¹² 10 U.S.C. § 5046. The same statute that created the SJA to CMC billet also established the independence of SJAs.

¹³ See Annex C.

¹⁴ No other Service employs judge advocates at the battalion level (though the Army has Brigade JAGs); yet these roles have proven invaluable in assisting Marine combat battalions with detainee operations, targeting, rules of engagement, claims, and investigations.



primarily from the general population of judge advocates serving in LSSSs and law centers throughout the Marine Corps. The well-documented success of this asset has assured its continued employment.¹⁵

2. Legal Service Support – In general support of our Commanders and their SJAs in the worldwide mission of legal service support, Marine legal offices are organized in three basic models:

a. Legal Service Support Sections – As part of a deployable command, the active force LSSS's primary purpose is to provide military justice support to a wide variety of Marine Corps commands as prosecutors, defense counsel, post-trial review officers, and military justice support personnel. The LSSS also provides administrative law support. The Marine Corps has three active force LSSSs, located on board Camps Pendleton, Lejeune, and Foster (Okinawa); all are organic to their respective Marine Logistics Groups (MLG). A fourth LSSS resides within Marine Forces Reserve (MFR). The Reserve LSSS provides professional oversight for the 341 members of the Reserve judge advocate community.¹⁶ The Reserve LSSS supports the total force by providing trained and qualified judge advocates where needed. Beginning in FY11, the Reserve LSSS headquarters will be geographically co-located with the SJA to CMC thereby better facilitating coordination of all Reserve judge advocate support.

b. Law Centers – Marine law centers are located on board Marine Corps Air Stations Miramar, Cherry Point, Beaufort, Yuma, Iwakuni, and New River; on board the Recruit Depots in San Diego and Parris Island; at our bases at Quantico, 29 Palms, and Kaneohe Bay; and at MFR in New Orleans.¹⁷ The level of legal services support at these law centers varies by mission and local arrangement. Most law centers provide full service legal service support, including military justice services, personal and family legal assistance, civil law/ethics advice, administrative law, and post-trial transcription and review, while others are more limited in scope.

¹⁵ See, e.g., MCCL LEGAL SERVICES REPORT (Tab 2).

¹⁶ The Marine Corps Reserve currently has no enlisted legal service specialist career path.

¹⁷ Barstow, CA and Albany, GA also have small law centers.

c. Base Staff Judge Advocate Offices – The SJA offices at Camps Lejeune, Pendleton, and Butler historically provided all legal services and support to the Base Commander and the base population. The Base SJA offices generally consisted of an SJA (also serving as the OIC), a civil law section (which works ethics and installation law, often in conjunction with CL offices), a military justice section (historically performing trial services), an administrative law section (handling mostly administrative separations and investigations), legal assistance offices, and a base magistrate (handling base traffic offenses, housing infractions, and juvenile matters). Under memorandums of agreement (MOA) implemented in the mid-1990's, LSSSs perform the trial services for the Base SJA offices at Lejeune, Pendleton, and Butler. These MOAs also provided for personnel exchanges to allow officers assigned to each Base SJA's office the opportunity to obtain litigation experience at the LSSS, while allowing officers assigned to the LSSS to obtain experience in civil law, legal assistance, and other Base SJA practice areas.¹⁸ Marine Corps Base and Installations SJA offices now typically provide command legal advice and legal assistance to the supporting establishment.

3. Judge Advocates Assigned to the Counsel for the Commandant – As part of the Office of the General Counsel of the Department of the Navy, the Counsel for the Commandant performs the General Counsel legal mission for the Marine Corps.¹⁹ Marine judge advocates augment the civilian CL structure, performing duties in areas where their background, education, and experience provide a valuable asset to the particular mission. Conversely, service in CL provides a broadening tour that both expands a judge advocate's view of the law and enables a greater appreciation of the major legal issues facing our General Officers. There are currently 14 active duty Marine judge advocates serving with CL, most of whom have advanced degrees in environmental, labor, or procurement law. The SJA to CMC and the Counsel for the Commandant maintain a close working relationship on matters of common interest.

¹⁸ A variation on this model, which arguably provides flexibility worth emulating, is the LSSS Okinawa (3d MLG), which performs all of the functions of the LSSS and some Base SJA functions (e.g., legal assistance).

¹⁹ A part of the Office of Navy General Counsel (OGC), the Counsel for the Commandant provides comprehensive and timely legal advice and support to the Commandant, HQMC staff agencies, and Marine Corps operating and supporting establishments in the areas of business and commercial law including environmental law, land use, civilian personnel law, procurement and fiscal law, government ethics, and all other matters under the cognizance of the General Counsel of the Navy. See U.S. DEP'T OF NAVY, SEC'Y OF THE NAVY INSTR. 5430.25E, THE GENERAL COUNSEL OF THE NAVY; ASSIGNMENT OF RESPONSIBILITIES (27 Dec 2005) [hereinafter SECNAVINST 5430.25E].

4. Departmental Billets – Navy-Marine Corps²⁰

a. Navy-Marine Corps Trial Judiciary – The Navy-Marine Corps Trial Judiciary, composed of military trial judges from both the Navy and Marine Corps, presides over all special and general courts-martial in the Department of the Navy. As of June 2010, the Marine Corps had 13 judges assigned to the various circuits of the Navy-Marine Corps Trial Judiciary. The Marine Corps considers these assignments critical because the senior Marine judge advocates who serve as judges understand, through experience, our service culture. As such, they are better positioned to balance the interests of good order and discipline of our Marine Corps and the needs of the accused Marine. Marine judges are stationed in the Northern Circuit in Washington DC; the Eastern Circuit in Camp Lejeune, NC, the Southern Circuit at MCRD Parris Island, SC; the Western Circuit in Camp Pendleton, CA; and, the Western Pacific Circuit in Hawaii and Okinawa.

b. Navy-Marine Corps Appellate Review Activity (NAMARA) and Other Office of the Judge Advocate General of the Navy (OJAG) Billets – Marine judge advocates serve as appellate government and appellate defense counsel in support of the post-trial process within the Office of the Judge Advocate General of the Navy. Currently, the Marine Corps assigns 18 Marine judge advocates to this mission in grades ranging from captain to colonel, including three judges assigned to the Navy-Marine Corps Court of Criminal Appeals.²¹ This mission has not changed significantly over the years. Marines also support the Departmental OJAG mission in the areas of federal litigation, civil law, operational law, and military justice.

c. Naval Justice School (NJS) – NJS, located in Newport, RI, is the primary MOS training school for Navy, Marine, and Coast Guard judge advocates, Navy paralegals, and

²⁰ Historically, the Navy JAG Corps provided limited support to Marine Corps legal services. Assignment of Navy JAGs to the LSSS was phased out by 2000. In 2003, Navy JAG began to provide JAGs to deploy with the Marine Corps as individual augmentees (IA). These JAGs made a valuable contribution by serving in supporting roles. Those judge advocate billets providing primary command legal advice, including regimental and battalion judge advocates, however, continued to be filled by Marine judge advocates. On average, four Navy lawyers were attached to the MEF (Fwd) during a deployment. In 2008, the number of Navy JAGs deployed in support of Marine units peaked at six. This program was suspended, and beginning in 2010, the Marine Corps will fill its organic operational law requirements with only Marine judge advocates.

²¹ Only second tour judge advocates are eligible to fill Marine appellate government and defense billets at NAMARA.

Marine legal service specialists and court reporters.²² The Marine Corps supports the mission of NJS by assigning experienced judge advocates and legal service specialists as full-time instructors. Since 2002, the Marine legal services community has integrated a week-long Basic Operational Law Training (BOLT) program for all Marine NJS students as part of every Basic Lawyer Course (BLC); NJS began including this training as part of the BLC curriculum for all students in 2006.²³

5. Joint Billets – The Marine Corps provides judge advocates and legal service specialists for assignment to joint billets. Our ability to fill these billets has depended largely on the personnel inventory, current operational commitments, and the demands of our Departmental and Service requirements.²⁴

a. Deployed Operational Law Joint Billets – The Marine Corps is required to fill a varying number of Joint Manning Document (JMD) billets in support of OIF/OEF. Currently, the Marine Corps fills nine judge advocate and seven legal service specialist billets in locations such as Iraq, Afghanistan, Cuba, and Djibouti. The Marine Corps has relied in part on reservists to assist in this mission, but because operational requirements always trump garrison requirements, the cost of filling these billets is felt keenly across the Marine Corps.

b. Office of Military Commissions (OMC) – As a result of a requirement levied in 2008, there are eight Marine judge advocates and eight enlisted legal service specialists assigned to OMC as of May 2010. The OMC, which falls under the Office of the Secretary of Defense, is responsible for the prosecution and defense of unprivileged enemy belligerents accused of war crimes and other offenses under the Military Commissions Act (MCA).

c. Other Joint Billets – Marine judge advocates fill several billets at various joint commands, on the joint staff, and on standing joint task forces.

²² Though a Departmental school, NJS is operated and commanded by Navy JAG under a Navy Service vice Departmental construct. Operation of NJS is governed by a Commander, Navy Legal Service Command instruction and the Commanding Officer reports to the Deputy JAG.

²³ See Annex C for more information on BOLT.

²⁴ One result is that Marine judge advocates have filled very few senior joint judge advocate billets.



B. ROLE OF THE STAFF JUDGE ADVOCATE TO THE COMMANDANT

Professional leadership of the Marine Corps legal community resides, within the Service, with the SJA to CMC, and within the Department, with the Judge Advocate General of the Navy. The Navy JAG's statutory authority over the practice of law in the Marine Corps is a vestige of the three-department view of the armed forces which pre-dated the 1978 statutory inclusion of the Commandant as a full member of the Joint Chiefs of Staff,²⁵ as well as the 1986 Goldwater-Nichols Act which emphasized a four-service component view of joint operations.²⁶ Since 1978, the Marine Corps has matured as a separate Service, and the billet of SJA to CMC has evolved along with the practice of law in the Marine Corps. From a Service perspective, the SJA to CMC currently provides the de facto leadership for the Marine Corps legal community.

Historically, the Marine legal services community has been much less formally organized and led than the JAG Corps of the other armed services. Before 1986, the senior Marine judge advocate served in a staff position as the Director, Judge Advocate Division (JAD), HQMC. The adoption of 10 U.S.C. § 5046 provided a statutory basis for the billet, renamed the position SJA to CMC, and established criteria for selection.

Since the enactment of 10 U.S.C. § 5046, the responsibility and authority of the SJA to CMC to advise the Commandant has been clear.²⁷ In 2004, Congress strengthened this advisory authority by amending this statute to prohibit any officer or employee within the Department of Defense from interfering with the ability of the SJA to CMC to give independent legal advice to the Commandant.²⁸ Departmental regulations further define the role of the SJA to CMC. Secretary of the Navy Instruction 5430.27C, provides that the SJA to CMC is responsible for advising the Commandant “in military justice, civil and

²⁵ See The Department of Defense Appropriation Authorization Act of 1979, Pub. L. No. 95-485 (1978) (amending the National Security Act of 1947 to include the Commandant of the Marine Corps as a full member of the Joint Chiefs of Staff).

²⁶ Goldwater-Nichols Department of Defense Reorganization Act of 1986, Pub.L. No. 99-433 (1986).

²⁷ Prior to the creation of SJA to CMC in 1986, this billet was largely undefined and, as noted in the MCLS Study, “there is no statutory or other criteria established by regulation at present which prescribes the qualifications for the Brigadier General billet.” 1969 MCLS STUDY, *supra* note 1, at 34.

²⁸ The statute was amended in a manner similar to sections of federal law covering the Judge Advocates General of the other Services.



administrative law, operational law, legal assistance matters, and any other matter as directed by the SecNav and CMC.”²⁹

The SJA to CMC’s supervisory role in overseeing the professional practice of law throughout the Marine Corps, while not specifically set forth in the statute, is discussed in the legislative history. The Senate report accompanying the 1986 legislation that established the billet states: “this position serves as the legal advisor to the Commandant, as well as oversees those Marine Corps officers designated as judge advocates by the Judge Advocate General of the Navy.”³⁰ Whether the report was intended to express Congressional intent that the billet include an oversight or supervisory responsibility, or was simply intended to express a factual observation, no additional statutory supervisory authority was provided to the SJA to CMC to meet the responsibility of overseeing Marines designated as judge advocates.³¹

Four years after the Senate report described the conceptual framework for an oversight role for the SJA to CMC, the Marine Corps adopted the Legal Service Support Master Plan 1990-2000.³² This plan included an annex describing the staff relationships within the legal services community, stating therein, “[the SJA to CMC] has no express statutory duties other than those which any staff judge advocate has under the UCMJ.”³³ It went on to explain that the SJA to CMC:

[h]as no Departmental responsibilities whatsoever. Although he serves as the occupational field sponsor for judge advocates, legal services officers, and enlisted, he does not exercise any supervisory authority over such personnel. Such authority remains with the chain of command, except in

²⁹ U.S. DEP’T OF NAVY, SEC’Y OF THE NAVY INSTR. 5430.27C, RESPONSIBILITY OF THE JUDGE ADVOCATE GENERAL OF THE NAVY AND THE STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE CORPS FOR SUPERVISION AND PROVISION OF CERTAIN LEGAL SERVICES (17 Apr. 2009) [hereinafter SECNAVINST 5430.27C]. For those legal services which fall under the cognizance of the Counsel for the Commandant, see SECNAVINST 5430.25E.

³⁰ S. REP. NO. 99-331, at 223 (1986), 1986 U.S.C.C.A.N. 6413, at 6418.

³¹ Due to the opaque statutory framework, an intermittent debate has grown up within the Marine legal services community around the perceived supervisory authority (or lack thereof) of the SJA to CMC. Two schools of thought have emerged: one view is that, by statute, the SJA to CMC has limited oversight over the Marine legal services community, while the other is that the SJA to CMC has no supervisory authority at all.

³² CMC General Gray, Jr., LEGAL SERVICES SUPPORT MASTER PLAN 1990-2000 (21 Dec 1989) [hereinafter 1990 MASTER PLAN] (Tab 3).

³³ *Id.* at c-II.



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matters of judge advocate certification in which ultimate authority lies with the Judge Advocate General.³⁴

By limiting the billet to a HQMC role, the 1990 Master Plan left the SJA to CMC with only the basic statutory right of communication with subordinate SJAs, but no supervisory role. The 1990 Master Plan summarized the theory of complete decentralization of legal services, stating, “Staff Judge Advocates (SJAs), LSSS OICs, and senior judge advocates have exclusive cognizance throughout the Marine Corps over military law.”³⁵ This approach, while superficially based on the primacy of Commanders, failed to recognize a gap in service authority over the practice of law in the Marine Corps, and resulted in a wide range of disparate procedures for the delivery of legal services in our Corps.

Due to the two-service nature of the Department of the Navy, and the U.S. Navy’s control over the Departmental JAG and Deputy JAG billets,³⁶ the Marine Corps is left without the level of autonomy necessary to lead its legal community that the other services are afforded. Congress assigned to the Departmental JAGs, (who for the Air Force and the Army are also Service JAGs), important duties and responsibilities flowing from the definition of “Judge Advocates General” in Article 1, Uniform Code of Military Justice (UCMJ). Those responsibilities include the duty to “conduct frequent inspections in the field in supervision of the administration of military justice,”³⁷ and the duty to “certify judge advocates as competent to perform as trial or defense counsel.”³⁸ The Marine Corps lacks the internal authority to perform these critical functions, which are necessary for ensuring both the professional competence of Marine judge advocates and the health and efficiency of the Marine legal community as a whole. Although the Judge Advocate General of the

³⁴ *Id.* at c-III.

³⁵ *Id.* at 3-5.

³⁶ Although by statute, Marines are eligible to serve in the Departmental billets of the JAG and Deputy JAG, past precepts for these boards have specifically limited consideration to members of the Navy JAG Corps. 10 U.S.C. § 5148 provides, in relevant part, “[The Navy JAG] shall be appointed from judge advocates of the Navy or the Marine Corps who are members of the bar of a Federal court or the highest court of a State or Territory and who have had at least eight years of experience in legal duties as commissioned officers. The Judge Advocate General, while so serving, has the grade of vice admiral or lieutenant general, as appropriate.” (emphasis added). Similarly, 10 U.S.C. § 5149(a) states: “[The Deputy JAG]...is appointed...from among the judge advocates of the Navy and Marine Corps who have the qualifications prescribed for the Judge Advocate General... the officer shall be appointed in the regular grade of rear admiral or major general, as appropriate.”

³⁷ UCMJ art. 6 (2008). In practice, however, the SJA to CMC carries out the inspection duties on behalf of the Judge Advocate General of the Navy.

³⁸ UCMJ art. 27(b) (2008).



Navy is charged by statute and Departmental regulations with general oversight of the Marine legal services community, the Navy JAG, ill-positioned to exercise that responsibility, has traditionally deferred this mission to the SJA to CMC and Marine SJAs at the command level. As a result, the senior Marine judge advocate has assumed the de facto oversight responsibility over the practice of law in the Marine Corps without specific statutory authority.³⁹

PART II – ASSESSMENT: MISSION PERFORMANCE

The success of the Marine Corps legal services community in accomplishing its mission, particularly since 2003, is well documented. Nevertheless, a candid assessment of the current state of Marine Corps legal services is required if we are to become a more professional and efficient organization. By analyzing strengths, weaknesses, opportunities, and threats, we better position ourselves to pursue realistic solutions to identified challenges. This analysis provides the foundation for our strategic goals and for the initiatives we have undertaken to accomplish those goals.

A. STRENGTHS

1. Organic Legal Personnel: Marines and MAGTF Officers – As an integral part of the Nation’s expeditionary force in readiness, Marine officers possess a unique mindset, which distinguishes them from officers of the other Services.⁴⁰ All Marine officers, including judge advocates, are fully integrated line officers⁴¹ and undergo the same rigorous indoctrination and training.⁴² As a result, Marine judge advocates, like Marine officers of every MOS, share a deep cultural understanding and a common operational picture with the

³⁹ To have effective professional oversight of the Marine legal community, the Marine Corps should have an internal ability to set and train to standards, inspect for compliance, and enforce those same standards. That oversight responsibility and authority should be assigned to the SJA to CMC, consistent with both the statutory foundation of the billet and, as a practical matter, his Service responsibilities.

⁴⁰ “Being a Marine is a state of mind. It is an experience some have likened more to a calling than a profession.” U.S. MARINE CORPS, MARINE CORPS WARFIGHTING PUBLICATION 6-11, LEADING MARINES 7 (3 Jan 1995).

⁴¹ Warrant and limited duty officers are not unrestricted line officers but, having come up from the enlisted ranks, have undergone the same rigorous indoctrination and training.

⁴² “All officers and enlisted Marines undergo similar entry-level training which is, in effect, a socialization process. This training provides all Marines a common experience, a proud heritage, a set of values, and a common bond of comradeship. It is the essential first step in the making of a Marine.” MCDP 1 WARFIGHTING, *supra* note 8, at 50. Marine judge advocates undergo 11 months of training before certification, compared to the 15 weeks it takes to become a Navy JAG.



Commanders they support. This creates a special relationship between the Commander and his judge advocates and enables judge advocates to provide professional legal advice and support regardless of the nature of the assignment.⁴³

2. General Practitioners – The wide range of Marine legal missions (e.g., deployed operational law to garrison military justice) requires the Marine Corps to maintain flexibility to task organize our personnel to meet specific mission requirements. Although most judge advocates begin their careers with an emphasis on military justice, shifting operational requirements mandate that the Marine legal services community develop judge advocates who are “general practitioners.” Consistent with the MAGTF officer concept, the generalist judge advocate is a versatile, “plug-and-play” asset, capable and ready to assist the Commander in any clime and place and with virtually any legal issue.⁴⁴

3. Court-Martial Litigation – Historically, the volume of court-martial trials in the Marine Corps has far exceeded that of the other services. Over the past 12 years, the Marine Corps has tried nearly three times more courts-martial (both per judge advocate and per 1,000 servicemembers) than any other Service.⁴⁵ As a result, Marine judge advocates are, primarily and by necessity, litigators from the time that they report to their first duty station. The trial experience our junior judge advocates obtain is a strength that provides us the opportunity to attain unparalleled military justice litigation expertise, and to produce more seasoned judge advocates of every grade capable of advising Commanders on all legal matters.

4. An Effective Defense Bar – The mission of Marine Corps defense counsel is to ensure that every Marine and Sailor’s statutory and constitutional rights are safeguarded across the spectrum of military justice and administrative processes. Marine defense counsel, zealous and professional in the defense of their clients, remain a source of pride

⁴³ Nowhere is this more evident than in the recent development of assigning judge advocates with infantry battalions in combat missions. See MCCL LEGAL SERVICES REPORT, *supra* note 6.

⁴⁴ The generalist concept does not exclude the notion of obtaining expertise in certain areas. Indeed, the early military justice focus and heavier caseloads provide Marine judge advocates with an enhanced understanding of an area they will encounter throughout their careers. Practiced litigation skills also translate into improved competence in other practice areas. At times during their careers, the demands of the Marine Corps also require judge advocates to spend time concentrating in other areas of the law. Under the generalist concept, they typically return to the mainstream after these tours with an enhanced capability based on their temporary specialized experience.

⁴⁵ Annual Reports from the Code Committee on Military Justice are available at <http://www.armfor.uscourts.gov/Annual.htm> (last visited May 11, 2010).



for our community and service as a defense counsel remains a critical part of the continued growth and maturation of well-rounded MAGTF officer judge advocates.

To help ensure the integrity of the defense function, the Marine Corps, in 1985, created the Chief Defense Counsel (CDC) of the Marine Corps and a separate fitness report chain for defense counsel.⁴⁶ Within this organization, defense counsel are supervised by and receive performance evaluations from local Senior Defense Counsel (SDC) and Regional Defense Counsel (RDC). The CDC, a Marine colonel, and the three lieutenant colonel RDCs provide individual defense counsel with a significant depth of military justice experience to meet the mission of defending Marines and Sailors free from influence of any commander. This defense organization is intended to strike a balance between ensuring the unfettered ability of defense counsel to zealously represent their clients and maintaining flexibility in judge advocate assignments to ensure continued growth and maturation of well-rounded MAGTF officer judge advocates. It has worked well for more than 25 years.⁴⁷

5. Trusted Advisors – The cumulative effect of the strengths identified here is that Marine judge advocates become trusted advisors to Commanders, Marines and Sailors and their families. As MAGTF officers and early-seasoned, well-rounded legal experts, Marine judge advocates enhance the effectiveness of the legal voice within the Marine Corps.

B. WEAKNESSES

1. Lack of Uniformity in Policies and Procedures for Legal Services – While decentralized command and execution is a key aspect of our maneuver warfare philosophy, its success depends on a unified vision and an ability to communicate in a common language. Lack of uniformity of procedures has, at times, resulted in inconsistent execution of the legal mission and has created duplicative training and supervision requirements.⁴⁸

⁴⁶ U.S. MARINE CORPS, ORDER 5800.11A, (15 Nov 1985) [hereinafter MCO 5800.11A]. The defense structure includes three Regional Defense Counsel (RDC). The separate fitness report chain is defined in the Legal Administration Manual, U.S. MARINE CORPS, ORDER P5800.16, MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION para 6005 (MCO P5800.16A)(31 Aug 1999) [hereinafter LEGADMINMAN], and incorporated into the Performance Evaluation System Manual, U.S. MARINE CORPS, ORDER P1610.7F, PERFORMANCE EVALUATION SYSTEM (11 May 2006) [hereinafter PES Manual].

⁴⁷ The effectiveness of the CDC/RDC model, particularly benefiting less experienced counsel, has led to a proposal for a similar structure to oversee the prosecution function.

⁴⁸ For example, the timeline and method for processing cases under standard operating procedures for a military justice office should not vary greatly from one location to the next within the Marine Corps. Accordingly, young Marine legal service specialists or judge advocates that learn basic processes and procedures at LSSS, Camp Lejeune, should be able to integrate



2. Lack of Oversight: Professional and Performance Standards

a. Professional Oversight of the Practice of Law – In addition to being held to the high standards of conduct and performance demanded of all Marine officers, Marine judge advocates must also meet legal professional and ethics requirements, both under the UCMJ and as members of state and federal bars. Yet, under current law and regulations, the Marine Corps has little organic authority to professionally supervise its judge advocates. By statute, the Judge Advocate General of the Navy has the responsibility and authority to provide this oversight for the Department, but has historically focused on the U.S. Navy, a reflection of the cultural differences between the two Services of the Department of the Navy. The practical result is a gap in oversight.⁴⁹

b. Performance Assessment – In addition to the individual professional requirements for Marine judge advocates, the Marine Corps legal community requires performance standards. As with any other military specialty, these standards are required at the tactical level to ensure the proper provision of legal services. Maintaining performance standards and ensuring timely, efficient, and appropriate legal service support to Commanders requires an organic inspection capability. Due to the statutory requirement that Convening Authorities exercise independent discretion and the requirement that SJAs provide legal advice without outside interference, the Commander's need to accurately measure legal readiness is critical. However, due to the nature of legal services, the Commander's ability to measure readiness is limited without an effective quality assurance capability.

3. Lack of Formal Mechanisms for Maintaining Military Justice Expertise –

While Marine judge advocates have the opportunity to try many cases and learn the mechanics of courts-martial early in their careers, they typically lack the opportunity for long-term continuity in trial billets sufficient to truly refine their military justice expertise. This is a necessary by-product of the Marine Corps' preference for generalists and its adherence to the MAGTF officer concept. The 1990 Master Plan, provided that “[e]very field grade

seamlessly into their next billet at the Joint Law Center, MCAS Miramar, because of the common operating scheme throughout the community.

⁴⁹ A statutory grant of authority to allow the SJA to CMC to exercise professional oversight of our practice and practitioners would eliminate this gap.

judge advocate must have a firm, complete knowledge of all aspects of military justice and must maintain that proficiency regardless of current billet assignment.”⁵⁰ In order to reconcile the requirement for advanced military justice proficiency and expertise with the Marine Corps generalist concept, we need mechanisms to capture and communicate corporate expertise and experience in military justice throughout the community.

4. Lack of Current Doctrine – Published Marine Corps Legal Doctrine is out of date and does not reflect current practice. The primary doctrinal publication, OH 4-10,⁵¹ is out of publication and has not been revised in a quarter century. The only legal doctrine currently published is Marine Corps Warfighting Publication 4-11.8, Services in An Expeditionary Environment (24 Sep 2001) which, despite having been recently reviewed, does not reflect the current practice for provision of legal services in an expeditionary environment and does not address legal services in a garrison environment.

C. OPPORTUNITIES

1. Leverage Advancements in Technology – Advancements in technology provide opportunities for the legal community to streamline its efforts to achieve greater efficiency. For example, the 4422 court reporter community has already implemented significant advancements in technology enhancing the ability to provide timely transcription of verbatim records of trial. Moreover, collaborative tools such as SharePoint are improving our practice.

2. Newly Validated Billet Requirements – Between 2008 and 2010, SJA to CMC proposed to Marine Corps Total Force Structure Division (TFSD) the re-coding of approximately 70 judge advocate billets in the areas of military justice, operational, environmental, labor, and procurement law. TFSD partially approved and implemented the re-coding proposal by identifying 51 billets that require specialized training and education (a Master of Laws) in critical areas of legal support. Re-coding also prioritizes these billets for 100% staffing, ensuring uninterrupted command support in these critical areas. Re-coding ensures an increased capability in supervisory judge advocates, creates an expanded

⁵⁰ 1990 MASTER PLAN, *supra* note 33, at 3-7 (emphasis added).

⁵¹ U.S. MARINE CORPS, OPERATIONAL HANDBOOK 4-10, LEGAL SERVICES SUPPORT (31 Jan 1984) [hereinafter OH 4-10] (Tab 5).



opportunity for post-graduate judge advocate training, and facilitates further development of judge advocates for the critical leadership grades of major and lieutenant colonel.

3. Increase in Grade of SJA to CMC – SJA to CMC remains a billet without statutory responsibility or authority.⁵² In 2008, Congress increased the grade of SJA to CMC from brigadier general to major general.⁵³ However, this statutory change did not establish billet responsibilities or include a corresponding increase in authority with the increase in grade. The grade increase provides an opportunity to more formally define the role of SJA to CMC and refine upward the SJA to CMC’s responsibilities for, and authority over, the provision of legal services in the Marine Corps. A greater leadership and supervisory role is consistent with the increase in grade and with the legislative purpose behind the original statutory creation of the billet.⁵⁴

D. THREATS

1. Operational Tempo – As the Commandant stated in the 2009 Service Campaign Plan: “Operations in Iraq are expected to be reduced over the next two years, but commitments to Afghanistan will continue or increase. The conflict in Afghanistan is expected to place heavy requirements on our personnel, equipment, and families... The focus and the deployment rate of many units threaten to erode the skills needed for Marine Corps missions.”⁵⁵ The threat identified by the Commandant extends equally to the legal community. Our focus on operational requirements has the potential to erode critical judge advocate skills for some of our other core competencies.

2. Complexity of Courts-Martial Litigation – Although the number of courts-martial across the services has declined in recent years, military justice practice has grown more complex.⁵⁶ For example, the proliferation of child pornography cases requires the

⁵² Army JAG duties are defined in 10 U.S.C. § 3037(c);
Navy JAG duties are defined in 10 U.S.C. § 5148(d);
Air Force JAG duties are defined in 10 U.S.C. § 8037(c);
There is no corresponding statutory provision in 10 U.S.C. § 5046 outlining the duties of the SJA to CMC.

⁵³ Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. No. 110-417, 112 Stat. 4356, 4434 (codified at 10 U.S.C. § 5046(a) (2008)).

⁵⁴ See note 32, *supra*.

⁵⁵ CMC General James T. Conway, MARINE CORPS SERVICE CAMPAIGN PLAN 2009-2015, 2 (9 Dec. 2009).

⁵⁶ For a discussion regarding case trends, see Annex A.



presentation of intricate computer forensics evidence. The increased reliance upon DNA and other medical evidence requires a similar command of complicated scientific principles.⁵⁷ This increased complexity in litigation, in turn, places substantially greater professional demands on skills in pretrial preparation, trial advocacy, and post-trial review of court-martial records of trial.

3. Competition to Recruit and Retain Quality Marine Judge Advocates – In order to recruit and retain judge advocates, other Services have maximized statutory authorization for the use of Student Loan Repayment Programs and Judge Advocate Continuation Pay (JACP). Under these programs, the Army pays a total bonus of \$185,000 over ten years at different points in the judge advocate’s career. The other Services mirror the JACP portion of the Army program, offering a total of \$60,000 over the judge advocate’s career provided they choose to remain on active duty beyond their first tour. In contrast, the Marine Corps program offers \$30,000 over three years as an Education Debt Subsidy, but does not offer a loan forgiveness program or any additional incentives. The average law school debt of an incoming judge advocate exceeds \$75,000.⁵⁸ The desire to earn the title Marine must continue to be our central recruiting consideration; however, this debt, coupled with the lack of financial assistance offered by the Marine Corps, may prevent worthy candidates from joining our Corps. Additionally, junior officers may choose to leave the Marine Corps because they simply cannot afford to remain.⁵⁹

PART III – VISION FOR THE FUTURE

The Marine Corps legal services community will provide the highest quality legal advice and support to our Commanders, Marines, Sailors, and family members. We recognize that quality organic legal support is essential to mission success at the tactical, operational, and

⁵⁷ Adding to the complexity of courts-martial litigation is the “impact that viewing fictional criminal investigation shows like Crime Scene Investigation (‘CSI’) has upon jurors’ real-life decision-making processes.” Anecdotal comments from military judges, judge advocates, and Marine (jury) members reveal that this “CSI Effect” influences courtroom evidentiary expectations. See Tamara F. Lawson, *Before the Verdict and Beyond the Verdict: The CSI Infections within Modern Criminal Jury Trials*, 41 LOY. U. CHI. L.J. 119 (2009).

⁵⁸ E-mail from Lieutenant Commander Tanya M. Cruz, Code 13, Office of the Judge Advocate General, to Captain Jason M. Foscolo, Deputy Branch Head, Judge Advocate Support, Headquarters Marine Corps (Sept. 23, 2009, 10:25 EST) (on file with Judge Advocate Division, Headquarters Marine Corps).

⁵⁹ The vast majority of judge advocates are accessed in the Marine Corps via the Platoon Leaders Course (PLC) or Officers Candidate Course (OCC) program. There are a small minority of officers that access from other MOSs into the judge advocate community via the funded law or excess leave programs. Thus, the judge advocate MOS is the only MOS in which a majority of the officers have to pay for the professional education required for certification in that MOS.



strategic level, and we are dedicated to helping the Marine Corps fight and win our Nation's battles. We will consistently strive to improve the provision of legal services by setting standards, elevating the quality of our practice and our practitioners, harnessing technology, and ensuring all members of the Marine legal community are trained, organized, and equipped to meet the emerging and increasingly complex legal requirements of our Marine Corps now and in the future.

PART IV – ACTION: IMPLEMENTATION OF STRATEGIC GOALS

The Marine legal services community has taken action to implement our strategic vision in the form of several key initiatives intended to elevate the practice of law and the quality of practitioners in the Marine Corps. Overall, these initiatives institutionalize a comprehensive approach to quality assurance in the delivery of legal services. Each of the current and future initiatives of the Marine legal services community, taken alone, represents only the first steps in this approach. We anticipate that the initiatives, taken together, will produce a whole greater than the sum of its parts – timely, comprehensive, quality legal services delivered the Marine Corps way.

A. STANDARDIZE FUNCTIONAL AREAS, PROCEDURES, AND TECHNOLOGY TO FOSTER A COMMON OPERATING SCHEME THROUGHOUT THE COMMUNITY OF PRACTICE

Standardizing judge advocate functions, legal procedures, and technology fosters a common operating scheme throughout our community of practice. With the assistance of the Marine legal services community, SJA to CMC has undertaken initiatives to improve and standardize procedures in key practice areas. Already, these initiatives have begun to contribute to a common operating picture and a unified vision throughout our community of practice.

1. Case Management System – To gain broader visibility of courts-martial processing, the Marine Corps implemented and made mandatory a single web-based, Corps-wide case management system (CMS) in February 2010.⁶⁰ CMS replaced a variety of systems that were being employed by individual law offices across the Marine Corps to track military justice. CMS tracks court-martial cases in a single database (with multiple user

⁶⁰ Marine Administrative Message, R012130Z Feb. 10, Headquarters Marine Corps, subject: Implementation of Case Management System for Courts-Martial (mandating use of CMS by 17 Feb 10 for all Marine legal offices in tracking of military justice cases), *available at* <http://www.usmc.mil/news/messages/Pages/MARADMIN062-10.aspx>.

views) from receipt of the Request for Legal Services (RLS) to final review by the Navy-Marine Corps Court of Criminal Appeals. CMS is already providing a real time, common operating picture across the community.⁶¹ The CMS administrative law module will soon be online to track administrative separations, investigations, and claims.

2. Automated Inspection Reporting System (AIRS) Checklist – In May 2010, the SJA to CMC developed and the Inspector General of the Marine Corps implemented AIRS 091 – SJA Office, Law Center, Legal Service Support Section. This checklist, which includes standards for all SJA-level legal services functional areas is now institutionalized as a formal part of the Commanding General’s Inspection Program (CGIP).⁶² For the first time, Marine Commanders and their SJAs have the ability to formally inspect the functional areas of SJA offices, LSSSs, and law centers using subject matter experts. Previously, the CGIP only applied to legal sections at the unit level. Commanders and SJAs now have a tool to ensure legal readiness on a broader scale.

3. Standardized Forms – The SJA to CMC has begun the process of capturing and consolidating forms, document templates, checklists, and standard operating procedures in all practice areas, with a view toward standardization where appropriate. For example, post-trial documents, such as the Staff Judge Advocate’s Recommendation and Convening Authority’s Action are being standardized to facilitate consistency and contribute to expeditious post-trial processing that will withstand appellate review.

4. Electronic Records of Trial - The Marine legal services community is conducting a model project to test the use of electronic records of trial, which could greatly reduce costs and improve post-trial processing timelines.⁶³

⁶¹ When CMS was first implemented in February 2010, there were 41 post-trial cases that had exceeded the 120-day time limit for Convening Authority’s Action set by Section 0151 of the JAGMAN in light of *U.S. v. Moreno*, 62 M.J. 129 (2006). As of June 2010, there were less than two. This is largely due to the visibility CMS created and the ability to determine at a glance which commands needed to expedite their post-trial processing.

⁶² Marine Administrative Message, R142126Z May 10, Headquarters Marine Corps, subject: Implementation of Command Inspections of SJA Offices, Law Centers and Legal Support Service Sections, *available at* <http://www.usmc.mil/news/messages/Pages/MARADMIN276-10.aspx>.

⁶³ The President amended R.C.M. 1104(a)(1) to allow electronic signature of “an electronic record of trial” and service of an authenticated electronic record of trial with a means to view it as satisfying the service requirements upon the accused and defense. *See* Exec. Order No. 13468, 73 Fed. Reg. 43, 830 (2008).



B. DEVELOP AND MAINTAIN CRITICAL CAPABILITIES NECESSARY TO EXECUTE CORE COMPETENCIES AND IMPROVE THE PROFESSIONAL TRAINING, EDUCATION, AND PERFORMANCE OF OUR LEGAL SERVICES COMMUNITY

Recognizing the need to train to standards and develop and maintain our legal core competencies, the Marine Corps is improving the training and assistance provided to the legal services community.

1. Training and Readiness (T/R) Manual – On 13 May 2010, the Marine Corps published a revised Legal Services T/R Manual, NAVMC 3500.82, with significant changes that will drive future training of Marine legal personnel. The T/R Manual establishes Core Capability Mission Essential Tasks for readiness reporting and required events for standardized training of Marines assigned to Marine Corps legal services units. It provides tasking for formal schools preparing personnel for service in the legal community. Additionally, for Marines already assigned to legal MOS billets, the Manual provides standards to evaluate proficiency in the tasks required. The recent updates ensure that all members of the legal services community possess the requisite skills to competently perform the mission.

2. Trial Counsel Assistance Program – In May 2010, the SJA to CMC stood up a Trial Counsel Assistance Program (TCAP) to enhance the resources available for our prosecutors. The program is currently staffed with one field grade and one company grade officer (as a collateral duty). In addition to training, TCAP provides resources to assist Marine litigators using a number of electronic tools, including a litigation support website containing practice advisories, a military justice blog, a motions bank, and other useful documents and links. JAD recently submitted a proposal to expand TCAP by adding a civilian sexual assault and complex litigation specialist and three field-grade Regional Trial Counsel, (RTC), to provide military justice expertise to prosecutors.

On the defense side, the CDC has a well-established SharePoint portal that has significantly enhanced the defense bar's ability to work collaboratively and push expertise to individual counsel. In July 2010, the SJA to CMC began considering revisions to Chapter 2 of the LEGADMINMAN, proposed by the CDC, to effect changes within the defense organization. The proposed changes are designed to improve the delivery of defense

services to the individual client by addressing apparent resource gaps and by enhancing the autonomy of the defense bar and insulation of the defense function.

3. Master of Laws Programs – Increased complexity in the practice of law has led the Marine Corps to re-code judge advocate billets in areas in which specialized expertise is necessary. A secondary effect of this re-coding is an increased opportunity for judge advocates to receive advanced degrees. The availability of additional education will elevate the practice of law throughout the Marine Corps.⁶⁴

4. Clarification of SJA to CMC Role – In the fall of 2009, the Judge Advocate General of the Navy and the SJA to CMC convened a working group to recommend a revision to SECNAVINST 5430.27C, the Departmental regulation outlining the duties, responsibilities, and relationships of the Judge Advocate General of the Navy and the SJA to CMC.⁶⁵ The proposed revisions would, if approved, grant the SJA to CMC “professional supervisory authority over all active and reserve Marine judge advocates and legal service specialists” and “civilian attorneys and civilian support personnel, with the exception of those assigned to... the Counsel for the Commandant.”⁶⁶ The draft also states that the SJA to CMC “formulates, implements, supervises, and inspects the use of standard practices and procedures for the delivery of legal services throughout the Marine Corps, with the exception of those matters assigned to the Counsel for the Commandant.”⁶⁷ The SJA to CMC would also become “the doctrine proponent for Marine Corps legal service support doctrine.”⁶⁸ The draft revision is currently being staffed with the Department of the Navy General Counsel’s Office.

The proposed grant of authority, however, is constrained by existing statutes. The authority it provides to the SJA to CMC is entirely derivative of and dependent on the statutory

⁶⁴ Master of Laws (LL.M) degrees may be obtained at civilian institutions through the Special Education Program, the Advance Degree Program or off-duty education. A majority of Marine judge advocates, however, obtain their LLM’s through the Graduate Course at the (Army) Judge Advocate General’s Legal Center and School (TJAGLCS) in Charlottesville, Virginia. The professional education and training available through TJAGLCS is focused on the skill sets that Marine field grade judge advocates will need in the typical career progression.

⁶⁵ Draft U.S. DEP’T OF NAVY, SEC’Y OF THE NAVY INST. 5430.27D, RESPONSIBILITY OF THE JUDGE ADVOCATE GENERAL OF THE NAVY AND THE STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE CORPS FOR SUPERVISION AND PROVISION OF CERTAIN LEGAL SERVICES [hereinafter Draft SECNAVINST 5430.27D](Tab 4).

⁶⁶ *Id.* at subsection (4)(c).

⁶⁷ *Id.*

⁶⁸ *Id.* at subsection (4)(g).

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authority of the Judge Advocate General of the Navy,⁶⁹ leaving the SJA to CMC without independent enforcement authority over the professional conduct of Marine judge advocates. Thus, the proposed regulatory change should be regarded as a precursor to, rather than a substitute for, an amendment to 10 U.S.C. § 5046, which would better clarify the duties and responsibilities of the SJA to CMC.

Specifically enumerating, by statute, the responsibilities and authorities of the SJA to CMC to set and train to standards, inspect for compliance, and uphold standards would enhance the delivery of legal service support in the Marine Corps. It is equally apparent that the statutory authority of SJA to CMC's can be expanded without encroaching on the Departmental authority currently exercised by the Judge Advocate General of the Navy. Additionally, this expansion of authority can be made without infringing upon any Marine SJA's statutory right to provide independent substantive legal advice to his Commander or in any way interfering with any Commander's prerogatives with respect to military justice decisions.

To meet the demands of a mature separate Service, the statutory authority of the SJA to CMC could be refined upward, for example, by: (1) adding an express professional oversight role to the billet description;⁷⁰ (2) amending Article 6, UCMJ, to direct the SJA to CMC to "conduct frequent inspections in the field in supervision of the administration of [Marine Corps] military justice,"⁷¹ and (3) amending Article 26 and/or Article 27 to give SJA

⁶⁹ Draft SECNAVINST 5430.27D prefaces references to SJA to CMC authority with language such as, "[i]n fulfillment of the JAG's responsibilities," even on the matter of professional supervision of Marine judge advocates, and provides no enforcement mechanism for SJA to CMC other than referral of a matter to Navy JAG. *See also* U.S. DEP'T OF NAVY, JUDGE ADVOCATE GENERAL INSTR. 5803.1C, PROFESSIONAL CONDUCT OF ATTORNEY PRACTICING UNDER THE COGNIZANCE AND SUPERVISION OF THE JUDGE ADVOCATE GENERAL (9 Nov 2004) (Instruction under review).

⁷⁰ Although more limited than the JAG billet descriptions, SJA to CMC's billet description contained in 10 U.S.C. § 5046 should be amended to clarify the professional oversight role of the SJA to CMC over the Marine legal services community and judge advocates as follows:

(c) The Staff Judge Advocate to the Commandant of the Marine Corps, in addition to other duties prescribed by law--

- (1) is the legal advisor to the Commandant of the Marine Corps and Headquarters, U.S. Marine Corps;
- (2) shall formulate and implement standard policies and procedures for the delivery of legal services throughout the Marine Corps;
- (3) shall provide professional supervision over the officers of the Marine Corps designated as judge advocates in the performance of their legal duties; and
- (4) shall perform such other duties as may be assigned to him.

Notably, this language does not use the phrase "oversee the officers" contained in the JAG billet descriptions.

⁷¹ Under Article 6, UCMJ, the responsibility to make these inspections resides with the Judge Advocate General of the Navy. SECNAVINST 5430.27C is intended to memorialize the SJA to CMC's fulfillment of this Article 6 responsibility within the Marine Corps.

to CMC the duty to certify Marine judge advocates as competent to perform as military judges, or trial or defense counsel.”⁷² Such changes would enable the SJA to CMC to meet his responsibilities to the Commandant, improve the delivery of legal services throughout the Marine Corps, and better position the Marine legal services community to meet professional standards and emerging requirements.

C. CREATE AND IMPLEMENT A FORMALIZED AND COMMANDER-BASED INSPECTION PROGRAM TO FACILITATE TRANSPARENT OVERSIGHT OF THE READINESS OF ALL MARINE LEGAL OFFICES

Developing standards and inspecting to them is essential to the delivery of quality legal services and overall legal readiness. The Marine legal community will be inspected by two primary means:

1. Commanding General’s Inspection Program (CGIP) – The use of AIRS Checklist 091, implemented in May 2010 as part of the CGIP, supports the Marine Corps concept of a command-driven legal model. The checklist sets forth a clear standard that all law offices must maintain and to which they will be held accountable. It equips local Commanders and SJAs with an effective tool to ensure the highest standards of legal readiness within the command.

2. SJA to CMC Inspections – Under authority granted by SECNAVINST 5430.27C, SJA to CMC visits all Marine Corps installations in order to assess the provision of legal services. While these annual visits have historically included some assessment of the health of the provision of legal services at each office, there has been neither a standardized inspection process consistent with the Article 6, UCMJ, requirement “to make frequent inspection in the field in supervision of the administration of military justice”⁷³ nor an inspection process for any other practice area. The SJA to CMC has developed uniform information requirements for use in these visits which, in conjunction with CGIP inspections, gives Commanders and their SJAs an additional and more robust opportunity to assess legal readiness.

⁷² UCMJ arts. 26, 27(b) (2008).

⁷³ UCMJ Art. 6 (2008).



D. EVALUATE AND, AS APPROPRIATE, ADAPT ORGANIZATIONAL STRUCTURE TO RIGHT-SIZE THE LEGAL COMMUNITY AND ACHIEVE MAXIMUM EFFICIENCY WITH LIMITED RESOURCES

Historically, the legal services community has been regularly engaged in the evaluation and adjustment of the legal services billet structure and personnel inventory.⁷⁴ Two structure evaluations have been conducted within the last five years. In 2005, the SJA to CMC convened a strategic planning group to examine apparent anomalies in billet allocation among the law offices across the Marine Corps. The group recommended a modest re-distribution of assets to reflect changes in mission requirements. Efforts to reconcile legal requirements, structure, and inventory continued in 2007 with a full structure review of the legal services community. Using the 2005 planning group's recommendations as a baseline, the 2007 review took into consideration the Marine Corps end-strength increase to 202,000 and the associated increase in demand for legal services. The review also considered the fact that legal mission sets had expanded and that the practice had grown more complex while the inventory of judge advocates and the structure allocated for judge advocates had remained relatively constant. The 2007 study concluded that an increase in structure was needed to meet the current legal needs of Commanders, Marines and Sailors, and their families.

Adjustment initiatives based on these evaluations have created modest increases in structure and have achieved more significant gains in inventory which will provide increased experience in critical billets and complement the SJA to CMC efforts to increase efficiency and effectiveness within the available structure. Structural challenges remain, of course, and the SJA to CMC continues to evaluate and propose improvements.

1. Structure Adjustment Requests – Since the 2007 structure review, the SJA to CMC has presented several proposals requesting increases in judge advocate structure. Each request was tailored to the various processes developed by the Marine Corps to manage structure growth requests, overall Marine Corps priorities, and redistribution of the 202,000 end strength.⁷⁵ During this period, judge advocate structure increased, but only to account for emergent statutory requirements, such as the Military Commissions.

⁷⁴ “Structure” refers to billets designated on a Table of Organization as required for fill by a specific legal services MOS. ‘Inventory’ refers to actual Marines on active duty who hold one of the legal services MOSs.

⁷⁵ See Annex F.

Additionally, some of the apparent increases in structure merely represented re-coding of certain billets that historically required staffing by judge advocates, but had not been coded for MOS 4402.⁷⁶ Additional structure requests presented in 2008 and 2009 were validated by the Marine Corps, but remained unfunded due to competing Marine Corps priorities. In 2010, the Marine Corps validated, and agreed to fund the 2009 structure increase proposals by adding new structure for 32 regular officers and two warrant officers. If a requested statutory increase in overall structure is granted by Congress, the Marine Corps will add 32 judge advocates and two LAOs effective in FY15.

2. Increased Accessions – In order to increase overall judge advocate inventories, Marine Corps Recruiting Command (MCRC) increased Judge Advocate accessions by 71% from FY08 to FY10. From FY03, the recruiting mission held steady at 35 judge advocates per year until FY09, when it increased to 45. In FY10, the judge advocate recruiting mission increased again, this time to 60. Future attrition rates will determine whether the accessions mission remains at this level.

3. Return to Active Duty Board – In February 2010, the Marine Corps conducted a return to active duty board (RAD) to address a shortage of judge advocates in the grade of major. The RAD effectively augments the Funded Legal Education and Excess Leave Programs to ensure adequate numbers of field grade judge advocates, without the delay inherent in those programs. The February 2010 RAD selected six officers for return. Another board is scheduled for Fall 2010. These boards provide the Marine Corps with experienced mid-level leaders with a combination of military and civilian legal expertise.

4. Consolidation and Regionalization of Post-Trial Processes – As part of an effort to minimize delay in post-trial processing, the SJA to CMC has begun to examine the efficiency of the various offices providing post-trial processing throughout the Marine Corps to evaluate the merits of consolidation and to explore the creation of regional post-trial review offices.

⁷⁶ For example, the 2008 approval of the conversion of civil affairs officer billets (0530) at each Marine Expeditionary Unit (MEU) headquarters for fill by 4405—International/Operational Law judge advocate majors increased the total judge advocate structure by seven billets. This allowed for the accurate accounting of the historical staffing of those billets with judge advocates and highlighted for the Officer Plans section at Manpower the fact that the inventory of judge advocate majors was low in proportion to the requirement. This, in part, prompted the increase in accessions and the Return to Active Duty boards for judge advocates.

5. Transfer of Reserve LSSS – Based on a 2010 SJA to CMC initiative, the Marine Forces Reserve's LSSS, currently part of Mobilization Command, will transfer to SJA to CMC in FY11. The Reserve LSSS has operational control over the 109 Marine Reserve judge advocates that comprise the LSSS's Individual Mobilization Augmentee (IMA) Detachment.⁷⁷ The Reserve LSSS task-organizes its organic IMA judge advocate structure to respond to the warfighting needs of the Total Force. The LSSS IMA Detachment is organized into six branches: Navy-Marine Corps Trial Judiciary, Law of War/Operational Law, Installation Staff Judge Advocate, Regional Defense Activity, Regional Judge Advocate Command and the Regional Government (Prosecution) Activity.⁷⁸ In addition to employing the capabilities residing in its organic IMA Detachment, the Reserve LSSS tracks, coordinates sourcing, and provides professional oversight for the 232 Reserve judge advocates who are not part of the LSSS IMA Detachment. Those judge advocates include: 84 IMA judge advocates who are employed by commands directly;⁷⁹ 27 Selected Marine Corps Reserve (SMCR)⁸⁰ members;⁸¹ 78 members of the Individual Ready Reserve (IRR);⁸² and 43 Inactive Status List (ISL)⁸³ members.⁸³

The transfer of the Reserve LSSS to SJA to CMC will enhance the ability of the SJA to CMC to coordinate the employment of over 340 Marine Reserve judge advocates.

⁷⁷ IMAs are trained individuals assigned to an active component organization's billet that must be filled on or shortly after mobilization. IMAs participate in training activities on a part-time basis with active or reserve units in preparation for recall in a mobilization. See DEP'T OF DEFENSE, RESERVE COMPONENTS OF THE ARMED FORCES: RESERVE COMPONENT CATEGORIES, (Sep 2005) available at <http://ra.defense.gov/documents/RC101%20Handbook-updated%2020%20Sep%2005.pdf> [hereinafter OSD Reserve Component Categories]; Marine Forces Reserve Legal Services Support Section (MFR LSSS) Information Paper of 16 Jun 2009 [hereinafter MFS LSSS info paper] (on file with Judge Advocate Division, Headquarters Marine Corps).

⁷⁸ IMA lawyers also serve as instructors at NJS and the Naval War College. See MFR LSSS info paper.

⁷⁹ The Reserve LSSS assists in sourcing the IMA judge advocates attached directly to certain base commands and combatant commands.

⁸⁰ The SMCR consists of units manned and equipped to serve and/or train either as operational or as augmentation units. See OSD Reserve Component Categories.

⁸¹ In addition the Reserve LSSS assists in sourcing judge advocates assigned in SMCR billets either as deployed battalion judge advocates or assigned to non-judge advocate duties such as executive officers or adjutants.

⁸² The IRR consists of those Ready Reservists who are not in the Selected Reserve. The IRR is a manpower pool comprised principally of individuals having had training, having served previously in the AC or in the Selected Reserve and having some period of their military service obligation remaining. See OSD Reserve Component Categories.

⁸³ The ISL consists of those Standby Reservists (personnel who maintain their affiliation without being in the Ready Reserve) who are not required by law or regulation to remain in an active program and who retain their Reserve affiliation in a nonparticipating status. See OSD Reserve Component Categories.



This will provide the Marine Corps an improved Reserve integration capability, critical in light of the extensive employment of Reserve assets, including judge advocates, over the last decade.

E. CAPTURE, MEMORIALIZE, AND PROMULGATE LEGAL SERVICES DOCTRINE TO EXPLOIT LESSONS LEARNED AND IMPROVE THE DELIVERY OF LEGAL SERVICES

In January 2010, the legal services community began the process to revise and develop new doctrine for the provision of legal services within the Marine Corps. Doctrine establishes the foundation for professionalism: it captures the fundamental beliefs of the Marine legal services community; it guides the way we practice our profession; it imbues us with a common language and way of thinking; and it provides us with a common method of execution of our legal services competencies.⁸⁴ The goal of updating our doctrine is to facilitate each Commander's ability to integrate command legal advice and legal services during the planning and execution of legal support for Marine Corps operations across the spectrum of conflict. Our updated doctrine will also provide flexible guidance, based on accumulated best practices, and it will be applicable across the range of legal advice and services. It will provide Commanders and judge advocates with a toolbox for task-organizing to meet mission requirements while maintaining unity of effort for the practice of law in our Corps.

As part of the 18-month doctrine development process, the SJA to CMC, the designated proponent of legal services doctrine, submitted a publication development order to the Deputy Commandant for Combat Development and Integration (DC, CD&I). The DC, CD&I designated the forthcoming publication as MCWP 4-12.2, "PROVISION OF LEGAL SERVICES WITHIN THE MARINE CORPS." The doctrine review process will culminate with the development of a team made up of the doctrine proponent (SJA to CMC), an Integration Action Officer from CD&I (SJA, CD&I), and subject-matter experts working with Doctrine Control Branch, who will revise and finalize the doctrinal publication prior to its release.

⁸⁴ See U.S. MARINE CORPS, MARINE CORPS DOCTRINAL PUBLICATION 1-3, TACTICS 113 (30 July 1997).

CONCLUSION

Over the past 40 years, the determination made by the Commandant in 1969 that an organic Marine legal services community was a force multiplier for our Corps has been validated again and again. As a community, we have always contributed to mission accomplishment by meeting the needs of our Commanders and the needs of our individual Marines and Sailors, and their families. We have done so as an integrated, organic Service asset capable of manning virtually any section of the wall.

To continue this legacy, it is essential that we assess our capabilities, the threats confronting us, and the opportunities presented us, and adapt to meet emerging challenges. In a word, the purpose of this plan is to press ahead. We will continue to capitalize on our strengths. We will identify and eliminate our weaknesses. Marine judge advocates, legal administrative officers, and legal service specialists take justifiable pride in two basic things: being Marines and providing legal services on a par with the warfighting capabilities for which our Corps has long been famous.