

MARINE CORPS LEGAL SERVICES



STRATEGIC ACTION PLAN

2010-2015

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.

A handwritten signature in black ink that reads "V. A. Ary".

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 . . .” 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.

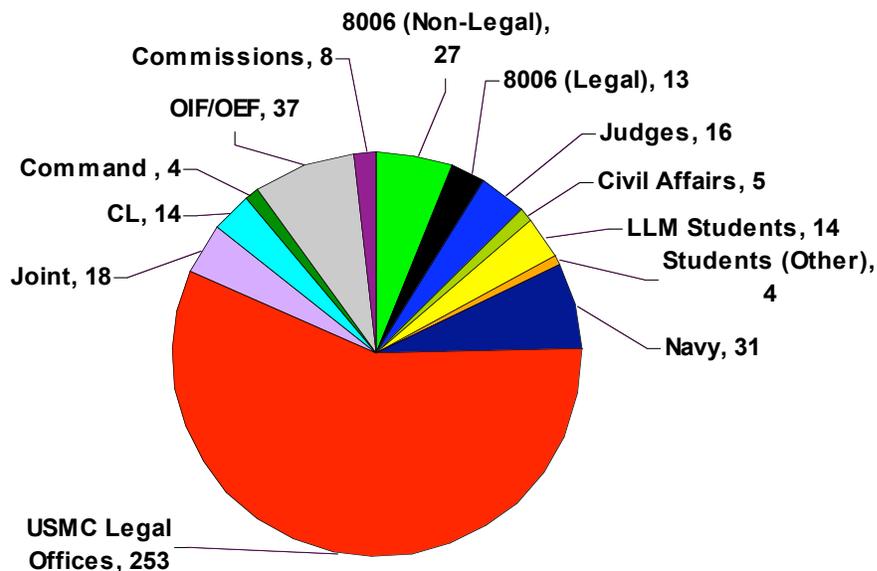
The generalist preference and its underlying MAGTF officer requirement are reflected in promotion opportunities and have implications for career development. Unlike the Army, Navy, and Air Force JAG Corps, which have separate promotion boards for lawyers, Marine judge advocates compete head-to-head as 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.

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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 developed 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.



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.



ANNEX A: MILITARY JUSTICE



ANNEX A

SUBJ: MILITARY JUSTICE ANNEX

1. Purpose. To provide an overview on the practice of military justice in the Marine Corps as part of the Marine Corps Legal Services Strategic Action Plan, 2010-2015.

2. Background. The practice of military justice is the historical reason for the profession of judge advocates in the armed services, and, in the Marine Corps, it has traditionally been a primary focus of our legal community. The military justice system is driven by the commander and based on a complete set of criminal laws for service members in the Uniform Code of Military Justice (UCMJ). The UCMJ includes many crimes punished under civilian law, such as murder, rape, drug use, larceny and drunk driving. In addition, the UCMJ allows a commander to punish strictly military crimes, such as desertion, absence without leave, disrespect towards superiors, failure to obey orders, dereliction of duty, drunk on duty, and malingering. It includes a general article applicable to officers (conduct unbecoming) and a general article for offenses (both enumerated and unenumerated) prejudicial to good order and discipline or service discrediting, respectively. The UCMJ includes provisions punishing misbehavior before the enemy, improper use of countersign, misbehavior of a sentinel, misconduct as a prisoner, aiding the enemy, spying, and espionage.

3. Discussion

a. History

(1) Modern military justice practice began with the enactment of the UCMJ in 1950 (effective 1951), which modernized the practice of criminal law in all Services. The Military Justice Act of 1968 and the Manual for Courts-Martial (MCM) of 1969 further modernized the practice of criminal law in the military by, among other things, establishing an independent trial judiciary and ensuring a defense counsel was appointed to all members of the armed forces facing trial by special or general court-martial. Since that time, the MCM has been continuously updated to keep pace with the federal practice of criminal law.¹

(2) Historically, the Marine Corps has tried more courts-martial than the other Services. In addition, due to the general preference to ensure all Marine judge advocates are grounded in military justice, judge advocates in their first tours typically litigated a significant number of courts-martial cases. This provided our

¹ The Joint Service Committee on Military Justice has the responsibility of reviewing and proposing changes to the Manual for Courts-Martial per Article 146, UCMJ and DOD Directive 5500.17 (May 3, 2003). In addition, Military Rule of Evidence (MRE) 1102 ensures that amendments to the Federal Rules of Evidence (FRE) apply to the MRE within 18 months of the effective date of the FRE amendments “unless the President takes action to the contrary.” Manual for Courts-Martial, United States, Mil. R. Evid. 1102 (2008) [hereinafter MCM].

judge advocates basic competence in the practice of military justice and placed them in good stead for follow-on tours as supervisors of military justice offices.²

b. Current Practice

(1) In the Marine Corps, military justice services are provided by Legal Service Support Sections (LSSS), Staff Judge Advocate (SJA) offices, and law centers and include both prosecution and defense services. The LSSSs and law centers are responsible for the handling of all aspects of a military justice case from the time a request for legal services is submitted by the command through post-trial processing and forwarding, if necessary, to Navy Marine Corps Appellate Review Activity (NAMARA) for appellate review. The officer-in-charge, LSSS or the Director of the law center is the senior supervisory attorney for the trial counsel in their respective offices. Each LSSS or law center serves multiple commanders (courts-martial convening authorities) and SJAs aboard their respective installations or regions.³

(2) Commanders seeking to have charges preferred against individual Marines or Sailors send a request for legal services (RLS) to the LSSS or law center,⁴ initiating the military justice process. The military justice section is responsible for the prosecution of the case. In addition, trial counsel (prosecutors) assess the evidence and advise their supervisors (the senior trial counsel or military justice officer) of the prosecutorial merits of the case. The commanding officer is advised by the trial counsel or military justice officer, often in conjunction with the SJA.

(3) Upon preferral of charges or placement in pretrial confinement, an accused Marine or Sailor at a special or general court-martial case will be assigned a detailed defense counsel.⁵ Marine defense offices⁶ also provide nonjudicial punishment (NJP) counseling, Article 138 complaint advice and representation for servicemembers at adversarial proceedings such as administrative discharge board hearings.

² Prior to the current conflicts, it was common for Marine judge advocates to have several years of military justice experience and extensive courts-martial experience before being placed in a military justice supervisory billet.

³ Typically, the Director of a law center also acts as a staff judge advocate for an installation commander. However, the OICs of the three LSSSs do not act as SJAs.

⁴ There are three LSSSs in the Marine Corps, one attached to each Marine Logistics Group. Law centers are at all major installations where there is no LSSS.

⁵ Per Military Rule of Evidence 305(d), an accused or person suspected of an offense is entitled to consult with defense counsel and to have them present at the interrogation if evidence of a testimonial nature is sought during questioning.

⁶ The Marine defense community is managed by a separate supervisory chain for fitness reports and attorney oversight. All defense counsel in the Marine Corps fall under the professional supervisory authority of the Chief Defense Counsel of the Marine Corps (CDC). In turn, each region in the Marine Corps (E. Coast, W. Coast and Pacific) has a regional defense counsel (RDC), who acts as the supervisory attorney and fitness report reviewing officer, for the defense counsel in their region. The senior defense counsel at an LSSS or law center provides professional supervisory oversight of junior defense counsel. *See* U.S. MARINE CORPS, ORDER P5800.16A, MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION (31 Aug 1999) [hereinafter LEGADMINMAN].

(4) The commander has several options to dispose of the case after the prefferal of charges.⁷ If a case is referred to a special court-martial or an article 32 followed by a general court-martial, the LSSS, SJA office or law center responsible for the case, will handle the case through the pre-trial, trial, and post-trial process. If the case is handled at a lower forum, such as summary court-martial, NJP or adverse administrative action, the LSSS, SJA office or law center responsible also continues to provide administrative support and legal advice until the completion of the process.

(5) The post-trial review process before forwarding to NAMARA requires a substantial amount of work in a relatively short period of time (120 days from date of trial to the convening authority's initial action).⁸ After trial, a transcript of the trial proceedings, the record of trial (ROT) is prepared by a court reporter in the court-reporter section. It is provided to both the trial counsel and the defense counsel for correction, and is then authenticated (certified as accurate) by the military judge. The severity of the adjudged sentence determines whether a verbatim or summarized ROT is required. After a general or special court-martial, a verbatim transcript is required when any part of the sentence adjudged exceeds six months confinement, forfeiture of pay greater than two-thirds pay per month or any forfeiture of pay for more than six months or other punishments that may be adjudged by a special court-martial or when a punitive discharge has been adjudged.⁹ Other sentences require only a summarized record.¹⁰ Once the ROT is authenticated, the review officer at the LSSS, SJA office or law center takes the record through the post-trial review process, preparing the SJA recommendation for the SJA and the convening authority's action for the convening authority. Upon completion, the record is forwarded to the appropriate authority for appellate review.

(6) The convening authority performs the initial review of the case and takes action on the sentence.¹¹ Prior to taking action, the convening authority must consider the results of trial, the recommendation of the Staff Judge Advocate, and any matters submitted by the defense counsel and the accused. If there is a finding of guilt and the adjudged sentence falls outside the purview of automatic review by

⁷ These include taking no action, initiating administrative action, taking nonjudicial punishment per Article 15, UCMJ, or sending the case to a court-martial. If the commander decides that the offense is sufficiently serious to warrant trial by court-martial, the commander requests that charges be preferred and referred to a summary or special court-martial or sent to an Article 32 investigation.

⁸ U.S. v. Moreno, 63 M.J. 129 (2006).

⁹ See UCMJ Art. 19 (2008); MCM, *supra* note 1, R.C.M. 1103(b)(2)(B).

¹⁰ See MCM, *supra* note 1, R.C.M. 1103 (b)(2)(C).

¹¹ In taking action, the convening authority either approves the findings and sentence or may change either or both of them. He or she may dismiss any offense or change the finding of guilty of any offense to one of a lesser-included offense. The convening authority may disapprove the findings of guilty or all or any part of a sentence. However, court-martial findings of "not guilty" are final when adjudged and may not be later changed by the convening authority. He or she may reduce or suspend a sentence or change the punishment to one of a different nature so long as the severity of the punishment is not increased. The convening authority may approve a sentence only if he or she determines that it is warranted by the offense(s) and appropriate for the accused servicemember. For example, the convening authority may reduce or eliminate any confinement, may change a dishonorable discharge to a bad-conduct discharge, and may reduce a sentence of death to imprisonment. See MCM, *supra* note 1, R.C.M. 1101-1114.

the appellate court or Judge Advocate General, the review officer shall provide a review to determine whether the court-martial met the jurisdictional and sentencing requirements of the UCMJ.¹² Following the convening authority's action, the case will be forwarded by the review officer to NAMARA for the appropriate level of review. If there is an approved sentence that includes a sentence of death, a punitive discharge (dishonorable discharge or bad conduct discharge for enlisted personnel; dismissal for officers), or confinement for one year or more, the Navy-Marine Corps Court of Criminal Appeals (NMCCA) will automatically review the case.¹³ In any general court-martial which does not trigger review by the NMCCA under Article 66, UCMJ and in which there is a finding of guilt and the accused does not waive his right to appellate review, the Navy Judge Advocate General is required to examine the ROT for legal errors and possible referral to the appellate courts.¹⁴ Additionally, upon timely application¹⁵ of an accused whose case does not trigger automatic review by the Judge Advocate General or by the NMCCA, the Judge Advocate General may modify or set aside the findings or sentence on the ground of newly discovered evidence, lack of jurisdiction, fraud on the court, error prejudicial to the substantial rights of the accused or the appropriateness of the sentence.

c. Current Training, Education, and Resources

(1) All Marine judge advocates attend the Naval Justice School's (NJS) Basic Lawyer Course (BLC) after completion of The Basic School. Upon successful completion of the BLC at NJS, Marine judge advocates are certified to practice law as a judge advocate, including specifically, as trial and defense counsel. The BLC is designed to meet the requirements for basic judge advocate qualification and certification as set forth in the UCMJ. Marine judge advocates are provided with continuing training and access to resources for the practice of military justice from the time they leave NJS throughout their trial careers. These include providing mentoring and training at local military justice offices, providing opportunities for continuing legal education courses, and providing advice and support at local and higher echelons of command.

(2) For enlisted Marines in the legal community, during Recruit Training, potential legal service specialists (MOS 4421) are screened based on test scores, general aptitude, and disciplinary history. Upon completion of Recruit Training and Marine Corps Combat Training, 4421s attend NJS for their formal legal training (Legal Service Specialist Course). This course of instruction lasts 11 weeks and trains Legal Marines in military justice, post-trial review, legal administration, and legal assistance issues and procedures. Upon graduation, new 4421s are assigned to fulfill a 36-month tour of duty. Additionally, each fiscal year, two speech recognition courses are held at NJS to train new Marine court reporters. Each

¹² See UCMJ Art. 64 (2008).

¹³ See UCMJ Art. 66 (2008).

¹⁴ See UCMJ Art. 69(a) (2008).

¹⁵ The application must be filed on or before the last day of the two-year period beginning on the date the sentence is approved, unless the accused establishes good cause for failing to file within this period. See UCMJ Art. 69(b) (2008).

course has 10 allocations and provides training over 11 weeks. The instruction for the course covers exhibit handling and preparation, grammar, operation of computer aided transcription systems, courts-martial proceedings, closed mask capture of proceedings and the preparation of verbatim and summarized ROTs. Upon completion of this course the Marine is sworn as a court reporter and an officer of the court. As with Marine judge advocates, legal service specialists and court reporters are provided with local training and mentoring, opportunities for follow-on training, and resources and support throughout their careers.

d. Current Initiatives. In recent years, the practice of military justice has become more complex, necessitating greater proficiency on the part of judge advocates and legal service specialists. The historical focus by our legal community on military justice has served the Marine Corps well; however, operational requirements since 2002 have created a demand on legal services that compete with military justice requirements. Simultaneously, from within the practice of military justice the pressures of increasingly complex courts-martial, an increasing number of high profile cases, and events highlighting post-trial processing delays have demonstrated a need for a reassessment of the delivery of military justice services. The initiatives described below are, in part, a result of that reassessment, which is in progress now in our legal community and the Military Justice Branch (JAM), Judge Advocate Division (JAD).

(1) Case Management System (CMS). The Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) mandated use of the CMS per MARADMIN 062/10 of 1 February 2010. The implementation of a common database, the CMS, is an initiative to improve the administrative efficiency and procedural regularity of military justice services. The CMS is a Lotus Notes based, web-enabled database. The CMS tracks court-martial cases from receipt of a RLS through to the promulgating order and submission of the ROT to NAMARA. CMS will eventually provide a standardized database for administrative separations and investigations. The new CMS enhances the ability of local supervisors to oversee their case loads for improved day to day management, provides a common operating picture for all military justice practitioners, provides a data mining tool, decreasing manpower dedicated to responding to requests for information (RFI), improves military justice data capture, increases the visibility of a case across its life from the local LSSS or law center to the cognizant SJA and HQMC, allows NAMARA to track Marine military justice cases from date of trial to mailing of the ROT to ensure visibility of post-trial cases, provides up to date trends for commanders and legal leadership to identify issues and improves ease of data entry and report creation for military justice clerks.

(2) Share Point and Public Websites. A new JAM website was launched in December 2009 to provide a single location for military justice supervisors and prosecutors for military law updates, forms, pleadings, motions, advice, links to various military law websites and a legal news and blog forum. The new website is a restricted Share Point site requiring judge advocates to register and use a common access card (CAC) to access. This allows JAM to provide forms, sample pleadings and motions directly to military justice practitioners and allows judge advocates in

the field to upload documents and comments. The Chief Defense Counsel launched a similar Share Point website in 2008, which has been successful in providing standardized resources, assistance and advice for the Marine defense bar. In addition, JAM continues to host a publicly available webpage on the SJA to CMC website that includes information regarding the military justice mission, the history of military justice, the Marine Corps Victim Witness Assistance Program (VWAP) and Sexual Assault Prevention and Response Program (SAPR), officer discipline and promotion matters, and points of contact at JAM.

(3) Standardization, SOPs and forms. The practice of military justice across the Marine Corps should be consistent from one duty station to the next. Military justice standard operating procedures (SOP), which will cover the details for the administration of military justice, review, and defense offices, are currently being collected and maintained centrally by JAM. Likewise, commonly used forms should be standard throughout the community. In that regard, a standardized post-trial SJA review letter and other forms have been posted on the SJA to CMC website and other documents are under review for standardization: 1) Military justice office SOPs; 2) SJA military justice forms, such as Article 34, UCMJ review letters and convening authority's actions; 3) motions and other trial pleadings, and 4) prosecution correspondence, such as discovery and witness requests/responses, letters accompanying subpoenas and travel orders.

(4) Inspections. To ensure standardization and guarantee the health of the military justice system, a standardized Article 6 inspection process and a commander driven, Inspector General Legal Service inspection process have been initiated. The IG inspections will rely upon the Marine Corps IG Automated Inspection Reporting System (AIRS) checklist, developed by JAD for military justice litigation, court reporter sections, and post-trial review, among other practice areas. The IG inspection process will provide local commanders with a means of measuring their military justice support, while annual Article 6 inspections provide an opportunity to reinforce the IG inspection process.

(5) Coded military justice billets. JAD requested in June of 2009 that Deputy Commandant, Manpower and Reserve Affairs (DC M&RA) code 37 billets for military justice specialization. These billets are supervisory and must be filled by military justice experts with an LL.M in criminal law or a proven history of military justice experience and expertise.

(6) Increase structure at LSSSs. JAD also requested in March of 2010 that DC M&RA increase the number of judge advocates at the LSSSs aboard Camp Lejeune and Camp Pendleton by six.¹⁶ If granted, the request for additional manpower at the LSSSs would relieve some of the strain upon the military justice mission that has historically occurred when the LSSSs have deployed by ensuring enough personnel are present to handle the rear echelon case load.

¹⁶ These two LSSSs have borne the majority of the deployment quotas for lawyers and are generally the busiest military justice offices in the Marine Corps.

(7) Increased availability of military justice LL.Ms. JAD also has an initiative underway to increase the number of military justice LL.Ms obtained by Marine judge advocates at The (Army) Judge Advocate General's Legal Center and School (TJAGLCS) each year, which will increase the number of military justice experts in the judge advocate community. JAD has historically sent 8-10 Marines to the TJAGLCS LL.M program¹⁷ each year. SJA to CMC has asked TJAGLCS to increase that number to 15 Marine students per year.

(8) Trial Counsel Assistance Program (TCAP). JAD has also initiated a Marine Corps TCAP¹⁸ headed by a field grade military justice expert, modeled after the Army JAG Corps TCAP. This initiative also contemplates augmentation by three regional trial counsel¹⁹ field grade military justice litigation experts and a civilian sexual assault litigation expert. The TCAP personnel at JAM will develop and provide training, litigation resources and on-call advice and mentoring for prosecutors across the Marine Corps. The regional trial counsel will provide local training, mentoring, advice and be available to try complex or serious, high profile cases upon demand.

(9) Civilian complex litigation and sexual assault expert. Based in part on the need to prevent and respond to sexual assault, JAD has proposed the hiring of a civilian complex litigation and sexual assault expert. The billet would provide another resource for counsel during complex litigation, including sexual assault cases, and serve as a force multiplier to the TCAP.

(10) Revitalize the USMC Victim Witness Assistance Program. After a review of VWAP around the Marine Corps in 2009, SJA to CMC determined it was necessary to renew our commitment to providing a professional, accessible and visible framework for the delivery of services and support to victims and witnesses of crime. In that regard, JAM embarked upon a mission to revitalize our base VWAPs through training, resources and leadership. As announced in MARADMIN 063/10, the SJA to CMC sponsored the first ever USMC VWAP Training Conference, hosted by JAM and attended by VWAP representatives from every Marine Installation in June 2010. Upon conclusion of the conference, the base Victim Witness Liaison Officers agreed to an ambitious plan to improve their programs within the immediate future. Additionally, JAM secured funding from the Department of Justice (DOJ) to provide training for Marine VWAP personnel around the Marine Corps to attend training provided by the DOJ's Office for Victims of Crime.

¹⁷ The Army Judge Advocate General's Legal Center and School (TJAGLCS) houses the only military law LL.M program. Students are typically 0-4s and, for the Marine Corps, are selected by a competitive board process.

¹⁸ JAM stood up the TCAP, run by the current Deputy Branch Head, JAM and a captain. The program includes a secure website (SharePoint) for government counsel in the Marine Corps, which features: Real-time (Blog format) military justice updates posted as issues arise, JAM Updates newsletters and Code 20 News-mailers, a Pleadings and Motions Bank for trial counsel, sample forms and correspondence, and updated directives and military justice regulations.

¹⁹ The defense community is already supported by three regional defense counsel (RDC). The RDC litigate cases, provide leadership, training and mentoring for the local defense bar and write fitness reports for the defense counsel in their region in order to maintain an independent defense bar.

(11) Electronic Records of Trial. Another initiative that may provide substantial improvements to the post-trial mission, in particular, is the use of electronic Records of Trial (e-ROT) along with the CMS or a follow-on common database. The use of e-ROTs has the potential to revolutionize the speed of post-trial processing. JAD envisions implementing e-ROTs as soon as possible, but must have a database that can support the data and must obtain the permission of the NMCCA to submit electronically certified records of trial.²⁰

(12) Consolidation and Regionalization of Post-Trial Processes. In order to improve the administrative processes, work flow and management of our LSSS and law centers, JAD is studying the post-trial processing mission. One possible improvement to our work flow in the area of post-trial processing is the realignment of the structure of the review offices in each region of the Marine Corps. By regionalizing review services, the Marine Corps may gain significant efficiencies by consolidating resources and know-how into one regional review shop on the East and West Coasts and in the Pacific. This proposal would also free manpower to devote to other missions such as trial litigation.

e. Goals and Strategic Vision

In the near term, the Marine legal community will standardize to the extent practicable the practice of military justice, provide improved resources for the increasingly challenging litigation mission and focus efforts on the improvement of the post-trial review process to ensure a fair and expeditious appeals process for criminal cases in the Marine Corps. During the next five years, the Marine legal community will continue to improve and standardize the practice of military justice and explore how to best harness technology and train, resource and equip the military justice mission.

4. Conclusion. The mission of providing military justice services is a core, statutory requirement for Marine judge advocates. The Marine legal community is committed to professional excellence in the practice of law, whether representing the government or zealously defending the rights of the accused. From the preferral of charges to the appellate courts, it is essential that our efforts sustain the impartial, timely and superior execution of military justice. Accordingly, we must elevate our practice to ensure that justice remains the cornerstone of good order and discipline in the Marine Corps.

²⁰ e-ROTs are authorized by Executive Order (EO) 13468 of 24 July 2008, which became effective 23 August 2008 and amended R.C.M. 1104 (a)(1) to allow an electronic signature to authenticate “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. Although the regulation on point, paragraph 0153(b) of JAGINST 5800.7E, Manual of the Judge Advocate General (JAGMAN), does not seem to contemplate electronic records of trial, it does not prohibit the use of e-ROTs. Moreover, paragraph 0153(b) of the JAGMAN was drafted prior to EO 13468 and could be easily amended to allow for use of e-ROTs. A pilot program using small e-ROTs was made at the NMCCA and resulted in an average savings of “four days mailing time and approximately \$56.00 per record.” Considering that this involved only small ROTs and took into account the savings of only the last leg of the post-trial process from the field, the overall savings per record of trial, if used throughout the post-trial life of a case, could be considerably larger per record.

5. Resources

- a. 10 U.S.C. §§ 801-941 (Uniform Code of Military Justice)
- b. U.S. Marine Corps, Order P5800.16A, Marine Corps Manual for Legal Administration (31 Aug. 1999) (LEGADMINMAN)
- c. Message, 012130Z Feb 10, Judge Advocate Division, Headquarters Marine Corps, subject: Implementation of Case Management System for Courts-Martial (MARADMIN 062/10)
- d. JAGINST 5800.7E, Manual of the Judge Advocate General (20 June 2007)

ANNEX B: ADMINISTRATIVE AND CIVIL LAW



ANNEX B

SUBJ: ADMINISTRATIVE AND CIVIL LAW ANNEX

1. Purpose. To provide an overview of the practice of Administrative and Civil Law as part of the Marine Corps Legal Services Strategic Action Plan, 2010-2015.

2. Background. Administrative and Civil law (ADLAW) judge advocates provide detailed legal analysis to commanders on a wide variety of issues. The ADLAW practice includes any area of law not specifically addressed by military justice, legal assistance, operational law or that falls under the exclusive responsibility of the Office of the Counsel for the Commandant (CL) (e.g., contracts, civilian employment, environmental law, or commercial law). ADLAW judge advocates are both general practitioners capable of identifying and resolving issues when given an undiagnosed problem and specialists with the ability to provide in-depth analysis and respond to unique situations. ADLAW judge advocates also coordinate with their counterparts in CL and with sister Services to provide an appropriate response to overlapping issues or novel questions of law.

3. Discussion

a. Administrative and Civil Law Practice

(1) ADLAW judge advocates at local Staff Judge Advocate (SJA) Offices or Law Centers provide legal advice to commanders and staff on administrative law matters. Much of the ADLAW practice relates to statutory and regulatory interpretation with a focus on the commander's responsibilities to members of the command and with respect to outside entities.

(2) ADLAW judge advocates specifically provide commands guidance relating to the inherent authority of the commander, review of investigations, requests for release of information, and other installation law issues. ADLAW judge advocates, for example, ensure the legal sufficiency of investigations concerning injuries to Marines (line of duty), equal opportunity, sexual harassment, minor misconduct, or investigations into matters concerning any possible claims against the government. ADLAW judge advocates answer requests for official information under the Freedom of Information Act, Privacy Act, and Department of Defense (DoD) or Department of the Navy (DON) instructions concerning release of information for litigation. In addition, ADLAW judge advocates advise commanders on requests for access to the installation from non-DoD entities, acceptance of gifts to the Marine Corps in compliance with statute and regulation, and debarment of certain individuals from installations (e.g., registered sexual offenders).

(3) Providing advice to commands on ethical standards is a large part of the ADLAW practice. The responsibility of ADLAW judge advocates to provide ethics counseling and advice has grown dramatically with the enactment of the Ethics in Government Act of 1978, the Office of Government Ethics (OGE) promulgation of Government-wide ethics regulations in 1992, and the Secretary of Defense's issuance of DoD 5500.7-R, the Joint Ethics Regulation in August 1993, as the DoD supplement to the OGE regulations. As the Department of the Navy's Designated Agency Ethics Official (DAEO), the Navy General Counsel has designated the Staff Judge Advocate to the Commandant of the Marine Corps

(SJA to CMC) and Counsel for the Commandant as Deputy DAEOs. The Head and Deputy Head of the Judge Advocate Division's Research and Civil Law Branch (JAR) and all SJAs and Deputy SJAs are designated as Ethics Counselors.

(4) ADLAW judge advocates provide Government ethics counseling to commanders and individual Marines on a host of topics. JAR and local ethics counselors provide guidance on gifts from outside sources, gifts between employees, acceptance of travel benefits and free attendance at widely attended gatherings, use of Government resources, logistics support to non-Federal entities, outside speaking, teaching, writing and other off-duty employment activities, travel and transportation issues, and enforcement of ethics violations. JAR and local ethics counselors provide written post-government employment counseling to Marines departing (retiring or separating) from Government service concerning the applicability of the Procurement Integrity Act and guidelines relating to Federal representational restrictions. Significant attention is given to issues relating to commanders maintaining appropriate relationships with non-federal entities, conducting unit fundraisers for the Marine Corps Birthday Ball, proper use of Marine Corps bands, and compliance with the Joint Federal Travel Regulations. In addition, ADLAW judge advocates are responsible for ensuring their command's compliance with the financial disclosure requirements by assisting general officers in filing SF 278 reports and commanders and other officials in filing OGE Form 450 financial disclosures.

b. Training, Education, and Resources. All judge advocates receive initial instruction on basic administrative law subject areas, such as conducting investigations, claims, release of information, and installation law, at the Naval Justice School (NJS). Additional classroom instruction is provided at NJS and the Army and Air Force JAG schools.

(1) The Judge Advocate General's Legal Center and School (TJAGLCS). ADLAW attorneys routinely attend ethics and ADLAW courses at TJAGLCS. JAR supports these courses by providing instructors and comments to course curriculum. The week-long courses provide judge advocates with instruction on a wide number of installation, administrative, information, and ethics law subjects.

(2) Administrative & Civil Law Resources. The resources listed at the end of this annex provide judge advocates a basis for addressing core administrative and civil law questions, e.g., investigations, claims, requests for release of Government information, and handling complaints of wrongs. DoD, SECNAV, and USMC instructions are available online, as is access to Westlaw.

(3) Ethics Resources. Numerous agencies provide ethics information and forms on their web pages, including the Office of Government Ethics, DoD Standards of Conduct Office, and the Navy Ethics Compass.

c. Research and Civil Law Branch of the Judge Advocate Division (JAR)

(1) Practice. JAR is the office in the Judge Advocate Division responsible for ADLAW. The primary missions of JAR are to provide legal advice to Headquarters Marine Corps (HQMC) agencies; to assist the SJA to CMC in his role as the Rules Counsel for Professional Conduct of USMC attorneys and as the Deputy DAEO; and to provide

assistance to ADLAW judge advocates across the Marine Corps. JAR's focus at HQMC is that of a Pentagon legal staff section reacting to issues requiring comment and/or coordination within the DoD or the Services. Recently, for example, JAR has researched and answered significant policy questions concerning revised DoD regulations implementing 10 U.S.C. § 654 ("Don't Ask, Don't Tell"), the wearing of religious apparel while wearing the uniform, bans on tattoos, interpretation of changes to Title 10, United States Code, in past or current National Defense Authorization Acts (NDAA), the scrolling of commissioned officer appointments in the Regular Marine Corps and the Marine Corps Reserve, sanctuary policy for Marine Corps Reservists, and involuntarily removing senior Marine officers from the Reserve Active Status List due to force reduction. JAR is also responsible for data calls to local SJA offices to obtain information and statistics, reporting the quarterly general gift fund reports through the Assistant for Administration Office of the Under Secretary of the Navy, Finance Management Division to Defense Finance and Accounting Service, the semiannual reports on acceptance of travel gifts from non-federal entities under 31 U.S.C. § 1353, the annual OGE agency ethics program questionnaire, and the annual report on gifts from foreign government sources to the Department of State Office of Protocol. JAR manages the reporting system for HQMC filers and responds to requests for information from local ethics counselors on a host of issues relating to these annual reports.

(2) JAR Resources and Initiatives. While primarily focused on answering daily requests for legal review from HQMC agencies, JAR provides strategic analysis of policy issues and outreach to Marine Corps ADLAW judge advocates. Recent initiatives include:

(a) JAR SharePoint: JAR maintains a web page accessible to all Marine judge advocates with information concerning civil law and ethics. The page includes information papers, changes to current practices and regulations, and links to relevant resources.

(b) JAR Files: JAR's shared drive contains opinions and research materials dating back to 1999. In addition, JAR maintains an on-line filing system that allows multiple-user access to an easily searchable, catalogued database of completed JAR projects.

(c) On-line Ethics Instruction: JAR provides access to and monitors the completion of on-line ethics training required for commanders and ethics counselors.

(d) Ethics Roundtable: JAR hosts the DoD Standards of Conduct Office's monthly ethics roundtable where ethics practitioners from across DoD receive updates on legal developments and discuss current ethics issues.

d. JAR Status, Vision and Strategic Goals

(1) JAR will assist ADLAW judge advocates in maintaining and increasing expertise in ADLAW areas of practice. We will provide commanders timely, well-researched and relevant answers to ADLAW problems. We will continue to improve our ability to perform complex research using a wide variety of resources. We will improve our relationships with other ADLAW attorneys throughout DoD in order to provide the best advice to our commanders. We will enhance our coordination efforts with CL attorneys in order to reduce

duplication of effort and conflicting legal advice. We will assist judge advocates in developing expertise in ADLAW subject areas and help to ensure that serving as an ADLAW attorney enhances a judge advocate's career.

(2) Many ADLAW issues require time and critical thinking. These issues have no easy answer and have not been directly addressed by regulation or case law. This makes the ability to research a wide variety of resources such as the Internet, sister service publications, and legislative history essential. JAR will continue to serve as a research source by providing local ADLAW judge advocates with methods to address novel questions and how to better employ electronic resources. JAR will continue to increase, for example, the resources available on JAR's SharePoint page and will soon expand the page to include a document database and a discussion board for general administrative law, military personnel law, Government ethics, professional responsibility, and other civil law issues.

4. Conclusion. ADLAW branches are the "residual" sections of a legal office, providing the commander with generalist attorneys to answer new and original issues. NJS and follow-on Continuing Legal Education courses provide a basic understanding of ADLAW. However since many ADLAW issues and ethics questions are novel (or appear to be novel to some local judge advocates), the ability to perform original research and come to a viable solution for commanders is the core requirement for a proficient administrative law attorney. JAR provides an essential bridge between headquarters level experience and providing resources to the field.

5. Resources

- (a) Title 10, U.S. Code
- (b) DoD 5500.7-R, Joint Ethics Regulations
- (c) DoD 5400.7-R, DoD Freedom of Information Act Program
- (d) DOD 5400.11-R, DoD Privacy Act Program
- (e) SECNAVINST 5820.8A, Release of Official Information for Litigation Purposes and Testimony by Department of the Navy Personnel
- (f) JAGINST 5800.7E, Manual of the Judge Advocate General
- (g) JAGINST 5803.1C, Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of the Judge Advocate General
- (h) MCO P5800.16A, Marine Corps Manual for Legal Administration

ANNEX C: OPERATIONAL LAW



ANNEX C

SUBJ: OPERATIONAL LAW ANNEX

1. Purpose. Provide an overview of the practice of operational law in the Marine Corps as part of the Marine Corps Legal Services Strategic Action Plan, 2010-2015.

2. Background

a. Operational law, as a practice area, addresses the entire range of legal issues that arise as a part of planning and executing military operations. While traditionally focused on areas such as the law of armed conflict, status of forces agreements, and rules of engagement (ROE); it also encompasses such divergent areas as fiscal law, military justice, intelligence oversight, cyber operations and environmental law. Operational lawyers also play a key role in military missions such as rule of law and civil affairs tasks as part of security and stabilization operations. The art of the operational legal practice is identifying the legal issues in these divergent areas and rapidly synthesizing them into timely, coherent legal advice for a military commander engaged in operational planning and execution.

b. The International and Operational Law Branch (JAO) supports the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) in providing legal advice to the Commandant and to Headquarters, U.S. Marine Corps staff agencies on international and operational law matters. JAO also represents the SJA to CMC when addressing international and operational law matters with our sister services, the Joint Staff, Department of Defense (DoD) General Counsel, and other organizations. JAO provides representation to the DoD Law of War (LoW) Working Group and to various other working groups and committees. JAO assists the SJA to CMC as the HQMC resource for judge advocates, commanders and staffs throughout the Marine Corps to facilitate consistent application of law, policy, and regulation on matters related to international and operational law.

3. Discussion

a. History. Formalization of operational law as a distinct practice area within military law is a relatively recent development. Focus on operational law has been driven by the increased significance given to legal matters arising out of military operations, and the increasing complexity of the legal issues involved. Events highlighting this increased concern include the establishment of the DoD LoW program, implemented as a result of war crimes arising out of the Vietnam war, increased political and media attention paid to targeting decisions made during the NATO air campaign in Kosovo and the Gulf War, ROE implementation during U.S. operations in Somalia, and allegations of detainee mistreatment arising from the conflicts in Iraq and Afghanistan.

Since the late 1970's, operational law has grown significantly within DoD. These years saw the establishment of programs of instruction in operational law at the service legal schools, and the establishment of operational legal departments within the service judge advocate headquarters. In 1981, the Judge Advocate, Research and Civil Law Branch (JAR) maintained the portfolio of international and operational legal issues within JAD. In 1986, Brigadier General David Brahms, then SJA to CMC, established the JAO branch. The

branch has been a resource to the SJA to CMC, the HQMC staff, and the Marine Corps legal community on matters of operational and international law ever since.

From the mid-1980's, within the Marine Corps operating forces, operational law support was provided primarily by the Marine Forces (MARFOR), Marine Expeditionary Forces (MEF) and major subordinate command SJAs, and additional support was provided, as needed, by the Legal Services Support Section (LSSS). Consistent with then existing legal doctrine, an operational law billet was created within the LSSS organization. This operating concept was successfully utilized in the Gulf War.

This historical evolution informed the employment of judge advocates after September 11, 2001. Commanders, recognizing the increased complexity of the operating environments in Afghanistan and Iraq, requested that legal support be integrated into their planning, training and operations. This requirement was initially met by the command SJA offices, which used organic and reserve personnel. As demand increased, additional judge advocates were taken from their T/O billets (usually from the LSSS) and sent to augment operational units. The culmination of this trend was the decision to assign judge advocates to each deploying infantry battalion and regiment. Often the judge advocates at the battalion level were junior company grade officers with little operational experience. However, due largely to their training as Marine Air-Ground Task Force (MAGTF) officers, functional supervision at the regimental and division level, and predeployment training, these assignments proved successful.

As a result of this evolution, day-to-day practice of international and operational law is now almost exclusively the province of the command judge advocate or the staff judge advocate directly supporting a Marine Commander.

b. Current Training, Education, and Resources. The most effective method for improving the provision of operational legal advice is ensuring command and staff judge advocates are properly trained and resourced. An occupational field sponsor who knows the judge advocates and their experience levels, and the requirements of these jobs is crucial to support the best assignment decisions. In addition, a robust and relevant training program, and resources adequate to backstop these attorneys if they encounter novel issues helps ensure success. As the lead for international and operational law matters within JAD, JAO will continue to act as a clearinghouse of information, as well as work as part of overall efforts to establish standards and oversight of the operational law practice in the Marine Corps. The most significant effects will be achieved by developing and implementing training and education that accurately reflects the most significant current operational law issues as well as those priorities of effort identified by the SJA to CMC on behalf of the Commandant.

(1) Basic Operational Legal Training (BOLT). BOLT is a five-day training program that gives new judge advocates a working foundation in international and operational law. BOLT was created by JAO in response to a lack of international and operational law training at the Naval Justice School's (NJS) Basic Lawyer's Course (BLC). Originally, BOLT was a "Marine-only" program given at the beginning or end of the 10-week BLC. Realizing the benefits of providing such training to junior judge advocates, the Navy began participating in the program in August 2006. BOLT has become a formal part of the NJS BLC curriculum. JAO continues to participate in curriculum development and provides instructors for BOLT.

(2) Pre-Deployment Legal Training (PDLT). PDLT is a program in which judge advocates preparing to deploy receive the latest updates on legal issues affecting their deployment. These training periods are organized and managed by the respective Marine Expeditionary Force SJA's. JAO is available to support curriculum development as well as instruction.

(3) Training and Education Command (TECOM) coordination. JAO has played an important role in the development of curriculum for all students at Command and Staff College, Expeditionary Warfare School, and other formal Marine Corps Schools. JAO has also provided instruction at these formal schools on international and operational law matters. JAO continues to maintain a relationship with TECOM and assists in the maintenance and validation of formal Marine Corps school curriculum in the areas of international and operational law. JAO also provides instructors, as requested, to support the TECOM mission.

(4) Corps-wide Support. JAO provides support to Marine Corps judge advocates, commanders and staffs on international and operational law issues whenever requested. In addition to responding to direct phone and e-mail requests for assistance, JAO is continually increasing their use of internet-based resources to act as a clearinghouse for information of interest to the community.

(a) JAO Share PointPage. JAO is currently maintaining both a public internet site and a restricted access site using SharePoint. The SharePoint page allows FOUO reference documents to be posted and establishes a collaboration site for exchanging training material, legal opinions, and other work-product.

(5) Policy. JAO continues to engage and participate as the leading USMC agency on the development of policy relating to international and operational legal matters.

(a) Law of War Working Group. By direction of the Secretary of Defense, the SJA to CMC is a member of the DoD Law of War (LoW) Working Group, which develops and coordinates LoW initiatives and issues, manages other LoW matters as they arise, and provides advice to the DoD General Counsel on legal matters relating to the DoD LoW Program. JAO is the SJA to CMC's representative to the LoW Working Group. This participation provides JAO with insight into LoW matters affecting the ability of the Marine Corps to conduct operations. In addition, it provides the SJA to CMC the opportunity to shape the development of international and operational law policies at the DoD level. Conversely, this participation allows JAO to provide up-to-date guidance on such matters to command SJAs throughout the Marine Corps.

(b) Marine Corps LoW Program. The Marine Corps LoW Program is contained in Marine Corps Order (MCO) 3300.4. The Order currently implements the DoD and the Secretary of the Navy's LoW Programs. It also establishes the Marine Corps Program for ensuring training and compliance with the LoW. The program does so by creating four levels of training, training requirements, a baseline for curriculum, and reporting requirements for violations of the LoW. JAO maintains primary coordination responsibility for the program and ensures it meets the needs of the Marine Corps.

(c) Legal Policy Review. JAO is the office of primary responsibility within JAD for reviewing and commenting on all international and operational law matters tasked to the

SJA to CMC that could impact the ability of the Marine Corps to conduct training, exercises, and operations.

c. Recent JAO Initiatives. JAO has taken a more active role in shaping and supporting the provision of international and operational law advice within the Marine Corps.

(1) Legal Doctrine Development. JAO has the administrative lead in coordinating input, drafting, reviewing, and submitting for publication revisions to Marine Corps legal doctrine. The historic doctrinal documents for the provision of legal services and command legal advice are Operational Handbook 4-10 and Chapter 3 of Marine Corps Warfighting Publication 4-11.8. These documents provide detailed discussions on the role of the LSSS, but do not address the significant changes in the organization and structure of the Marine Corps since their publication, or the changes to how legal support is provided in response. As a result, these documents have become less relevant to current practice and future planning, and will be replaced by a new doctrinal publication MCWP 4-12.2, Provision of Legal Services within the Marine Corps. JAO has also been managing a doctrine development SharePoint collection site for all relevant reference material useful for the development of legal doctrine and allows collaboration in the writing of doctrinal material.

(2) JAO and the U.S. Army's Center for Law and Military Operations (CLAMO). CLAMO is a joint, interagency, and multinational legal center responsible for collecting and synthesizing data relating to legal issues arising in military operations, managing a central repository of information relating to such issues, and disseminating resources addressing these issues to facilitate the development of doctrine, organization, training, material, leadership, personnel, and facilities as these areas affect the military legal community. JAO collaborates directly with CLAMO on the development, revision, and distribution of publications including:

(a) Deployed Marine Air-Ground Task Force (MAGTF) JA Handbook. JAO is coordinating the revision of the Deployed MAGTF JA Handbook. Originally published in 2002, it remains a useful reference for deployed judge advocates. Written from the perspective of a Marine Expeditionary Unit (MEU) SJA, the handbook is undergoing revisions in light of the experiences and lessons learned in Iraq and Afghanistan.

(b) BN JA Handbook. Based on the emergence of battalion and brigade command judge advocates, JAO and CLAMO are developing a Battalion/Brigade JA handbook for use as a source of information for judge advocates in this developing role.

d. Vision and Strategic Goals of JAO for Area of Practice. The requirements for international and operational law expertise within the Marine Corps will continue to increase. The SJA to CMC, as part of his responsibility to establish standards and oversight and set priorities for the provision of legal services within the Marine Corps, will constantly reevaluate and reassess these requirements to ensure training remains relevant, manpower remains properly allocated, and commanders receive the best legal advice. JAO will continue to work within JAD to advocate for international and operational law. By leveraging available technology and existing relationships with sister services and other agencies, JAO will remain positioned to act as the clearinghouse for Marine Corps knowledge, policy, and best practices in the area of international and operational law.

ANNEX D:
PERSONAL AND FAMILY
LEGAL ASSISTANCE



immigration and naturalization counseling and advice. Legal Assistance offices are also authorized to provide, as practicable, various additional services not specifically prohibited.

b. Training, Education, and Resources

(1) All Marine judge advocates attend the Naval Justice School's (NJS) Basic Lawyer Course (BLC) after completing the Basic Officers Course at The Basic School. NJS provides baseline training for all Marine judge advocates that meets the requirements to perform duties as a legal assistance attorney. Currently, the Navy JAG is responsible for NJS and the certification process for all Marine judge advocates as legal assistance attorneys.

(2) Follow on training for legal assistance practitioners is readily available through military legal schools and regional symposia, as well as civilian continuing legal education (CLE) courses.

(3) Assistance on various legal assistance topics is also available through the LAMP Committee of the ABA. The LAMP Committee's mission is to foster the continued growth of the military legal assistance programs; promote the delivery of legal services to military personnel and their family members in their personal legal affairs; and maintain close liaison with the military services to enhance the scope, quality and delivery of free legal services to eligible clients. The LAMP Committee provides multiple continuing legal education seminars each year on relevant legal assistance topics. Additionally, the LAMP Committee assists in the publication of numerous documents on legal assistance topics.

(4) Local bar associations and attorneys provide much needed practical assistance to legal assistance attorneys. Former judge advocates from all the Services and other attorneys in the local community often volunteer to educate or answer questions from military legal assistance attorneys.

c. Recent JAL Initiatives

(1) Support of Marine Corps Wounded, Ill, and Injured (WII) through the Disability Evaluation System (DES). To meet requirements set forth in the Fiscal Year 2008 National Defense Authorization Act, the Under Secretary of Defense (Personnel and Readiness) issued a Directive Type Memorandum (DTM) directing the military services to provide wounded, ill, and injured servicemembers, who are referred to a medical board, the opportunity to consult with and obtain the assistance of legal counsel during the pendency of DES proceedings. In response to this mandate, the Marine Corps mobilized four reserve judge advocate billets to provide these services in FY 2009. To meet a growing need for judge advocate assistance in the DES, JAD is working with Wounded Warrior Regiment (WWR) to obtain authorization for civilian attorneys to ensure that wounded, ill, and injured Marines have access to DES counsel. In addition, JAD also requested active duty permanent structure billets through the Capability Assessment Review. If both initiatives are approved, the Marine Corps will have strategically placed DES attorneys, providing assistance for the approximately 2400 Marines processed through the DES each year.

(2) Support of Marine Exceptional Family Member Program (EFMP). In 2009, JAL spearheaded the hiring of two civilian EFMP attorneys working in legal assistance offices on

the east and west coast. These attorneys provide legal advice on all aspects of state and federal educational law, including the Individuals with Disabilities Education Act (IDEA), and related disability laws and regulations benefitting family members with special needs.

(3) Homeowners Assistance Program (HAP). In 2009 Congress expanded the HAP through the American Recovery and Reinvestment Act (ARRA) to authorize benefits to servicemembers executing permanent change of station orders who are facing financial hardship due to the mortgage crisis. JAL was instrumental in drafting and providing input on the implementing regulations for this program. Legal Assistance offices Marine Corps-wide have the capability to advise and assist personnel on HAP and HAP related issues.

(4) ABA Military Pro Bono Project. In late 2008, the ABA introduced its Military Pro Bono Project and began working with JAL to implement the program throughout the Marine Corps. The program provides placement of qualified legal assistance cases through an electronic database maintained by the ABA. Once a case is entered into the system, the ABA works to place the case with a qualified pro-bono attorney. The pro-bono attorneys are volunteers who generally specialize in the applicable area of law and provide additional services not available through legal assistance offices. The program has already obtained civilian representation for scores of Marines and Sailors.

(5) Civilian Legal Assistance Attorneys. Given the highly specialized nature of legal assistance and the frequency of military personnel rotations, many Marine Corps legal assistance offices employ civilian attorneys to provide resident knowledge, experienced supervision, and continuity in order to ensure quality legal assistance services are provided to Marines, Sailors, and their families.

d. Vision and Strategic Goals. As the demand for legal assistance increases, it is critical to further improve the ability of legal assistance attorneys to provide quality advice and to standardize the way personal and family legal assistance is provided. Increased training on applicable state laws is essential to improve the quality of services provided at each installation. In addition to increased training, there is also a need to standardize certain legal assistance practices. Accordingly, JAL is working to standardize conflict screening in all legal assistance offices. The standardized system will also mandate inspections ensuring conflicts of interest checks are being conducted properly.

4. Conclusion. Commanders have demonstrated a strong desire for comprehensive legal assistance for their Marines and Sailors. With more than 45 percent of Marines married and ever-changing laws and regulations increasingly affecting Marines' lives and financial interests, an investment in personal and family legal assistance is essential for mission accomplishment. Ensuring that Marines know their personal interests and families are taken care of allows Marines to concentrate on the mission at hand and assists in successful completion of that mission.

ANNEX E:

LEGAL ADMINISTRATION



ANNEX D

SUBJ: PERSONAL AND FAMILY LEGAL ASSISTANCE ANNEX

1. Purpose. To provide an overview of the practice of legal assistance as part of the Marine Corps Legal Services Strategic Action Plan, 2010-2015.

2. Background

a. Personal and Family Legal Assistance Practice. Personal and family law as a practice area addresses those legal issues that directly affect Marines, Sailors, and their families. Issues frequently seen in personal and family law include domestic relations, estate planning, consumer law, military rights and benefits advice, immigration advice and assistance, and notary services. The art of practicing personal and family law is quickly recognizing the legal issue and resolving that issue so the Marine can focus on mission accomplishment.

b. Legal Assistance Branch (JAL). JAL supports the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) in his mission to provide legal advice to the Commandant and Headquarters, U.S. Marine Corps (HQMC) Staff agencies on legal assistance and tax matters. JAL represents the SJA to CMC as a member of the advisory committee to the Legal Assistance for Military Personnel (LAMP) Committee of the American Bar Association (ABA). JAL represents the SJA to CMC as a member of the Armed Forces Tax Council. JAL assists the SJA to CMC in his role as the HQMC point of contact for Corps-wide legal assistance offices and tax centers to ensure consistency in the practice and the policies that are applied.

3. Discussion

a. History of Personal and Family Legal Assistance

(1) War Department Circular Number 74 established the beginnings of the provision of personal and family legal advice and assistance for military personnel. In March 1943 the War Department and ABA joined together to sponsor a plan to "make adequate legal advice and assistance available throughout the Military Establishment to military personnel in the conduct of their personal affairs." Circular 74 established legal assistance offices throughout the Army so personnel could obtain "gratuitous services from civilian volunteers and military counsel."

(2) In 1984, Congress passed 10 U.S.C. § 1044 authorizing the Service Secretaries to provide legal assistance to qualified personnel in connection with their "personal civil legal affairs." For Navy and Marine Corps Legal Assistance offices, this authority is promulgated through JAGINST 5800.7E, Manual of the Judge Advocate General (JAGMAN) and JAGINST 5801.2A, Navy-Marine Corps Legal Assistance Program. These documents direct that competent legal assistance attorneys be made available to provide the following services: deployment briefings and assistance; family law/domestic relations; consumer law; estate planning counseling and advice; military rights and benefits advice; powers of attorney counseling, advice, and drafting; notary services; and service member

ANNEX E

SUBJ: LEGAL ADMINISTRATION ANNEX

1. Purpose. To provide an overview of legal administration and the roles, responsibilities, and duties of the Legal Administrative Officer within the Marine Corps as part of the Legal Services Strategic Action Plan, 2010-2015.

2. Background

a. Although the myriad legal administrative functions and tasks associated with the provision of general legal services are too numerous to detail completely, legal administration is generally considered to include the actions necessary to deliver the services associated with the legal service practice areas of military justice, administrative and civil law, personal and family legal assistance, and operational law. Accordingly, legal administration at the General Court Martial Convening Authority (GCMCA) and Legal Service provider-level is a function of the entire 44XX legal community from private through major general. GCMCA-level legal administration does not directly provide the minimal organic unit level legal capabilities which handles the basic legal administrative tasks such as producing the unit punishment book, administrative entries in the service record book, and conducting administrative investigations.

b. As the legal mission continues to increase in complexity, the Marine legal community must efficiently manage its legal offices in order to provide continuous, efficient, and appropriate legal administration within the provision of general legal services to commanders, Marines, Sailors, and their families.

3. Discussion. Legal administration is the underlying foundation in the provision of legal services addressed in the Strategic Action Plan. This annex specifically focuses on administrative functions associated with the operations and management of Marine Corps legal offices and the roles and responsibilities of the Legal Administrative Officer (LAO).

a. History. Historically, the day-to-day management of the LSSS and law centers was handled by the senior judge advocate present, whether the Staff Judge Advocate (SJA) or the Officer-In-Charge (OIC). The Marine Corps Legal Services Study of 1969 briefly discussed the concept of non-lawyer personnel [i.e. administrative officers or warrant officers] performing “some” legal services in order to permit lawyers to focus on those duties required by law to be performed by licensed attorneys. In the 1980’s, the Marine legal community migrated toward a “law officer manager” concept, which essentially separated the business aspects of managing the practice of law (administration) from the legal aspects, thus allowing senior judge advocates to focus their efforts on the latter. The LAOs became the community’s law office managers and were responsible for specific administrative law functions including reviewing and processing claims, administrative investigations, and involuntary administrative separations as well as managing the day-to-day operations of the larger law offices. The senior officer present did not abdicate responsibilities in handling these matters, but rather, entrusted the LAO with the day-to-day handling of those duties and responsibilities that did not require, by statute, regulation, or law, certification as a judge advocate.

b. Current Practice. In keeping with the Marine Corps ethos of decentralized execution, law offices are managed locally with little oversight of the day-to-day operation from the Judge Advocate Division (JAD) at Headquarters Marine Corps. This decentralized approach has the advantage of offering flexibility to commanders but has also resulted in law offices operating differently throughout the Marine Corps. Not only do law offices differ with regard to internal management, but also in terms of what legal services are offered to supported commands. This has created a number of inefficiencies. For example, the lack of standardization inhibits meaningful initial training at our schools and therefore requires extensive on-the-job training as no one system is in place throughout the Marine Corps. Further, when a legal services specialist PCS's to another duty station, the Marine is often required to learn a completely new way of doing business. This is especially true in the training and employment of LAOs throughout the Marine Corps Legal community.

c. Role and Duties of Legal Administrative Officers (WO – CWO5). LAOs provide the following support where assigned:

(1) Provide administrative management/law office management and legal support to the SJA, Commanders and Staff at the GCMCA level, the OIC/SJA at the installation law center level, or the OIC of an LSSS.

(2) Provide Administrative Law services to include technical guidance: review and processing of administrative investigations; claims for or against the U.S. Government, and processing and acting as government recorder for involuntary administrative separations.

(3) Prepare and monitor internal budgets, property acquisitions, and other supply/fiscal-related matters. Supervise the maintenance, accountability, procurement, employment and deployment of information technology assets to include legal specific software and hardware requirements, audio recording devices and other information technologies required both in garrison and in the deployed environment.

(4) Supervise files and directives; safeguard sensitive, classified and privileged information; advise on proper correspondence procedures, compile reports, conduct legal briefings and inspections; determine legal office publication requirements; develop legal administrative standard operating procedures including building and courtroom security; monitor and update library resources to include commercially procured legal publications; process recommendations for awards, track and review fitness reports, review civilian performance evaluations; notarize documents, certify true copies, supervise the processing of temporary additional duty orders through the Defense Travel System and work closely with the senior enlisted Marine assigned on the assignments and training of enlisted personnel.

(5) Recommend improvements to office operations, monitor table of equipment and table of organization, and perform all other duties deemed necessary by the SJA or OIC that do not require certification as a judge advocate by statute, regulation, or law to ensure the accomplishment of providing timely and accurate legal service support.

d. Current Training and Education for the LAO. Currently, there are only two required training evolutions for the Marine Corps LAO upon selection for appointment. Subparagraphs (2) and (3) identify schools and billet assignments desired but not required.

- (1) LAO required schools at appointment:
 - (a) The Basic School (TBS)—(required for all Marine Corps Officers)
 - (b) Warrant Officer Basic Course, The Judge Advocate General Legal Center and School (TJAGLCS), Charlottesville, VA
- (2) Desired schools as enlisted (MOS 4421/4422 (formerly 4429)):
 - (a) Legal Services Specialist Course
 - (b) Legal Services Mid-Level Career Course—(no longer available)
 - (c) Stenography/Speech Recognition Course
 - (d) Corporal, Sergeant, Staff Noncommissioned Officer Courses
- (3) Desirable past assignments prior to appointment:
 - (a) Administrative Support Chief
 - (b) Administrative Law Chief
 - (c) Legal Chief
 - (d) Independent duty (Drill Instructor, Recruiting, Marine Security Guard)

e. LAO of the Marine Corps Vision and Strategic Goals for the LAO community. In keeping with the intent of the Strategic Action Plan, we will ensure that LAO core competencies are standardized and published, that LAOs are provided standardized training and educational opportunities to become competent in those core competencies, that LAOs are fully and properly employed across the Marine Corps to maximize their technical skill set, and ensure that the Legal Services community has the requisite number of LAOs required to effectively and efficiently execute the mission of providing general legal services to commanders, Marines, Sailors, and their families.

(1) Setting the standard.

(a) The LAO core and individual events are detailed in Chapter 7 of the revised NAVMC 3500.82, Legal Services Training and Readiness Manual (Legal Services T/R Manual) (enclosure (j)). These core “events,” categorized as Administrative Law, Administration, Basic Common Legal Skills, Basic Common Non-Legal Skills, Management, and Operational Law are further broken down into specified tasks, which capture the minimum functions expected of an LAO. By identifying the minimum functions expected of an LAO, the manual supports the strategic goal of standardizing procedures and functions to foster a common operating scheme throughout the community of practice and creates standards for training and inspection.

(2) Training to the standard.

(a) Prior to the promulgation of the revised Legal Services T/R Manual, the majority of the LAO core events were trained via Military on-the-Job Training (MOJT). Because of the differing standards throughout the Marine Corps, the level of competence for each LAO could not be appropriately measured. The revised T/R manual establishes the requirement to formalize the training setting, which seeks to standardize the training and the overall capabilities of the individual LAO. To support the formal training setting, JAD is reviewing course curriculums and programs of instruction (POI) for both the Warrant Officer Basic (WOBC) and the Warrant Officer Advanced Courses (WOAC) sponsored by TJAGLCS. The goal is to develop a POI that includes Marine specific training events

derived from the Legal Services T&R Manual, to require all new LAO accessions to attend the WOBC, and to require all LAOs in the rank of CWO3 and above to attend the WOAC.

(b) JAD will continue to evaluate the training opportunities and funding available to the LAO community to ensure standardized training for LAOs assigned throughout the Legal Services community. Standardized training and education coupled with standardized employment and practices throughout the Legal Services community will enhance the overall provision of general legal services to commanders, Marines, and their families.

(c) During the annual LAO conference, the LAO of the Marine Corps will also conduct training and analysis to ensure standardization and continual review and sharing of best business practices.

(3) Structure/Manpower.

(a) Increased structure/inventory of LAOs. In 2005, JAD sponsored a Strategic Planning Panel to analyze how the 44XX community is organized, trained, and equipped and to recommend realistic improvements for consideration by the SJA to CMC. With regard to the LAO community, the panel supported the idea of increasing the inventory of LAOs from 18 to 26. The panel further recommended adding one LAO to the three respective LSSSs, MCAS Miramar and Cherry Point, 29 Palms, MCRD Parris Island, and Marine Corps Base Hawaii to further enhance legal administrative capabilities. The recommendation garnered no additional structure and the inventory of LAOs remains at 18.

(b) JAD's goal is to review current Warrant Officer structure, determine structure availability, and request five additional Warrant Officer billets for assignment as LAOs in the Legal Services community. These personnel additions coupled with the standardized training, education, employment, and practice standards should enhance the overall provision of legal services.

4. Conclusion. Efficient law office administration is essential to providing timely and quality legal service support. Standardizing training, employment, procedures and processes across the Marine Corps legal community will serve as a force multiplier, improving the delivery of legal services through the utilization of best business practices Marine Corps-wide.

5. Resources:

- (a) Manual for Courts-Martial (2008)
- (b) MARCORSEPMAN (MCO P1900.16F) ch 2
- (c) SECNAVINST 1920.6C
- (d) JAG MANUAL (JAGINST 5800.7E)
- (e) LEGADMINMAN (MCO P5800.16A) w/ch 1-5
- (f) IRAM (MCO P1070.12)
- (g) MILPERSMAN (NAVPERS 15560D)
- (h) DOD Directive 1332.14
- (i) NAVCOMPT MANUAL
- (j) NAVMC 3500.82 (Legal Services Training and Readiness Manual)

ANNEX F: MANPOWER



ANNEX F

SUBJ: MANPOWER ANNEX

1. Purpose. To provide an overview of judge advocate manning, personnel management, and individual career issues as part of the Legal Services Strategic Action Plan, 2010-2015.

2. Background

a. Manpower Management. Manpower in the Marine Corps consists of officer judge advocates (4402s), warrant officer legal administration officers (4430s) and enlisted legal service specialists (4421s). The Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) is the legal services Occupational Field Manager¹ for the Marine Corps and manages a continuous manpower analysis process utilizing subject matter experts (SMEs)² to evaluate each of the three legal Military Occupational Specialties (MOS). These SMEs forecast future requirements and essential resources based on several considerations:

1. How many legal services billets do we have?
2. Are those billets in the right places, i.e., where the mission requires them?
3. Are there enough 4402s, 4430s, and 4421s of the appropriate grade to fill those billets?
4. Are the Marines we have to fill the billets the “right kind” of Marines, e.g., do they have the requisite experience and training to successfully fill the billet?

Related considerations include:

1. Are we recruiting the right kind of Marines to meet the mission in the future?
2. Are we retaining the Marines we want and need to retain?

These questions are constantly readdressed as mission priorities, budgetary constraints and emergent requirements change over time. The fluid nature of military manpower management requires continuous monitoring of this process in order for the legal community to evolve to meet mission and capitalize on emerging opportunities.

The Judge Advocate Support Branch (JAS) manages and continually evaluates these considerations on behalf of the SJA to CMC by ensuring a constant dialogue and analysis of where legal billets are located in the Marine Corps, how those billets are “coded,” who fills the billets, and whether there are sufficient school seats in the right training courses to make sure the legal community is qualified to perform the mission.

The Marine Corps legal services community’s manpower management (retention, graduate education programs, and law education programs) is ultimately controlled by the Deputy

¹ Defined in MCO 5311.1D as “the principal point of contact between the Commandant and the total force with regard to capabilities and force structure, intended structure changes, training, and unique operational considerations pertaining to a specific OccFld. OccFld managers are assigned purview over a grouping of Military Occupational Skills (MOS) and their respective MOS managers.” U.S. MARINE CORPS ORDER 5311.1D, TOTAL FORCE STRUCTURE PROCESS (MCO 5311.1D) (26 Feb 2009)

² Defined in MCO 5311.1D as ‘MOS Managers.’ The MOS Manager for 4402s is the JAS Branch Head, for 4421s, the Legal Chief of the Marine Corps and for 4430s, the Legal Administrative Officer of the Marine Corps.

Commandant for Manpower & Reserve Affairs (M&RA). The structure is managed by the Deputy Commandant for Combat Development and Integration via Total Force Structure Division (TFSD), and our recruiting is managed by Marine Corps Recruiting Command (MCRC). Judge Advocate Division (JAD) has a close working relationship with each of these agencies. Through the various MOS Specialists, JAD manages and makes recommendations to each agency based on the needs of the legal community as a whole.

b. Structure (Billets). Since 2005, JAS has worked to organize and realign the Marine Corps judge advocate structure³ to maximize efficiency. Prior to 2005, judge advocate structure remained relatively unchanged for twenty years, while the delivery of legal services and judge advocate deployment requirements evolved significantly. During this period, the inventory of available and assignable officers remained relatively constant, with the number of active duty judge advocates hovering around 400.⁴

c. Inventory. From 2003 to 2008, M&RA set the annual accession quota at 35 judge advocates per year, which allowed the Marine Corps to replace personnel losses resulting from active service attrition (EAS, retirement, and resignations). In FY09, the accession quota increased to 45 judge advocates per year and in FY10, M&RA increased the annual recruiting mission to 60, in order to increase the judge advocate inventory. Warrant Officers and enlisted Marine recruiting and retention has also remained relatively constant over the past ten years with the exception of the 2008 elevation of accession standards for enlisted Marines.⁵ The increase provides a more capable enlisted population able to function at a higher level in an intellectually demanding MOS.

3. Discussion

a. Training, Education, and Resources

(1) Training and Readiness (T/R) Manual. In May 2009, JAD and Training and Education Command (TECOM) began a bottom up review of training standards in the legal services community and used the review to rewrite the T/R Manual. Since the last manual was published, in 2007, the mission had evolved, but performance requirements had not been incorporated as training standards.⁶ With the publication of the new manual, curriculum development for new courses will begin in areas noted as having deficiencies in training, particularly for enlisted legal service specialist advanced training.

(2) Judge Advocate Initial training. Upon completion of The Basic School, all Marine judge advocates attend the Naval Justice School (NJS) for the Basic Lawyer Course (BLC) in Newport, Rhode Island. The BLC is a 10-week course that trains Navy, Marine Corps,

³ MCO 5311.1D defines force structure as “the number, size, and composition of Marine Corps units required to perform the Marine Corps mission essential tasks.”

⁴ See Figure (1).

⁵ The MOS Manual, specifies prerequisites for the awarding of particular military specialties. From 2002 until 2009, the requirement to become a Legal Service Specialist (4421) was a General Technical (GT) score on the ASVAB test of 100. In 2009, the new requirement was for a Clerical (CL) score of 105 and a GT score of 100. U.S. MARINE CORPS ORDER 1200.17A, MILITARY OCCUPATIONAL SPECIALTIES MANUAL (MCO 1200.17A) (4 Jun 2009).

⁶ Operational Law is just one example of mission expansion and evolution beyond traditional Law of War training requirements to real time advice on myriad issues ranging from detention operations to information/cyber operations.

and Coast Guard judge advocates in the fundamentals of military justice, administrative law, investigations, legal assistance and basic operational law. The BLC emphasizes trial advocacy skills required for new military attorneys to serve as counsel at courts-martial. Upon completion of NJS, judge advocates are certified as trial/defense counsel, legal assistance attorneys and ethics advisors, and are admitted to practice in Military Courts. The Marine Corps augments the instructor staff at NJS with five active duty judge advocates.

(3) Follow-on training/Continuing Legal Education (CLE). After graduating the BLC, judge advocates are sent to their permanent duty station and are typically assigned to military justice as either trial or defense counsel, or to legal assistance as a legal assistance attorney. Once at their duty station, judge advocates are given the opportunity to attend CLE courses for continued training and education. Courses on such varied topics as trial advocacy, computer crimes, legal assistance, the law of military operations, and prosecuting and defending complex cases are offered. Primarily, these courses are held at NJS or at the Army's Judge Advocate General's Legal Center and School (TJAGLCS) in Charlottesville, VA. A complete list of the CLE courses available is published annually and posted on the JAS website.

(4) Law Education Programs. The Marine Corps provides law education programs for Marine officers to compete to become judge advocates. Over 90 judge advocates have been accessed through these programs since 2002. The Marine Corps also provides programs for judge advocates pursuing postgraduate education.

(a) Funded Law Education Program (FLEP). Pursuant to 10 U.S.C § 2004, as implemented by DoD Directive 1322.12 and SECNAVINST 1520.7, commissioned officers of the Marine Corps, while continuing to draw full pay and allowances, may be ordered at Government expense to American Bar Association (ABA) accredited law schools located in the United States for education leading to the degree of *Juris Doctor* or recognized equivalent degree.⁷

(b) Excess Leave Program (Law) (ELP(L)). Pursuant to 37 U.S.C. § 502(b), commissioned officers of the Marine Corps may be permitted leave without pay and allowances in excess of that authorized by 10 U.S.C. § 701 (b), to attend ABA accredited law schools located in the United States at no expense to the Government for education leading to the degree of *Juris Doctor* or recognized equivalent degree.⁸

(c) Post-Graduate Programs. The Marine Corps has identified and validated several judge advocate billets that are required to be staffed by officers who possess a Master of Laws (LL.M) degree. There are currently three programs by which judge advocates may attain this education: the Special Education Program (SEP), Advanced Degree Program (ADP), and the Graduate Course at The Judge Advocate General's Law Center and School (TJAGLCS). Through SEP and ADP the Marine Corps offers its judge advocates the opportunity to earn an LL.M in criminal, environmental, labor, procurement or

⁷ U.S. MARINE CORPS ORDER P5800.16A, MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION (MCO P5800.16A) (31 Aug 1999).

⁸ *Id.*

international law.⁹ The primary feeder for LL.M qualified attorneys in the Marine Corps is the Graduate Course at TJAGLCS in Charlottesville, VA. Ten Marine Corps judge advocates attend the Graduate Course each year. The Marine Corps provides two instructors, (increasing to three in FY 2011), and the school allows five students per Marine Corps instructor. In contrast to civilian schools, the Graduate Course curriculum is focused on areas of expertise required to fulfill a billet as a command advisor or staff judge advocate. The curriculum produces well-rounded judge advocates capable of entering any billet and excelling in a variety of subject matter areas.¹⁰

(5) Additional MOS (AMOS). Upon receipt of an LL.M, a judge advocate receives an additional MOS. This allows for Manpower tracking of judge advocate qualifications and gives the Marine Corps visibility when inventories in a specific area of concentration are lacking. It allows oversight and facilitates current and future planning to prevent deficits in any area of expertise. There are six different AMOSs provided for by MCO 1200.17A: International Law, Environmental Law, Labor Law, Procurement Law, Criminal Law, and General Law.

(6) Funding. CLE is available to all judge advocates and legal service specialists and is funded by TECOM (if required by the T&R Manual), or by the Marine's local command. CLE quotas are centrally managed by JAS, and locally assigned, recommended, and requested by a Marine designated to coordinate CLE, (usually the LAO or Legal Services Chief). JAS manages the various law education programs, but they are funded by TECOM.

(7) Legal Service Specialists and Court Reporters. JAD will continue to take a leading role in developing and implementing court reporter training and education for Marine Corps legal services specialists.

(a) Training Enlisted Legal Service Specialist. During Recruit Training, potential legal service specialists (MOS 4421) are screened based on test scores, general aptitude, and disciplinary history. Upon completion of Recruit Training and Marine Corps Combat Training, 4421s attend NJS for their formal legal training (Legal Service Specialist Course). This course of instruction lasts nine weeks and trains Legal Marines in military justice, post-trial review, legal administration, and legal assistance issues and procedures. Upon graduation, new 4421s are assigned to fulfill a 36-month tour of duty.

Occasionally, the Marine Corps permits a Marine to make a lateral move into the legal community from another MOS. In order to make the lateral move, the Marine must be interviewed by the Legal Services Chief at a major installation and by the Legal Services Chief at Headquarters Marine Corps. M&RA must also approve and have structure in place for the Marine to fill.

JAD is developing a legal non-commissioned officer course for corporals and sergeants to provide follow-on legal training after a Marine has been in the fleet for two to three years. Additionally, a senior enlisted legal course is being developed for Marines (Staff Sergeant

⁹ Tuition for SEP students is paid by the Marine Corps, while ADP students pay their own tuition.

¹⁰ The Graduate Course allows attorneys to specialize in Administrative and Civil Law, Criminal Law, Contract and Fiscal Law, or International and Operational Law.

and above) to provide more advanced and specialized legal training. Both of these courses will be several weeks long are scheduled to begin in the summer of 2011. Each course will be offered once annually.

The Marine Corps trains its legal service specialists differently from the way the Navy trains its Legalmen. The Navy Legalman school is also located at NJS. The 11 week Navy course includes eight weeks of courses at Roger Williams University. The credits earned at Roger Williams are an incentive for young Legalman to work towards an associate's degree in paralegal studies. The Navy starts their Legalman pipeline at the grade of E-4 rather than the entry level.

(b) Legal Services Court Reporter Course (Speech Recognition). In 2007, the Marine Corps transitioned from stenography to speech recognition as the primary means of capturing courts-martial. Each fiscal year, two speech recognition courses are held at NJS. Each course has 10 allocations and provides training over 11 weeks. The instruction for the course covers exhibit handling and preparation, grammar, operation of computer aided transcription systems, courts-martial proceedings, closed mask capture of proceedings, preparation of results of trial, and the preparation of verbatim and summarized records of proceedings. Upon completion of this course the Marine is sworn as a court reporter and an officer of the court.

(c) TECOM Coordination. JAD and NJS play an instrumental role in the development of curriculum for the Legal Services School in Newport, and other formal Marine Corps schools. JAD maintains a relationship with TECOM to assist in the maintenance and validation of formal Marine Corps school curriculum in the areas of basic and advanced legal skills, including speech recognition court reporting. JAD provides instructors consistent with staffing goals to support the TECOM mission. Structure has been moved from the Personnel Administrative School at Camp Johnson, Camp Lejeune, to meet the LSS requirement at NJS. With the development of new courses, it is anticipated that the need for instructors at NJS will increase.

b. Recent JAS Initiatives

(1) Funding for Legal Service Specialists. Enlisted career progression training has been historically non-existent. Significant efforts have been made to identify and gain TECOM funding for courses that would enhance the ability of the enlisted legal service specialist to become a more integral part of a legal team. The goal is to maximize personnel efficiency and allow for judge advocates to focus on tasks that require a licensed attorney.

(2) Increasing SEP Opportunities for Judge Advocates. Over the past two years, five SEP students (up from three) have been funded.

(3) Return to Active Duty (RAD) Board. Over the past two years, increases in judge advocate structure at the rank of major have caused the total number of majors in the inventory to fall below 70% of the total Marine Corps requirement for 4402s. Officer inventory planners instituted a RAD board in an attempt to quickly make up for the shortfall. Although this solves the short term deficiency, it will not fully offset the experience deficit at the mid-level leadership ranks. M&RA has also scheduled a RAD board in the fall of 2010.

The eligible population consists of former active duty judge advocates as well as former Marines who held other occupational specialties, but have since completed their law degree and passed the bar.

(4) Increased accession mission. In FY10, DC M&RA increased the accession quota for new judge advocates from 45 to 60 per year. This will make up for losses to attrition and allow for inventories to meet the projected growth in structure over the long term. JAD is working with MCRC to ensure that we attract the best qualified officers among these additional accessions. In order to minimize OCS attrition among candidates with law contracts, MCRC must recruit candidates who possess the required physical and mental toughness to complete OCS and become a Marine officer.

(5) Shaping the Legal Community. Although Marine judge advocates are generalists by design, the Marine Corps has designated billets to require a secondary MOS to ensure necessary levels of expertise in critical billets (usually field grade). There is currently structure for 32 specialized billets spread across various offices in the Marine Corps in International/Operational Law (MOS 4405), Environmental Law (MOS 4406), Labor and Employment Law (MOS 4407), Procurement and Fiscal Law (MOS 4408) and two requiring General LL.M degrees (4410). There is also a request pending for three new billets to reflect the growing need for contingency contracting attorneys to support deploying operating forces and to designate billets requiring military justice expertise (MOS 4409).

(6) Shaping the court reporter community

(a) Update of the Legal Administrative Manual. JAD recently revised Chapter 18 of the Marine Corps Manual for Legal Administration (LEGADMINMAN) (MCO P5800.16A) with new instructions and qualifications for speech recognition court reporters.

(b) Update of Speech Recognition Course. Since the transition to speech recognition court reporting, several modifications to the size and duration of the court reporter course have been made to ensure optimum training and performance output by the Marines attending. The future mission requirements in this area will be met by stabilizing the course at 20 school seats per year by FY12.

c. JAS's Vision and Strategic Goals

(1) JAD's goal is to provide, by 2015, a realistic opportunity for every judge advocate to obtain an LL.M by the time they reach Lieutenant Colonel.

(a) For FY11, the SEP quota was increased from three judge advocates to five after confirming budget allocations from TECOM. TECOM will re-evaluate the additional quotas for FY12 in view of budget constraints.

(b) Change MCO 1520.9G (Special Education Program) to provide for waivers in exceptional circumstances for junior Lieutenant Colonels to participate in SEP.

(c) Increase the number of judge advocates attending the Graduate Course at TJAGLCS from 10 to 15 per year.

(2) Develop plan for staffing judge advocates from the RAD board and FLEP/ELP students in order to capitalize on the experience and maturity levels of these officers.

(3) Compete with other services on accession/retention incentive pay.

4. Conclusion. Manpower management inevitably relies on projections and predictions and, therefore, will always be a challenge. Statistical models help with planning, but cannot accurately account for all factors. JAD is working closely with TFSD and M&RA to ensure that the legal community structure and inventory matches the needs of the Marine Corps. Through JAS's and the Legal Services Chief's advice to M&RA, JAU continually strives to maximize manpower efficiency by placing the right Marines in the right billets. By working through these channels, the legal services community is responding to new challenges in order to improve efficiency and increase the quality of legal services across the Marine Corps.

5. Resources

a. References

- (a) MCO 5311.1D, Total Force Structure Process
- (b) MCO P5800.16A, LEGADMINMAN, Chapter 19 and 21
- (c) MCO P1300.8R, Marine Corps Assignment Policy
- (d) MCO 1200.17A, Military Occupational Specialty Manual
- (e) MCO 1520.9G, Special Education Program (SEP)
- (f) MCO 1560.19E, Advanced Degree Program (ADP)

b. Figures

- (1) Historic Judge Advocate Inventory and Ratio/1,000 Marines
- (2) A Brief Timeline of Recent Manpower, Structure and Planning Efforts

Figure (1)

STATUS	CYEAR	4402 Inventory	9914 (Colonel MOS) Inventory*	Total	USMC End Strength	JA/1,000	
ACTIVE	1990	422	28	450	196,577	2.3	
	1991	370	29	399	193,963	2.1	
	1992	348	26	374	184,548	2.0	
	1993	387	27	414	178,336	2.3	
	1994	347	32	379	174,103	2.2	
	1995	362	32	394	174,506	2.3	
	1996	343	31	374	174,817	2.1	
	1997	371	26	397	173,810	2.3	
	1998	359	23	382	173,072	2.2	
	1999	337	23	360	172,633	2.1	
	2000	370	24	394	173,291	2.3	
	2001	393	23	416	172,914	2.4	
	2002	413	23	436	173,749	2.5	
	2003	411	26	437	177,756	2.5	
	2004	385	31	416	177,159	2.3	
	2005	395	34	429	180,025	2.4	
	2006	402	32	434	180,414	2.4	
	2007	418	*The 9914 MOS was discontinued and JA Colonels reverted to the 4402 MOS.		418	186,471	2.2
	2008	409		409	198,505	2.1	
	2009	407		407	202,786	2.0	
2010	444		444	202,100	2.2		

Forecast

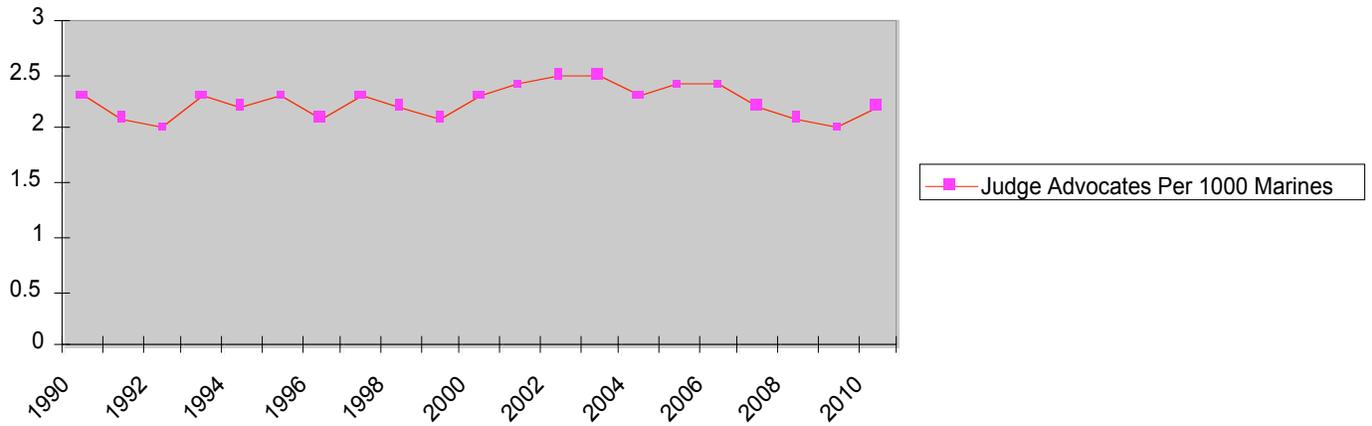


Figure (2)

A Brief Timeline of Recent Manpower, Structure, and Planning Efforts:

Key events/timeline:

Jan 03	Navy JAG removes last of three Navy judge advocates assigned to Legal Service Support Sections at Camp Pendleton, Camp Lejeune and Okinawa.
May 03	Request to re-align O-3 historically unfilled O-3 billet from Marine Corps Equal Opportunity Office to the Defense Institute for International Legal Studies due to emerging requirements in the U.S. Security Assistance Program mission. Approved.
Oct 03	Law School Education Debt Subsidy (LSEDS) instituted as a force shaping tool due to shortage of judge advocate captains (LSEDS renewed every year until the present--\$30k over 3 years, for career designated captains).
Feb 04	Request to re-align O-4 billet from Marine Corps Logistics Base, Albany, GA to Marine Central Command (MARCENT), creating a MARCENT SJA billet due to wartime requirements. Approved.
Oct 04	Request to re-align O-3 billet from Navy Formal Physical Evaluation Boards to Marine Forces Reserve to serve as trial counsel due to workload requirements. Approved.
Jan 05	Request to re-align O-3 billet from Naval Support Activity, Naples, Italy to the Naval Trial Services Office Southeast, Pensacola, FL due to workload requirements and overall value to the Marine Corps. This corrected an 'unstructured' requirement that had been staffed by a judge advocate since 2000. Approved.
Jan 06	Request to re-align a military judge from Camp Lejeune to Naval Air Station Jacksonville. Approved.
May 06	MOS Manual changed to reflect new MOSs available to judge advocates after their completion of Master of Law degree.
Dec 06	USMC announced end strength increase to 202k.
Feb 07	JAS sent data call to collect input on Command needs and T/O requirements.
May 07	SJA to CMC letter to ASN (M&RA). Subj: Undocumented Requirements for USMC Judge Advocates, responding to request by ASN M&RA as to why USMC had so many judge advocates on active

duty if there were not Table of Organization (T/O) billets for them (at the time, T/O=306, inventory=454).

- Jun 07 Office of the Staff Judge Advocate created at MCRC, allowing for increased judge advocate involvement in judge advocate recruiting.
- Jul 07 SJA to CMC signed Memo to CMC and routed recommendations on T/O adjustments to CMC ("Structure/Review").
- Aug 07 SJA to CMC asked by CMC "Do we have enough lawyers?"
- Oct 07 Counsel for the Commandant (CL) input on Structure Review received.
- Oct 07 MCRC developed "Platoon Leader's Class (PLC) Mentorship Program" for lawyers in the recruiting pipeline.
- Dec 07 TFSD re-routed Structure Review to Marine Forces Commands for concurrence.
- Jan 08 JAS participated in the joint student loan working group to address increasing debt loads among judge advocates and service initiatives to address problems in recruiting and retention.
- Feb 08 Uncompensated Review Board (URB) announced and Structure Review diverted into that process.
- May 08 JAD requested change to MCO 1210.9 (Supplementary MOS (SMOS) Program and Voluntary Lateral Move Program For Marine Corps Officers) to permit lateral moves into the 4402 MOS.
- May 08 MCRC established internship program to allow student judge advocates to begin active duty 180 days prior to reporting to TBS. Student judge advocates assigned to legal offices across the Marine Corps.
- May 08 SJA to CMC briefed the URB on JAD proposal of an increase of 34 4402s and 29 4421s; validated but no new structure granted.
- Jun 08 7 MEU billets, MOS 0530 (Civil Affairs), approved for conversion to 4402.
- Jul 08 Judge Advocate initial accession mission for FY09 increased from 35 to 45.
- Jul 08 Re-code of 14 CL Billets (7 billets as 4406, 3 as 4408 and 4 as 4407).
- Oct 08 College Cost Reduction Act passed by Congress providing loan forgiveness for public service employees (to include military attorneys)

if certain provisions are met. JAS briefed judge advocates and briefed Manpower for use in recruiting all officers.

- Nov 08 17 officer and 7 enlisted billets added by TFSD (13 required by Presidential Directive Memorandum (PDM) III) as “permanent” structure through 2012 in support of the Defense Legal Services Administration (Office of the Military Commissions).
- Jan 09 Re-coded Assistant Branch Head billet at JAO as 4405 MOS and Navy JAG International and Operational Law (Code 10) billet as 4405 MOS.
- Apr 09 Moved Military Judge Billet from Jacksonville, FL to Parris Island, SC to align with case volume requirements (approved May 09).
- May 09 Deputy SJA to CMC briefed URB on JAD proposal—32 4402s and 29 4421s; validated but no new structure granted.
- Jun 09 MCRC Order 1131.1 (MCRC Law Programs) signed, adding structure, organization and standards for the recruitment of judge advocates. Formalized a pre-active service internship program to assist with retention and help develop judge advocates before TBS. Also implemented program to allow student judge advocates the opportunity to complete judicial clerkships or LL.Ms before accessing to active duty.
- Jun 09 Submitted proposal re-coding of billets: (pending final approval): 37 4409; 9 4405; 7 4410.
- Aug 09 JAD submitted request to Capability Assessment Review (CAR) (202K Re-look) for 19 judge advocates and 1 civilian.
- Aug 09 Manpower Policy and Procedure, Officer Plans, raised concern regarding the health of judge advocate population.
- Aug 09 Judge advocate initial accession mission for FY10 increased from 45 to 60.
- Jan 10 JAS submitted additional billets for re-coding: 8 4405 and 4 4409.
- Jan 10 T&R Conference to re-write training standards for Marine Corps legal mission requirements.
- Feb 10 RAD board convened to make up for a shortage in the mid-level leadership ranks.

- Mar 10 Meeting with TFSD & Manpower to discuss solutions such as designating the 4402 community for 100% fill on the Authorized Strength Report.
- Apr 10 New Legal Services T&R Manual signed, standardizing formal school and on-the-job training requirements for all judge advocates, legal administrative officers, and legal service specialists.
- May 10 Second RAD Board announced – convenes in August 2010.