

# The Role of the Judge Advocates General and of Judge Advocates: A Primer

Standing Committee on Law and National Security  
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## INTRODUCTION

The pending confirmations of the incoming service Judge Advocates General, as well as recent events, highlight the need for discussion and clarity concerning the role of judge advocates in the United States military and the importance of objective, apolitical legal advice to commanders and defense officials. Section one of this paper addresses the role of the Judge Advocates General within the administrative chain of command. Section two addresses the principal roles of judge advocates. Section three addresses the role of judge advocates in providing legal advice to commanders within the operational chain of command. Section four concludes the paper by identifying multiple reasons why adherence to law in and out of combat leads to better national security results and sustained public support for the military and its missions.

### 1. THE ROLE OF THE JUDGE ADVOCATES GENERAL

The role of lawyers in the U.S. military predates the founding of the Republic. Twenty-six days after assuming command of what was to become the Continental Army, George Washington named Colonel William Tudor as the first Judge Advocate. Since that day, the Judge Advocates General and their subordinate military attorneys have been providing legal advice at every level of command for the past 250 years.

The Judge Advocate General of each of the services is a general, or flag, officer who, by statute, is selected by a board of officers utilizing the same process employed by boards of officers that select line general and flag officers.<sup>2</sup> In the Army and Air Force, these officers are referred to as the “TJAG” and are assigned

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2. 10 U.S.C. §§7037 (Army), 8046 (Marine Corps), 8089 (Navy), and 9037 (Air Force). “The term ‘Judge Advocate General’ means, severally, the Judge Advocates General of the Army, Navy, and Air Force and, except when the Coast Guard is operating as a service in the Navy, an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security.” 10 U.S.C. §801.

to the Army and Air Force staffs. The Judge Advocate General of the Navy is assigned to the Office of the Secretary of the Navy, serving “under the direction of the Secretary.” The senior Marine uniformed attorney, also a general officer, is the Staff Judge Advocate to the Commandant of the Marine Corps. Each of these officers serves in the administrative chain of command.

The officers holding these positions are appointed, and certain of their responsibilities articulated, under specific statutory provisions within Title 10 of the United States Code. Key among these duties is serving as a legal adviser to their respective service Secretary and to officers and agencies of their military department. The law provides that each of these officers shall provide independent legal advice without interference from any officer or employee of the Department of Defense. Section 8088 of Title 10, for example, states with respect to the Judge Advocate General of the Navy, “no officer or employee of the Department of Defense may interfere with the ability of the Judge Advocate General to give independent legal advice to the Secretary of the Navy or the Chief of Naval Operations.” Title 10 includes parallel language for the Judge Advocates General of the Army and the Air Force, as well as for the Staff Judge Advocate to the Commandant of the Marine Corps.<sup>3</sup> The duties of these officers, as prescribed by law, include the responsibility for recruiting, training, and equipping all uniformed attorneys, civilian attorneys, non-commissioned officers, and enlisted and civilian support personnel comprising their individual JAG Corps. This includes active duty, Reserve Component and in the case of the Army, National Guard, attorneys, and in the case of the Air Force, Air National Guard personnel. This collective responsibility extends to approximately 5,000 military attorneys serving on active duty in the six uniformed services. Judge advocates comprise approximately .4% of the total number of active duty service members; a similar percentage of attorneys is found in the Reserve and Guard components.<sup>4</sup>

Each of the Judge Advocates General also plays an important role, not only within the Department of Defense legal structure, but also within the Federal

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3. See, *Id.* The legal requirement for and importance of independent legal advice were recently acknowledged by Chairman of the Joint Chiefs of Staff General Dan Caine and the recently confirmed DOD General Counsel, Mr. Earl Matthews. In responses to advance policy questions submitted to the Senate Armed Services Committee, as nominee for appointment to the grade of general and to the position of Chairman, General Caine stated, “I commit to respecting the independence of uniformed military attorneys to provide their best legal advice free from inappropriate influence and reprisal.” In responses to advance policy questions submitted to the Senate Armed Services Committee, Earl Matthews stated,

I understand that the Judge Advocates General of the Services, the Staff Judge Advocate to the Commandant of the Marine Corps, and the Legal Adviser to the Chairman of the Joint Chiefs of Staff provide independent legal advice to the leadership of their respective Military Departments, and that under the law no officer or employee of DoD may interfere with that. If confirmed, I will respect and support the important role played by these officers and be clear with my expectation that we fully comply with the law in this regard.

4. 5,000 = .38% of 1.31 million.

inter-agency process<sup>5</sup> and in representing the views of the United States before the international military community. In fulfilling their duties, they function exclusively in the administrative, vice operational, chain of command; they do not provide operational legal advice to commanders in the field. Rather, they advise the administrative chain of command on personnel, legislation, litigation, and other administrative matters associated with recruiting, training, equipping, and operating the armed forces.

## 2. THE ROLE OF JUDGE ADVOCATES

Military attorneys in the Army, Navy, Air Force (including those serving with the Space Force), Marine Corps, and Coast Guard are often referred to as JAG Officers or JAGs.<sup>6</sup> Judge advocates are required to provide independent legal advice to commanders and their staff members. Title 10 states with respect to each service,

No officer or employee of the Department of Defense may interfere with the ability of the Judge Advocate General to give independent legal advice to the Secretary of the Navy or the Chief of Naval Operations. – Section 8088, Title 10.

This independence is further established and affirmed in the oath taken by attorneys when accepting a military commission. Like all military officers, judge advocates swear or affirm that they will “support and defend the Constitution.” The oath is to the law, and not to a service, a command, or to the government.

Judge advocates are assigned to military units at almost every level of command. In this capacity, and in addition to other duties and responsibilities, they provide operational legal advice when assigned to combatant commands and units. The senior judge advocate supervising the JAGs assigned to a command legal office is the Staff Judge Advocate and serves as a member of the command staff. The structure of the various command legal offices is service-dependent.

JAGs engage in a wide-ranging practice of military law, within both domestic and overseas military commands, as well as on combat and non-combat deployments. Judge advocates in each of the services, at every level of command, provide some, or all, of the following legal services.

***Criminal Law:*** Maintaining good order and discipline is essential to the combat readiness of the force. This is accomplished through leadership, nonjudicial punishment, and, if necessary, through the prosecution and defense of servicemembers under the Uniform Code of Military Justice before judge

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5. For example, in the areas of the Law of the Sea and Ocean Policy, the Law of Armed Conflict, and Prisoners of War.

6. “The term ‘judge advocate’ means - (A) an officer of the Judge Advocate General’s Corps of the Army or the Navy; (B) an officer of the Air Force or the Marine Corps who is designated a judge advocate; or (C) a commissioned officer of the Coast Guard designated for special duty (law).” 10 U.S.C. §801.

advocates serving as Military Judges, who usually have years of litigation experience and who receive extensive judicial training.

**Legal Assistance:** Judge advocates at every level of command and at every command provide legal assistance to service personnel and their families. This includes drafting wills, addressing landlord-tenant disputes, answering tax questions, and addressing commercial disputes and issues with civilian entities. Legal assistance is an essential component of military readiness, as judge advocates help servicemembers and their families prepare for deployment.

**Administrative Law:** This includes military personnel law; administrative investigations; standards of conduct; the legal authority of commanders; environmental law; labor law; and federal claims.

**Contract and Fiscal Law:** All aspects of contracting on behalf of the government; identifying and expending the appropriate category of government funds for the acquisition of various categories of goods and services.

**International and Operational Law** (designated as National Security Law by the Army and Navy): International norms applicable to the use of military force; the Law of Armed Conflict (LOAC); Rules of Engagement (ROE); detention law; cyber law; intelligence law; and operational legal advice on specifically identified issues arising across the military law spectrum that directly impact the conduct and sustainment of military operations - kinetic or passive.

JAGs within a particular service also may engage in a sui generis area of legal practice, such as the Law of the Sea and admiralty law in the Navy, the management of Prisoners of War in the Army, and space law in the Air Force and the Space Force.

In addition to serving within the services' commands, JAGs, from across the services, are also assigned, pursuant to Title 10, to the Office of the Chairman of the Joint Chiefs of Staff. There, the senior JAG serves as the Legal Counsel to the Chairman and performs "such legal duties in support of the responsibilities of the Chairman of the Joint Chiefs of Staff as the Chairman may prescribe."<sup>7</sup> As in the case of the senior uniformed lawyers in each service, "no officer or employee of the Department of Defense may interfere with the ability of the Legal Counsel to give independent legal advice to the Chairman of the Joint Chiefs of Staff and the Joint Chiefs of Staff."<sup>8</sup>

Title 10 further provides that "an officer appointed to serve as Legal Counsel. . . shall be appointed in the regular grade of brigadier general or rear admiral (lower half)."<sup>9</sup> The service judge advocates assigned to the Office of

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7. 10 U.S.C. §156(d)(1).

8. 10 U.S.C. §156(d)(2).

9. 10 U.S.C. §156(c).

the Chairman of the Joint Chiefs of Staff serve in the Office of the Legal Counsel (colloquially known as “Chairman’s Legal”).

JAGs from all services are similarly assigned to each of the eleven regional and functional joint Combatant Commands, comprised of units from two or more of the services. In these commands, the Staff Judge Advocate serves as the senior legal advisor to the Combatant Commander, a four-star general or admiral, and the commander’s staff. Accordingly, the Staff Judge Advocate and his staff are called upon to provide legal advice to a Combatant Commander on operational matters. Consistent with Title 10, and pursuant to Article II, the operational chain of command runs directly from the President, as Commander in Chief, to the Secretary of Defense to each of the Combatant Commanders, although the President and the Secretary of Defense generally exercise operational command through the Chairman of the Joint Chiefs of Staff.<sup>10</sup> The constitutional principle of civilian control of the military is thus exercised through the President and the Secretary of Defense.

### 3. OPERATIONAL LEGAL ADVICE: A CRITICAL JAG FUNCTION

Judge advocates receive extensive Operational Law training, which enables them to advise both commanders and subordinate personnel on the rules and norms that govern military operations. As recognized by commanders, sound legal advice contributes directly to mission accomplishment and enhances operational planning and combat effectiveness. As stated by current Chairman of the Joint Chiefs of Staff, General Caine, “I absolutely value the independence and professionalism of uniformed military lawyers to provide legal advice to military commanders, military service leadership, and Department of Defense leadership. I have relied on JAGs throughout my career to provide candid and independent legal advice on the broad range of legal issues involved in military operations and activities. I will continue to do so.”<sup>11</sup>

The relationship between JAGs and their commanders is often described as: “JAGs advise; commanders decide,” as between lawfully available options. This principle, understood by both commanders and the JAGs who advise them, is foundational to their relationship. Its importance is reflected by the fact that the commander is accountable for his or her decisions and actions, as well as for everything his or her unit does or does not do, regardless of legal advice. This is foundational to the doctrine of command in the U.S. Armed Forces. It is also embedded in the LOAC principle of Command Responsibility. The relationship between commander and judge advocate is described by the former Supreme Allied Commander, Europe, General Phil Breedlove, USAF (Ret.):

[I]t was clear to me that anytime I started a new command, or even a supervisory position that was not a command, . . . that one of the first things I needed to do was have a relationship with a JAG that first started with complete trust

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10. See, 10 U.S.C. §162(b).

11. General Caine, Advance Policy Questions, p. 7, SASC.

and confidence. . . . [During a combat operation a commander is] going to turn and look at his JAG. And he or she will render an opinion that then either enables the commander, or suggests caution. The JAG doesn't make the decision. But the commander makes a decision based on what the JAG tells them.<sup>12</sup>

As operational lawyers, JAGs offer informed counsel to commanders, assisting in the decision-making process by highlighting the legal implications of various proposed courses of action, distinguishing between what is law, i.e., required, and what is legal policy, i.e., prudential advice.<sup>13</sup> Informed legal advice assists commanders to navigate complex situations and to balance operational objectives against the potential legal consequences. Given the complexity and nuance of modern military operations in combat and non-combat operations, commanders seek the advice of their JAGs when charting a particular way forward. General David Petraeus, USA (Ret.), for example, referring to his time as Commander of Coalition Forces in Iraq and Afghanistan, stated,

It is a well-known fact. You can never have enough lawyers. I mean that. Lawyers are just very useful human beings. When I have a thorny problem, I turn it over to the lawyers. They were involved in everything - from staffing and planning to operations.<sup>14</sup>

#### 4. WHY ADHERENCE TO LAW MATTERS

The LOAC consists of a series of international agreements, including the 1949 Geneva Conventions, the 1907 Hague Conventions, and the 1980 Conventional Weapons Convention, as well as universally recognized customary LOAC principles such as military necessity, distinction, and proportionality. As a party to these agreements, the U.S. is bound to comply with them. The U.S. is also bound to observe those rules and principles the United States recognizes as customary international law. Significantly, much of the LOAC, treaty and customary, is implemented in U.S. domestic criminal law, including through application of the Uniform Code of Military Justice, and Title 18 Section 2441 (War Crimes). Section 2441 provides for U.S. criminal jurisdiction where the person committing the crime or the victim of the crime is a “member of the Armed Forces of the United States or a national of the United States” and the offense involves (1) grave breaches of the Geneva Conventions and Protocols; (2) conduct prohibited by enumerated Articles of the Annex to the Hague Convention IV; (3) violations of Common Article 3 of the Geneva Conventions; or (4) the willful killing or causing of serious injury to

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12. Charlie Dunlap, “A Conversation with Retired NATO Commander General Phil Breedlove about Ukraine, JAGs, Leadership, and More,” *Lawfire*, March 2, 2022.

13. For example, as between lawful options, what are the pros and cons of each; or what some might describe as “the Washington Post test.”

14. Lori Craig, “General Petraeus Speaks on Lawyers and Leadership,” USC Gould School of Law, March 31, 2014.

civilians in violation of the Protocol on Prohibitions or Restrictions on the use of Mines, Booby-Traps and Other Devices. Drawing upon the lessons learned from the 1968 My Lai incident, the U.S. developed an extensive DOD Law of War Program, requiring training by military personnel in the LOAC and legal (and policy) review for the development of new means and methods of warfare. This DOD program is recognized as a leader in this area of the law.

Compliance with the LOAC, and law generally, serves multiple military purposes, starting foremost with combat effectiveness.

***Combat Effectiveness.*** It was George Washington who observed first, in U.S. practice, that “an Army without Order, Regularity & Discipline, is no better than a Commission’d Mob.”<sup>15</sup> He also stated, “It is required and expected that exact discipline be observed, and due Subordination prevail thro’ the whole Army, as a Failure in these most essential points must necessarily produce extreme Hazard, Disorder and Confusion; and end in shameful disappointment and disgrace.”<sup>16</sup> Experience has repeatedly shown the wisdom of Washington’s words. Adherence to the LOAC is the key to a disciplined force in combat, and only a disciplined force is an effective force. Clausewitz observed about Soldier character, “If the soldier lacks character, the mass will drag him down to the brutish world where danger is shirked and shame unknown.”<sup>17</sup> Disciplined armies follow the law, and disciplined armies win wars. Armed mobs in uniform commit war crimes.

***Coalition Support.*** While lethality, unchecked, might win an individual battle, the legitimacy of a Nation’s use of force that results from adhering to the legal norms applicable to armed conflict helps to build and sustain coalitions, win wars, and achieve lasting peace. Failure to follow the LOAC may break NATO consensus supporting an operation, lead allied militaries to curtail intelligence sharing, or result in allies and coalition partners placing limitations on the use of their forces or on the transfer and use of weapons and munitions.

***Adherence to Law Reflects a Nation’s Values.*** Adherence to the LOAC also reflects the values of the nation the military serves. As former Air Force judge advocate and Senator Lindsey Graham said, “One of the things that make this country great is the fact that rules matter. In civilian courts and in the military, we follow a set of laws. This separates us from our enemies and truly demonstrates our commitment to individual rights.”<sup>18</sup> Conversely, as former Special Forces Lieutenant Colonel Mike Nelson has written after eleven deployments, “when American forces are perceived as acting immorally, they directly undermine national objectives. Domestic and international

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15. General Orders, January 1, 1776.

16. General Orders, July 4, 1775.

17. Clausewitz, Carl von, *On War*, ed. and trans. Michael Howard and Peter Paret (Princeton UP 1976). Pages 104-105

18. Original Press Release, “Graham Sworn in as Air Force Judge,” November 5, 2003.

support erode, fueling enemy propaganda and complicating cooperation with allies and local populations.”<sup>19</sup>

**Public Support and Recruiting.** Adherence to law, or failure to adhere to the law, can also impact the will to fight, public support, and recruitment. Mothers and fathers do not wish to send their children to serve in militaries that commit war crimes, potentially exposing those servicemembers to prosecution for such crimes. The presence of judge advocates is one way of assuring the American public that the U.S. military will adhere to the LOAC and that, if there are allegations of wrongdoing, their sons and daughters will receive counsel and, if charged, have those allegations adjudicated before military members familiar with the nature and stress of combat. Moreover, as illustrated by My Lai and Abu Ghraib, failure to adhere to the law can impact public support for the U.S. military and its missions.

**Accountability, Credibility, and Reciprocity.** Adherence to the law allows the United States and its allies to more credibly allege, charge, and prosecute violations of the LOAC committed by our enemies. It also makes it harder for our enemies to assert, for propaganda purposes, false equivalencies between singular breaches of the LOAC and serial or mass violations of the LOAC, such as those committed by Russian forces in Ukraine or Axis forces during World War II. In some instances, but not all, adherence to the LOAC can also contribute to the reciprocal application of law.

JAGs are specially positioned to assist commanders in accomplishing their missions in a manner that adheres to the LOAC and thus contribute to the military purposes identified above. As former Chief of Staff of the Army General Gordon R. Sullivan has said, “The special training of the Staff Judge Advocate has often made the lawyer one of the most important sources of insight.”<sup>20</sup> Judge advocates are trained in both the LOAC and military doctrine. In the words of former Central Command Commander General Frank McKenzie, USMC (Ret.),

I found that military lawyers are broad, deep, well-versed people who understand the Law of War and other issues as well. And I want their counsel. I want to get as much information as I can. . . . They could tap a deep reservoir of military advice and bring it to me. And I wanted that. And also my guidance to them was . . . keep me legal. I’m depending on you to do that. . . . When they give you advice you don’t want to hear, you’ve got to listen to it. And I think I did that in just about every case.<sup>21</sup>

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19. Mike Nelson, “The Warrior Myth: What Pete Hegseth doesn’t understand about Soldiers,” *The Atlantic*, July 8, 2025.

20. Frederic L. Borch, *Judge Advocates in Combat: Army Lawyers in Military Operations from Vietnam to Haiti*, p. iii (Office of the Judge Advocate General and Center of Military History, United States Army, 2001).

21. Charlie Dunlap, “Podcast: An Interview with General (Ret) Frank McKenzie, USMC about High Command and War in the 21<sup>st</sup> Century,” August 12, 2024.

Good military lawyers are also critical thinkers and can articulate how adherence to the LOAC relates to military concepts such as economy of force and directed fire. They also understand the concept of “Commander’s Intent” and the capacity of various weapon systems. Thus, while military commanders are responsible for ROE, JAGs can effectively assist commanders to draft, adopt, and promulgate ROE. Because judge advocates deploy with combat units and work directly with commanders, they are more effective in assisting commanders in disseminating and training personnel on ROE, as well as in realistically advising commanders in the moment, as facts unfold. In brief, JAGs ensure that the U.S. wages war in a way that maintains both the support of the American public and international respect for the professionalism and integrity of the U.S. armed forces.

Lastly, and importantly, JAGs play a key role in fostering the military’s culture of accountability. JAGs, in exercising their professional responsibility to oversee compliance with the LOAC, work with commanders to ensure that all military personnel, regardless of grade, are accountable for their actions. As Washington and other commanders have noted, accountability is essential to the maintenance of discipline, trust, cohesion and, ultimately, combat readiness and combat effectiveness.

#### CONCLUSION

For over 250 years, lawyers have served in uniform, assisting commanders uphold good order and discipline, helping to make the U.S. Armed Forces a more effective combat force. Today’s judge advocates are doing the same, contributing to military readiness through legal assistance to military members and their families; contributing to military training by addressing and resolving the myriad of issues that derive from operating military facilities in CONUS and overseas; and contributing to combat effectiveness by advising commanders, not just on what the law is, but how the law contributes to mission accomplishment.

Judge advocates are effective in doing so because they are trained in military law and in applying that law in operational settings. They are effective in doing so because they serve in uniform with the units and with the commanders they serve. They are effective in doing so because they are independent. Therefore, they are free to think critically and offer candid advice to commanders without interference. Commanders know this. Commanders respect this. Commanders want this. Most of all, judge advocates are effective because they continue in a long tradition of military attorneys who have understood that, in supporting and defending the Constitution, the military must provide for our physical security in a manner that also preserves our values.

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