

# Safeguarding the Role of America's Military Lawyers

Why the JAG Corps is essential to U.S. national security and what  
Congress can do to strengthen and protect this vital institution

**Zachary T. West**

MAY 2026

**Protect Democracy is a nonpartisan nonprofit organization dedicated to preventing American democracy from declining into a more authoritarian form of government.**

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This paper was authored by Zachary T. West, with thanks to Beau Tremitiere and Ariela Rosenberg for their contributions.

This publication is available online at:  
[protectdemocracy.org/military-lawyers](https://protectdemocracy.org/military-lawyers)

Suggested citation: Zachary T. West, *Safeguarding the Role of America's Military Lawyers*, Protect Democracy (May 2026).

Please direct inquiries to:  
[press@protectdemocracy.org](mailto:press@protectdemocracy.org)

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# Key Takeaways

Why it's important to safeguard the role of our military lawyers

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## → A strong and trusted JAG Corps is critical to U.S. national security.

The Judge Advocate General (JAG) Corps is the military's legal and ethical backbone. By ensuring adherence to the law, the attorneys in the JAG Corps maintain force discipline, preserve public trust in the military, sustain support of our allies, and protect the American warfighter's sacred honor.

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## → The JAG Corps is facing serious challenges as a result of actions by civilian leadership.

The ability of the JAG Corps to provide trusted, independent analysis is under significant strain after the politicized removals of senior JAG officers and other recent actions by civilian leadership. The unprecedented placement of JAGs in civilian law enforcement roles without any connection to the military undermines readiness and healthy civil-military relations.

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## → Congressional oversight and reform is necessary.

Congress can and should immediately take concrete steps to protect and enhance effective, independent legal advice. This includes insulating the JAG Corps from improper political pressure; ensuring military readiness by focusing on core military legal issues; and otherwise protecting the integrity of our nonpartisan military.

# Introduction

**THE JUDGE ADVOCATE GENERAL (JAG) Corps** is critical to maintaining good order and discipline across the U.S. military, providing legal assistance to servicemembers and their families, and ensuring lawful combat operations. Yet this institution is facing unprecedented challenges, including the no-cause firing of the Army and Air Force's top JAG officers and the Pentagon's announcement that it would reassign judge advocates to serve as temporary immigration law judges and backfill vacancies in U.S. Attorney's offices. This paper discusses the history and purpose of the JAG Corps, recent challenges to its independence and ability to serve as a trusted advisor, and how Congress can strengthen U.S. military readiness by protecting the JAG Corps from improper influence and misuse.

## **A NOTE ON TERMINOLOGY**

For ease of reference, this paper uses "the JAG Corps" as a collective term for the judge advocate organizations of the individual U.S. military services, including the Marine Corps' Judge Advocate Division and Coast Guard Office of the Judge Advocate General.

# Basics of the JAG Corps

## History

In 1775, the Continental Congress appointed William Tudor as the first Judge Advocate of the Army. Tasked by General George Washington to bring “order and discipline” to a fledgling force, Tudor and his successors laid the groundwork for a system of military justice.

During the American Civil War, the role expanded under the leadership of Joseph Holt, who served as the first formal “Judge Advocate General.” In this era, JAG officers managed the legal complexities of a fractured nation, including the prosecution of those involved in the Lincoln assassination conspiracy and the Andersonville prison camp trials.

World War II saw an expansion of each service’s JAG Corps, dealing with everything from international war crimes at Nuremberg and Tokyo to the rapid implementation of the Uniform Code of Military Justice (UCMJ) in 1950. This landmark legislation unified military law across the services, ensuring a standardized legal framework that protected the rights of servicemembers regardless of their branch.<sup>1</sup>

In the modern era, the scope of a judge advocate’s duty has increasingly shifted from the courtroom to supporting operations. From the jungles of Vietnam to the deserts of Iraq and Afghanistan, JAGs have become essential advisors on the law of war. Today’s JAG Corps members serve as versatile legal professionals who balance justice with the necessities of command, ensuring that American

military operations remain grounded in domestic law, international treaty obligations, and military command requirements.

## Structure

Judge advocates are commissioned military officers licensed to practice law who serve in their respective service branches. They practice a wide spectrum of law at both domestic and overseas military bases, from providing legal assistance to deploying servicemembers, to prosecuting and defending courts-martial, to ensuring compliance with the law of war in military operations. Beyond uniformed attorneys, the JAG Corps includes civilian lawyers, military and civilian paralegals, and professional support staff. The JAG Corps integrates legal professionals from across different military statuses — including full-time active duty and reserve component members — to support the mission.

Like all military officers, judge advocates swear or affirm that they will “support and defend the Constitution.”<sup>2</sup> Consistent with that oath, and through their legal counsel, judge advocates seek to uphold the simple but enduring principle at the heart of our civil-military system: that the U.S. military serves the nation, not any party, faction, or individual leader.

## Leadership

The top military lawyer for the Army, Navy, and Air Force is called the Judge Advocate General (TJAG), and the senior Marine uniformed attorney

is the Staff Judge Advocate to the Commandant of the Marine Corps.<sup>3</sup> Each TJAG — and the Staff Judge Advocate to the Commandant of the Marine Corps — serves as a general or flag officer within their respective service.<sup>4</sup> Title 10 of the U.S. Code establishes these positions and defines their core responsibilities, including serving as legal adviser to their service Secretary and to officers and agencies within their military department. The TJAGs operate within the administrative — not operational — chain of command. Rather than advising field commanders on combat operations, TJAGs counsel senior service leadership on personnel matters, legislation, litigation, and other administrative issues related to recruiting, training, equipping, and sustaining the force.<sup>5</sup>

The TJAG rank carries strategic significance. After September 11, 2001, as Justice Department and White House lawyers advised the Central Intelligence Agency and Department of Defense (DOD) that torturing detainees was legally permissible, several TJAGs warned against it. But the TJAGs — serving in a two-star grade — were often not senior enough to be in the room for these sensitive discussions. As one defense official explained, “When you’re a 2-star and you walk into the room for a high-level meeting, you’re against the wall. You’re not at the table. And there are some meetings that are held just at the 3 or 4 star level — so you can’t even get into the room as a 2-star.”<sup>6</sup>

In 2008, Congress addressed this concern by elevating the TJAG positions to a three-star grade to ensure senior military lawyers had the standing to advise senior leaders on consequential decisions.<sup>7</sup> As explained by Senator Lindsey Graham, who served as an Air Force JAG for more than 30 years:

*[T]he reason that I am changing the statute to make sure that military lawyers have an independent role to play when it comes time to advise commanders ... I don’t want the*

*military legal system having to answer unnecessarily to political appointees. I want them to be able to talk to their commanders, get independent input, to use their military legal experience in independent fashion for the good of the system. And that’s going to take some statutory changes. It’s time to make the judge advocate generals of the Army, Navy, Air Force, Marine Corps three-star generals so they’ll have more weight when they go to meetings.”<sup>8</sup>*

Subsequently, as part of a general effort to reduce the number of general and flag officers, the 2017 National Defense Authorization Act (NDAA) removed the statutory requirement that the TJAGs serve in the three-star grade.<sup>9</sup> Despite this change, TJAGs continued to serve in the three-star grade until 2025.

## The role of military lawyers

As trusted advisors, judge advocates provide invaluable counsel to commanders and civilian officials, assisting in the decision-making process by highlighting legal considerations in various courses of action.<sup>10</sup> But for command decisions, judge advocates do not play a decision-making role. This relationship between judge advocates and their commanders is often described as: “JAGs advise; commanders decide.”<sup>11</sup>

For example, judge advocates advise on the preparation of the rules of engagement governing U.S. military operations, but commanders decide their scope and are responsible for their implementation.<sup>12</sup> Similarly, judge advocates advise on the legality of proposed military strikes, but commanders decide whether and how to undertake such strikes. Even though they are the decision-makers, commanders seek out and listen to their judge advocates because they value the professional and practical benefits of their independent advice.

The relationship between commander and judge advocate is described by the former Supreme Allied Commander, Europe, General Phil Breedlove, United States Air Force (USAF) (Ret.):

*[I]t was clear to me that any time 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 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>13</sup>*

# The Essential Duties of Military Lawyers

**THE JAG CORPS IS** the U.S. military's legal and ethical backbone. Judge advocates strengthen the force by grounding commanders' decisions in law, safeguarding the military's nonpartisan character, and ensuring compliance with the law of war — thereby maintaining discipline, legitimizing coalitions, and protecting the American warfighter's sacred honor. The JAG Corps' importance to commanders and U.S. military operations is discussed further below.

## Providing independent legal advice

JAG Corps lawyers are tasked with providing independent, neutral, and fact-based legal advice to military commanders and civilian leaders. That independence is not only an end in itself; it is the condition that makes their advice effective and makes them trusted advisors. Underscoring the importance of this function, federal law mandates that TJAGs and subordinate judge advocates must be able to provide independent legal advice without interference from military officers or DOD employees.<sup>14</sup> This candid, nonpartisan legal advice is critical to the success of the U.S. military: commanders need trusted advisors who will provide frank answers to difficult questions, even when those answers are politically inconvenient. The moment a judge advocate starts softening conclusions, commanders lose their best tool for avoiding costly legal mistakes. As General John D. Caine, current Chairman of the Joint Chiefs of Staff, stated:

*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>15</sup>*

Indeed, judge advocates have a history of telling leaders what they need (but may not want) to hear. In 2003, an Air Force Deputy TJAG was among the first of the military lawyers to oppose torture of detainees and other excesses by writing a series of “vehemently argued memos.”<sup>16</sup> As recounted by Senator Graham, the JAG Corps “felt that the policies being pushed by the Department of Justice and coming out of the White House counsel’s office were going to create real problems for commanders, create real problems for our troops and lead to problems. And they were prophetic. That’s exactly what happened.”<sup>17</sup>

## Preserving public trust in the military

For over two centuries, the U.S. has sustained a defining democratic norm: a military that is nonpartisan, professional, and subordinate to civilian authority. This norm assures Americans that their armed forces serve the Constitution rather than any political faction, sustains bipartisan support in Congress, and signals to allies and adversaries that American power is wielded in the national interest, not on behalf of any party or person.<sup>18</sup>

The JAG Corps plays a vital role in preventing the politicization of the armed forces and sustaining healthy civil-military relations by serving

as nonpartisan guardians of the rule of law. By rigorously vetting operations for compliance with domestic constraints like the Posse Comitatus Act, judge advocates protect the boundaries between civilian law enforcement and the armed forces.<sup>19</sup> Similarly, by advising adherence to DOD regulations and service-level policies reinforcing the military's nonpartisan ethos, judge advocates help ensure that military symbols, installations, and personnel remain distinct from partisan politics, thereby preserving the public trust and democratic norm of a nonpartisan military.<sup>20</sup>

### Acting as a force multiplier

Because judge advocates are trained in the law of war, they advise commanders and servicemembers on the rules governing military operations. Through this advice, judge advocates help ensure the U.S. military achieves military objectives while maintaining public and coalition support essential to victory. This advice also helps ensure that servicemembers can return home with honor, secure in the knowledge that they served a cause greater than themselves within the boundaries of the law. Adherence to the law of war serves multiple military purposes, including:

#### Making the U.S. military stronger

George Washington observed that “Discipline is the soul of an army. It makes small numbers formidable; procures success to the weak and esteem to all.”<sup>21</sup> That principle is as true today as it was at Valley Forge. Adherence to the UCMJ and the law of war is not merely a legal obligation, but the backbone of a disciplined force, and disciplined forces win wars.<sup>22</sup>

#### Undermining enemy propaganda

By operating within the bounds of the law, the U.S. military strengthens its standing to expose, charge, and prosecute war crimes committed by adversaries. Adherence to the law of war also neutralizes enemy propaganda: adversaries cannot

legitimately compare isolated U.S. infractions to systemic, state-sanctioned war crimes committed by nations like Russia in Ukraine in recent years or the Axis powers in World War II.<sup>23</sup>

#### Securing coalition support

When the U.S. military operates lawfully, it earns the legitimacy upon which coalitions are built and lasting peace is possible. But law of war violations can fracture coalitions and shatter legitimacy. As former Special Forces Lieutenant Colonel Mike Nelson wrote, “[w]hen American forces are perceived as acting immorally, they directly undermine national objectives. Domestic and international support erode, fueling enemy propaganda and complicating cooperation with allies and local populations.”<sup>24</sup>

#### Lowering the enemy's will to fight

During World War II, German soldiers went out of their way to surrender to American forces rather than fall into Soviet hands and suffer mistreatment. A similar dynamic played out during the 1991 Gulf War, when Iraqi troops surrendered en masse after radio transmissions and leaflets assured them of humane treatment, providing Coalition intelligence debriefers with valuable information.<sup>25</sup> In both cases, adherence to the law of war did not constrain the mission, but advanced it.

#### Protecting our sacred honor

By following the law during the heat of battle, servicemembers ensure they can return home with their honor intact when the fighting ends. As former Air Force judge advocate Senator 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>26</sup> It is that separation — the fidelity to law even under fire — that defines the character of the American warfighter.

# Challenges to Independence and Effectiveness

**TODAY, THE JAG CORPS** is facing serious challenges that raise questions about its ability to provide independent legal advice and continue serving as a trusted counsel. These challenges come amidst the broader context of successive domestic deployments of U.S. military members to U.S. communities; the firing, early reassignment, resignations, and blocked promotions of senior military leaders without explanation; U.S. military operations in the Caribbean, Eastern Pacific, Venezuela, and Iran; the use of military bases for partisan events; and an announced restructuring of the JAG Corps. These challenges — and the associated negative effects they have had on the JAG Corps — are discussed further below.

## The firings of the Army and Air Force TJAGs

In early 2025, Secretary of Defense Pete Hegseth fired the Army and Air Force TJAGs, while the Navy's TJAG post was filled by an acting successor following the incumbent's early retirement.<sup>27</sup> Secretary Hegseth, when asked about the firings, said the dismissed officers had been “roadblocks to orders that are given by a commander in chief.”<sup>28</sup> Since the TJAG firings, National Guard judge advocates — holding the rank of two-star generals — have been confirmed for appointment as successors to the Army and Air Force TJAGs. In August 2025, a two-star Marine general assumed the duties of the Judge Advocate General of the Navy.

In the 2026 NDAA, Congress required that if a TJAG is removed from office, the Secretary of Defense must provide Congress with notice and a reason for the removal no later than five days after the removal takes effect.<sup>29</sup>

## Deploying JAGs to serve as temporary immigration law judges

In August 2025, Secretary Hegseth authorized the deployment of up to 600 judge advocates to serve as temporary immigration judges in the DOJ for six-month renewable terms.<sup>30</sup>

These appointments come after the DOJ waived traditional qualification requirements for temporary immigration judges, which previously required a candidate to have served in specific roles with significant immigration law or judicial experience.<sup>31</sup>

Detailing JAG officers as immigration judges likely violates the Posse Comitatus Act, which prohibits the military from “executing” civilian laws.<sup>32</sup> Former immigration judges have also raised concerns that the temporary judges have not received sufficient training in immigration law before taking the bench.<sup>33</sup> Retired U.S. Army Lieutenant General Mark Hertling noted that “[p]ulling [JAGs] into domestic immigration adjudication should not be viewed as a viable ‘surge capacity.’ It is instead a structural reallocation of critical military personnel that will have severe consequences on the good order and discipline of servicemembers and their families.”<sup>34</sup>

## Using JAGs to prosecute civilian cases with no military nexus

The Pentagon has also detailed JAGs to serve as Special Assistant U.S. Attorneys (SAUSAs) to backfill vacancies in U.S. Attorneys' offices. For decades, the government has detailed judge advocates as SAUSAs to prosecute offenses committed by civilians on military installations. This arrangement has allowed the military services to take part in cases in which they had a clear interest — such as traffic violations committed on military installations subject to exclusive federal criminal jurisdiction — while giving courtroom experience to junior JAG officers.

However, the government recently expanded this practice far beyond its historical and statutory bounds. Public reporting suggests that the government has detailed dozens of JAGs to U.S. Attorney's Offices in Minnesota, Washington, D.C., and Tennessee, backfilling vacancies left by civilian resignations.<sup>35</sup> During these temporary duty assignments, JAGs are not prosecuting cases with a nexus to the U.S. military. Instead, they are prosecuting civilians in cases with no connection to the military, for the kind of general, domestic federal offenses that civilian DOJ prosecutors would normally handle.

In February 2026, a Minnesota federal judge held in civil contempt a JAG detailed as a SAUSA over the government's repeated failures to obey court orders. When pressed about the government's failures, the judge advocate admitted the case had slipped "through the cracks," he had never practiced in federal court, and had been assigned nearly 130 cases in a month.<sup>36</sup>

Using judge advocates to prosecute civilians in cases with no military nexus violates the Posse Comitatus Act. In 1983, when Congress amended a statute to allow JAGs to serve as SAUSAs without violating a civil office ban, it said the amendment

"does not sanction or endorse any use of military attorneys beyond" cases with a military nexus.<sup>37</sup> And in 1986, when Congress amended the UCMJ to allow judge advocates to serve as SAUSAs, it said the amendment clarified when judge advocates are detailed to assist "the Department of Justice in litigation involving the Department of Defense."<sup>38</sup>

The services have long understood that judge advocates can only serve as SAUSAs in cases with a military nexus: U.S. Army, Navy, and Air Force regulations all require a military nexus before a JAG may serve as a SAUSA.<sup>39</sup> These rules reflect a shared understanding that judge advocates may only participate in criminal prosecutions with a clear connection to the military.

The DOJ's current use of judge advocates violates the law and longstanding regulations.<sup>40</sup>

## Negative effects on the JAG Corps

These recent developments have collectively taken a toll on the JAG Corps. The effects range from the institutional — a chilling effect on independent legal advice and the diminished standing of TJAGs — to the operational, as the diversion of JAG officers to civilian law enforcement functions drains the personnel the military depends on to maintain legal readiness, enforce discipline, and advise commanders in the field. Each of these consequences is examined below.

### Chilling candid legal advice and counsel

The dismissal of the Army and Air Force TJAGs — characterized by the Secretary of Defense as the removal of "roadblocks" — sends an unmistakable message to every JAG officer below them: independent legal advice that conflicts with the administration's policy preferences can invite adverse professional consequences. The resulting chilling effect could lead JAGs to swallow their objections to legally suspect policies. When JAG

officers self-censor, the chain of command loses the independent legal voice it depends on to avoid law of war violations and mitigate legal risk.

### **Absence from decision-making spaces**

Downgrading TJAGs from three-star to two-star grade is a structural change with operational consequences. Congress mandated the three-star requirement in 2008 because a three-star TJAG has the institutional weight to be in the room when critical decisions are made. A two-star TJAG does not carry that same standing, and the military risks reverting to the arrangement that history has shown leads to legal failures with lasting strategic consequences.

### **Harming military readiness**

Diverting JAGs to prosecute domestic civilian crimes and serve as immigration judges siphons them away from their critical military duties. JAG officers are indispensable to military readiness: they ensure compliance with the law of war, prosecute and defend courts-martial to maintain unit discipline, and provide legal assistance to deploying troops.

# Principles for Oversight and Reform

**RECENT DEVELOPMENTS**, including but not limited to those discussed above, have exposed vulnerabilities in the legal architecture that protects military readiness and the rule of law. Indeed, in recently announcing a review of the JAG Corps, Secretary Hegseth drew attention to the harms arising from the policy changes implemented under his leadership.

His press release stated the current administration of the JAG Corps had “pulled critical judge advocates away from what matters most: advising commanders in the fight, on operations, in deployed environments;” and that the JAG Corps needed to “align functions so that military legal stays laser-focused on warfighting and readiness” and to let “civilian lawyers handle nonoperational stuff ... [and] litigation outside of military channels.”<sup>41</sup> The Secretary subsequently promulgated a memo stating that “[l]itigation before ... federal courts and coordination with the Department of Justice” are civilian legal matters that should be performed under the civilian general counsel hierarchy, not by the JAG Corps.<sup>42</sup>

These contradictions highlight the urgent need for Congressional oversight and reform. In the 2026 NDAA, Congress took steps to protect JAG Corps independence by requiring notice and a reason for removal if a TJAG is fired.

Congress should build on those steps through reforms anchored in three foundational principles:

- ✓ **The importance of effective, independent legal advice**
- ✓ **Enhancing military readiness by focusing on core military legal issues**
- ✓ **Protecting the integrity of our nonpartisan military**

The following non-exhaustive proposals illustrate how Congress might act on these principles.

## PRINCIPLE 1

### **Protect and enhance effective, independent legal advice.**

#### **Restore the three-star grade to the Judge Advocates General.**

Congress codified the three-star grade for TJAGs in 2008 because effective legal counsel requires a seat at the senior leadership table. Congress should restore those grades across all services, ensuring that independent legal advice reaches the room when critical military decisions are made.<sup>43</sup> Congress could also consider codifying other statutory requirements, including but not limited to ensuring TJAGs are commissioned officers with a minimum number of years within their service.

## **Protect the independence of TJAGs through a for-cause removal requirement.**

Sound legal advice requires independent lawyers, and independence requires job security. Congress should explicitly prohibit the firing of TJAGs for political or other improper reasons, authorizing their removal only when there is good cause.

## **Protect subordinate JAGs from inappropriate removal or reassignment.**

JAG Corps independence depends on protecting not just the TJAGs but the lawyers who work for them. Congress should vest sole authority over JAG Corps personnel decisions in the TJAGs of their respective services.

### **PRINCIPLE 2**

## **Enhance military readiness by focusing on core military legal issues.**

### **Expressly prohibit JAGs from serving as immigration judges and as SAUSAs in cases with no military nexus.**

Secretary Hegseth said commanders need JAGs “focused on warfighting, military justice, operational law, law of armed conflict” and not “stuck doing civilian work.” While these details violate longstanding legal restrictions, Congress should explicitly limit JAG details to roles with a substantial military nexus and prohibit their assignment to civilian judicial roles.

### **Strengthen the DOD Law of War Program.**

The DOD Law of War Program is the policy framework ensuring that servicemembers adhere to the law of war. Congress should codify the core obligations of the program — like training requirements, reporting chains, and investigation obligations — and strengthen its requirements.

## **Amend UCMJ jurisdiction for retiree conduct after retirement.**

Current UCMJ jurisdiction over retirees for post-retirement conduct raises serious constitutional questions and chills protected speech from retirees, including former JAGs, on critical matters of public importance. Congress should remove continuing UCMJ jurisdiction over retirees or limit jurisdiction to offenses committed during active-duty service.

## **Create an operational law track for JAG officers.**

The JAG Corps has invested in developing military justice specialists through assignments and career pathways, but no equivalent exists for operational law. A formal track would produce deeper expertise, stronger career incentives, and more capable legal advisors for commanders.

### **PRINCIPLE 3**

## **Protect the integrity of our nonpartisan military.**

### **Defend the merit-based military promotion process.**

The U.S. military’s merit-based promotion system is a cornerstone of its institutional strength. Congress should strengthen the promotion process by requiring the prompt transmittal of promotion lists to the president, enhancing congressional notification for delayed promotions, and expanding appeal rights for members removed from promotion lists for political reasons.

### **Enhance military officer education.**

The Pentagon banned DOD-funded attendance at certain universities for reasons untethered to an educational or national security standard. Sending officers to elite universities builds the strategic thinkers the military needs while deepening the

civil-military ties a healthy democracy requires. Congress should codify the criteria governing DOD-funded civilian graduate education to permit our next generation of military leaders to obtain an excellent education.

## **Reform is needed now to keep our JAG Corps strong.**

The JAG Corps has served as the legal conscience of the American military, a nonpartisan institution dedicated to ensuring that the armed forces operate within the bounds of law, no matter the political climate or the pressures of the moment. That record is not self-sustaining. It depends on law, tradition, and the daily choices of judge advocates who understand that their obligation runs not to any administration, but to the Constitution itself. Congress should take this opportunity to reaffirm the importance of independent legal advice and military readiness.

# Notes

- 1 Pub. L. 81-506, 64 Stat. 107 (1950), *codified at* 10 U.S.C. Ch. 47.
- 2 5 U.S.C. § 3331.
- 3 Standing Comm. on Law & Nat'l Sec., *The Role of the Judge Advocates General and of Judge Advocates: A Primer*, Am. Bar Ass'n, at 2–3 (Aug. 5, 2025) (ABA Primer).
- 4 ABA Primer at 2–3.
- 5 *Id.* at 3–4.
- 6 Natasha Bertrand, *How the Pentagon sidelined lawyers while testing the legal limits of military action*, CNN (Oct. 16, 2025), <https://www.cnn.com/2025/10/15/politics/pentagon-lawyers-sidelined-jags>.
- 7 Pub. L. 110-181, Title V, § 543.
- 8 *Interviews: Lindsey Graham, Rumsfeld's War*, FRONTLINE, PBS (Oct. 26, 2004), <https://www.pbs.org/wgbh/pages/frontline/shows/pentagon/interviews/graham.html>.
- 9 Pub. L. 114-328, Title V, § 502.
- 10 Former JAGs Working Group, *Statement on the Importance of the JAG Corps of the Military Services* (2025), <https://www.formerjagworkinggroup.org/post/statement-on-the-importance-of-the-jag-corps>.
- 11 ABA Primer at 6.
- 12 Per the Chairman's Joint Chiefs of Staff Instruction 3121.01B, "Commanders at all levels are responsible for establishing [Rules of Engagement/Rules for the Use of Force] for mission accomplishment that comply with ROE/RUF of senior commanders, the Law of Armed Conflict, applicable international and domestic law and this instruction."
- 13 Charles J. Dunlap, Jr., *A Conversation with Retired NATO Commander General Phil Breedlove About Ukraine, JAGs, Leadership, and More*, Lawfire (Mar. 2, 2022), <https://sites.duke.edu/lawfire/2022/03/02/a-conversation-with-retired-nato-commander-general-phil-breedlove-about-ukraine-jags-leadership-and-more/>; ABA Primer at 6–7.
- 14 See, e.g., Section 8088, Title 10 ("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" or "the ability of judge advocates of the Navy assigned to, or performing duty with, military units to give independent legal advice to commanders."); ABA Primer at 3.
- 15 Advance Policy Questions for Lieutenant General John Daniel Caine (USAF), Retired, Nominee for Appointment to Grade of General and to the position of Chairman of the Joint Chiefs of Staff, S. Armed Servs. Comm. (2025), p. 7, [https://www.armed-services.senate.gov/imo/media/doc/caine\\_apq\\_responses.pdf](https://www.armed-services.senate.gov/imo/media/doc/caine_apq_responses.pdf); ABA Primer at 6.
- 16 Charlie Savage, *Takeover: The Return of the Imperial Presidency and the Subversion of American Democracy* (2007); Charles J. Dunlap, Jr., *Is Independent, Nonpartisan Legal Advice from Military Lawyers on the Chopping Block?*, Lawfire (Feb. 22, 2025), <https://sites.duke.edu/lawfire/2025/02/22/is-independent-nonpartisan-legal-advice-from-military-lawyers-on-the-chopping-block/>.
- 17 Graham Interview, *supra* note 8.
- 18 Count Every Hero, *The Perils of Politicization: Safeguarding Military Neutrality and the Rule of Law* (2025), at 2, <https://counteveryhero.org/wp-content/uploads/2025/12/CEH-Perils-of-Politicization-FINAL-112525.pdf>.
- 19 18 U.S.C. § 1385 (prohibiting the willful use of any federal military personnel to "execute the laws" unless "expressly authorized by the Constitution or Act of Congress.>").
- 20 Count Every Hero, *supra* note 18, at 8–9.
- 21 *Washington Takes Command of Continental Army in 1775*, U.S. Army Ctr. of Military Hist. (Apr. 15, 2016), [https://www.army.mil/article/40819/washington\\_takes\\_command\\_of\\_continental\\_army\\_in\\_1775](https://www.army.mil/article/40819/washington_takes_command_of_continental_army_in_1775).
- 22 ABA Primer at 8.
- 23 *Id.* at 9.
- 24 Mike Nelson, *What Pete Hegseth Doesn't Understand About Soldiers*, The Atlantic (July 8, 2025), <https://www.theatlantic.com/magazine/archive/2025/08/warrior-myth-lethality-pete-hegseth/683247/>; ABA Primer at 9.

- 25 U.S. Dep't of Defense, *Conduct of the Persian Gulf War: Final Report to Congress* (Apr. 1992), at xxii.
- 26 Original Press Release, "Graham Sworn in as Air Force Judge," Nov. 5, 2003; ABA Primer at 8–9.
- 27 MLT Staff, 'People Are Very Scared': Trump Administration Purge of JAG Officers Raises Legal, Ethical Fears, *Military.com* (Feb. 25, 2025), <https://www.military.com/daily-news/2025/02/24/people-are-very-scared-trump-administration-purge-of-jag-officers-raises-legal-ethical-fears.html>.
- 28 Sarah Fortinsky, *Hegseth: Fired military lawyers were potential 'roadblocks' to Trump orders* (Feb. 24, 2025), <https://thehill.com/policy/defense/5162069-pentagon-officers-fired/>.
- 29 Pub. L. 119-60, Title V, § 506.
- 30 Konstantin Toropin, *Pentagon authorizes up to 600 military lawyers to serve as temporary immigration judges*, AP News (Sept. 2, 2025), <https://apnews.com/article/pentagon-immigration-judges-trump-pete-hegseth-b07950833591270b926ad86ede8b961f>.
- 31 Compare 8 C.F.R. 1003.10 (July 2024) to 8 C.F.R. 1003.10 (August 2025) (permitting the DOJ to designate or select "any attorney" to serve as a temporary immigration judge).
- 32 See Mark Nevitt & Margy O'Herron, *Soldiers in Robes: Why Military Lawyers Can Not and Should Not Serve as Immigration Judges*, *Just Security* (Nov. 17, 2025), <https://www.justsecurity.org/124574/soldiers-in-robos-why-military-lawyers-can-not-and-should-not-serve-as-immigration-judges/>.
- 33 Suzanne Monyak & Celine Castronuovo, *DOJ Memo Draws Doubts on Military Lawyers as Immigration Judges*, *Bloomberg Law* (Nov. 18, 2025), <https://news.bloomberglaw.com/us-law-week/doj-memo-draws-doubts-on-military-lawyers-as-immigration-judges>.
- 34 Mark Hertling, *JAGs Shouldn't Be Civilian Prosecutors*, *The Bulwark* (Feb. 10, 2026), <https://www.thebulwark.com/p/jags-shouldnt-be-civilian-prosecutors>.
- 35 See *Department of War Assigns 20 Military Lawyers to Serve as Special Assistant U.S. Attorneys in Memphis*, U.S. Att'y's Off., W. Dist. of Tenn. (Jan. 7, 2026), <https://www.justice.gov/usao-wtdn/pr/department-war-assigns-20-military-lawyers-serve-special-assistant-us-attorneys>; Thomas Novelly, *JAGs Are Becoming Federal Prosecutors in Minneapolis. Experts Warn It's New Territory*, *Defense One* (Jan. 29, 2026), <https://www.defenseone.com/policy/2026/01/jags-are-becoming-federal-prosecutors-minneapolis-experts-warn-its-new-territory/411064/>.
- 36 Paul Blume, *ICE in Minnesota: Federal Judge Lifts Contempt Order, Blasts Government Attorneys*, *Fox 9 Minneapolis* (February 20, 2026), <https://www.fox9.com/news/federal-judge-lifts-contempt-order-blasts-government-attorneys-feb-20-2026>.
- 37 10 U.S.C. § 973(b)(2)(B); S. Rep. No. 98-174 (1983), reprinted in 1983 U.S.C.C.A.N. 1081, at 233.
- 38 See 10 U.S.C. § 806(d)(1); H.R. Conf. Rep. 99-1001 (1986), reprinted in 1986 U.S.C.C.A.N. 6529, at 493.
- 39 See 32 C.F.R. § 516.4 and AR 27-10, *Military Justice* (January 8, 2025), Ch. 23 (allowing Army judge advocates to serve as SAUSAs in cases "in which the Army has an interest"); Naval Legal Service Command Instruction 5822.1, ¶ 4 (the Navy provides SAUSA support in cases "wherein the [Navy] is the originating agency or in which the [Navy] has a significant interest"); Air Force Policy Directive 51-2, *Military Justice And Other Criminal Proceedings* (Jan. 16, 2024) ¶ 2.16.2 (limiting Air Force SAUSA prosecutions to those "of civilians who commit offenses in violation of federal law, including applicable assimilated state criminal laws, on [Air Force] installations where the United States has either exclusive or concurrent jurisdiction.").
- 40 In March 2026, a group of former military lawyers — including a former Navy TJAG, an Air Force Deputy TJAG, and a two-time U.S. Attorney for Minnesota — filed an amicus brief arguing that it violates federal law when JAGs serving as SAUSAs prosecute civilians in cases with no military connection. See *Former JAGs File Brief Opposing Trump Administration's Use of Military Lawyers to Prosecute Civilians*, *Protect Democracy* (Mar. 10, 2026), <https://protectdemocracy.org/work/jag-amicus-brief/>.
- 41 Matthew Olay, *Hegseth Calls for Assessment, Alignment of DOW Legal Functions, Operations*, U.S. Dep't of War (Mar. 11, 2026), <https://www.war.gov/News/News-Stories/Article/Article/4431680/hegseth-calls-for-assessment-alignment-of-dow-legal-functions-operations/>.
- 42 Memorandum from Pete Hegseth, Sec'y of War, to Sec'y's of the Military Dep'ts et al., *Directed Assessment and Alignment of Legal Functions to Enhance Legal Support to Warfighters* (Mar. 11, 2026).
- 43 Notably, Secretary Hegseth's recent memo on the JAG Corps instructed that "[u]pon the recommendation of the Secretary concerned, a Judge Advocate General will be considered for service at the uniformed grade of O-9 ...." *Id.*





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