



General George Washington, father of the JAG Corps. (Credit: National Portrait Gallery, Smithsonian Institution).

Corps saw vast changes in military justice, in the composition and training of the Army's legal professionals, and in the Army's legal missions. As one of the Army's oldest branches, the JAG Corps's story reflects many broader currents that have shaped our Army and our Nation's history.

Founding

Upon the outbreak of the American Revolution in 1775 and his designation to lead the new Continental Army, George Washington found himself in charge of a motley assemblage of militiamen. Washington recognized that his troops required the discipline to train and fight like a professional European force to be effective and gain legitimacy. An essential aspect of this project was a military justice system modeled after the British Army's, which had a judge advocate general since 1666.

As he organized his forces, Washington corresponded with John Hancock, President of the Continental Congress, on establishing key military staff positions. "I would humbly propose that some Provision should be made for a Judge Advocate [(JA)]," Washington wrote on 21 July 1775.¹ Congress followed Washington's recommendation and established William Tudor's position on 29 July. Tudor's title was changed to Judge Advocate General in 1776.²

Court Is Assembled

The U.S. Army JAG Corps A Legacy of Legal Excellence Since 1775

By Dr. Nicholas K. Roland, Ph.D.

The U.S. Army Judge Advocate General's (JAG) Corps traces its establishment to 29 July 1775, when the Second Continental

Congress appointed William Tudor as "Judge Advocate of the Army." Over the next 250 years, the path to the modern JAG

The Evolution of Military Justice

In keeping with Washington's original priorities for his judge advocate general, military justice remained the *raison d'être* for the JAG Corps and its antecedents into the latter half of the twentieth century. For much of American history, the court-martial was considered a purely military function unrelated to the Federal courts established under Article III of the U.S. Constitution.³ Under the Articles of War,⁴ which Congress passed in 1806, protections for the accused were minimal, and sentences, with a few exceptions, were handed down at the discretion of courts-martial panels. The Articles of War remained in effect (with revisions) until 1951.



First Lieutenant Victor A. DeFiori (later a military judge and brigadier general) acting as trial counsel in an early court-martial under the UCMJ in Korea, 22 September 1954. (Credit: JAG Corps Regimental Archives)

Perhaps the nineteenth century's best-known innovation in military law was the 1863 promulgation of General Orders No. 100 as an addendum to the Articles of War.⁵ Authored by legal scholar Francis Lieber, the "Lieber Code" incorporated common law crimes under the Articles of War for the first time and defined what is today known as the law of armed conflict. The Lieber Code directly influenced the body of international law born from the Hague Conventions of 1899 and 1907.

The United States' entry into World War I sowed the seeds for dramatic changes to military justice. A public disagreement erupted between Major General Enoch Crowder, the Judge Advocate General, and

his number two, Brigadier General Samuel T. Ansell, over Ansell's proposed Articles of War revisions. Ansell, reacting to the Houston Riot cases and other instances of harsh punishment with minimal due process in the American Expeditionary Forces, wanted to increase accuseds' rights and make courts-martial more closely resemble civilian trials. Crowder publicly disagreed with most of Ansell's proposals and argued that the military justice system existed purely to enforce a commander's disciplinary prerogative. In the aftermath, Congress adopted only incremental reforms.

World War II spurred a renewed push for military justice reform. During the war, the Armed Forces carried out approximately

1.7 million courts-martial. Veterans complained to Congress of defects in the Articles of War and the military justice system: undue command influence, wildly varying sentences for similar offenses, seeming favoritism toward officers, and more.

In response, Congress significantly changed the Articles of War in the Selective Service Act of 1948⁶ by, among other reforms, including enlisted Soldiers and warrant officers on court-martial panels and prohibiting unlawful command influence. It also transformed the JAG Department into the JAG Corps. However, the legislation only reformed the Army's Articles of War.

In 1950, Congress passed the Uniform Code of Military Justice (UCMJ),⁷

abolishing Service-specific military justice codes. Among other significant reforms, it required “a thorough and impartial” pretrial investigation; provided the right to legally qualified counsel for the accused at general and special courts-martial; created a quasi-judicial “law officer” position; and created a three-member civilian Court of Military Appeals atop the military appellate structure.⁸ Foreshadowing an important trend, UCMJ Article 36 stated that courts-martial should “apply the principles of law and rules of evidence generally recognized in the trial of criminal cases in the [U.S.] district courts.”⁹

The Vietnam era saw another wave of far-reaching military justice changes. The first major UCMJ overhaul came with the Military Justice Act (MJA) of 1968.¹⁰ The most important changes in the act were the creation of a military judiciary and the right to representation by a JA at special courts-martial. New Army judges would be selected in a manner that removed the possibility of local conflicts of interest. Army judges would also assume some powers that the court-martial panel previously held. Individuals facing a court-martial could now request a judge-only trial, the redesignated Courts of Review were composed of Army judges, and avenues to appeal convictions increased.

Since then, military justice has continued to increasingly align with the practices of Federal courts. Following the 1968 MJA, significant developments included the implementation of the Military Rules of Evidence (modeled after the Federal Rules of Evidence) in 1980 and the passage of the 1983 MJA,¹¹ which allowed for appeals directly from the Court of Military Appeals to the U.S. Supreme Court. In 1994, the Court of Military Appeals was renamed the U.S. Court of Appeals for the Armed Forces.

Post-9/11-era military justice reform focused on sexual harassment, sexual assault, and other serious crimes. A series of reforms in the National Defense Authorization Acts between 2016 and 2022 changed the UCMJ and culminated in the 2023 establishment of the Office of Special Trial Counsel. The new organization features specially trained military prosecutors with the sole authority to prosecute sexual assault and thirteen other crimes.



Personnel assigned to the Office of the Staff Judge Advocate, XVIII Airborne Corps, Operation Desert Shield, 1990. (Credit: JAG Corps Regimental Archives)

Composition and Training Over Time

In the antebellum period, the Army typically only maintained a single full-time Army lawyer—the Judge Advocate General (or a similar title)—while line officers served as JAs at courts-martial as an additional duty. Army lawyers gained an institutional toehold in 1862 when Congress established the Judge Advocate General position as a brigadier generalship. The subsequent creation of the Bureau of Military Justice in 1864 and its conversion into the JAG Department in 1884 saw a small cadre of officers serving as full-time Army lawyers.

From the American Revolution to the adoption of the UCMJ, full-time JAs were customarily formally trained lawyers, but no law or regulation defined their qualifications. Even after the JAG Department’s establishment, line officers were sometimes selected for a commission in the department before attending law school and passing a bar exam. Mirroring the trend toward professionalization in the civilian practice of law, most JAs in the twentieth-century JAG Department were law school graduates. Finally, the 1950 UCMJ required JAs to be law school graduates and state bar members.

Training in military law was on-the-job until World War II, when a JAG School was established at the University of Michigan.

The school was restarted in 1950 at Fort Myer, Virginia, and relocated to the University of Virginia the following year. With added capabilities and missions, such as the Noncommissioned Officer Academy established in 2004, The Judge Advocate General’s Legal Center and School remains in Charlottesville today.

Furthermore, until World War I, the JAG Department and its antecedents did not include enlisted Soldiers. The temporary assignment of legal clerks to the JAG Department during the Great War was imitated again in World War II. With the adoption of the 1968 MJA and its requirement that a JA be provided as counsel at special courts-martial, and with nearly 60,000 special courts-martial in 1969 alone, demand for JA services sharply increased. This heavier caseload made enlisted and warrant officer support more critical than ever. In response, the JAG Corps established the legal clerk (presently paralegal specialist) Military Occupational Specialty (MOS) and established formal training programs for legal administrator warrant officers and enlisted legal clerks in 1969 and 1972, respectively.

In the twenty-first century, JAs, legal administrators, and paralegals are found in all components of the Army. In fact, like the rest of the Army’s branches, the bulk of the JAG Corps’s force structure is found in the

Army Reserve and National Guard. Reserve Component legal professionals were instrumental in the mobilizations for both World Wars and have played a major role in Army operations since September 11, 2001.

Changing Roles and Missions

While military justice remained at the forefront for most of the JAG Corps's history, times of war invariably involved Army legal personnel in other areas of law to support the Army's operations. The vast scope of World War II, for instance, saw the expansion of the JAG Department into fields such as claims, contracts, patents, and real estate. In 1943, the Army also began providing legal aid to Soldiers for the first time—the beginning of the Legal Assistance program.

Perhaps most notably, the war's aftermath saw Army legal personnel directly involved in prosecuting war crimes. At trials in Germany, Italy, and the Philippines between 1945 and 1948, Army lawyers and legal personnel helped prosecute and defend thousands of former enemy officials, military personnel, and civilians charged with violating the laws of war. The JAG Department therefore played a key role in establishing a precedent of accountability for those who violate international humanitarian law.

The courts-martial that followed the 1968 My Lai massacre marked another defining moment for the JAG Corps in the Vietnam era. Of the thirteen Soldiers charged with murdering civilians in South Vietnam, only a platoon leader, First Lieutenant William L. Calley, was convicted. The famous trial prompted Army reforms in law of war training and led to a new Department of Defense training program in 1974. Crucially, the reform also required legal review of operational plans.

Direct legal support to operations planning and execution did not come to fruition until the early 1980s. During Operation URGENT FURY in 1983, JAs provided on-the-spot legal advice to commanders on rules of engagement, detainee operations, damage claims, a new status of forces agreement between the United States and Grenada, and more. In the operation's aftermath, the JAG Corps had reached a watershed moment in redefining expectations for legal support to the Army. By 1987, operational law (OPLAW) was a core component of the JAG

Corps mission, and the JAG School developed an OPLAW curriculum to train Army lawyers in its application. Army lawyers were fully integrated into Army operational planning and execution by Operations JUST CAUSE (Panama, 1989) and DESERT SHIELD/DESERT STORM (Persian Gulf, 1990–1991). Operational law is now part of the larger field of national security law, a core component of JAG Corps legal support to the Army.

Since the advent of the Cold War and a permanently enlarged defense establishment, the JAG Corps has taken on a multitude of roles to support the Army. Besides national security law and military justice, legal support to the twenty-first-century Army also includes administrative and civil law and contract, fiscal, and acquisition law. Developments in Federal law have frequently required the Army's legal engagement. For instance, Federal environmental law growth and resulting litigation led to the Corps's Environmental Law Division in 1988. Legal support to Soldiers and Families consists of Trial Defense Service (established 1980) and Soldier and Family legal services, which encompasses claims by Soldiers and Army civilians, medical evaluation and disability law, Soldier and Family legal assistance, and, as of 2014, special victims' counsel services. The JAG Corps will continue to meet evolving demands and support the Army in emerging fields such as cyberspace law, artificial intelligence, and autonomous weapons systems.

Conclusion

Since 1775, the Army's legal profession has grown and changed significantly. Several trends characterize our history: the evolution of our organization, composition, and training to meet military justice reforms, an expanded scope of practice, and the integration of legal support into Army operations at every level. In an increasingly complex and legally dynamic world, the JAG Corps will continue to honor its rich 250-year legacy by proudly providing our Army with premier legal services. **TAL**

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Notes

1. Letter from George Washington to John Hancock (July 21, 1775), *reprinted by* NAT'L ARCHIVES: FOUNDERS ONLINE, <https://founders.archives.gov/documents/Washington/03-01-02-0085> [https://perma.cc/38TA-JZRB].
2. THE JUDGE ADVOC. GEN.'S CORPS, THE ARMY LAWYER: A HISTORY OF THE JUDGE ADVOCATE GENERAL'S CORPS 1775-1975 at 11 (1976).
3. U.S. CONST. art. III.
4. Articles of War of 1806, *reprinted in* 2 WILLIAM WINTHROP, MILITARY LAW AND PRECEDENTS 1509 (1886).
5. Headquarters, U.S. War Department, Gen. Orders No. 100 (24 Apr. 1863) [hereinafter Lieber Code].
6. Selective Service Act of 1948, Pub. L. No. 80-759, 62 Stat. 604.
7. An Act to Unify, Consolidate, Revise, and Codify the Articles of War, the Articles for the Government of the Navy, and the Disciplinary Laws of the Coast Guard, and to Enact and Establish a Uniform Code of Military Justice, Pub. L. No. 81-506, 64 Stat. 107 (1950).
8. *Id.*
9. *Id.* art. 36, 64 Stat. at 120.
10. Military Justice Act of 1968, Pub. L. No. 90-632, 82 Stat. 1335.
11. Military Justice Act of 1983, Pub. L. No. 98-209, 97 Stat. 1393.