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Jon Shelburne

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Military Justice in the United States Marine Corps After 9/11:

Does the War on Terror Change How Justice is Defined or Whether Justice Can Ever Be Achieved?

Jon Shelburne

This trial is a kind of tactics. It is a natural action and not a moral action. Suppose one throws a ball and it falls. Then we can see the ball stop (bouncing). But actually it rolls a little while by inertia. In the same way, the war is going on yet. It is not an ordinary court. It is a continuation of the war. . . . You can kill people by any means. It is more advantageous to kill by means of such a trial than with a gun.¹

INTRODUCTION

Before retiring from command of United States Central

1. Valentine B. Deale, Letter to the Editor, *The Tokyo Tribunal: Principles and Practices of Procedure Criticized*, N.Y. TIMES, Dec. 19, 1948, at E8. (In his letter to the editor, Mr. Deale quotes a former Japanese war leader. Mr. Deale served as the Acting Director of the American Defense Counsel at the military tribunals conducted in Japan immediately after WWII. His letter to the Editor was openly critical of the way defense services were provided to senior Japanese admirals and generals facing the penalty of death at the hands of the tribunals. While the trials at Nuremberg receive significant attention from history books and legal scholars, the trials held in Japan are virtually forgotten or ignored.).

Command, General John Abizaid coined the term “Long War”² to describe the conflict United States military forces have been engaged in since 9/11. The attempt by General Abizaid to shift the focus from the War on Terror to a more accurate description of a conflict that has both military and political ramifications beyond the borders of Afghanistan and Iraq had a noble purpose but also the unintended consequence of conveying a message to the Middle East that the United States and coalition forces might never leave.³

More recently, unrest in Tunisia sparked waves of protest throughout the Middle East and Africa. While the protests and riots have caused some governments to tumble and others to begin making reforms, the Libyans find themselves in the midst of a violent struggle for control in a country that has been dominated by Muammar Gaddafi for more than forty years.⁴ The decision by President Obama to allow the United States to join a coalition of countries engaged in armed responses to the violence in Libya has been praised by some and criticized by many,⁵ but the simple reality for the United States military is that the conflict in Libya is just one more engagement in a war that is being fought globally. At the time of this writing, it is too early to tell whether the United States involvement in coalition operations in Libya will be one week, one month, one year, or even longer. Regardless of the timing or the extent of this or any other military engagement, one thing that is certain is: wherever the United States military goes, military lawyers go also.⁶ And while the primary focus of military

2. See Michael R. Gordon, *U.S. Shortens Life of ‘Long War’ as a Reference*, N.Y. TIMES, Apr. 24, 2007, at A14 (In a short article in the NY Times, Michael Gordon highlights the many different terms used by military commanders and officials within the Bush administration to define the conflict being waged by American forces. The article captures the essence of the problem of defining a conflict that is not limited to the borders of Iraq and has no discernible beginning or end.).

3. *Id.*

4. See Dirk Vandewalle, *After Gaddafi*, NEWSWEEK (Feb. 21, 2011), <http://www.newsweek.com/2011/02/27/after-gaddafi.html>.

5. See Jeff Zeleny, *Airstrikes in Libya; Questions Back Home*, N.Y. TIMES (Mar. 20, 2011) <http://www.nytimes.com/2011/03/21/world/africa/21prexy.html>.

6. See generally *Marine Corps Judge Advocate*, U.S. MARINE CORPS (2011), http://officer.marines.com/marine/winning_battles/leadership_positions/law/judge_advocate.

lawyers in any mission is to ensure the conduct of operations is legal and justifiable under the international law of armed conflict, military justice matters inevitably follow wherever troops are engaged in the battle or other supporting operations.⁷

This Article focuses on the delivery of military justice services in a post 9/11 military and how the delivery of the services of the defense bar is inevitably impacted by the changing nature of the battlefield. Perhaps more importantly, this Article raises questions about the effectiveness of the delivery the United States Marine Corps in providing such defense services. To examine this issue, the Article will first focus on several scenarios taken from various military legal offices followed by a brief history of how the armed services attempted to provide defense counsel and services to military personnel prior to 9/11. Next, the Article will focus on the law, military orders and other ethical obligations that mandate delivery of such services. The article will then look at how the Marine defense bar is organized post 9/11 and how military justice is defined by the current system in place. Finally, this Article will conclude by looking at proposed changes to the current way military justice is administered and explore whether those proposed changes go far enough to provide justice to military service members who are charged with crimes under the Uniform Code of Military Justice in a time of undeclared war.

SETTING THE STAGE

Military justice matters are infused into all aspects of a military operation no matter where that operation is being conducted and regardless of the circumstances.⁸ The case the United States Army is prosecuting against Private First Class Bradley Manning⁹ is a highly visible example of how military justice matters are always a factor in any military operation.

7. *Id.*

8. See generally Victor M. Hansen, *Changes in Modern Military Codes and the Role of the Military Commander: What Should the United States Learn from this Revolution?*, 16 TUL. J. COMP. & INT'L L. 419 (2008).

9. PFC Manning is an Army specialist who is facing charges ranging from simple orders violations to espionage in connection with allegations that he provided a significant number of classified documents and other classified information to an organization known as "Wikileaks." See Charlie Savage, *Soldier Faces 22 New WikiLeaks Charges*, N.Y. TIMES, Mar. 2, 2011, available at www.nytimes.com/2011/03/03/us/03manning.html.

Those unfamiliar with the inner workings of military intelligence question how someone who ranks as low as a Private First Class could have access to so much classified information.¹⁰ Manning claims that he is simply a whistleblower who should be protected from being charged for doing what he is lawfully required to do by the Uniform Code of Military Justice (UCMJ).¹¹ His alleged violations of the UCMJ occurred while participating in operations in Iraq. However, Private First Class Manning is not the only soldier accused of espionage since the War on Terror began. Army Specialist Ryan Anderson was convicted by a court-martial in 2004 after a joint Department of Justice and Federal Bureau of Investigation sting operation uncovered evidence that Anderson, while serving at Fort Lewis in Washington state, sought to share secrets about tanks and other weaponry to individuals he believed to be Al Qaeda operatives.¹² For his misconduct, Anderson received a sentence of life with the possibility of parole, reduction to private, forfeiture of all pay and allowances, and a dishonorable discharge.¹³ In another recent case, Navy Intelligence Specialist

10. Marc Ambinder, an online political blogger who writes for the National Journal, states, "[s]keptics of the government's case against Manning wonder how one young soldier, operating with a couple of computers in the middle of desert, could access and download so much classified information and do so undetected for so long But in the modern military, which relies on information as much as bullets and bunkers, it's easier than one might think to gain access to classified material and to disseminate it, according to interviews with numerous officials." See Marc Ambinder, *WikiLeak: How Could One Person Leak So Much Classified Material?*, NAT'L J., available at http://news.yahoo.com/s/yblog_exclusive/20101130/pl_yblog_exclusive/wikileaks-how-could-one-person-leak-so-much-classified-material.

11. PFC Manning is accused of several violations of the UCMJ including, but not limited to Article 92 orders violations. Among these charges are allegations he violated the provisions of 18 United States Code § 793 prohibiting disclosure of classified information. However, PFC Manning may argue that Department of Defense Directive 2311.01E dated May 9, 2006, the same Directive used to charge LtCol Chessani and the officers in his chain of command, requiring soldiers to report known violations of the law of armed conflict. See *infra*, note 92.

12. See *Famous Espionage Cases (2000-2004) in the USA*, STRATEGIC ANALYSIS (Nov. 1, 2006, 02:04 AM), <http://strategicanalysis.wordpress.com/2006/11/01/famous-espionage-cases-2000-2004-in-the-usa> (citing the case of Army Specialist Ryan Anderson). See also *United States v. Anderson*, 68 M.J. 378, 308-81 (C.A.A.F. 2010).

13. *Famous Espionage Cases (2000-2004) in the USA*, STRATEGIC ANALYSIS (Nov. 1, 2006, 02:04 AM), <http://strategicanalysis.wordpress.com/>

Second Class B. Minkyu Martin faces charges of espionage and mishandling classified material for attempting to sell highly classified material to officers from the Federal Bureau of Investigation who were again posing as enemy operatives.¹⁴ Martin's alleged violations of the UCMJ are alleged to have occurred while he served as an intelligence analyst at Fort Bragg, North Carolina.¹⁵

While Private First Class Manning's case receives significant national attention, the other cases noted above, as well as many more cases not specifically mentioned,¹⁶ are not widely publicized outside of close military circles. Yet all of these cases highlight how military justice matters arise at all ranks and at all stations both inside and outside of combat zones. What is troubling in these cases is the varying level of defense services available to these Soldiers, Sailors, Airmen, and Marines. How is justice defined in these circumstances? Is the definition the same as in any other military courts-martial? Has the War on Terror changed the definition for all of the aforementioned defendants? Does the outrageous publicity in Private First Class Manning's case change the paradigm for his case only, or does the media exposure of his case or that of the Abu Ghraib defendants¹⁷ add another layer to the definition of justice? Does justice get sacrificed on the altar of public opinion in such circumstances, or are military juries and military defense lawyers immune from the

2006/11/01/famous-espionage-cases-2000-2004-in-the-usa.

14. Lauren King, *Sailor Charged with Attempted Espionage is Held In Norfolk*, THE VIRGINIAN PILOT (Mar. 4, 2011), <http://hamptonroads.com.nyud.net/2011/03/ncbased-sailor-charged-attempted-espionage>. At the time of this writing, the case of *United States v. Martin* is pending referral to a general courts-martial so no cite is available.

15. *Id.*

16. From 2009 to 2010, the author of this article defended a Reserve Marine Colonel at Camp Pendleton on charges of espionage and mishandling of classified material. The Colonel and four other Marines ranging in rank from Major to Staff Sergeant faced similar charges stemming from activities that were alleged to have involved foreign agents and sharing classified information outside official Department of Defense channels.

17. Staff Sergeant Ivan L. Frederick II, Specialist Charles A. Graner, Sergeant Javal Davis, Specialist Megan Ambuhl, Specialist Sabrina Harman and Private Jeremy Sivits were charged and tried in Iraq while Private Lynndie England was charged and later tried at Ft. Bragg. See Seymour M. Hersh, *Torture at Abu Ghraib*, THE NEW YORKER, May 10, 2004, http://www.newyorker.com/archive/2004/05/10/040510fa_fact.

pressure which inevitably flows down from above when too many questions get asked by those outside the military community?

THE MARINE CORPS RESPONSE

Marines pride themselves on being able to make decisions quickly, efficiently and effectively despite the fog of war or other friction that might exist in a given situation. We all train the same way, learn the same steps in the Marine Corp Planning Process,¹⁸ and embrace the same leadership principals so that when we are confronted with difficult situations we can observe, orient, decide, and act faster than our enemy.¹⁹ We pride ourselves on being able to fight the current war, while still maintaining a forward-thinking, forward-leaning posture to be ready for the next war or contingency that will inevitably arise. We always do well in anticipating what the enemy will do on the battlefield or in adjusting swiftly when the enemy does the unexpected or acts in an unconventional manner. However, Marines are not always so quick, efficient or effective when it comes to recognizing flaws in the way we handle administrative issues or processes. Change is viewed as the enemy and staunchly resisted - often times for no better reason or justification than "that's the way we've ALWAYS done it, Marine!" As quick as we are to recognize the need for flexibility on the battlefield, at the same time we fail to recognize or embrace the need for the same flexibility within our administrative procedures. Any change to orders covering existing procedures is generally met with significant resistance. Such is the case with a current proposal to revise and update the orders covering the way the Marine Corps provides defense services to Marines accused of violating the UCMJ.²⁰ The proposed changes come as a direct response to

18. See generally *Marine Corps Planning Process*, MARINE CORPS WARFIGHTING PUBLICATION 5-1, available at <http://smallwarsjournal.com/document/mcwp5-1.pdf>.

19. The OODA Loop - observe, orient, decide and act - is a concept coined by retired Air Force General John Boyd. The Marine Corps includes this decision making cycle in one of its most widely published and distributed manuals. See generally *Warfighting*, U.S. MARINE CORPS DOCTRINAL PUBLICATION 1, available at http://www.dtic.mil/doctrine/jel/service_pubs/mcdp1.pdf.

20. Working Group Draft Proposals for the Manual of the Judge Advocate General, ¶¶ 0130, 0131, [hereinafter *JAGMAN*] (on file with

recommendations provided to the Secretary of Defense in December of 2010 by an independent panel studying the possibility of combining the Judge Advocate General Corps of each of the Services.²¹

To understand the current proposals for change within the Marine Corps specifically one must first understand the broader mandate of the Section 506 panel.²² To answer the larger question of whether the services should combine into one large legal the panel's report made several findings regarding the changing nature of the way in which legal services are provided by the Navy and Marine Corps.²³ Among other things, the panel concluded that operational requirements and the corresponding demand for more judge advocates to answer law of armed conflict issues or other questions related to operations in the field would continue to increase due to the ongoing war effort.²⁴ In examining the increased role for judge advocates in a combat environment, the panel examined the involvement of lawyers across operations in both Iraq and Afghanistan.²⁵ The provision of defense services was only one small part of this equation included within the broader scope of providing military justice support in the field.²⁶ Additional findings are included that note a continuing need for defense attorneys in support of the military commissions

author); Working Groups Draft Proposal for the Marine Corps Manual for Legal Administration, Ch. 2, [hereinafter *LEGADMINMAN*] (on file with author).

21. An independent panel comprised of Navy and Marine senior officers, civilians, and lawyers complied with an order from the Secretary of Defense to respond to a mandate contained in section 506 of the National Defense Authorization Act of 2010. The mandate essentially required the Department of Defense to look at how legal services are provided to members of each of the armed services. *See generally* National Defense Authorization Act for Fiscal Year 2010, Pub. L. No. 111-84, 123 Stat. 2190, (2009).

22. *Id.*

23. The independent panel produced a large report detailing their findings and providing extensive support for the position that Navy and Marine legal services should remain separate from the Air Force JAG and Army JAG services. *See* NAVY 506 PANEL, INDEP. REVIEW PANEL OF JUDGE ADVOCATE REQUIREMENTS OF THE DEPT OF THE NAVY, (2010) [hereinafter 506 Draft Report], available at <http://www.caaflog.com/2010/12/22/navy-506-panel-draft-report/>.

24. *Id.* at 50.

25. *Id.* at 63-70.

26. *Id.* at 67.

conducted at Guantanamo.²⁷ The findings here are supported by little more than a review of the numbers required to continue prosecuting the cases. Perhaps more telling is the conclusion that “the most experienced and accomplished litigators” will be required to prosecute the thirty-four commissions remaining. The finding is further supported by the need to continue to fund the Navy’s military justice specialty track without reference to Marines and there is no specific reference to defense services by either service.²⁸ Likewise, the justification for the findings and recommendations is also devoid of any call for justice or fairness in the process.

The provision of military justice services to Sailors and Marines in the context of prosecution and defense of courts-martial is only a small part of the overall 506 draft response.²⁹ The Marine Corps drafted another more specific response to the Section 506 review.³⁰ Included within this response is a renewed pledge to put more emphasis on the delivery of quality military justice services, for both the prosecution and defense.³¹ Incorporated within this pledge is a call to ensure the defense bar within the Marine Corps is fully equipped to provide independent and fair representation to all Marines charged with violations of the UCMJ.³² However, at the same time the pledge is being offered, the report takes a self-congratulatory tone as the authors note how developed the defense bar is under the current structure.³³ The problem with this assessment and pledge is that the assessment fails to acknowledge that the Marine Corps is the only service in which the defense bar is not fully independent and

27. *Id.* at 78.

28. *Id.* at 82.

29. National Defense Authorization Act for Fiscal Year 2010, Pub. L. No. 111-84,

30. MARINE CORPS LEGAL SERVICES, STRATEGIC ACTION PLAN 2010-2015, http://www.marines.mil/unit/judgeadvocate/Documents/Home%20Page/Legal_SAP/SAP_And_Annexes/Legal_Service_SAP.pdf.

31. *Id.* at 15.

32. *Id.* at 15-16.

33. *Id.* at 16. “The 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 25 years.*” (emphasis added).

the pledge to put more emphasis on military justice starts the process with a baseline belief that the defense bar is already fully functional. Hence the need to reiterate the question posed at the outset of this Article. How is justice defined after 9/11 and can it be achieved in a Marine Corps that continues to insist not only is nothing broken but also that the defense bar is stronger than ever?³⁴

REAL CASES HIGHLIGHT CONFLICTS OF INTEREST AND FLAWED JUSTICE

Consider the following scenarios³⁵ as a way to frame the issue of developing a system that allows for judge advocates to deliver competent, conflict free advice in a system that is inherently biased toward the government and the prosecution:

Situation1: A Marine judge advocate serving as a defense counsel (DC) at a large West Coast base aggressively represents her client in a case while the investigation into the charges under the UCMJ is still ongoing. Interaction between the DC, the Commanding Officer (CO) and several other senior officers at the Battalion become heated. The DC is junior to everyone in the room but does not back down from allegations that she is overstepping her authority. Her argument with the CO borders on disrespect but is merely a response to the provocation by the senior officers and is arguably nothing more than an aggressive effort to assist and represent her client.

The DC apologizes to the CO and other officers involved in the argument as soon as the meeting is concluded. After the incident in the CO's office, the DC is counseled by her Senior Defense Counsel (SDC), the Regional Defense Counsel (RDC) and the Officer in Charge (OIC) for the Legal Service Support Section (LSSS). The SDC and RDC are also the Reviewing Senior (RS)

34. *Id.* at 16.

35. The first two situations chronicled in this section are taken almost verbatim from a memo written by then LtCol John J. Canham, who was serving at the time as a Regional Defense Counsel on the West Coast. The memo was drafted August 1998 and forwarded to the Chief Defense Counsel of the Marine Corps. See Letter from Lieutenant Colonel John Canham to Chief Defense Counsel of the Marine Corps (Aug. 27, 1998) (on file with author)[hereinafter Canham Letter].

Situations 3 and 4 are from cases tried and appealed through the Navy-Marine Corps courts. These cases also highlight conflicts of interest endemic to the Marine Corps.

and Reviewing Officer (RO) for the DC but the OIC still has administrative control over all JA assignments at the LSSS to include the DC involved in this matter and all other prosecution and defense counsel at the command. The OIC answers to the senior Staff Judge Advocate (SJA) at the MEF and is the RO for all the Trial Counsel (TC) and JAs who work in Legal Assistance.

Over the objection of the RDC and SDC and despite the CO's acceptance of the original apology, the OIC makes the determination that the DC will be relieved and reassigned to Legal Assistance if she doesn't apologize a second time and in a more formal way to the CO and the other officers who were present during the argument.

Situation 2: An OIC makes the decision to transfer his most successful TC to the defense section at the same large West Coast base. Less than two weeks into the assignment, and after six cases have already been assigned to the DC, the OIC is pressured by the senior SJAs at the area commands to bring the counsel back to the government side and reassign him as a TC again. No justification for the removal and reassignment of the junior counsel is offered to the SDC or RDC but later the OIC admits the SJAs from the area commands expressed concerns that putting the best litigator in the defense section would adversely affect the prosecution of all cases brought by the government at this large base.

Situation 3:³⁶ A new DC in Hawaii is appointed as the SDC for the legal office that provides defense services to any Marines stationed on the island accused of violating the UCMJ. This SDC is a senior Captain but is new to the legal field having recently graduated from law school and Naval Justice School (NJS) in Newport, Rhode Island. Soon after taking over as SDC, he is presented with a case involving a recently mobilized senior Reserve Lieutenant Colonel who is charged with several violations of the UCMJ and is headed to an article 32 hearing. The new SDC is not familiar with Reserve Marine issues and because the Lieutenant Colonel is eligible for promotion and retirement, the SDC strongly believes he needs other outside help for the client.

36. The facts set forth in situation 3 are taken from *United States v. Wiechmann*, 67 M.J. 456 (2009). The author was the lead military counsel in this case.

Based on his initial evaluation of the case, the SDC immediately calls his RDC, a Lieutenant Colonel who is stationed in Okinawa and supervises all defense counsel assigned to the Western Pacific Region. After much discussion, the RDC agrees the SDC needs outside help on the case but he is unavailable to provide the help himself due to conflicts created by a large number of high visibility cases which have recently been charged on the West Coast. The RDC briefs the Chief Defense Counsel (CDC) of the Marine Corps and they agree that detailing the Reserve RDC, who is also a Lieutenant Colonel, is the best solution to the case. They agree that existing rules for detailing counsel are somewhat limited when it comes to using a reserve JA on active duty cases but that it can be done. The CDC makes the determination she will detail the Reserve JA who lives in Rhode Island to assist the young SDC and ensure the accused is properly represented by competent counsel.

The SDC promptly informs the SJA, the OIC and the TC of the new detailed DC being assigned to the case and attorney client relationship which is formed based on that assignment. The SJA is upset by the arrangement because he does not believe the CDC has detailing authority under the existing regulations or that a reservist can be detailed to a case unless the reservist is serving on active duty. As such, he instructs the TC and OIC to refuse to recognize the reserve DC as counsel in the case.

By the time the case gets to trial, the SDC and the reserve detailed DC file several motions on behalf of the accused Lieutenant Colonel. One motion specifically raises the issue of Unlawful Command Influence (UCI) by the SJA, the OIC and one of the military judges in the circuit. Among other things, the UCI motion alleges that the OIC is threatening to remove the SDC and reassign him to legal assistance due to animosity created by the SDC's aggressive handling of this and other cases. Before the conclusion of the trial in the case, the SDC is reassigned to legal assistance at the law center and his reporting chain now includes the same OIC against whom the UCI motion was filed as the RS on his fitness report.

Situation 4:³⁷ A DC at a large East Coast base is assigned as

37. The facts in this situation are taken from the case of *United States v. Lee*, 66 M.J. 387 (2008).

detailed counsel for the defense of a Marine accused of several serious violations of the UCMJ and who is facing a General Court-Martial. During the Marine's representation, the detailed DC informs him that he will be wrapping up his defense cases and that he will be working as a TC in the same office that is currently prosecuting the charges against the Marine. The DC says his new duties will entail prosecuting minor offenses but he does not say anything about for whom or with whom he will be working or who his RS will be when he moves to the prosecution. The accused Marine agreed to the arrangement because his DC told him there will not be any conflict of interest. However, the Marine is convicted at trial and receives a severe punishment. After trial, the Marine learns that his detailed DC had actually been working as a TC on another serious case while simultaneously representing him. He also discovers that in the other case his detailed DC was working for the same TC who prosecuted his case and that they both worked for the same senior trial counsel.

Unfortunately, the four situations described above are not unique or isolated incidents.³⁸ These situations are merely provided as anecdotal evidence representative of a much larger and widespread problem with the provision of defense services to Marines accused of violating the UCMJ. These situations, taken together, also highlight an even bigger problem than those simply stated by the facts of each case – they reflect the institutional blindness the Marine Corps has toward the need for an independent defense bar. The Marine Corps is the only service that does not have an independent defense bar³⁹ and consistently rejects calls for such a change.⁴⁰

These four situations were chosen specifically because they reflect long-standing problems in the way the Marine Corps requires defense services be provided and the Marine Corps's resistance to change in this regard. The first two situations were

38. See Canham Letter, *supra* note 35.

39. T.G. Hess, Staff Judge Advocate to Comman Marine Corps, *Reorganization of Defense Services in the Marine Corps* (position paper) (May 10, 1998) (on file with author) [hereinafter *Reorganization of Defense Services*]. (In the position paper, the SJA provided the Commandant with a short history of how the other services established independent defense bars in 1974, 1980 and 1995 leaving the Marines as the only service that had not done so.).

40. *Id.*

cited in a memorandum from the RDC for the West Coast penned to the CDC of the Marine Corps in 1998.⁴¹ This standard Naval letter contained a simple question in the subject line, "DO PROBLEMS EXIST IN TODAY'S MARINE CORPS WHICH JUSTIFIES [sic] THE REORGANIZATION OF THE DEFENSE STRUCTURE?"⁴² To answer that question in the affirmative, the RDC identifies ten different, real-world situations raised by the conduct of, or conflicts between and among, government counsel and prosecutors in the mid-90s.⁴³ The harsh reality of the facts and situations highlighted in this memorandum is that defense attorneys in the Marine Corps practice under a system which is inherently flawed and subject to bias and many of the policies which allow for such flawed practice were implemented as far back as the early 1980s.

The cases which provide the factual basis for Situations 3 and 4 are instructive because they occurred almost ten years after the memorandum from the RDC on the West Coast.⁴⁴ Both of these cases raise issues of constitutional proportions and one of the cases is still being argued in the appellate courts at this time.⁴⁵ The issues in these more recent cases are not so different from the ones raised in the memo from the RDC nor are the issues raised in 1998 different than the issues raised by his predecessors ten years earlier.⁴⁶

Of course this begs the question, how long must trial errors of constitutional proportions be tolerated before the Marine Corps'

41. See Cahnham Letter, *supra* note 35.

42. *Id.* (emphasis in original).

43. *Id.*

44. See *United States v. Wiechmann*, 67 M.J. 456, 460 (2009) (tried in 2007); *United States v. Lee*, No. NMCCA 200600543, 2007 WL 1890683 (N-M. Ct. Crim. App. Jun. 26, 2007) (tried in 2005).

45. *Lee* was remanded to the appropriate convening authority for further inquiry by a trial court in 2008. 66 M.J. 387, 390 (2008). The case was subsequently remanded a second time by the Navy-Marine Corps Court of Criminal Appeals in 2009. See *United States v. Lee*, No. NMCCA 200600543, 2009 WL 3747173, at *4 (N-M. Ct. Crim. App. Nov. 10, 2009).

46. Three years after the Marine Corps established a billet for the Chief Defense Counsel and assigned all defense attorneys under the supervision of three Regional Defense Counsel, Lieutenant Colonel J. Michael Roake who served as one of the first three RDCs, published an article, "The Marine Corps Defense Bar: A Paper Tiger," in the *Marine Corps Gazette* in December, 1988. See Michael Roake, *The Marine Corps Defense Bar: A Paper Tiger*, MARINE CORPS GAZETTE, December, 1988, at 27.

legal community and the Marine Corps at large answer the question raised by then Lieutenant Colonel Canham in 1998? The systemic problems that give rise to inherent conflicts of interest and allow for unlawful command influence on Marine defense attorneys continue to exist more than twenty-five years after the first attempts to satisfy the American Bar Association (ABA) and Congress.⁴⁷ The systemic problems and corresponding failings or shortcomings in the process provide ample justification for the reorganization and establishment of an independent Marine defense bar on par with her sister services.

A QUICK HISTORY

In December 1988, Lieutenant Colonel Roake chronicled the development of what he characterized as the “semiseparate Marine Corps defense bar, created in 1985 by Marine Corps Order 5800.11A.”⁴⁸ His article brings forth the sordid past that forced the Marine Corps to create the then new position of CDC with a corresponding hierarchy of RDCs who would supervise SDCs and ostensibly all share a separate fitness report reporting chain from their respective counterparts on the government side of the LSSS.⁴⁹ These efforts to protect young JAs assigned to the defense were borne out of perceptions that the playing field is uneven, that defense counsel are subject to undue pressure from commanders to play nice or run the risk of bad evaluations or punitive transfers, and that the system as it existed prior to 1985 was fraught with actual conflicts or potential conflicts of interest.⁵⁰

More than ten years before Marine Corps Order 5800.11A was implemented, a 1973 memorandum from the Department of Defense (DoD) called for the creation of separate defense bars for

47. See Colonel John G. Baker, Chief Defense Counsel of the Marine Corps, *Information Paper 5800/CDC, History of the Marine Corps Defense Organization 2* (Dec. 17, 2010) [hereinafter, Baker, *Information Paper 5800/CDC*] (referencing a letter from the Judge Advocate Division to JAG with the Marine Proposal in 1974). This proposal went unfunded and it was not until 1985 that the Marine Corps established the office of the Chief Defense Counsel. *Id.* at 7.

48. Roake, *supra* note 46.

49. *Id.*

50. *Id.* at 28-29.

each of the services.⁵¹ This DoD memorandum and mandate for change came in response to significant pressure from Congress after a number of missteps by military lawyers caused Congress to question the ability of the services to fairly and effectively provide for conflict-free defense services to military defendants.

The Air Force response to the 1973 memorandum was swift and decisive. The Air Force established an independent defense bar in 1974⁵² while the Navy and Army continued to study the options. The Army established its own independent defense bar, the Trial Defense Service (TDS), in 1980.⁵³ By 1983, the Navy incorporated certain standards that stopped short of giving the defense bar complete independence but by 1995, the Navy established autonomous defense commands as Naval Legal Service Offices (NLSO) and split the TCs into separate and independent Trial Service Offices (TSO).⁵⁴ This left the Marine Corps as the last service component operating under a model that does not allow for DCs or their supervisors to operate independently from the SJAs or OICs of the LSSS.⁵⁵

PUBLISHING MCO 5800.11A

In 1984, the Marine Corps suffered a public relations setback in an incident that many thought would surely be the catalyst for significant change within the legal community.⁵⁶ Having largely ignored the 1973 DoD memorandum and after offering many times over to “study” the issue, the Marine legal offices in 1984 still largely shared buildings, office space, and personnel on both sides of the courts-martial aisle.⁵⁷ A DC at MCAS, El Toro wrote several Senators and Congressmen complaining about the treatment of DCs at Air Station, highlighting several specific examples of abuse of authority by SJAs and the OIC at El Toro,

51. Baker, Information Paper 5800/CDC, *supra* note 47, at 2 (citing Memorandum from the U.S. Sec’y of Def. (Jan. 22, 1973)).

52. *Id.*

53. *Id.* at 4-5. *See also Reorganization of Defense Services in the Marine Corps*, *supra* note 39.

54. *Id.*

55. *Id.* at 2. *See also* Baker, Information Paper, *supra* note 47; Position Paper of Chief Defense Counsel entitled “*Defense Reorganization*,” (April 2, 2002) (on file with author).

56. *See* Baker, Information Paper, *supra* note 47, at 5.

57. *See id.*

and asking for an independent investigation into the matter.⁵⁸ His letter quite poignantly (and perhaps prophetically) highlights a defect unique to the Marine Corps (then and to some degree now) in that our assignments process allows the SJA or OIC to control where counsel are assigned at a given base.⁵⁹

Two separate investigations were convened in response to the letters from the “rogue” DC.⁶⁰ One investigation focused almost exclusively on the provision of defense services at the law center. The other focused on the larger question of the assignments process, the overall administration of justice, the logistical support provided to counsel for both sides, and the ethics of running a law center in such a fashion.

After receiving the reports of investigation from both investigations, the Commandant of the Marine Corps (CMC) wrote a letter to the Secretary of the Navy on September 4, 1984 in which he essentially defended the overall method in which the Marine Corps provides legal services but also found that the system as it existed “exposes defense counsel to the potential for improper pressures” and promised that “structural and procedural changes will be implemented effective 1 February 1985 which will adopt some of the beneficial features of the other services’ defense counsel systems, tailored to Marine Corps missions and readiness.”⁶¹

The Secretary of the Navy responded to CMC on September 20, 1984.⁶² While agreeing with CMC’s recommendations and applauding the efforts to reform the system, the Secretary made a very telling comment in providing further direction to CMC.⁶³ He stated, “[i]n view of the clear need for separation of trial defense counsel from the staff judge advocate chain of command, please accelerate your proposed timetable”⁶⁴ As a result of this push from the Secretary, MCO 5800.11A was published on November 15, 1985, establishing the office of the CDC and creating three RDC positions to separate the reporting chains for

58. *Id.*

59. *See id.* at 5-6.

60. *Id.* at 6.

61. *Id.*

62. Baker, Information Paper, *supra* note 47, at 6.

63. *Id.*

64. *Id.* at 6-7.

all JAs assigned to the defense bar.⁶⁵

WHERE ARE WE NOW?

The current CDC recently observed that “[t]he effectiveness of this supposedly independent defense organization has been questioned from its inception.”⁶⁶ Since 1988, approximately every three to five years a new call is sounded for reform of the defense bar or for outright independence similar to the Army and Air Force systems.⁶⁷ During that time, at least four position papers have been staffed by a sitting CDC or the SJA to CMC in an attempt to revise the orders which control the defense bar in the Marine Corps.⁶⁸ Several CDCs have attempted unsuccessfully to garner enough support for the defense bar to be fully independent of the SJAs and OICs.⁶⁹ On each occasion, after an initial surge of support from some commanders and senior officers within the legal community, voices from other corners raise the concern that independence will make DCs unaccountable to commanders, DCs will become less a part of the Marine Corps, or ultimately, judge advocates will be removed from the Marine Corps all together if they cease to be complete MAGTF officers.⁷⁰

In 1998, the SJA to CMC explained the need for change when he routed a proposal through HQMC asking for the creation of an entirely separate command structure for the Marine defense bar.⁷¹ The routing sheet on the cover of the proposal asks the question that has consistently been asked since the efforts to force reform.

65. *Id.* at 7.

66. *Id.*

67. LtCol Roake's Gazette Article in 1988 is the first published criticism of the Marine Defense bar. *See* Roake, *supra* note 46. In 1995 Col Harvey Hopson, then Chief Defense Counsel, staffed an information paper that never made it past the SJA to the Commandant; in 1998, LtCol Canham's letter, Canham *supra* note 35, was used to provide support for Brigadier General Ted Hess's Headquarters Marine Corps Position Paper, Hess *supra* note 39 *supra*; Col Calvin Scovel's Position Paper calling for Defense Reorganization was published in 2002, Scovel *supra* note 55 *supra*; Col Ralph Miller, Col Carol Joyce and Col Rose Favors also made informal attempts to bring about change within the defense bar in 2004, 2005 and 2009 respectively. Most recently, Colonel John Baker published an information paper in December 2010. Baker, *supra* note 47.

68. Roake, *supra* note 46, at 27.

69. *Id.* at 28.

70. Baker, Information Paper 5800/CDC, *supra* note 47, at 8.

71. Hess, *supra* note 39.

The SJA asked quite simply, "... did we go far enough?"⁷² He stressed further that "[w]e are the only service without a fully independent defense organization. Ultimately our isolated position will prompt the judiciary, or Congress to compel us to change."⁷³ At the end of the day, the proposal for an independent defense bar proved to be too radical for some within the legal community and for commanders who feared losing the power over the process.⁷⁴ A new, revised order governing the conduct of judge advocates ultimately was published in 1999 but without the revisions pushing for independence of the defense bar sought by the SJA to the Commandant.⁷⁵

In 2002, the CDC pushed a proposal providing three courses of action to realign or "reorganize the defense bar, requiring it to provide defense services to the operating forces and Supporting Establishment and eliminating the current requirement for Law Centers and Legal Services Support Sections to do so."⁷⁶ These courses of action ranged from minor, more cosmetic changes such as separation of office spaces to the more radical change of providing complete independence for the defense bar.⁷⁷ Predictably, none of these courses of action were selected or implemented at that time.

Each successive CDC makes equally unsuccessful pushes to gain independence of the Marine defense bar to match the independence that our sister services have enjoyed for more than thirty years.⁷⁸ Each effort to revise or reorganize the defense bar meets with the same arguments against change. A review of the e-mail traffic between senior SJAs who were asked to offer suggestions for change prior to the 2010 submission reflect the same recycled arguments against independence that were offered

72. *Id.*

73. *Id.* (emphasis in original).

74. See Baker, Information Paper 5800/CDC, *supra* note 47, at 8 (citing E-mail from Colonel Brian Palmer to CDC Baker (Dec. 20, 2010)).

75. *Id.* at 8 & n.19 (referencing MCO P5800.16A cancelling MCO 5800.11A on Aug. 31, 1999).

76. Chief Defense Counsel Position Paper "Defense Reorganization" dated April 2, 2002, *supra*, note 55.

77. *Id.*

78. See Roake, *supra* note 46; Canham, *supra* note 35; Hess, *supra* note 39; Scovel, *supra* note 67; Baker, *supra* note 47.

in the early 1980's.⁷⁹ One SJA's input offered blunt advice to the CDC: "[f]rom the lines of authority, to the devolution of command authority, to the funding problems, to the legal issues regarding termination, parity, and a host of other details, I see nothing but trouble."⁸⁰

At the end of the most recent push for independence in 2010 and early in 2011, the CDC is left with a number of significant revisions and modifications to the two manuals currently governing the conduct of judge advocates in the fleet – the Marine Legal Administration Manual and the Navy's Judge Advocate's General Manual.⁸¹ As significant as the revisions are, the call for change and independence once again falls short of the mark and the CDC is left with something less than the power and independence necessary to provide free and unfettered defense services in the Marine Corps without significant government or command influence.

CAN WE DEFINE JUSTICE AFTER 9/11 AND CAN JUSTICE BE ACHIEVED?

One glaring absence from the brief history above is how, or even if, the delivery of military defense services, particularly within the Marine Corps, changed after 9/11. Perhaps the answer is entirely obvious in light of this omission. The cases which provide the facts for situations 3 and 4 above both occurred after 9/11 and a close look at the proceedings in each case show quite clearly they are tried in much the same way as cases tried prior to 9/11. In fact, it is precisely because they are tried in the same manner, using the same procedures set forth in Chapter 2 of the LEGADMINMAN and paragraphs 0130 and 0131 of the JAGMAN, that errors are cited by the courts and questions raised about the fair and just provision of defense services in the Marine Corps.⁸² The SJA who denied the participation of a reserve judge

79. E-mails on file with the Chief Defense Counsel of the Marine Corps at the Navy Annex in Washington, D.C.

80. E-mail from Col Louis Puleo to Chief Defense Counsel (Oct.14, 2010).

81. MCO 5800.16A [hereinafter LEGADMINMAN]; JAGINST 5800.7E [hereinafter JAGMAN].

82. *Wiechmann*, 67 M.J. 456, 462 (2009). The court in *Wiechmann* made the following finding, "[t]he convening authority erred by restricting the role of Appellant's detailed defense counsel during the pretrial proceedings, including the proceedings concerning the Article 32 investigation and pretrial agreement negotiations. In so doing, the convening authority improperly

advocate as a properly detailed counsel in the *Wiechmann* case while relying on a restrictive reading of the LEGADMINMAN and JAGMAN provisions cited above is the same senior SJA who “see[s] nothing but trouble” when the issue of an independent defense bar is raised.⁸³

When the events at Abu Ghraib unfolded in a very public way in 2004,⁸⁴ people inside and outside the military openly questioned whether the soldiers accused of such actions could get a fair trial in an Army court.⁸⁵ The same questions are being asked again in Private First Class Manning’s case today.⁸⁶ However, an independent, robust defense bar makes it far easier for the Army to answer the public outcry for justice in cases arising from the battlefield that have international implications.⁸⁷ Likewise, any cases tried by the Air Force since 9/11 enjoy the balance and at least appearance of conflict free defense services provided by judge advocates serving in an independent and separate defense command.⁸⁸ While at least one recent article questions the ability of the military in general to effectively try cases in the field,⁸⁹ there is no dispute that the Army and Air Force are at least better equipped to provide conflict free defense

interfered with the attorney-client relationship established at the time of LtCol Shelburne’s initial detail as Appellant’s defense counsel. These actions violated Appellant’s rights under Article 27, UCMJ.” *Id.*

The *Lee* court made the following observations before remanding the case: “[a]ppellant’s declaration implicates three related questions. First, when, and under what circumstances, did defense counsel serve as a trial counsel, and did military counsel labor under a conflict of interest in representing Appellant under such circumstances? ... Second, if defense counsel had in fact begun duties as a prosecutor, was defense counsel subject to the supervision of trial counsel in Appellant’s case? ... Third, whatever the underlying facts, did Appellant make an informed decision to waive any conflict of interest based on the actual facts at the time he consented to further representation?” *United States v. Lee*, 66 M.J. 387, 389-90 (2008).

83. See Puleo E-mail, *supra* note 80.

84. See *supra* note 17.

85. MSNBC, msnbc.com, *Abu Ghraib Soldier Loses His Bid to Dismiss Trial*, Dec. 6, 2004, http://www.msnbc.msn.com/id/6658513/ns/world_news-mideast/n_africa.

86. See Savage, *supra* note 9.

87. See Chapter 6, Army Regulation 27-10 dated 16 Nov. 2005.

88. See JAJD Operating Instruction 51-204 dated 15 April 2010.

89. Franklin D. Rosenblatt, *Non-Deployable: The Court-Martial System in Combat from 2001 to 2009*, ARMY LAW., Sept. 2010 at 12.

counsel under the current regulations.⁹⁰

While many Marine officers are critical of leadership failures that allow for Abu Ghraib type scandals or alleged leaks of classified information on a scale such as the one being charged in Private First Class Manning's case, the Marine Corps has not escaped the cruel eye of the media in its own handling of cases arising since 9/11. Names like Hamdinya,⁹¹ Haditha⁹² or Fallujah⁹³ evoke reactions from every Marine officer. To the extent that civilians have followed the trials or investigations arising from incidents at each of these towns, similar questions are asked about what type of justice can be obtained when a convening authority must answer to the critics in the media or in Congress. The Marine Corps's response is the same. The expectation is that all Marine judge advocates will be general practitioners rather than litigation specialists.⁹⁴ And yet, the Marine Corps still argues that they try "three times more courts-martial (both per judge advocate and per 1,000 service members)

90. See Army Regulations 27-10, *supra* notes 87; see also JAJD Operating Instructions, *supra* note 88.

91. A squad of Marines and a Navy Corpsman were tried separately on charges stemming from an abduction and killing of a local Iraqi male in 2005. The trials took place in 2006-07 at Camp Pendleton, CA. The squad leader, Sgt. Hutchins, was convicted of a number of violations under the UCMJ and his punishment included confinement of fifteen years. See *United States v. Hutchins*, 69 M.J. 282 (2011).

92. A squad of Marines patrolling Haditha in 2005 killed twenty-four men and women after their convoy was attacked by an improvised explosive device, or an IED. Several of the Marines in the squad and several officers in the chain of command faced charges ranging from dereliction to murder for the killings in the town. All were either acquitted, had charges dismissed, or were allowed to retire with the exception of the squad leader, Sgt. Wuterich, who is still pending court-martial at the time of this writing. See *United States v. Chessani*, No. NMCCA 200800299, 2009 WL 690110 (N-M Ct. Crim. App. Mar. 17, 2009).

93. Video cameras captured a Marine shooting a wounded Iraqi lying in a mosque. See SKY NEWS, *Fallujah: 'US Marine Shot Dead Prisoner'*, Nov. 16, 2004, http://news.sky.com/skynews/Home/Fallujah-US-Marine-Shot-Dead-Prisoner/Article/200411313249236?lpos=Home_Article_Body_Copy_Region_0&lid=ARTICLE_13249236_Fallujah%3A_US_Marine_Shot_Dead_Prisoner. The Marine was never charged but the footage caused a media frenzy and led to calls for the Marine's court-martial for an alleged law of armed conflict violation. The command did a thorough investigation and exonerated the Marine.

94. Marine Corps Legal Specialists – Strategic Action Plan 2010-2015, at 15. See also STRATEGIC ACTION PLAN 2010-2015, *supra* note 30.

than any other Service.”⁹⁵ The argument follows that because so many cases are tried under a system that has been in place for more than twenty-five years, the need for change is negligible or non-existent.⁹⁶ The perception from within is that the system is fair and that justice is already being served so there is no need to redefine the mission or seek greater justice particularly in a time when resources are already being stretched by operational concerns.⁹⁷ To the extent change is necessary, the vision for the future calls for increased resources for the prosecutors through a new program called the Trial Counsel Assistance Program established in May, 2010.⁹⁸ However, the defense bar has a “well-established SharePoint portal” and minor revisions to the existing orders and regulations will answer any future needs.⁹⁹

This response does not go far enough to establish independence and parity with the Marine prosecutors. Justice in this higher tempo, more complex environment demands the defense bar in the Marine Corps be removed from government influence and funded separately so as to allow the flexibility necessary to comply with the ethical standard of zealous, conflict free representation.¹⁰⁰ The *Hutchins* case arising out of the incidents at Hamdaniya was overturned because of counsel issues,¹⁰¹ the *Chessani* case was dismissed because of unlawful command influence by senior lawyers involved in the case,¹⁰² and the court in *Wiechmann* found error in the denial of counsel rights but stopped short of reversing the lower court’s decision.¹⁰³

95. *Id.*

96. The SJA to CMC claims, “It has worked well for more than 25 years.” *Id.* at 16.

97. “Our focus on operational requirements has the potential to erode critical judge advocate skills for some of our other core competencies.” *Id.* at 19.

98. *Id.* at 23.

99. *Id.*

100. See generally Office of the Judge Advocate General, Dep’t of the Navy, Jag Instruction 5803.1C (JAGINST 5803.1C) (largely following the ABA Model Rules for legal ethics governing the ethical conduct of all Navy and Marine judge advocates.)

101. See *United States v. Hutchins*, 69 M.J. 282, 293 (2011).

102. See *United States v. Chessani*, No. NMCCA 200800299, 2009 WL 690110, at *7 (N-M. Ct. Crim. App. Mar. 17, 2009).

103. See *United States v. Wiechmann*, 67 M.J. 456, 462-64 (2009).

WHAT IS THE REMEDY?

In his article to the Marine Corps Gazette more than twenty years ago, Lieutenant Colonel Roake called for three substantive changes to the Marine defense bar.¹⁰⁴ He prophetically noted that if the Marine Corps is unwilling to create a completely independent defense bar, the Corps should at a minimum increase the rank of the senior counsel on the defense side of the equation, mandate additional training for judge advocates assigned to defense, and mandate specific lengths of time a counsel must be assigned to the defense before a counsel could be reassigned within the legal community.¹⁰⁵ Over the next twenty-five years, counsel serving as senior defense or regional defense counsel are required to have the rank of field grade officers and additional training has been mandated, although the convening authority, an arm of the government, is still the one who must agree to pay for the training.

Colonel Scovel (and all of the other Chief Defense Counsel who submitted proposals from 1998 to the present) offered three courses of action in his Point Paper to the SJA to the Commandant.¹⁰⁶ The biggest difference between Colonel Scovel's proposed courses of action and the ones that came prior to 2002 is that all of his proposed courses of action involved the creation of a new and entirely separate defense command.¹⁰⁷ The degrees of change were varied in terms of movement of counsel or realignment of some physical facilities but no matter how minimal or how robust the change, they all involved the prospect of creating and funding a new command for the defense bar.¹⁰⁸ His proposals, like those of his predecessors and successors in the Chief Defense Counsel's office, failed to gain support from those who had the power to make a change.

The most recent call for change appears to be headed down a similar path. Agreements are already being put in place that allow for measured changes to Chapter 2 of the LEGADMINMAN and paragraphs 0130 and 0131 of JAGMAN¹⁰⁹ as opposed to the

104. Roake, *supra* note 46, at 28.

105. *Id.* at 28-29.

106. *See Defense Reorganization*, *supra* note 55.

107. *Id.*

108. *Id.*

109. *See generally* Baker, Information Paper, *supra* note 47 (supporting

move to establish a completely independent defense bar. One concern being voiced as the primary reason for maintaining the status quo rather than making a bolder and more creative solution is that the mandated 506 Review¹¹⁰ may simply be a precursor to combining all of the judge advocates from all the services into one large service. If the defense bar is to be completely different in the Marine Corps, then what makes these judge advocates any different than an Army judge advocate or an Air Force judge advocate? The answer to this question is perhaps oversimplified and a return to the remedy proposed by Lieutenant Colonel Roake in 1988. Creation of an entirely separate defense command and specific identifiable terms for the length of duty a judge advocate is assigned to the defense command solves the vast majority of the criticism from the old guard. Limited terms of duty – perhaps eighteen months to two years in duration – ensure the officer does not forget she is an officer of the Marines first but gives her the autonomy to act with the necessary zeal and intensity required to serve her client's best interest without fear of reprisal by the commanding officer or senior staff judge advocates. While recommended tours of duty are contemplated in the new drafts of the orders being reviewed at the time of this writing,¹¹¹ recommended tour lengths as opposed to mandated tour lengths leaves too much subjectivity in the process. Even more so, recommended tour lengths in the absence of a separate command structure make any such change meaningless and will not change the way justice is pursued in the current courts-martial system.

CONCLUSION

In Mr. Deale's letter to the NY Times, he eloquently points out that what happens in our military courts or tribunals is simply a "continuation of the war."¹¹² What measure of justice is afforded the accused in our courts-martial is defined by those sitting on the sidelines in the comfortable settings of our offices and headquarters, and yet the application of that measured

draft changes to MCO P5800.16A and JAGINST 5800.7E).

110. See National Defense Authorization Acts for Fiscal Year 2010, Pub. L. No. 111-84, 123 Stat. 2190 (2009).

111. See Baker, *supra*, note 47, at 1 & n. 1, 9.

112. Deale, *supra*, note 1.

justice reaches across borders, across services and has direct and palpable impact on service members accused of violating the UCMJ while serving on the front lines as much as those who stand accused in garrison. While we have engaged in the “Long War,” the way we fight has changed significantly, and the way we engage the enemy has developed over time.

Unfortunately for Marines who face the prospect of a court-martial, the process for them is still very much the same as if they were charged during the Cold War of the 1980’s. The origin of the phrase “justice delayed is justice denied” is in dispute; yet, with regard to the issue of the establishment of the Marine defense bar, no other phrase is more appropriate. As we stand on the verge of an opportunity to make a long overdue change to the orders and regulations that would operate to establish a new, independent and robust Marine defense bar, justice delayed truly is justice denied and the definition of justice remains the same. After all, “[i]t has worked well for more than [twenty-five] years.”¹¹³

113. MARINE CORPS LEGAL SERVICES, STRATEGIC ACTION PLAN 2010-2015, *supra* note 30, at 16.