



Our Mission is to Keep the Good Guys Wearing the White Hat

How Commanders Can Best Utilize Judge Advocates for Operation Accomplishment

By Cpt. James Flanagan

I was struck spellbound when the words hit my ears. At the time, I was a brand new Soldier and Attorney – wet behind the ears – and sitting in an old Army auditorium listening to a senior leader speak. But this was not a typical Army “death by PowerPoint” presentation – instead the guidance created a good starting blueprint for a class of new Judge Advocates. Those “mission oriented” words from a wise Senior Judge Advocate have motivated me on a daily basis and have shaped my approach to advising Commanders.

A Commander – at any level – has a wide variety of resources and tools to accomplish the mission. A Sergeant Major, a great mentor of mine, is a firm believer that Commanders are not utilizing one of those tools –the Judge Advocate – to the fullest. Often this means that a Commander sees the Judge Advocate as “just an attorney.” If there isn’t a court-martial happening the Judge Advocate didn’t need to be included. Perhaps this innate hesitation to avoid the Judge Advocate stems from humanity’s natural dislike for lawyers – a condition that has been developed over thousands of years.

I was astonished when the Sergeant Major, this veteran Green Beret, who has served for multiple decades across the globe, announced to me one day “Do you know the most important weapon on the battlefield? The Judge Advocate.”

I shouldn’t have been surprised – looking at history, some of the most successful Leaders have recognized the value these legal officers add.

Historian Fred L. Borch points out that General George Washington was first to realize the value of the attorney in accomplishing his strategic goals for the force and the nation. Only a few days after assuming duties as Commander-in-Chief, Washington insisted that the Continental Congress appoint a lawyer. The Army JAG Historian details the motivation behind this Commander’s decision:

While General Washington wanted a judge advocate to oversee the administration of military justice, his concerns also reflected the larger debate about justice and legal authority that was fueling the American Revolution. The new Nation envisioned by the Founding Fathers was a bold social and political experiment: the ‘Rule of Law’ would replace the ‘Divine Right of Kings.’ This Rule of Law was grounded in respect: government would respect individual rights and freedoms, and in return, individuals would respect the government’s obligation to regulate and enforce standards of behavior. It is the Rule of Law, in both civilian life and in the military, that ensures Order, Justice, and Equality. ¹

Opening Statement

Fast forward to present day and Judge Advocates can be found in every area of Army operations. Whether it is purchasing of tanks for the conflict on the Korean peninsula to consulting decision makers regarding Rules of Engagement and everything in between, the Judge Advocate has a seat at the table.

I have worked in Administrative Law, Contracts, Military Justice, Legal Assistance, Labor Law, Operational, and Claims. The variety of these jobs have kept me flexible and helped me have the ability to adapt. When I was sent



to Camp Red Cloud, Korea I was expecting to be an Administrative Law attorney – instead I was asked to fill in and be a Labor Law Attorney – a job that I knew very little about. On another occasion I was handed a Board Separation packet for a Soldier that the Command wanted to be removed a few days into my transfer into the Military Justice section and asked to execute immediately.

These challenging environments and missions blessed me with the opportunity to meet some great leaders in our ranks. The following strategies for maximizing the value of your Judge Advocate come from those Commanders I worked with. The strategies are commander-centric but the smart Judge Advocate can utilize them as a cheat sheet how to best provide value to the mission.

Strategy #1 - See Judge Advocates As “Problem Solvers” - Not Just Attorneys:

Considering the range of the variety of activities the Judge Advocate must advise on – the first thing the Commander must realize is that the Judge Advocate is not just an attorney – the best ones must be seen problem solvers. This revelation might shock some readers but the best Commanders² know that it is true – that the majority of issues the Army lawyer faces on a daily basis are not legal issues – instead they are problems to mission accomplishment.

Army’s senior Judge Advocates preach this on a daily basis to us – the need to be problem solvers. If your attorney is not listening to this gospel – set him straight immediately. The value added Judge Advocate will not reject these problems just because they don’t have a legal nexus. Instead, he will work with the staff and find the best way forward with any project.

Strategy #2 – The Commander’s Vision Is Vital:

Command 101 teaches the importance of setting a clear vision and mission for the troops. The value of a clear end-state is multiplied greatly when it comes to Judge Advocate effectiveness.

The best Judge Advocates I have seen take the “Find a way to Yes” mantra to heart. But here is the thing – finding a way to “YES” doesn’t necessarily mean finding a legal way to implement the current plan placed on my desk. In fact, if the Judge Advocate isn’t involved early in the process – the plan could have legal obstacles that can’t be overcome if a certain path is followed.

This is where the Judge Advocate – “The Problem Solver” comes into play. Knowing the Commander’s end state allows the Judge Advocate to use every tool and law available to get to that end state. Perhaps the first plan faces legal obstacles but the new plan will work.

I have been successful in my Army career when Commander’s have trusted that I understand their visions and that I am trying to find a way to “YES” on every single action. This credibility pays off when in the rare circumstances that there is no legal way to achieve the Commander’s goal legal and I have to have a legal objection; the Commander knows that I exhausted every option.

Strategy #3 – The Judge Better Be Fully Integrated With Your Staff!

Is your Judge Advocate hiding in his degree laden office behind a pile of case law? That’s the wrong answer.

One of the best Judge Advocates that I have seen using this strategy was a Soldier I deployed with from 10th Mountain Division. This guy took Ferrazzi’s book *Never Eat Alone* to heart and constantly interacted with the Command staff. He could sit down with anyone on the staff and find the facts needed to create a solid legal opin-



ion. This mentor made it crystal clear for me – the Judge Advocate who waits behind his desk for an e-mail with facts regarding the project is already behind the power curve. I learned quickly from my mentor that especially in a deployed environment integration with the staff is necessary for mission accomplishment.

Why is this integration vital for the Judge Advocate? Simply stated – there is a legal nexus with every area and the Judge Advocate will be called to know the projects of every section to have mission accomplishment. That means the smart Judge Advocate is socializing projects with every member of the Commander's staff.³

Strategy #4 – The Unique Relationship- Commander and Judge Advocate:

All eyes were upon me as I responded to the Boss' question. A bit of uncomfortable shuffling and awkward glances. I was the only one that wasn't fully on board with the Boss' plan. I wanted to dig myself a big foxhole with that E-tool issued to me a week prior at CIF and just hide.

Finally, the silence broke when the Commander announced "Well okay James – let's see what we can do to make our plan legal." The mood of the entire room changed as I started to suggest different ideas to get to "YES" and accomplish the Command's goal.

The Judge Advocate must build up a positive relationship with his Commander. The Commander needs to trust that the Judge Advocate will have the moral fortitude to be the one person who will be able to stand up and voice concerns and not just go along with the group. I have been extremely blessed with my Commanders – these Senior Leaders have been supportive beyond belief. These Commanders were able to build that unique relationship by understanding that a legal objection to a plan was not an attack on his decision. This process takes time and multiple contact between both sides. If the Judge Advocate is only meeting the Commander a couple of times a month that relationship won't thrive.

These Commanders didn't view me as an obstacle – they viewed me as a tool and make it clear to the rest of the staff. This support makes it clear to the rest of the staff that the attorney is not the enemy – the JA is part of the team trying to find an answer just like everyone else.

Strategy #5 – A Reminder, We Are Advisers:

One of my first Staff Judge Advocates clearly explained our role on the staff. Perhaps in an effort to appeal to my Catholicism (the best Judge Advocates are excellent salesman after all, right?), "Priests can't order the penitent to amend his ways. A priest can only advise the sinner of the consequences for not doing so." Applying the lesson to the Army – of course, in the end, the decision to execute or not execute is the Commander's. In fact, I have seen some otherwise good Judge Advocates forget this vital point - that we advise but we don't make decisions for the Command.

So with all due respect to the great chaplains we have in the Army, what must Judge Advocates as holy advisers do to best serve Commanders? First, the Judge Advocate earns his pay check by providing multiple COAs (Courses of Actions). This is pretty standard for staff work in the military. Where the Army lawyer can apply value is explaining and then mitigating the risk as much as possible.

This Strategy is especially important in a deployed environment. I saw it often when I was the Chief of Operational and International Law in RC-East. Often a combat situation is not completely clear and all the facts are not known. However, I was fully aware that my role was to present options for the command and clearly explain the level of risk how risk can be mitigated.



Strategy #6 – Facts, Locations, And Laws Change: Good Legal Advice Does Not

One of the questions that I get on a daily basis is:

“Why can’t we do this? We were able to do this just [insert time period] at [insert location]!”

Unfortunately, I have to often tell the Commander that the same method can’t be used now with the present set of facts. The Commander is just trying to find a solution so I understand the frustration. Force your Judge Advocate to articulate why they can’t do it now – often it is because one of the following:

1. The fact pattern is different
2. The jurisdiction is different
3. The laws have changed

This is why giving your Judge Advocate a full set of facts and background is extremely vital for mission accomplishment. Partial sets of facts will give a partial legal opinion that won’t provide the Commander with options.

The Judge Advocate will pester the individual requesting the legal review with questions – indulge his need to act like Dan Rather. What the Judge Advocate is doing is trying to understand the situation completely to get to “Yes.” Let us advocate for the mission - we love to argue for our client! The Judge Advocate can use the law as a weapon but the facts are the necessary ammunition. Without good facts – the weapon won’t function and there is zero mission accomplishment.

Strategy #7 – Avoid Rushing To Failure:

Judge Advocates, like other Soldiers, don’t work “banker hours.” We are available around the clock. Many a time, I have been woken up by an anxious young Company Commander or CID contacting me regarding a sex crime in the barracks. A targeting opportunity might occur anywhere and at any time downrange – Judge Advocates adjust and complete the mission. We aren’t straddled by billable hours unlike our civilian counterparts.

One of the most effective Commanders I have ever met drummed into me on a daily basis – “Be ready to respond to emergencies but never RUSH to failure.” What this leader instilled in me was that when there was a project that was being worked on give the Judge Advocate some time to research the law and come up with a proper review. Some individuals seeking a legal review will wait until the end for a legal review – providing no time for adjustment of the final project.

If the big unit event is to occur tomorrow (you know the one with the VIPs flying in and sheet cakes purchased from the Commissary) – and funds have been spent and the invitations have been sent – a legal review the night before will do nothing to add value to the event. It is too late to adjust the plan to meet the Commander’s goal.

Strategy #8 – You Represent Whom?

“Sir, I just need your advice on something – I had a crazy weekend and I want to bounce some ideas off of you.”

It was early Tuesday morning after a four day weekend and I was checking my e-mail before P'T when this young Soldier knocked on my door. I didn’t have to be a Supreme Court justice to know that this Soldier was seeking legal advice about some misbehavior. He wanted to confess his crime and seek assistance. Only problem - I was a Prosecutor for the Command.

While the situations are usually not that extreme – many a decision maker will forget that Judge Advocates repre-



sent the Command and ultimately the Army as an institution. Just because we are attorneys doesn't mean that we can represent you or provide you advice. The good Judge Advocate can point the questioner into the right direction – typically Trial Defense Services or Legal Assistance.

So while Commanders typically don't typically ask personal questions it is important to where our confidentiality exists. More importantly – Commanders must convey to your Soldiers the different roles of Judge Advocates so they don't end up being tossed out of my office like that young private.

Strategy #9 – Train As You Fight:

I have had Commanders utilize me to constantly train their Soldiers. Their mentality was the old medical saying – “An ounce of prevention is worth more than a pound of cure.” Take advantage of the Judge Advocate to train your guys and gals – the law is constantly changing (one of the things that most people don't understand). This is particularly important when it comes to Military Justice- young Soldiers⁴ need to know the rules – helps with good order and discipline. Get your Judge Advocates to create Information Papers, PowerPoints, and FAQ that can be distributed to your Soldiers.

Strategy #10 –Following Washington's Lead

Nobody wants a delay in the project – when the mission needs to be accomplished – unnecessary delays are unacceptable.

One big area where I see Commanders most frustrated is in the area of Military Justice. This is the bread and butter of the Army JAG Corps and a vital tool for creating good order and discipline in the unit. Much of the activities might appear to be tedious – the minutia of hearings and procedures. Many a time, I had to explain why an Article 32 had to be delayed. A good Judge Advocate will explain what each one of these activities will do. Remember, General Washington's motivation for establishing the JAG Corps in 1775? Remember?

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I have adopted the policy of many of my successful peers and role models in the JAG Corps – if there is a delay on my end it is only because I am running it through the legal procedures as quickly and effectively as possible but it is still taking time.

One side note – while I have only been a prosecutor – I have had friends that have served their country as defense counsel. The best Commanders that I have had follow General Washington's lead. These Commanders never belittled defense attorneys by associating them with the “Dark Side.” Instead, these Commanders see these Judge Advocates as “Defending those who Defend America” on a daily basis.

Closing Arguments

I fully understand the complaint that there are too many attorneys in the world. Believe me – even as an attorney– I get frustrated with the rise of legalese and attorneys gumming up the works.



However, I have seen Commanders utilize their Judge Advocates to be effective weapons in pursuit of the goals of the mission. The above 10 strategies are the effective first step in utilizing that attorney on your staff. So follow General Washington's lead and see the value of that Judge Advocate and utilize him today.

Cpt. James Flanagan earned his law degree from The Catholic University of America, Columbus School of Law and is a proud graduate of the 178th Judge Advocate Officer Basic Course. During his service, Cpt. Flanagan has been privileged to work in multiple legal areas including Administrative Law, Contracts/Fiscal, Labor, Criminal, and Claims/Torts. Cpt. Flanagan is currently the Chief of Operational and International Law for 1st Special Forces Command.

NOTES

1. Fred L. Borch, "The Judge Advocate General's Corps in the Army and at West Point," accessed 20 March 2016, <http://www.usma.edu/sja/SitePages/About.aspx>.
2. I am forever grateful to all the great leaders I have worked with in the Army. Beats out my civilian counterparts on a daily basis!
3. Good thing attorneys like to talk, right?
4. I used to be frustrated trying to explain the law to some disinterested Soldiers after lunch on a hot summer afternoon. My perspective changed completely, however, when I was assigned to train ROE and LOAC to Polish and Georgian Soldiers who couldn't speak English at all. Tip – get a great translator. (Believe me – a joke to the Georgians like "Go Dawgs!"--would be lost in translation)