

LIEUTENANT COLONEL TODD J. FANNIFF
CHIEF, SENIOR DEFENSE COUNSEL EASTERN AND EUROPEAN CIRCUITS
UNITED STATE AIR FORCE

Written statement before the
Ad Hoc Committee to Review the Criminal Justice Act Program
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Opening Comments

Members of the Committee, thank you for the opportunity to speak to you today about the structure of the defense community and the judiciary within the Air Force. As a defense counsel, I am especially grateful for the opportunity to discuss this tremendously important topic.

I am Lt Col Todd Fanniff, Air Force Chief Senior Defense Counsel for the Eastern and European Circuits of the United States Air Force. In this capacity, I supervise 7 Senior Defense Counsel (SDCs), 28 Area Defense Counsel (ADCs), and 25 Defense Paralegals who are spread across the eastern United States and throughout Europe and the Middle East. They form one third of the 186 Air Force defense team worldwide. They are professional officers and non-commissioned officers who are dedicated to providing defense services in a zealous, ethical, and professional manner. Together, my team provides defense services for more than 100 thousand Airmen. This is my third assignment as an Air Force Defense Counsel. In the past I have served as an Area Defense Counsel for two years, and as a Senior Defense Counsel for three years.

History of the Independent Military Defense Counsel in the United States Air Force

Within the Air Force, the independent military defense counsel was established in 1974 as a pilot program. Prior to 1974, attorneys working within the base legal office at installations worldwide were assigned defense counsel duties on a case by case basis. These attorneys were supervised by the base staff judge advocate regardless of whether they were prosecuting or defending cases. They would often switch sides from case to case, acting as the defense counsel in one trial and the next acting as the prosecutor. The pilot program started in January of 1974 with a world-wide roll out in July of that same year. The program was established due to the perception of undue command influence upon the defense counsel, especially with respect to the criminal defendant. During the post-Vietnam era there was a widespread belief that the military justice system was unfair. Prominent attorney, F. Lee Bailey, who defended several prominent military cases during the Vietnam era told a reporter: “The only time you can count on a military defense lawyer to whale the hell out of the military – and that’s a defense lawyer’s job – is when the lawyer is getting out of the service very soon and he doesn’t give a damn what his superior officers put in his fitness report.”¹ While Judge Advocates (JAGs) at the time did not agree with Mr. Bailey, the perception of an unfair system prompted them to establish the independent

¹ Quoted in “U.S. Military Justice on Trial,” Newsweek, 31 August 1970, p. 22.

military defense counsel, known as the Area Defense Counsel program. In 1975, an independent panel of JAG officers and Non-JAG officers was commissioned to evaluate the Area Defense Counsel Program. Due to the resounding success of the program, the panel recommended retention of the program and in July 1975, the Chief of Staff of the Air Force authorized the program on a permanent basis. The Area Defense Counsel program has operated on a continuing basis since that day.

Organization of Defense Counsel Services in the United States Air Force Today

The Air Force defense services are headed by the Chief, Trial Defense Division, a Colonel (O-6), a position currently occupied by Colonel Daniel Higgins. Underneath Col Higgins, the Air Force defense network consists of 187 active duty officers and non-commissioned officers broadly divided into five circuits, the Pacific, covering our overseas Pacific bases; Western, which covers the western United States; Central, which extends from Colorado in the west to St. Louis in the east; Eastern which covers the eastern United States; and the European Circuit, encompassing bases in Europe and the Middle East. There are three lieutenant colonel Chief Senior Defense Counsel (CSDC), who head these circuits. The Western and Pacific circuits fall under one CSDC stationed in California and the Eastern and European circuits fall under another CSDC stationed in Virginia. They are responsible for the provision of defense services within their area of responsibility. To assist them with this task, each Chief Senior Defense Counsel supervises seven Senior Defense Counsel, or SDCs for a total of 21 who in turn each supervise four to five geographically dispersed Area Defense Counsel-Defense Paralegal teams. These teams form the core of the defense community. Our defenders represent eligible military members in administrative and judicial matters that range from challenges to professional credentialing and minor disciplinary infractions to major criminal allegations that result in trial by court-martial. Normally there is one team ADC and defense Paralegal assigned to each installation, they are primarily responsible for representing military members on their installation who are facing an adverse action but may be detailed to cases at other installations when necessary to balance the workload or avoid a conflict of interest. Together, we are responsible for providing defense services to the 307,000 active duty Air Force members worldwide.

Our Senior Defense Counsel typically enter their duties having completed two base level assignments and 6 to 7 years of service in the Judge Advocate General's Corps. All of the SDCs have successfully completed a tour of duty as an ADC. The 21 SDCs are tasked with providing not only day to day supervision and administrative maintenance of defense teams at the installation level, but are also responsible for defending Airmen in the most serious cases at trial.

ADCs are competitively selected following one to two base level assignments. In general terms, they have spent between two and four years in the Judge Advocate General's Corps at the base level and have prosecuted approximately 10 courts-martial prior to assuming duties as a

defense counsel. The typical annual workload for any one defense team includes 8-10 courts-martial, 75 non-judicial punishments, and 300-400 other adverse actions.

The Trial Defense Division falls under the Air Force Judiciary Directorate, JAJ, which is headed by a Colonel. The Air Force Judiciary Directorate contains five divisions; Trial Defense (JAJD), Appellate Defense (AJAJ), Government Trial and Appellate Counsel (AJJG), Military Justice (AJJM), and Clemency, Corrections and Officer Review (AJJR). This includes all trial and appellate counsel both defense and prosecutors (JAJD, AJAJ, AJJG), and the policy division (AJJM). The Director of the Air Force Judiciary is responsible for administrative control of all five divisions, including the Trial Defense Division. While they exercise administrative control the Judiciary directorate is neutral and does not dictate how the trial defense division's attorneys represent their clients.

The Air Force Judiciary Directorate falls under the Air Force Legal Operations Agency, AFLOA. AFLOA is currently headed by a two-star or Major General, who is the only commander within the USAF JAG Corps. Again AFLOA has administrative control over the trial defense division, but does not dictate how any of the attorneys in the trial defense division represent their clients.

Advantages to the Independent Military Defense Counsel

In the military we have an extremely unique situation, our defense counsel wear the same uniform as the prosecutors, commanders, and supervisors of the accused facing criminal prosecution. Our independent system was established to counter act the perception that our system is unfair to the defendants. Many of the clients an ADC represents are young airman who made a mistake early into their Air Force careers. It is vital that we can show our clients that even though we wear the same uniform as everyone else on the base where we are stationed, we do not answer to anyone within their command structure. By creating a fully independent command structure it gives the client reassurance that our goal is to represent them as best we can within the bounds of the law and ethics. For our ADCs and SDCs this independence manifests itself in reassuring them that doing their job and doing it well will be the factors that drive their performance evaluations. There is no fear among the defense counsel that they will be rated on any standard other than representing their clients in a zealous, ethical, and professional manner.

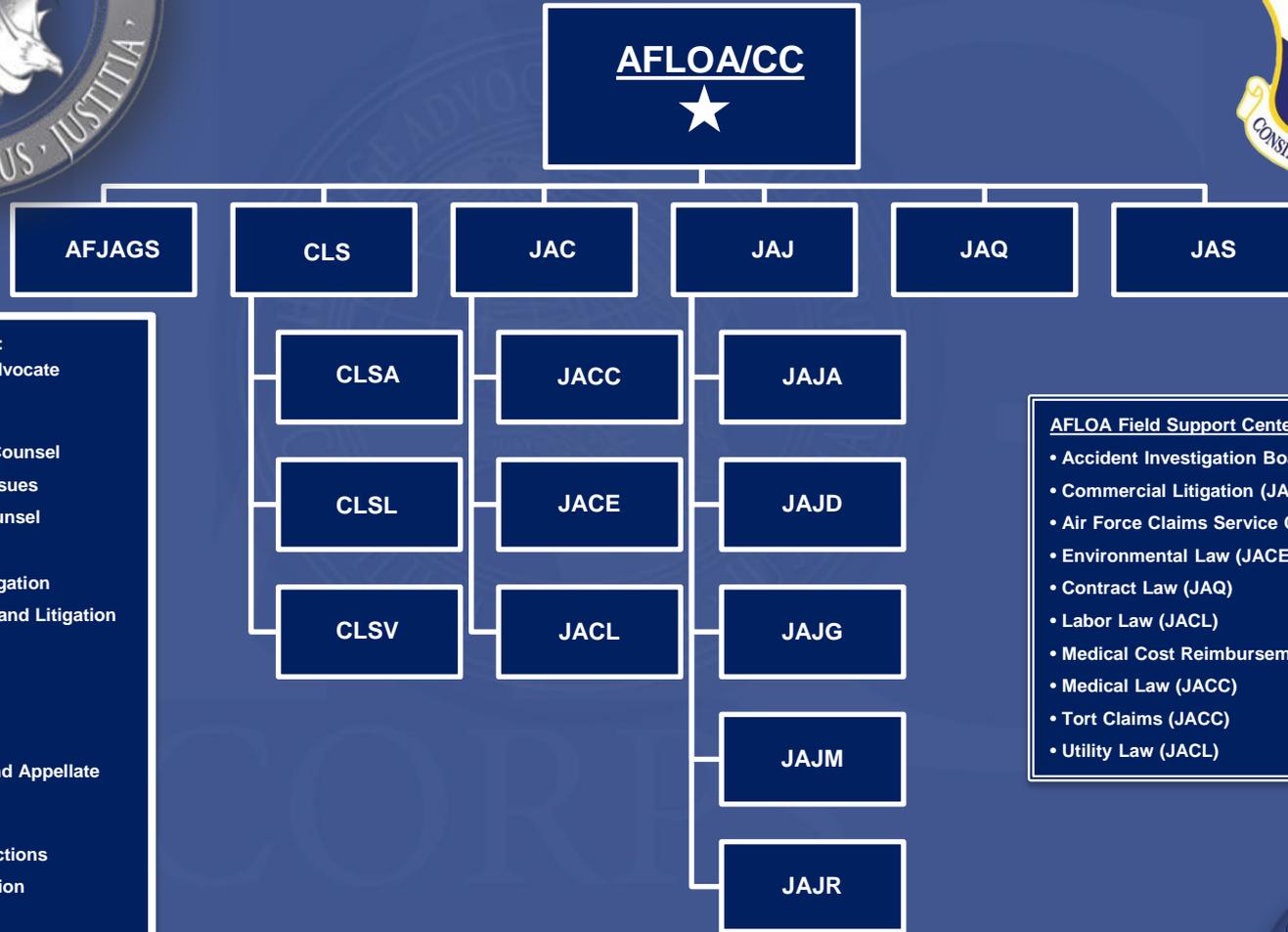
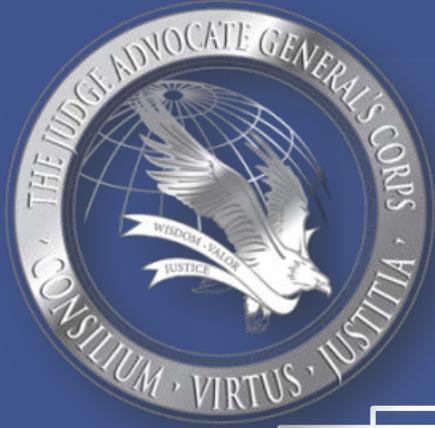
Closing Comments

In closing, let me say that I am very grateful to be here today. I appreciate the opportunity to discuss the structure of Air Force Trial Defense services as an example of an independent defense services model.

Attachment

AFLOA Org Chart

Air Force Legal Operations Agency (AFLOA)



AFLOA Directorates and Divisions:

- AFJAGS: The Air Force Judge Advocate General's School
- CLS: Community Legal Services
 - CLSA - Office of Airmen's Counsel
 - CLSL - Community Legal Issues
 - CLSV - Special Victims' Counsel
- JAC: Civil Law and Litigation
 - JACC - Claims and Tort Litigation
 - JACE - Environmental Law and Litigation
 - JACL - Civil Litigation
- JAJ: Air Force Judiciary
 - JAJA - Appellate Defense
 - JAJD - Trial Defense
 - JAJG - Government Trial and Appellate Counsel
 - JAJM - Military Justice
 - JAJR - Clemency and Corrections
- JAQ: Commercial Law and Litigation
- JAS: Legal Information Services

AFLOA Field Support Centers:

- Accident Investigation Board (JACC)
- Commercial Litigation (JAQ)
- Air Force Claims Service Center (JACC)
- Environmental Law (JACE)
- Contract Law (JAQ)
- Labor Law (JACL)
- Medical Cost Reimbursement Program (JACC)
- Medical Law (JACC)
- Tort Claims (JACC)
- Utility Law (JACL)

