

# Looking Outward<sup>1</sup>

Better the Marine Corps' legal services community

by 1stLt Steven J. Arango

Suppose you were a Marine graduating law school. You have over \$140,000 of student loans; however, at least you have a *juris doctorate* degree.<sup>2</sup> Now, you are heading to The Basic School (TBS)—eventually.

After law school, Marine judge advocates<sup>3</sup> on a Platoon Leaders Class contract wait up to twelve months to attend TBS, which is the next phase of training for most new Marine Corps attorneys. It is not uncommon for a Marine who graduated law school in May 2019 to not attend TBS until May 2020. In contrast, ground or air Marines heading to TBS from Officer Candidates School transition almost immediately, oftentimes over the course of a weekend. This article advocates that the Marine Corps use temporary placements with federal and state judges called “clerkships” as a viable solution to, and asset during, this wait time.

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Marines have limited employment options while they await TBS orders. The primary option is to gain acceptance to one of the Marine Corps' pre-TBS “internships,” such as working in a Legal Services Support Section. But these orders start between October and March, which means judge advocates—many of whom carry costly student loans—may be unemployed from August until October.

Further, these internships are available only after a Marine has gained admittance into a state bar—oftentimes October or November, depending on the state. Therefore, the average Ma-

rine has likely been unemployed from May (when he started studying for the bar exam) until October of that year. Additionally, because of funding constraints and a lack of positions, the Marine Corps is sometimes unable to issue these orders as soon as the Marine is certified to practice law.

Another option for judge advocates is to attempt to find civilian employment. Such civilian employment opportunities are limited at best. Most law firms or government organizations will not hire a Marine judge advocate, only to train and lose them six to eight months later. It makes little financial sense for these organizations. Faced with limited civilian opportunities to practice law, judge advocates are forced to accept non-legal employment or “temporary” legal positions of limited value. Neither the judge advocate nor the Marine Corps benefits from these limited civilian options.

To address these issues and better prepare judge advocates for active duty, the Marine Corps should consider developing a “judge advocate clerkship program.” The concept for this program is simple. Judge advocates at Marine Corps Recruiting Command (MCRC) could create an informal network between judges, Marine judge advocates who have clerked, and Marines in law school.<sup>4</sup> In reality, it is little more than a networking and database effort managed by MCRC. Judge advocates could then send their applications to judges on that list, either through traditional application channels or directly to the



*Following graduation before TBS, it would be beneficial for legal officers to clerk for judges.*

*(Photo by LCpl George Nudo.)*



**Judge advocate recruiting efforts may also benefit from the judge advocate clerkship program.** (Photo by LCpl Phuchung Nguyen.)

judges. As with any applicant, judges would be free to contact judge advocate applicants for interviews and hiring, or not.<sup>5</sup>

Although this network will not guarantee a position for Marines, it will hopefully guarantee that Marines' applications will be reviewed. This result would be a significant step in the application process since judges receive upward of 300 applications for each clerkship position. At the very least, the program may lead to judges carefully considering the diverse talents Marines bring to the position compared to your average law student. At most, judges could be willing to create a clerkship position as some judges have extra funds to do so.

Veteran judges and non-veteran judges have already been convinced of the merit of the program for both their country and themselves.<sup>6</sup> In writing this article, the author has contacted eight Federal judges, all of whom expressed enthusiasm for judge advocate applicants. There are certainly more untapped judges on the bench like these; if there are eight judges who are enthusiastic about this particular clerk program, there must be more out there.

The Marine Corps already has the foundation in place for this program. Currently, it allows Marines a one-year

deferment to clerk for a judge while awaiting orders to TBS.<sup>7</sup> This policy is implicit acknowledgement of the benefits that judicial clerkships bring to our Corps. But there is no Marine Corps program to help create clerkship opportunities: law students must network for themselves and rely on school administrations that are often strangers to the military.

So why would the Marine Corps establish this program? To be sure, the Marine Corps is more focused on developing better judge advocates—not on making judge advocates more successful when they leave. At first glance, this program looks like it would make Marines more eager to transition to the civilian world after their first tour to leverage their clerkship and military experience. But a deeper dive reveals the Marine Corps benefits just as much, if not more, than individual Marines here.

Serving as a judicial clerk is an excellent developmental position for anyone to hold, but there is a reason top law firms seek to hire judicial clerks: they also improve the firm. The Marine Corps would similarly benefit. Litigation skills in the judge advocate community are always at a premium. Not all judge advocates end up immediately in the courtroom. But if they do, a clerk-

ship will prepare them for the variety of cases they will face. The ability to work with a judge throughout a criminal or civil trial provides first-hand insight into how litigators operate, the mistakes they make, and how judges consider certain evidence. A clerkship also provides a judge advocate with an opportunity to develop substantive legal analysis skills through motions practice—a rare (but needed) opportunity for a first tour judge advocate. Some of the best litigators in the world clerked because of this valuable experience that cannot be replicated elsewhere.<sup>8</sup>

The benefits of clerkship are not limited to litigation billets. Clerks are exposed to civil law issues (like a legal assistance attorney), they advise a senior leader (the judge) on complex legal issues (like a staff judge advocate), and they work on complex regulatory cases (a beneficial skillset for if/when a judge advocate rotates to the Pentagon or is assigned to contract, fiscal, environmental, or labor law shops).

Clerking for a judge requires many of the same skills as working for a flag or senior officer. You learn about a complicated issue, condense it down, and then present it to the decision maker as a series of options. A simple skill in theory, but not in application. In a Marine Corps that continues to increase the amount of information and intelligence it gathers, this skillset is essential.

The Marine Corps also benefits financially from this program. There is no financial cost to the Marine Corps if a Marine is hired as a law clerk;<sup>9</sup> their salary will be paid by the judiciary. As the network grows, pre-TBS order costs will decrease, saving the Marine Corps funds for other operational needs.

Some Marines may argue that pre-TBS internship experience is more valuable than a clerkship. Some may say the Marine Corps wants great officers who are also qualified attorneys—not great attorneys at the expense of being a great officer. But being a great officer requires effective oral and written communication skills, as well as critical thinking skills, which a clerkship will provide more than any other legal position. These skills are absolute necessities in leadership development. Of course,

there will be practical experience that pre-TBS internships offer that a clerkship could not. There is a high value placed on being around Marines, leading Marines, and learning the institution as a whole—this reality should not be disregarded. That said, these internships are not always available to all judge advocates; and a Marine law clerk gains valuable skills in law *and* officership.

The judge advocate clerkship program would be a cost-effective solution that provides job security for Marines awaiting TBS and increases the Marine Corps' legal services legal and leadership abilities. The Marine Corps strives to be the best in every facet; creating this program<sup>10</sup> will help continue that great tradition and help develop technically and tactically proficient judge advocates.<sup>11</sup>

Notes

1. As with almost everything, this article was not completed alone. It is the result of many people, not just the author whose name is at the top. Eight Federal judges, most with military experience, 33 Marines from major general down to second lieutenant, most of whom are judge advocates, two senior officers in the Air Force JAG Corps, three Navy JAG Officers, and four Army officers, three of whom are or were in the Army JAG Corps, all provided feedback for this piece. Thank you all for your help with this article.

2. "The average law school graduate carried approximately \$145,500 of loan debt in 2016." The United States Department of the Navy, *Comprehensive Review of the Department of the Navy's Uniformed Legal Communities*, (Washington, DC: December 2019), available at <https://www.navy.mil>.

3. Although Marines in law school are not judge advocates yet, for this article, they will be referred to as judge advocates.

4. Currently, the DOD offers the Career Intermission Program, which permits company grade officers to complete a mid-career clerkship. The relationships established by this program could also help bolster DOD's program.

5. At first, this program could be an informal network outside of MCRC's mission (see for example the Association of Marine Corps Logisticians). However, once it is established, the program will require continuity. MCRC's involvement would help accomplish this goal.

6. Disclaimer: I spoke to these judges outside of the direction of the Marine Corps in a personal capacity. I shared this article with them and asked if they would be interested in the program—all agreed.

7. However, this deferment creates a "chicken-or-egg" problem that needs to be addressed. The Marine Corps will not grant a deferment until a clerkship offer exists. But applying to clerkships can be challenging when applicants cannot guarantee a judge if or when the applicant would actually be able to clerk if a position was offered. Pre-approving judge advocates to clerk allows them to apply to clerkships with confidence that it would work with their Marine plans. It would also allow judges to more seriously consider their applications. If the Marine does not accept a clerkship, then the deferment is moot.

8. Beaupre Gillespie, *The Best Postdoc You Could Ever Have*, (Chicago, IL: The University of Chicago School of Law, October 2019), available at <https://www.law.uchicago.edu>; *Judicial Clerkships in the U.S.*, (New Haven CT: Yale Law School), available at, <https://law.yale.edu>; *Why Clerk?*, (Austin, TX: The University of Texas School of Law), available at <https://law.utexas.edu>.

9. There is a cost to the Marine Corps if year-long deferrals become standard. If clerkship deferrals were standard, its accession pipeline would be negatively affected. However, just because a Marine's application is being reviewed, does not mean she will be hired for a clerkship. For example, I submitted over 150 applications and received only one clerkship offer. There is no guarantee in this process. As a result, I do not believe the numbers would increase drastically enough to affect the accession pipeline. If this issue did arise, the Marine Corps could cap the clerkship deferment program to "X" number of Marines, and grant deferments on a first come, first served basis.

10. Not only will this program support incoming Marines, but also departing Marines. Some judges will be interested in Marines who have a tour or two of experience. Helping these Marines transition to the private sector is in line with the idea of taking care of all Marines—past, present, and future.

11. Although not addressed in this article, the Marine Corps should consider a clerkship program for military judges. This program would allow the Marine Corps to bring Marines onto active duty as soon as they finish their bar exam. Marines do not have to be barred because they will not be practicing law, simply assisting the military judges with cases. A separate article detailing this idea would be worthwhile.

>Author's Note: The views expressed in this article are those of the author and do not necessarily represent the views of the Marine Corps, Department of the Navy, Department of Defense, or the U.S. government.

