

Center for Law and Military Operations (CLAMO) Note from the Field

The Judge Advocate General's Legal Center & School

Dual Boltage: A Sneak Preview of the Unit of Action

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Introduction

Every U.S. service member who has lived in Europe or deployed overseas knows how critically important it can be to have dual voltage appliances. Many Soldiers have experienced the sinking feeling of plugging in a prized possession only to see wisps of smoke emanate from the outlet and smell a burned-out motor. In much the same way, individual attorneys working in a deployed brigade operational law team (BOLT) have frequently found themselves inadequate and maladapted, which can lead to smoked, burned-out attorneys of little use to their commanders or the Army. The leadership of the Judge Advocate General's Corps has recognized this problem and has begun staffing units of action (UA) with two judge advocates (JA). Recently, albeit inadvertently, the 1st Armored Division (1AD) served as a test case for the dual JA concept during its extended deployment to Iraq.

Discussion

1AD Application of the Existing Doctrine

Field Manual (FM) 27-100 provides for a brigade JA, who is normally that brigade's trial counsel while in garrison, to

serve as the BOLT chief.² The paralegal specialists assigned to the brigade support that JA. Current doctrine requires the staff judge advocate to task-organize assets based on the following major factors considered during mission analysis: "mission, enemy, terrain and weather, troops and support available, time available, civil considerations" (METT-TC).³ Yet, because JA assets are limited, *FM 27-100* contemplates a single attorney being assigned to each brigade.⁴ Moreover, *FM 27-100* states that a brigade JA may be required to support more than one brigade or additional organizations.⁵ The JA is expected to contribute to several, if not all, of the battlefield operating systems while identifying and resolving legal issues across all legal functional areas and core legal disciplines.⁶ In addition, deployed JAs frequently find themselves fulfilling unanticipated, non-traditional missions.⁷ Accomplishing those myriad functions in an exercise or combat training center rotation is burdensome. Meeting that challenge as a JA for a brigade combat team (BCT) engaged in urban combat, however, is a Herculean task.

The size and composition of a "standard" brigade continues to—and will continue to—evolve. An example is the Second Armored Cavalry Regiment (2ACR), attached to the 1AD for Operation Iraqi Freedom (OIF). The 2ACR's mission was to eliminate opposition, maintain peace, and rebuild infrastructure in the northeastern neighborhoods of Baghdad, to include Sadr City, a cramped and impoverished sector of Baghdad.⁸ For at least a portion of the deployment, the 2ACR had authority under the Uniform Code of Military Justice (UCMJ)⁹ over six battalion-sized units comprised of as many as forty-six company-sized units with 4,400 Soldiers in theater.¹⁰ Some of those units, both reserve and active-duty, were not attached to 2ACR

1. The author wishes to thank the following attorneys who concurrently served in Baghdad BOLTs for their insights: Captain (CPT) Nate Jacobs (DISCOM), CPT Jeff Miller (3BCT), CPT Pat Parson (2ACR), CPT Dan Sennott (1BCT), and CPT Jay Urgese (2BCT). Additionally, the 82d Airborne Division Operation Iraqi Freedom After Action Report, published on the CLAMO database, was a helpful confirmation of these conclusions. See CENTER FOR LAW & MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER & SCHOOL, U.S. ARMY, 82D AIRBORNE DIVISION OPERATION IRAQI FREEDOM AFTER ACTION REPORT (Apr. 2003).

2. U.S. DEP'T OF ARMY, FIELD MANUAL 27-100, LEGAL SUPPORT TO OPERATIONS para. 5-21 (1 Mar. 2000) [hereinafter FM 27-100].

3. U.S. DEP'T OF ARMY, FIELD MANUAL 3-0, OPERATIONS para. 5-2 (14 June 2001) [hereinafter FM 3-0].

4. See FM 27-100, *supra* note 2, para. 5-21.

5. *Id.*

6. *Id.* para. 5-22. The Army's battlefield operating systems include: intelligence, maneuver, fire support, air defense, mobility/countermobility/survivability, combat service support, and command and control. FM 3-0, *supra* note 3, para. 5-64.

7. This assertion is based on the author's recent professional experiences in Iraq, May 2003 through March 2004 [hereinafter Professional Experiences].

8. *Id.*

9. UCMJ (2002).

10. Professional Experiences, *supra* note 7.

until they arrived in theater; thus, they lacked habitual legal support relationships. The 2ACR was spread out over five forward operating bases (FOBs) throughout an area of operations with a local population numbering approximately three million people.¹¹ The mission for other 1AD units was equally challenging. The ground-owning maneuver units in 1AD averaged over 3,500 troops and were responsible for countless citizens.¹² Yet existing Army doctrine called for only one attorney to address millions of potential claimants, detainees, or investigation subjects and thousands of Soldiers requiring operational law training, UCMJ administration, and legal assistance.¹³

To address this anticipated need, the 1AD Office of the Staff Judge Advocate (OSJA) deployed with enough JAs to supply each organic maneuver BCT with two JAs—the 1AD OSJA deployed with not only the attorneys on the tables of organization and equipment but also more than a dozen attorneys on the tables of distribution and allowance.¹⁴ This was only possible because reservists called to active duty supported the rear detachment and communities. In hindsight, it would have been impossible to effectively support each BCT with only one JA and provide the comprehensive legal support required by the mission.¹⁵ The reasons are as varied as the missions each BOLT routinely performed, missions that JAs in future operations will almost certainly be required to execute.

OIF: The Dual Attorney Concept in Action

As with most contemporary operations and training exercises, the OIF mission continued twenty-four hours a day, seven days a week. Unlike most recent deployments, however, that pace continued for deployed Soldiers more than a year. Providing twenty-four hour coverage for a thirty-day exercise is manageable; doing the same for six months on a deployment is difficult; continuing at that pace for 365 days and beyond is mentally and physically impossible without adequate support. While six-month personnel rotation plans are an appealing practical solution at first glance, the unpredictability and variety of contemporary operations necessitates deployment with a robust legal support package. Such a package will readily outstrip the ability of most offices to support six-month rotations.

Operation Iraqi Freedom is rife with examples of unforeseen missions that demanded enhanced legal support. Supporting those missions without the “luxury” of being two-deep in BOLTs would have been unrealistic. For example, the Corps Holding Facility at Camp Cropper on Baghdad International Airport required a magistrate’s cell to review the flood of detainee case files that accumulated daily to determine whether continued confinement was warranted.¹⁶ That mission required one full-time JA routinely assisted by other JAs on an almost daily basis. Another mission required a JA, in the grade of major, to support the Ministry of Justice at the Coalition Provisional Authority Headquarters.¹⁷ Fulfilling those requirements demanded the full complement of JAs in our stable to be able to continue providing effective legal support across the task force.

The complexity of the contemporary battle space quickly surpasses one JA’s capacity to provide full-spectrum legal operations at the BCT. Brigade combat teams conducted simultaneous humanitarian, peace, and combat operations. Judge advocates were accordingly expected to confront the unique legal challenges associated with each type of operation. Additionally, more traditional missions required JAs to spend extended time away from their BCT headquarters. The 1AD 1st BCT trial counsel found himself traveling back to the United States with the BCT commander to brief a family regarding the circumstances surrounding the death of their son. The 2d BCT trial counsel traveled with the BCT Forward Tactical Command Post to Karbala for an operation outside the division sector. In both instances, these JAs were away from their BCT headquarters for over a week.¹⁸ Even during daily operations, with battalion FOBs scattered throughout the BCT’s area of responsibility (AOR), consultation with two battalion commanders could take the trial counsel away from the BCT headquarters for an entire day. It was essential that another JA was available to sustain the remaining units throughout the AOR. The JA that remained at the BCT headquarters was able to advise other commanders, pay Iraqi claimants, assist investigating officers, and process legal assistance clients during such absences. The volume of work in these disciplines across the Task Force was staggering. In the first nine months of the deployment, 1AD processed almost 4,000

11. *Id.*

12. This figure was based on the average of the troop strengths reported by those units on daily status reports, calculated by the author in January 2004, Baghdad, Iraq.

13. See FM 27-100, *supra* note 2, para. 5-21.

14. Professional Experiences, *supra* note 7.

15. Interviews with 1AD Attorneys in three unclassified multi-discipline AARs, in Baghdad, Iraq (Sept. 2003, Dec. 2003, and Mar. 2004) (voicing collective opinions) [hereinafter Interviews with 1AD Attorneys].

16. Series of Personal Interviews with CPT R. Matthew Newell, Holding Facility Magistrate, in Baghdad, Iraq (June 2003).

17. Series of Personal Interviews with MAJ Tideman Penland, CPA Ministry of Justice Attorney-Advisor, in Baghdad, Iraq (Aug. 2003 to Mar. 2004).

18. Personal Interviews with CPT Dan Sennott, 1st BCT Trial Counsel, and CPT Joseph Urgese, 2d BCT Trial Counsel, immediately following these events, in Baghdad, Iraq (specific dates withheld for privacy and security reasons).

claims, paying almost \$700,000, saw almost 9,500 legal assistance clients, and reviewed close to 300 *Army Regulation (AR) 15-6*¹⁹ investigations.²⁰ Many of these actions were processed at the Division Main (DMAIN), but whenever possible, the actions were completed at the brigade level.

The challenge of moving safely from BCT FOBs to DMAIN demanded that brigade trial counsel travel to the DMAIN and remain overnight, often for several nights, during trial terms. Likewise, BCT commanders did not have the resources necessary to transport Soldiers across the city to DMAIN for routine legal advice; nor was it safe to do so. Nonetheless, the (timeless) challenge of conflicts of interest for a trial counsel providing legal assistance to individual Soldiers remained, and intensified over the course of a yearlong, or more, deployment. An organic administrative law JA within the unit solves all of these problems. Additionally, without a second JA in the BOLT, an *AR 15-6* investigation will normally have to be sent to the DMAIN for a legal review, since it is common practice and preferable, to have an impartial attorney review the investigation for legal sufficiency and not the one who advised the investigating officer (IO). In cases in which there will be no court-martial action taken, however, the administrative law attorney can advise the IO, and the trial counsel can conduct the legal review, or vice versa. Accordingly, each BOLT operated as a semi-autonomous OSJA. Most commonly, the trial counsel performed all military justice duties and also handled traditional operational law issues. The administrative law attorney provided legal assistance and claims advice and processing in addition to handling administrative law actions.²¹

Operation Iraqi Freedom introduced other unique challenges to the personnel tasked with providing legal support to a task-organized division. Each BCT established and administered its own holding facility which held detainees for up to seventy-two hours pending their transfer to the corps holding facility at Abu Ghraib prison or the division interrogation facility.²² It was incumbent upon the BCT legal team at the inception of this

operation to enforce division standards for detention, to review interrogation procedures, and to ensure evidence preservation. Trial counsel ensured the treatment of detainees and the construction of the holding facilities comported with international law. Also, U.S. Soldiers found themselves training and working along side Iraqi security guards (the Facilities Protection Service or FPS), the Iraqi Police Service (IPS), and the newly formed Iraqi National Guard (Iraqi Civil Defense Corps or ICDC). The ICDC, in particular, were attached to BCTs in battalion-sized elements and worked for, and received orders from, the BCT commander. Because ICDC Soldiers were not subject to the UCMJ, it became necessary for JAs to develop ICDC rules of conduct and advise U.S. commanders on the enforcement of discipline within their ranks. Other non-traditional missions included reviewing humanitarian projects funded with captured former regime funds, and attending, addressing, and advising neighborhood and district advisory council meetings.²³ Since those missions were not fully contemplated in the pre-deployment phase, planning the framework for execution occurred in theater, almost simultaneous to the actual execution. Accordingly, those missions were very time-intensive.

Conclusion

As this note has attempted to establish, the decision to place a second JA position in the new UA is both justified and plausible. The justifications include size of the jurisdiction served (both U.S. military and local national, and both in area and population), additional taskings acquired in theater both external and internal to the brigade, extended travel out of the sector, and conflicts of interest. Two JAs can split duties to provide the full spectrum of legal services or serve in exigent circumstances as the sole JA when the other is called away. With the very real possibility of additional and lengthening deployments on the horizon, it is imperative that brigade-sized units be adequately staffed with JAs and paralegals. Providing two JAs to the UA is a necessary, tenable, and welcome step in that direction.

19. See U.S. DEP'T. OF ARMY, REG. 15-6, PROCEDURES FOR INVESTIGATING OFFICERS AND BOARDS OF OFFICERS (30 Sept. 1996).

20. Compiled by the author based on reporting provided by the BOLTs and the OSJA Branch Chiefs on a weekly basis to DMAIN SJA, Baghdad, Iraq (May 2003 through Jan. 2004) (on file with author).

21. Interviews with IAD Attorneys, *supra* note 15.

22. Professional Experiences, *supra* note 7.

23. Interviews with IAD Attorneys, *supra* note 15.