

CLAMO Note

Center for Law and Military Operations (CLAMO)
The Judge Advocate General's School

Introductory Note

The provision of legal support to operations, through the practice of operational law, is no less an art than the litigation of the largest criminal and civil cases. The operational law practitioner of the former carries a significant burden on his shoulders—the lives of soldiers and the success of an operation. Operational law is also a science that calls for education and internship in all of its component areas. Because its practice occurs in an operational setting, we usually characterize the study of operational law as *training*, vice *education*. But, do not let the “training” label mislead those who do not practice in this arena. Operational lawyers have had to ponder the following: the impact of the Ottawa Convention¹ on U.S. operations with allied signatories, the intricacies of U.S. fiscal law as it relates to requests for assistance by foreign nationals, the authority for non-governmental organization members and civilian dignitaries to ride aboard military aircraft, the impact of the Basel Convention² on managing hazardous waste during a contingency deployment, and the nuances of other nations’ civil liability laws in order to adjudicate claims. This varied, multi-disciplinary, field requires that judge advocates be educated in all of the core legal disciplines.

The article below demonstrates how a staff judge advocate office can train to meet the challenges of today’s legally complex operations. The article is noteworthy, not only for its content, but also for the initiative and forward thinking that it reflects. Operations law is interactive; lessons learned must be documented and shared. Unique approaches, solutions, and legal tools must be created and improved with each use. Toward this end, the Center has developed its newest database, *Combat Training Centers and Training*, available at www.jagcnet.army.mil/clamo. There, you will find the outline of the Fort Gordon Operational Law Training Program described below, materials on the Army’s four Combat Training Centers, and many other operational law training documents. The Center continues to invite contributions of other materials and products that will better prepare judge advocates for future missions, domestically, and around the world.

OPLAW Attorney Training: A Program for Non-deployable Legal Offices

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Introduction

This note introduces a training program for military attorneys assigned to Training and Doctrine Command (TRADOC) installations or other non-deployable legal offices. Although rarely deploying its lawyers to provide support to military operations, the Office of the Staff Judge Advocate (OSJA), United States Army Signal Center and Fort Gordon, has conceived and developed this program to prepare its judge advocates for future assignments, deployments, and operational law (OPLAW) positions. Without a similar type of program, military attorneys in non-deployable legal offices can find themselves unprepared for the often quick transition to a deployable unit or position.

The OPLAW Attorney Training Program (ATP) is useful to introduce new judge advocates to the “soldier-lawyer” concept. It also develops and sustains the skills all military attorneys need for success in deployable assignments. With training focused in three areas—soldier skills, lawyer skills, and OPLAW skills—this ATP is readily adaptable to an existing leadership professional development (LPD) program; but it does require “out-of-office” exercises and qualification courses not normally attempted by non-deployable legal offices.³

Training Objectives

“To succeed in today’s operational environment, judge advocates must be . . . knowledgeable as soldiers and lawyers . . . and proactively working to promote the mission . . .”⁴ The inspiration for the OPLAW ATP is derived in large part from the lessons learned at the Combat Training Centers (CTCs) as

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1. The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, Mar. 1, 1999, 36 I.L.M. 1507.
 2. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, *opened for signature* Mar. 22, 1989, 28 I.L.M. 649.
 3. A description of this program and information on many of the training topics can be found on the Fort Gordon OSJA web page at www.gordon.army.mil/osja/osja.htm under the heading Administrative Law. It is also available in the “Leadership and Training” database on JAGCNET at www.jagcnet.army.mil and in CLAMO’s new *CTC and Training* database available at www.jagcnet.army.mil/clamo.
 4. U.S. DEP’T OF ARMY, FIELD MANUAL 27-100, LEGAL SUPPORT TO OPERATIONS IX (1 Mar. 2000) [hereinafter FM 27-100].

reported by CLAMO in this publication.⁵ The objectives of the program are soldier skill proficiency, familiarity with the core legal disciplines for military operations, and an understanding of the judge advocate's role in the OPLAW mission. The training cycle should be one year.

Soldier Skills

The most critical training area covered by this program is that of basic soldiering skills. If not adequately trained and proficient on common soldier skills, judge advocates and their fellow soldiers are at greater risk of injury or death in an operational environment.⁶ Even if a lack of soldier skills does not get a military lawyer hurt or killed, credibility in the eyes of commanders and other soldiers is threatened, and this may hinder the legal support provided to the operation.

A judge advocate participating in the OPLAW ATP must successfully qualify on the M16A2 rifle and the 9mm pistol. Familiarity with the handling and operation of these two personal weapon systems is essential because a deployed judge advocate never knows what type of weapon he or she will be issued. The program also requires proficiency with nuclear, biological, and chemical equipment use and decontamination procedures, radio use and procedures, map reading and land navigation, use of night observation devices, and personal issue equipment. Judge advocates can also participate in a first aid qualification course as part of the program—a valuable skill often overlooked.

Each attorney is also expected to obtain a driver's license to operate a high-mobility multipurpose-wheeled vehicle (HMMWV). To accomplish this cost-effectively, the motor pool can train and license one judge advocate in the office; that individual then can train the other lawyers in the office and conduct the required "road tests." Once qualified to operate a HMMWV, a judge advocate will not always have to pull enlisted legal support from the mission to drive around the area of operations (unless the mission or convoy rules so require). Knowledge of how to operate a HMMWV could end up being a lifesaver in a combat crisis situation.

As a hybrid of the term "soldier skill," the ATP also incorporates training related to the judge advocate's role as a staff officer. It is critical that military attorneys providing legal support to deployable units learn the military decision making process (MDMP). Although MDMP is trained extensively at the Combined Arms and Services Staff School (CAS3), many

judge advocates are thrust into a staff officer role before attending CAS3. Without an understanding of the MDMP, and of their role in it, judge advocates may be excluded from the planning stage of operations. Consequently, the judge advocate reacts to crises instead of helping the commander anticipate and proactively engage them.

Several of the soldier skills training areas require judge advocates to get out of the office and on the range, or behind the wheel, or in the gas chamber. Judge advocates in non-deployable legal offices will relish the opportunity to get away from clients or the computer screen and receive military training that can be fun and just might save their lives or the lives of others in the future.

Lawyer Skills

During the OPLAW ATP, judge advocates develop and sustain the skills necessary to provide accurate and timely legal support during military operations. They become familiar with the rucksack-deployable law office and library, and they gain proficiency in using JAGCNET. But most importantly, the program enhances their readiness to practice in the six core legal disciplines that comprise the Army's legal support of military operations.⁷

Because most judge advocates are exposed to legal assistance and military justice in their everyday garrison operations, the OPLAW ATP focuses mainly on three other disciplines: claims, administrative law, and civil law. The developers of this program feel these three legal areas are most critical in the modern operational environment.

The ability to pay claims to the inhabitants of foreign countries under the Foreign Claims Act⁸ for property damage, personal injury, or death plays an important role during military operations. The purpose of the Act is to promote friendly relations by settling meritorious claims through commissions that can pay up to \$100,000. The ability of the United States to pay claims quickly and efficiently during a military operation serves to promote good will with the local inhabitants of the host country and prevents grievances by potential claimants distracting the commander during operations.

Potentially, another source of distraction for commanders during military operations is investigations, especially *Army Regulation (AR) 15-6* investigations.⁹ The portion of the OPLAW ATP related to administrative law focuses on investi-

5. CLAMO Report, *Combat Training Centers: Lessons Learned for the Judge Advocate*, ARMY LAW., June 1999, at 52 (the first in a series of reports).

6. *Id.* at 60.

7. See FM 27-100, *supra* note 4, at 3-1 (listing military justice, international law, administrative law, civil law, claims, and legal assistance).

8. 10 U.S.C.S. § 2734 (LEXIS 2000).

9. U.S. DEP'T OF ARMY, REG. 15-6, BOARDS, COMMISSIONS, AND COMMITTEES: PROCEDURE FOR INVESTIGATING OFFICERS AND BOARDS OF OFFICERS (11 May 1988).

gations, situations that give rise to investigations (accidents and fratricide in particular), and techniques judge advocates can use to minimize the potential for distraction. Adequate pre-planning in this area, identifying investigating officers and preparing fill-in-the-blank investigation packets, will prove invaluable while deployed and minimize the distraction factor.

Another legal field critical to modern deployments is contingency contracting (which falls under the discipline of civil law in FM 27-100). Units rarely deploy these days with adequate food, fuel, and shelter. Much of this materiel must be acquired from a host nation. Securing such necessities requires legal support to the contracting process. At most Army installations, the attorneys working in the contract arena are Department of the Army civilians. Consequently, there is little opportunity for military attorneys to obtain practical hands-on experience in contract law. As an element of the OPLAW ATP, judge advocates are exposed to issues and processes related to contingency contracting. The civilian contract attorney can assist in this area (and may have practical active duty experience to share as well).

OPLAW Skills

Operational law is the body of domestic, foreign, and international law that directly affects the conduct of operations.¹⁰ Operational law supports the command and control, sustainment, and conduct of operations. If not assigned to a deployable unit, a judge advocate will not be exposed to OPLAW or forced to develop proficiency in this area. The OPLAW ATP recognizes this and incorporates training related to the provision of OPLAW support into the program.

Staff judge advocates and other senior leaders in a legal office can provide instruction on the history of legal support to military operations. This is a perfect opportunity to hear the “war stories” and gain an appreciation of how the role of the judge advocate has evolved over time. Additionally, a soon-to-be-published account of judge advocates in combat¹¹ may serve as the basis of instruction or added to a professional development reading list.

Military attorneys participating in the ATP are expected to become familiar with command post structure and operations; to be capable of developing and training rules of engagement (ROE); to learn how to track a battle; and to understand the mis-

sion and role of the judge advocate in public affairs, civil affairs, psychological operations, information operations, and targeting. As part of the ROE objective, judge advocates develop lane training and situational training exercises applying ROE and mission-specific requirements of deployable units on the installation. Many TRADOC posts host deployable tenant units that can benefit greatly from this type of legal support in garrison. Additionally, this hands-on, real-life aspect of the program can pay big dividends to the deployable units to which the trained attorneys are eventually assigned. Due to the nature of modern day deployments, where an international incident can arise from the conduct of one junior enlisted “strategic soldier” with a weapon, it is essential that judge advocates know how to properly train the troops with respect to the use of force, especially when dealing with civilians.

Responding again to the lessons learned from the CTCs, the OPLAW ATP also requires participating judge advocates to develop the skills necessary to identify and resolve issues related to fratricides, civilians on the battlefield, the handling of the dead, and host nation relations. These are very important areas in which judge advocates must develop proficiency to ensure the most effective support for modern military operations. Judge advocates assigned to units deploying to the CTCs receive extensive training in these areas. Judge advocates assigned to a non-deployable legal office, on the other hand, will not normally delve into these issues unless they participate in the OPLAW ATP.

Conclusion

By using the materials already developed for Fort Gordon’s OPLAW ATP, any installation can incorporate this training into its existing LPD program. To meet the objectives, however, additional training sessions, such as brown bag lunch lectures and “out-of-office” ranges and qualification courses, must be planned and executed to augment the LPD program. A legal office that does not have an OPLAW attorney should designate an experienced judge advocate to administer the OPLAW ATP. As a result of a properly run program, military attorneys stationed to non-deployable legal offices will leave that type of assignment knowing how to shoot, move, and communicate on the battlefield and will possess the OPLAW skills essential to success in supporting military operations.

10. See FM 27-100, *supra* note 4, at 3-2.

11. FRED L. BORCH, JUDGE ADVOCATES IN COMBAT: ARMY LAWYERS IN MILITARY OPERATIONS FROM VIETNAM TO HAITI (to be published by the U.S. Army Center of Military History later this year).