

## Advising Special Forces

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### I. Introduction

You have arrived. You previously asked for an assignment as a special forces battalion judge advocate and now here you are. Your new paralegal noncommissioned officer (NCO), Staff Sergeant (SSG) Smith, has escorted you to your new office. Before you can gather yourself, Smith starts briefing you.

“Ma’am,<sup>1</sup> I’m really glad you’re here. The battalion commander wants to know what to do with one of our Soldiers who popped up on the blotter—here it is.” You see something about bringing an unregistered weapon onto post. Standard stuff, you think, as you begin to think through possible courses of action for the command. You wonder if this generates an automatic general officer memorandum of reprimand (GOMOR) from the Office of the Staff Judge Advocate (OSJA) of your higher headquarters at Fort Bragg or at the garrison OSJA. You also make a mental note to check on any withholding policies and find the battalion commander’s office very soon. You reply, “OK, thanks. What’s next?”

“Well, now that you’re here, I don’t have to ask group legal to take care of these things,” he replies. “This is a training concept for one of our teams,” he continues. “They’re going out to a training area on a different installation and are thinking about training on someone’s farm. These aren’t tough to do, and I can draft them for you.” You start to ponder this issue, but SSG Smith is not yet done.

“Another thing that I had to go to group for was support on legal briefings. We have a few teams kicking out, one on a Joint Combined Exchange Training (JCET) and one on an Execute Order (EXORD) mission.” You are about to say that all of that is no problem, when an NCO wearing a special forces tab<sup>2</sup> steps into the office.

He asks for help with his “tab revo” packet, but you have no idea what that means. You buy yourself some time by asking if he can return after lunch. The NCO looks a little nonplussed, but he agrees. SSG Smith says, “Way to think on your feet, sir. But this office helped push that tab revo through.” You nod, but you still do not know what a tab revo is.

Before you can ask, SSG Smith says, “Sir, I’ve been wanting to take paternity leave for a while now. Taking care of the underlap and all . . . I’m just about to lose out on it. So, can you do without me for the next ten days?” All of what you have just seen and heard probably is not too difficult, you think. You just do not know what you do not know. You swallow hard. “Sure,” you hear yourself saying.

The foregoing provides a typical sampling of the issues that special forces (SF) battalion judge advocates (JA) regularly confront. This article will introduce a newly-assigned SF battalion JA to the practice of a legal advisor to SF units. Further, the following will especially help the SF battalion JA who cannot make it to off-site courses at the beginning of his assignment,<sup>3</sup> thereby enhancing his ability to

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<sup>1</sup> Positions for women as Special Forces Battalion Judge Advocates and Paralegal non-commissioned officers (NCOs) have recently opened. See U.S. DEP’T OF ARMY, DIR. 2015-08, EXPANDING POSITIONS IN OPEN

OCCUPATIONS FOR THE ASSIGNMENT OF FEMALE SOLDIERS WITHIN U.S. SPECIAL OPERATIONS COMMAND (25 Feb. 2015); Military Personnel Message, 15-088, U.S. Army Human Res. Command, subject: Implementation of Army Directive 2015-08 (23 Mar. 2015). See also Special Insert, *U.S. Army Special Operations Command ARSOF 2022, Part II, SPECIAL WARFARE*, July-Sept. 2014, at 1, 19, <http://www.dvidshub.net/publication/issues/22683> (highlighting progress on “Project Diane” which “expand[s] service opportunities for women and explore concepts to leverage gender in the conduct of [special] operations”) [hereinafter Special Insert]. Women have been serving in previously open positions as group judge advocates and group support battalion judge advocates.

<sup>2</sup> U.S. DEP’T OF ARMY, REG. 600-8-22, MILITARY AWARDS para. 8-49 (11 Dec. 2006) (RAR 24 June 2013) [hereinafter AR 600-8-22]. The special forces tab is commonly referred to as a “long tab.” See e.g. *What Does It Take to Become a Green Beret?* SAND DIEGO UNION-TRIBUNE (Aug. 26, 2015 1:48 PM), <http://www.sandiegouniontribune.com/news/2015/aug/26/green-beret-special-forces-requirements/>

<sup>3</sup> *Course Information*, JOINT SPECIAL OPERATIONS UNIV., [https://jsou.socom.mil/Pages/CourseInformation.aspx?CourseName=Joint Special Operations Legal Advisor Course](https://jsou.socom.mil/Pages/CourseInformation.aspx?CourseName=Joint%20Special%20Operations%20Legal%20Advisor%20Course) (last visited May 31, 2016); E-mail from Major Jeff Rohrbach, Group Judge Advocate, 5th Special Forces Group (Airborne), to author (Sept. 23, 2014 09:15 EST) (on file with author); Interview with Captain Keith Schellack, Battalion Judge Advocate, 3d Battalion, 5th Special Forces Group (Airborne) (Dec. 3, 2014).

practice preventive law.<sup>4</sup> This article will change the issues from “unknown unknowns” into “known knowns” and “known unknowns.”<sup>5</sup>

This article will proceed in four more parts. Part II will broadly explore the attributes of special operations, special operations forces (SOF), the SOF mission, and SOF Soldiers. The article will not address how one receives assignment as a SF battalion JA,<sup>6</sup> the storied history of the SF Regiment,<sup>7</sup> or specific SF unit composition.<sup>8</sup> Based on Part II, Part III will address the practical considerations for the SF battalion JA in rendering legal advice. Part IV will then examine specific substantive considerations of practicing at a SF battalion. Finally, Part V concludes the article.

## II. The Special Forces’ Mission Requires Unique People

### A. Statutes and Doctrine

Special operations forces are “special” both by statute and by the Secretary of Defense’s (SecDef) designation. Although many look at SOF and SF as superior to conventional forces,<sup>9</sup> one has to follow up with the question, “better at what?” The “what” is the particular group of core activities that Congress has set aside for SOF. The “who” is whomever the SecDef designates to accomplish SOF core activities.<sup>10</sup> Special operations forces are “[t]hose Active and Reserve Component forces of the Services designated by the SecDef and specifically organized, trained, and equipped to conduct and support special operations.”<sup>11</sup> Special forces Soldiers, also called “Green Berets”<sup>12</sup> because of their

distinctive headgear, fall under this definition as a subset of SOF.<sup>13</sup>

Special operations are those “operations requiring unique modes of employment, tactical techniques, equipment and training often conducted in hostile, denied, or politically sensitive environments and characterized by one or more of the following: time sensitive, clandestine, low visibility, conducted with and/or through indigenous forces, requiring regional expertise, and/or a high degree of risk.”<sup>14</sup> Within these operations, SOF executes statutorily specified core activities<sup>15</sup> for example, “direct action,” “strategic reconnaissance,” “unconventional warfare,” “foreign internal defense,” and “counterterrorism.”<sup>16</sup>

A unique SOF headquarters commands SOF subordinate commands. United States Special Operations Command (USSOCOM) is a unified combatant command with responsibilities similar to those of a service, military department, or defense agency.<sup>17</sup> United States Special Operations Command commands Joint Special Operations Command, Air Force Special Operations Command, Marine Special Operations Command, Naval Special Warfare Command, and U.S. Army Special Operations Command (Airborne) (USASOC(A)).<sup>18</sup> United States Army Special Operations Command (Airborne) in turn commands, among other units, First Special Forces Command (Airborne) (1st SFC(A)).<sup>19</sup> Additionally, USSOCOM commands the theater special operations commands (TSOCs).<sup>20</sup> The TSOCs serve under the operational control (OPCON)<sup>21</sup> of each combatant

<sup>4</sup> U.S. DEP’T OF ARMY, REG. 27-1, JUDGE ADVOCATE LEGAL SERVICES para. 5-3 (30 Sept. 1996) (RAR 13 Sept. 2011) [hereinafter AR 27-1]; U.S. DEP’T OF ARMY, FIELD MANUAL 1-04, LEGAL SUPPORT TO THE OPERATIONAL ARMY para. 4-6 (18 Mar. 2013) [hereinafter FM 1-04].

<sup>5</sup> See Transcript, DoD News Briefing-Sec’y Rumsfeld and Gen. Myers (Feb. 12, 2002), <http://archive.defense.gov/transcripts/transcript.aspx?transcriptid=2636>

<sup>6</sup> This is a topic a Judge Advocate Captain should address with his or her Staff Judge Advocate and the Personnel, Plans and Training Office.

<sup>7</sup> See generally *Special Forces History*, U.S. ARMY SPECIAL OPERATIONS COMMAND, <http://www.soc.mil/USASFC/SFhistory.html> (last visited May 31, 2016).

<sup>8</sup> See generally *infra* Part VIII.

<sup>9</sup> “Conventional forces” is the preferred doctrinal term to “general-purpose forces.” Jeffrey Hasler, *Defining War*, SPECIAL WARFARE, Jan.-Feb. 2011, at 12, 16–17. See also JOINT CHIEFS OF STAFF, JOINT PUB. 1-02, DEPARTMENT OF DEFENSE DICTIONARY OF MILITARY AND ASSOCIATED TERMS 55 (8 Nov. 2010) [hereinafter JOINT PUB. 1-02].

<sup>10</sup> See 10 U.S.C. § 167(i) (2012); see also ELVIRA N. LOREDO ET AL., AUTHORITIES AND OPTIONS FOR FUNDING USSOCOM OPERATIONS 3–4 (2014).

<sup>11</sup> JOINT PUB. 1-02, *supra* note 9, at 236.

<sup>12</sup> *Green Berets*, JOHN F. KENNEDY PRESIDENTIAL LIBRARY & MUSEUM, <http://www.jfklibrary.org/JFK/JFK-in-History/Green-Berets.aspx> (last visited May 15, 2016).

<sup>13</sup> See U.S. DEP’T OF ARMY, DOCTRINE REFERENCE PUB. 3-05, SPECIAL OPERATIONS paras. 3-57 to 3-63 (31 Aug. 2012) [hereinafter ADRP 3-05].

<sup>14</sup> JOINT PUB. 1-02, *supra* note 9, at 236.

<sup>15</sup> 10 U.S.C. § 167(j); JOINT CHIEFS OF STAFF, JOINT PUB. 3-05, SPECIAL OPERATIONS II-2 (16 July 2014) [hereinafter JOINT PUB. 3-05]; FM 1-04, *supra* note 4, para. 14-3. See also *infra* note 126 to 130 and accompanying text.

<sup>16</sup> 10 U.S.C. § 167(j).

<sup>17</sup> 10 U.S.C. §§ 164(c), 167(a), (e)–(f); DAVID TUCKER & CHRISTOPHER J. LAMB, UNITED STATES SPECIAL OPERATIONS FORCES 97 (2007); U.S. DEP’T OF DEF., DIR. 5100.01, FUNCTIONS OF THE DEPARTMENT OF DEFENSE AND ITS MAJOR COMPONENTS, para. 4(e) (21 Dec. 2010); U.S. SPECIAL OPERATIONS COMMAND, PUB. 1, DOCTRINE FOR SPECIAL OPERATIONS 11 (5 Aug. 2011) [hereinafter USSOCOM PUB. 1].

<sup>18</sup> 10 U.S.C. § 167(e)(2)(C); USSOCOM PUB. 1, *supra* note 17, at 11–14.

<sup>19</sup> This command will merge into Special Warfare Command (Airborne). Special Insert, *supra* note 1, at 10–11. United States Army Special Forces Command (Airborne) has recently changed its designation to 1st SFC(A).

<sup>20</sup> Michael D. Tisdell et al., Theater Special Operations Command Realignment, at slide 4 (17 June 2014) (PowerPoint presentation) INTERNATIONAL COMMAND AND CONTROL INSTITUTE, [http://www.dodccrp.org/events/19th\\_iccrts\\_2014/post\\_conference/presentations/005.pdf](http://www.dodccrp.org/events/19th_iccrts_2014/post_conference/presentations/005.pdf), (last accessed 22 Mar. 2016)

<sup>21</sup> JOINT PUB. 1-02, *supra* note 9, at 189.

command (CCMD).<sup>22</sup> First SFC(A) provides SF units for employment by TSOCS, usually in alignment with the SF groups' respective regional focus.<sup>23</sup>

Legislation "gave the [USSOCOM] its own line in the defense budget and the authority to develop and acquire SOF-specific equipment . . ." <sup>24</sup> Special operations forces "must use unorthodox approaches"<sup>25</sup> that "require unconventional equipment and training."<sup>26</sup> This statutory authority means that USSOCOM can equip its forces with materiel that each service procures, also known as "service-common" <sup>27</sup> equipment, and can also procure USSOCOM's own, "special operations-peculiar"<sup>28</sup> equipment.

Special forces are not different because of any purported mystique.<sup>29</sup> The substantive difference between conventional Soldiers and SF Soldiers, among others, is that the above missions drive different modes of operation. These missions require "hand-picked, distinctively prepared personnel."<sup>30</sup> The ability to escape conventional forces' strictures has undoubtedly motivated Soldiers to volunteer for assessment, selection, and continued service in the SF Regiment.<sup>31</sup>

## B. The Characteristics and Abilities of Special Forces Soldiers Make Them a Unique Army Client

As stated above, U.S. Army special forces<sup>32</sup> are a subset of SOF. An outward distinction is that only SF Soldiers get to wear the SF Tab.<sup>33</sup> This emphasis on SOF vs. SF may seem a pedantic technicality, but people often confuse the terms,<sup>34</sup>

and mastery of terminology—and a willingness to ask about it<sup>35</sup>—can help boost a JA's credibility.

Another way to view the general characteristics of the SF Soldier is through the lens of the five "SOF Truths."<sup>36</sup> Truth 1 is, "Humans are more important than hardware."<sup>37</sup> "(The Special Forces Operating Command) has often stressed that its philosophical approach is to 'equip the warrior, not man the equipment.'" <sup>38</sup> Truth 2 is, "Quality is better than quantity." Special Forces only accepts Soldiers into its ranks those who meet the requirements, those Soldiers who "have an uncommon will to succeed."<sup>39</sup>

Truth 3 is, "[SOF] cannot be mass produced," and Truth 4 is, "Competent [SOF] cannot be created after emergencies occur."<sup>40</sup> "[S]pecial operations require creative approaches to problem-solving that sometimes defy American norms and military doctrine without violating fundamental American values."<sup>41</sup> Achieving this judgment takes time; therefore, it cannot materialize on demand in an emergency.<sup>42</sup> Special forces Soldiers feel comfortable working and making decisions in so-called gray areas, which requires a "unique ability to lead in ambiguous circumstances."<sup>43</sup>

Truth 5 is, "most special operations require non-SOF assistance."<sup>44</sup> The battalion JA is part of that non-SOF assistance. Most operations will require legal advice and support. The SF battalion JA and paralegal NCO provide this assistance as a staff section.

<sup>22</sup> See 10 U.S.C. § 167(d)(1); MICHAEL D. TISDEL ET AL., *supra* note 20, at slide 4.

<sup>23</sup> See *U.S. Army Special Forces Command*, U.S. ARMY SPECIAL OPERATIONS COMMAND, <http://www.soc.mil/USASFC/HQ.html> (last visited May 15, 2016).

<sup>24</sup> National Defense Authorization Act for Fiscal Year 1987, Pub. L. No. 99-661, § 1311(c), 100 Stat. 3816, 3983 (1986); TUCKER & LAMB, *supra* note 17, at 97; USSOCOM PUB. 1, *supra* note 17, at 3-4; LOREDO ET AL., *supra* note 10, at 3-4.

<sup>25</sup> TUCKER & LAMB, *supra* note 17, at 149.

<sup>26</sup> *Id.*

<sup>27</sup> JOINT PUB. 1-02, *supra* note 9, at 230.

<sup>28</sup> 10 U.S.C. § 167(e)(4)(A); JOINT PUB. 1-02, *supra* note 09, at 237.

<sup>29</sup> See TUCKER & LAMB, *supra* note 17, at 45.

<sup>30</sup> STAFF OF H. ARMED SERV. COMM., 100TH CONG., UNITED STATES AND SOVIET SPECIAL OPERATIONS: A STUDY 73 (Comm. Print 1987) (primarily written by John M. Collins) [hereinafter Collins, SPECIAL OPERATIONS].

<sup>31</sup> See TUCKER & LAMB, *supra* note 17, at 49.

<sup>32</sup> JOINT PUB. 1-02, *supra* note 9, at 236.

<sup>33</sup> AR 600-8-22, *supra* note 2, para. 8-49. *But see id.* tbl.8-1.

<sup>34</sup> See, e.g., Major E. John Gregory, *The Deployed Court-Martial Experience in Iraq 2010: A Model for Success*, ARMY LAW., Jan. 2012, at 6, 6 n.3 (2012).

<sup>35</sup> Lieutenant Colonel Mike Ryan, *Azimuth, Distance, and Checkpoints: Thoughts on Leadership, Soldiering, and Professionalism for Judge Advocates (JA)*, ARMY LAW., Aug. 2005, at 40, 43-44 [hereinafter Ryan, *Thoughts on Leadership*]; Interview with Captain Schellack, *supra* note 3; Telephone Interview, Captain Jack Einhorn, Battalion Judge Advocate, 4th Battalion, 3d Special Forces Group (Airborne) (Dec. 9, 2014).

<sup>36</sup> *SOF Truths*, U.S. SPECIAL OPERATIONS COMMAND, <http://www.socom.mil/Pages/SOFTruths.aspx> (last visited May 15, 2016). See also Collins, SPECIAL OPERATIONS, *supra* note 30, at v; U.S. DEP'T OF ARMY, DA PAM. 600-3, COMMISSIONED OFFICER PROFESSIONAL DEVELOPMENT AND CAREER MANAGEMENT ch. 16 (3 Dec. 2014); U.S. DEP'T OF ARMY, PAM 600-25, U.S. ARMY NONCOMMISSIONED OFFICER PROFESSIONAL DEVELOPMENT GUIDE ch. 8 (28 July 2008) [hereinafter DA PAM. 600-25].

<sup>37</sup> *SOF Truths*, *supra* note 36.

<sup>38</sup> TUCKER & LAMB, *supra* note 17, at 149.

<sup>39</sup> *Id.* at 148.

<sup>40</sup> *SOF Truths*, *supra* note 36.

<sup>41</sup> TUCKER & LAMB, *supra* note 17, at 149.

<sup>42</sup> See *id.* at 50-51.

<sup>43</sup> Master Sergeant Walter K. Treichel, *Change of Command*, SPECIAL WARFARE, Apr.-June 2013, at 10.

<sup>44</sup> *SOF Truths*, *supra* note 36.

### III. The Special Forces Battalion Judge Advocate

#### A. Serving as a Personal Staff Officer<sup>45</sup> in Support of Special Forces

The battalion JA should expect to educate staff and commanders on a JA's role,<sup>46</sup> especially when his legal advice might be viewed as placing constraints on a commander's desired course of action.<sup>47</sup> The battalion JA should help other staff officers fulfill their responsibilities, while not undermining them.<sup>48</sup>

To add value as a counselor, the battalion JA must get himself into the room for meetings or discussions.<sup>49</sup> A predicate step is to have the appropriate clearances for access to classified information.<sup>50</sup> Prior to arriving at an assignment, a battalion JA should at the least assemble the required paperwork for a prospective Top Secret clearance.<sup>51</sup> The battalion JA must be in a position to give advice, and if that requires rucking, driving or jumping, then he does it.<sup>52</sup>

As the legal expert, the commander expects the battalion JA to use his own initiative to educate the command team and staff and take care of the unit's Soldiers.<sup>53</sup> The commander expects the battalion JA to exercise not only competence but also creativity within the constraints of law, regulation, and policy.<sup>54</sup> The battalion JA must remain aware that the SF Soldier and commander will approach a problem with great comfort in operating up to legal limits while not crossing them.

Gaining trust is a foundational requirement for effective legal services.<sup>55</sup> One way to gain trust from the unit's Soldiers is, within ethical bounds, to provide legal assistance.<sup>56</sup> To gain trust, the battalion JA must have credibility.<sup>57</sup> The battalion JA must carry himself well,<sup>58</sup> embracing the role as the legal expert who supports operators<sup>59</sup> but is not an operator himself.<sup>60</sup> The JA who has the courage to admit that he does not know the answer, but will find it, and then keep that promise, can gain credibility as well.<sup>61</sup>

Part of delivering legal services is cultivating relationships outside of the battalion. Often due to concurrent command and area jurisdiction, the garrison OSJA presents matters on behalf of the group to the general court-martial convening authority for decisions.<sup>62</sup> The battalion JA has to balance the requirements of his operational and technical chains.<sup>63</sup> The group judge advocate (GJA), the technical supervisor, expects the battalion JA to operate independently within her intent, to include that of the 1st SFC(A) SJA.<sup>64</sup> The battalion JA can help his battalion by conducting independent reviews that the GJA can either adopt or adjust, thereby setting conditions for favorable, expedient decisions up the chain of command.<sup>65</sup>

#### B. Leading and Mentoring the Paralegal NCO in Delivering Effective Legal Services

Under the battalion JA's supervision, the paralegal NCO provides legal services to the battalion. To best serve the

<sup>45</sup> U.S. DEP'T OF ARMY, FIELD MANUAL 6-0, COMMANDER AND STAFF ORGANIZATION AND OPERATIONS paras. 2-24, 2-105, 2-113 (5 May 2014) [hereinafter FM 6-0].

<sup>46</sup> UCMJ art. 6(b) (2012); AR 27-1, *supra* note 4, paras. 3-2, 5-2 to 5-3; U.S. DEP'T OF ARMY, REG. 27-26, RULES OF PROFESSIONAL CONDUCT FOR LAWYERS r. 1.13 & r. 1.13 cmt. (1 May 1992) [hereinafter AR 27-26]; FM 1-04, *supra* note 4, paras. 1-4, 1-7, 1-12, 2-40; FM 6-0, *supra* note 45, paras. 2-105, 2-113, 9-162. See Judge James E. Baker, *National Security Process and a Lawyer's Duty: Remarks to the Senior Judge Advocate Symposium*, 173 MIL. L. REV. 124, 132 (2002) [hereinafter Baker, *Lawyer's Duty*].

<sup>47</sup> Colonel Richard D. Rosen & Lieutenant Colonel Kathryn Sommerkamp, *Military Legal Practice Maxims: A Potpourri of Random Thoughts*, ARMY LAW., June 2001, at 22, 23 [hereinafter Rosen & Sommerkamp, *Maxims*].

<sup>48</sup> *Id.* at 27-28; Lieutenant Colonel Mike Ryan, *Setting Conditions for Success: Seven Simple Rules for New Staff Officers*, ARMY LAW., Oct. 2006, at 33, 36 [hereinafter Ryan, *Seven Simple Rules*].

<sup>49</sup> Lieutenant Colonel Marc L. Warren, *Operational Law—A Concept Matures*, 152 MIL. L. REV. 33, 40-41 (1996); Major Candace M. Beshershe, *The Godfather: Seven Lessons on Providing Effective Counsel*, ARMY LAW., July 2011, at 32, 33, 33 n.13-17.

<sup>50</sup> Major Gary L. Walsh, *Role of the Judge Advocate in Special Operations*, ARMY LAW., Aug. 1989, at 4, 6.

<sup>51</sup> Interview with Captain Schellack, *supra* note 3.

<sup>52</sup> See Ryan, *Thoughts on Leadership*, *supra* note 35, at 45-46.

<sup>53</sup> See Baker, *Lawyer's Duty*, *supra* note 46, at 132.

<sup>54</sup> LINDA ROBINSON, *MASTERS OF CHAOS: THE SECRET HISTORY OF THE SPECIAL FORCES 326* (2005); Rosen & Sommerkamp, *Maxims*, *supra* note 47, at 22-23.

<sup>55</sup> See Walsh, *supra* note 50, at 6.

<sup>56</sup> Interview with Captain Schellack, *supra* note 3. See *infra* Part IV.B (addressing avoiding conflicts of interest).

<sup>57</sup> Walsh, *supra* note 50, at 6.

<sup>58</sup> Ryan, *Thoughts on Leadership*, *supra* note 35, at 40-42. See Warren, *supra* note 49, at 41.

<sup>59</sup> Ryan, *Seven Simple Rules*, *supra* note 48, at 33.

<sup>60</sup> Ryan, *Thoughts on Leadership*, *supra* note 35, at 46.

<sup>61</sup> *Id.* at 43-44; Interview with Captain Einhorn, *supra* note 35.

<sup>62</sup> Interview with Captain John Swords, Battalion Judge Advocate, 1st Battalion, 10th Special Forces Group (Airborne) (Dec. 10, 2014).

<sup>63</sup> Memorandum from The Judge Advocate General to Judge Advocate Legal Service Personnel, subject: Use of Technical Channel of Communications-Policy Memorandum 14-04 (22 Jan. 2014); Interview, Captain Jason McKenna, Battalion Judge Advocate, 1st Battalion, 3d Special Forces Group (Airborne) (Dec. 3, 2014).

<sup>64</sup> FM 1-04, *supra* note 4, paras. 14-6, 14-11.

<sup>65</sup> Interview with Captain McKenna, *supra* note 63.

battalion, the JA must care enough to lead, mentor, invest time in, and look out for the paralegal NCO and his Family. The battalion JA should also take special note of the paralegal NCO's professional and personal goals and provide time and encouragement to the paralegal NCO to achieve them. Not only will the paralegal NCO benefit, but the battalion and the Army will benefit as well.

The battalion JA must lead, and that includes counseling.<sup>66</sup> No Soldier wants to arrive at the end of a rating period and then discover that he had not lived up to his supervisor's expectations.<sup>67</sup> The battalion JA must prepare for and execute the initial counseling and the quarterly counseling. Practically, regular counseling will help the battalion JA complete the noncommissioned officer evaluation report (NCOER) on time. The battalion JA should seek technical chain advice from his GJA and group paralegal NCO in completing the NCOER. The operational NCO leadership can offer advice as well, and will want to review it ahead of time.

Leadership also includes substantive actions. The battalion JA needs to supervise the paralegal NCO in accordance with professional ethics.<sup>68</sup> The paralegal NCO can conduct legal research and writing and give briefings. He can draft legal reviews of investigations and training concepts for the battalion JA to edit, review, and sign. Concurrently, the battalion JA should note areas for improvement and mentor the paralegal NCO accordingly.

The battalion JA should let the paralegal take the initiative wherever possible. The battalion JA can empower the paralegal NCO to run the office: keep track of issues and clients, screen for conflicts, etc. He should track training events including airborne operations and act as the section noncommissioned officer in charge (NCOIC) to help the battalion support company.

The battalion JA should recognize the paralegal NCO's achievements by submitting nominations for commander's coins or awards and supporting requests for schools. This support not only helps the paralegal NCO, it also lets the JA's chain of command know that he is supporting the unit and is willing to advocate for his subordinates. Thus, the paralegal

NCO becomes part of a legal team that can better meet its substantive responsibilities.

#### IV. The Six Core Legal Disciplines in the Context of Special Forces Operations

##### A. Administrative Law<sup>69</sup>

Special forces' command structure makes for unique command policies at each level. Applicable regulations and policies reside at the following levels: Department of Defense (DoD), USSOCOM, CCMD, TSOC, USASOC(A), 1st SFC(A), garrison, group, and battalion. Each higher headquarters might have adjusted regulations on certain activities more restrictively than law and regulation would otherwise allow. That knowledge also means that a battalion JA should look for opportunities to help guide requests for exceptions to policy through the chain of command.<sup>70</sup>

Additionally, battalion policy letters help govern day-to-day activities and may contain punitive provisions.<sup>71</sup> The battalion JA should work with the battalion adjutant (S-1) to review new policy letters—particularly those dealing with Uniform Code of Military Justice matters. The battalion JA should do this when the battalion commander decides to rewrite them either on his own, or otherwise. The paralegal NCO should read, brief, and discuss the policy letters with the battalion JA before the battalion JA renders legal advice.

##### 1. Financial Liability Investigations of Property Loss and Other Investigations

The battalion JA needs to help guide the financial liability investigations of property loss (FLIPL) process in support of the battalion supply officer (S-4).<sup>72</sup> Drafting appointment letters, in-briefing financial liability officers (FLOs),<sup>73</sup> and reviewing FLIPLs will be a significant part of battalion JA's practice.<sup>74</sup> The paralegal NCO can help make this a battle drill.

Advising on investigations appointed pursuant to Army Regulation 15-6 is another significant portion of the battalion JA's practice. Investigations in general give the commander an opportunity to get a more accurate picture of his

<sup>66</sup> U.S. DEP'T OF ARMY, REG. 600-20, ARMY COMMAND POLICY para. 2-3 (6 Nov. 2014) [hereinafter AR 600-20]; see Major Todd W. Simpson, *Supervising Paralegals in Accordance with the Rules of Professional Conduct*, ARMY LAW., Jan. 2014, at 24, 31.

<sup>67</sup> See U.S. DEP'T OF ARMY, DOCTRINE REFERENCE PUB. 6-22, ARMY LEADERSHIP para. 7-60 (1 Aug. 2012) (C1, 10 Sept. 2012). *But see* LEONARD WONG & STEPHEN J. GERRAS, LYING TO OURSELVES: DISHONESTY IN THE ARMY PROFESSION 10-11 (2015).

<sup>68</sup> AR 27-26, *supra* note 46, r. 5.3, 5.5. See generally Simpson, *supra* note 66.

<sup>69</sup> FM 1-04, *supra* note 4, paras. 5-31, 5-34 to 5-35.

<sup>70</sup> See Rosen & Sommerkamp, *Maxims*, *supra* note 47, at 24.

<sup>71</sup> See UCMJ art. 90 (2012); Major Troy C. Wallace, *Command Authority: What Are the Limits on Regulating the Private Conduct of America's Warriors?*, ARMY LAW., May 2010, at 13, 14-16.

<sup>72</sup> See generally Major Jason S. Ballard, *The New FLIPL: A Article for Practitioners*, ARMY LAW., Oct. 2014, at 45.

<sup>73</sup> See generally U.S. DEP'T OF ARMY, PAM. 735-5, FINANCIAL LIABILITY OFFICER'S GUIDE (9 Apr. 2007).

<sup>74</sup> U.S. DEP'T OF ARMY, REG. 735-5, PROPERTY ACCOUNTABILITY POLICIES para. 13-39 (10 May 2013) (RAR 22 Aug. 2013); Ballard, *supra* note 72, at 52.

command—although Soldiers in general typically do not like being investigated.<sup>75</sup> Completed investigations can help protect the command and Soldiers against post hoc allegations of wrongdoing. The battalion JA needs to know which incidents trigger an investigation and which incidents fall under particular investigative agencies' purview.<sup>76</sup>

## 2. Standards of Conduct

The battalion JA will also assist in the implementation of the GJA's ethics program. The GJA will likely be the appointed "ethics counselor"<sup>77</sup> for the group. Helping the GJA will usually entail issue spotting. The battalion JA should stay attuned to possible violations of the Joint Ethics Regulation (JER) because many outside agencies want to associate themselves with SF Soldiers and their status. The battalion JA must be familiar with the regulations, especially the JER,<sup>78</sup> regarding these types of solicitations and educate the command for its situational awareness. Possible areas of conflict include endorsements, contests, competitions, speaking engagements, donations to the Army and individual Soldiers, acceptance of travel benefits from non-federal entities (NFEs),<sup>79</sup> and post-government employment.<sup>80</sup> Battalion JAs will likely assist their GJAs with administration requirements for financial disclosures, namely Office of Government Ethics (oge) 450 reports.<sup>81</sup>

## 3. Taking Care of Soldiers and Their Families

The battalion JA will also assist with the family readiness group (FRG),<sup>82</sup> a commander's program.<sup>83</sup> A commander

must establish an FRG "in accordance with [regulations] to provide activities and support that encourage self-sufficiency among its members by providing information, referral assistance, and mutual support."<sup>84</sup> A family readiness support assistant (FRSA) helps administer the FRG for the commander. Family readiness support assistants help "maintain the continuity and stability" of FRGs.<sup>85</sup> A battalion JA who maintains close contact with the FRSA can help the FRG adhere to regulatory requirements, especially since a garrison command will probably have an applicable regulation as well.<sup>86</sup>

The JER permits NFEs, alongside DoD programs, to assist SF Soldiers.<sup>87</sup> One of these DoD programs is the USSOCOM Care Coalition. The USSOCOM Care Coalition "provide[s] direct, lifelong assistance to SOF personnel who are wounded, ill, or injured through effective follow up contact and collaboration with multidisciplinary teams . . . , medical case managers and other military agencies."<sup>88</sup> The Army Chaplain Corps provides Strong Bonds programs.<sup>89</sup> Non-federal entities who actively assist the command find ways to contribute as well.<sup>90</sup> The battalion JA contributes himself by providing legal assistance to Soldiers and their Families.

<sup>75</sup> See U.S. DEP'T OF ARMY, REG. 380-67, PERSONNEL SECURITY PROGRAM paras. 8-2 to 8-3 (24 Jan. 2014); U.S. DEP'T OF ARMY, REG. 600-8-2, SUSPENSION OF FAVORABLE PERSONNEL ACTIONS (FLAG) para. 2-2.a (23 Nov. 2012).

<sup>76</sup> See, e.g., U.S. DEP'T OF ARMY, REG. 195-2, CRIMINAL INVESTIGATION ACTIVITIES app. B (9 June 2014); Required Admin Investigations Chart JAGCNET (6 Oct. 2014), [https://www.jagcnet2.army.mil/Sites%5C%5CAdministrativeLaw.nsf/0/3DEDAB198F3A6B6185257DA40073814B/%24File/Required%20Admin%20Investigations%20Chart%20\(6OCT14\).docx](https://www.jagcnet2.army.mil/Sites%5C%5CAdministrativeLaw.nsf/0/3DEDAB198F3A6B6185257DA40073814B/%24File/Required%20Admin%20Investigations%20Chart%20(6OCT14).docx).

<sup>77</sup> U.S. DEP'T OF DEF., 5500.7-R, JOINT ETHICS REGULATION (JER) para. 1-212 (30 Aug. 1993) (C7, 17 Nov. 2011) [hereinafter JER].

<sup>78</sup> See generally *id.*; U.S. DEP'T OF ARMY, REG. 1-100, GIFTS AND DONATIONS (15 Nov. 1983); U.S. DEP'T OF ARMY, REG. 1-101, GIFTS FOR DISTRIBUTION TO INDIVIDUALS (1 May 1981).

<sup>79</sup> JER, *supra* note 77, para. 1-217.

<sup>80</sup> See generally *Ethics Counselor's Deskbook*, U.S. DEP'T OF DEF. STANDARDS OF CONDUCT OFFICE (SOCO), [http://www.dod.mil/dodgc/defense\\_ethics/resource\\_library/deskbook/deskbook\\_index.html](http://www.dod.mil/dodgc/defense_ethics/resource_library/deskbook/deskbook_index.html) (last accessed May 15, 2016) (providing a number of resources on the above topics).

<sup>81</sup> U.S. DEP'T OF ARMY, FINANCIAL DISCLOSURE MANAGEMENT USER GUIDE 274 [https://www.fdm.army.mil/documents/FDM\\_User\\_Guide.pdf](https://www.fdm.army.mil/documents/FDM_User_Guide.pdf) (last accessed Mar. 22, 2016). See Major Alan J. Cook, *Notes from the Field: An Overview and Practitioners' Guide to Financial Disclosures*, ARMY LAW., Nov. 1996, at 45, 45, 52-56.

<sup>82</sup> AR 600-20, *supra* note 66, para. 5-10.b(7)(g).

<sup>83</sup> U.S. DEP'T OF ARMY, REG. 608-1, ARMY COMMUNITY SERVICE para. 4-6.a (13 Mar. 2013) [hereinafter AR 608-1].

<sup>84</sup> *Id.* para. 4-6.a. See also AR 600-20, *supra* note 66, para. 5-10.b(7)(g).

<sup>85</sup> AR 608-1, *supra* note 83, para. 4-6.c.

<sup>86</sup> See generally *id.* app. J; Major Laura A. Grace, *Good Idea Fairies: How Family Readiness Groups and Related Private Organizations Can Work Together to Execute the Good Ideas*, ARMY LAW., Sept. 2012, at 25.

<sup>87</sup> See generally JER, *supra* note 78, ch. 3.

<sup>88</sup> *Care Coalition*, USSOCOM, <http://www.socom.mil/Care%20Coalition/Advocacy.aspx> (last visited May 18, 2015). See also The Wounded Warrior Act of 2008, Pub. L. No. 110-181, §§ 1601-76, 122 Stat. 431, 431-85 (2008); JER, *supra* note 78, paras. 3-400 to 3-401.

<sup>89</sup> Memorandum from Chief of Chaplains to Command Chaplain Offices et al., subject: Total Army Fiscal Year 2015 (FY15) Strong Bonds Program Management, Resourcing and Training (2 July 2014), <https://www.milsuite.mil/book/servlet/JiveServlet/download/530415-510166/FY15%20Strong%20Bonds%20MOI.pdf>.

<sup>90</sup> *Charitable Missions*, SPECIAL FORCES ASS'N, <http://www.sfahq.org/charitable-missions/> (last visited May 15, 2016); SPECIAL FORCES CHARITABLE TRUST, <http://www.specialforcescharitabletrust.org> (last visited May 15, 2016); Interview with Captain McKenna, *supra* note 63.

## A. Legal Assistance<sup>91</sup> and Claims<sup>92</sup>

The battalion JA has to balance providing legal assistance to his Soldiers with providing legal support to the battalion commander.<sup>93</sup> To avoid conflicts of interest, a battalion JA can brief his operational chain of command so that it can determine how to prioritize the battalion JA's efforts.<sup>94</sup> For example, if the chain of command wants to focus the battalion JA's efforts toward legal support to the Soldier, it can do so with an appreciation that if a legal issue arises with that Soldier, commanders will have to seek legal advice from the GJA or another battalion JA.<sup>95</sup> Conversely, the chain of command may want to focus legal support on itself, i.e., the Army, acting through its appointed officials,<sup>96</sup> with the understanding that the battalion JA would have to refer Soldiers to the garrison OSJA legal assistance office, GJA, or sister SF battalion JAs. Within the frame of the GJA's legal assistance policy, the battalion JA should discuss this topic with his chain of command.<sup>97</sup> The paralegal NCO can also help the battalion JA with preventive law emails, briefings for Soldiers, and coordination for garrison OSJA help. The paralegal NCO should also use the Client Information System.<sup>98</sup>

Finally, although the battalion JA does not run a claims processing office, he must be aware that claims issues arise anywhere in the world.<sup>99</sup> The battalion JA should know where SF teams are deploying and the service and local office responsibility for claims processing.<sup>100</sup> The battalion JA will

ensure that units know to give him a call, and he can monitor daily situation reports for claims issues.

## B. Military Justice and Adverse Administrative Personnel Actions<sup>101</sup>

Adverse administrative actions and military justice actions are not the same thing, but they often live in the same neighborhood. Although adverse administrative and military justice actions occur less frequently in SF than in conventional units,<sup>102</sup> the command will expect the battalion JA to help guide these processes efficiently to completion<sup>103</sup> and serve as recorder or trial counsel as needed. Just as in conventional units, SF units may determine that a Soldier, must be separated from the service in accordance with regulation.<sup>104</sup> In giving advice, the battalion JA should be prepared to explain the impacts of a separation on a Soldier such as special pays and bonuses.<sup>105</sup> A separation for an enlisted Soldier might dovetail with other adverse administrative actions.

One possible adverse administrative action for an enlisted SF Soldier in Career Management Field (CMF) 18<sup>106</sup> is revocation of his SF Tab. The "tab revo" is a significant command action that results in a huge emotional impact<sup>107</sup> with the potential for grave post-service consequences. This personnel action happens when the Commander, U.S. Army John F. Kennedy Special Warfare Center, usually on the recommendation of a SF Soldier's chain of command, revokes that Soldier's SF Tab.<sup>108</sup> This action should occur

<sup>91</sup> FM 1-04, *supra* note 4, paras. 5-55, 5-58 to 5-60. *See generally* U.S. DEP'T OF ARMY, REG. 27-3, THE ARMY LEGAL ASSISTANCE PROGRAM (21 Feb. 1996) (RAR 13 Sept. 2011) [hereinafter AR 27-3]; U.S. DEP'T OF ARMY, REG. 27-55, NOTARIAL SERVICES (17 Nov. 2003).

<sup>92</sup> FM 1-04, *supra* note 4, paras. 5-45 to 5-47, 5-49 to 5-50. *See generally* U.S. DEP'T OF ARMY, REG. 27-20, CLAIMS (8 Feb. 2008); U.S. DEP'T OF ARMY, PAM. 27-162, CLAIMS PROCEDURES (21 Mar. 2008).

<sup>93</sup> *See* AR 27-1, *supra* note 4, para. 2-5.a.

<sup>94</sup> AR 27-3, *supra* note 91, para. 4-9; Memorandum from The Judge Advocate General to Judge Advocate Legal Service Personnel, subject: Professional Responsibility-Policy Memorandum 14-02 (22 Jan. 2014); Interview with Captain Schellack, *supra* note 3.

<sup>95</sup> *See* AR 27-1, *supra* note 4, para. 2-5.a; FM 1-04, *supra* note 4, paras. 5-59 to 5-60.

<sup>96</sup> AR 27-26, *supra* note 46, r. 1.13 & r. 1.13 cmt.

<sup>97</sup> FM 1-04, *supra* note 4, para. 4-3.

<sup>98</sup> Memorandum from Deputy Judge Advocate General to Judge Advocate Legal Service (JALS) Personnel, subject: Directive to Use Judge Advocate General's Corps Enterprise Applications-DJAG Policy Memorandum 14-02 (3 Sept. 2014).

<sup>99</sup> *See infra* Part IV.E.

<sup>100</sup> *See* INT'L & OPERATIONAL LAW DEP'T, THE JUDGE ADVOCATE GEN.'S LEGAL CTR. & SCHOOL, U.S. ARMY, OPERATIONAL LAW HANDBOOK 291 (2014) [hereinafter OPLAW HANDBOOK].

<sup>101</sup> FM 1-04, *supra* note 4, paras. 5-1 to 5-2, 5-7, 5-11. *See generally* U.S. DEP'T OF ARMY, REG. 27-10, MILITARY JUSTICE (3 Oct. 2011).

<sup>102</sup> *See* TUCKER & LAMB, *supra* note 17, at 50-51.

<sup>103</sup> *See* LINDA ROBINSON, ONE HUNDRED VICTORIES: SPECIAL OPS AND THE FUTURE OF AMERICAN WARFARE 146-47 (2014).

<sup>104</sup> *See generally* U.S. DEP'T OF ARMY, REG. 635-200, ACTIVE DUTY ENLISTED ADMINISTRATIVE SEPARATIONS (6 June 2005) (RAR 6 Sept. 2011); U.S. DEP'T OF ARMY, REG. 600-8-24, OFFICER TRANSFER AND DISCHARGES ch. 4 (12 Apr. 2006) (RAR 13 Sept. 2011).

<sup>105</sup> U.S. DEP'T OF DEF., 7000.14-R, DoD FINANCIAL MANAGEMENT REGULATION, vol. 7A, subpara. 080103D, tbl.8-2 (June 2014); U.S. DEP'T OF ARMY, REG. 601-280, ARMY RETENTION PROGRAM, paras. 5-10.a, 5-13 (31 Jan. 2006) (RAR 15 Sep. 2011); Interview with Captain Schellack, *supra* note 3. *See* Military Personnel Message, 15-068, U.S. Army Human Res. Command, subject: Selective Retention Bonus (SRB) Program (3 Mar. 2015), <https://www.hrc.army.mil/Milper/15-068>.

<sup>106</sup> U.S. DEP'T OF ARMY, REG. 611-1, MILITARY OCCUPATIONAL CLASSIFICATION STRUCTURE DEVELOPMENT AND IMPLEMENTATION para. 6-3 (30 Sept. 1997). A career management field (CMF) is a "grouping a grouping of related [military occupational specialties] (MOSs) that is basically self-renewing and managed in terms of both manpower and personnel considerations. The CMF is used in the development, counseling and management of enlisted personnel." *Id.* The CMF 18 identifies special forces (SF) Soldiers and is the SF contingent of the Army Special Operations Forces. *See* DA PAM. 600-25, *supra* note 36, para. 9-1.

<sup>107</sup> Interview with Captain McKenna, *supra* note 63.

<sup>108</sup> AR 600-8-22, *supra* note 2, para. 1-31.c(9); Information Paper, U.S. Army Special Forces Command (Airborne), subject: Involuntary

concurrently with CMF 18 reclassification<sup>109</sup> and should be completed by the time a separation is complete, if separation is pursued. By doing these actions in this order, the discharge paperwork (DD Form 214) should no longer reflect the Special Forces Tab and CMF 18. If the command does not separate the Soldier, then the reclassification from CMF 18 means that the Soldier will return to an assignment in the conventional forces.<sup>110</sup> Revoking a “Special Operations Support” qualification is the equivalent for SF support personnel, and it is a simpler process since Military Occupational Speciality reclassification is not required but rather just a Department of the Army Form 4187 ordering personnel action.<sup>111</sup>

### C. Fiscal and Contract Law<sup>112</sup>

United States Special Operations Command receives its own line of funding through Major Force Program 11 (MFP-11).<sup>113</sup> “The major features of SOF funding are the distinction between MFP-2 [Department of the Army funding] and MFP-11 and the special-purpose language of statutory authorities. Major Force Program 11 was created to allow USSOCOM to pay for SOF-peculiar goods and services.”<sup>114</sup> Special operations forces can still acquire “service-common” equipment. The battalion JA should be aware when Soldiers want to use MFP-11 funds inappropriately for MFP-2 goods or services<sup>115</sup> and vice versa.

Various appropriations and agreements support SF operations. Counter-terrorism funds, commonly referred to as “1208 funds,” from the original section in the 2004 act, can

also fund SF training operations abroad.<sup>116</sup> Joint combined exchange training events involve SF units training foreign nation forces.<sup>117</sup> Joint combined training exchange events primarily benefit the SF units—thus answering the purpose prong of fiscal analysis—who improve their ability to train others.<sup>118</sup> With Joint Combined Exchange Training, battalion JAs should anticipate questions about what SF units can purchase for their foreign partner units.<sup>119</sup> Acquisition and Cross Servicing Agreements could provide a means to do this.<sup>120</sup> Additionally, the issue of accepting gifts from the partner force and purchasing gifts will frequently arise.<sup>121</sup> Finally, the battalion JA should pinpoint how SF units can participate in training under authority of the Department of State or other government agencies.<sup>122</sup>

### D. International and Operational Law<sup>123</sup>

The law binds SF operations, just as any other military operation. Since SF Soldiers look different, or at least are equipped differently than conventional forces, some observers might infer that SF operations are legally unbound. In fact, given the high profile and strategic nature of SF operations, legitimacy of American action through adherence to international and operational law can take on an even greater priority for a special forces commander.<sup>124</sup>

Special forces units routinely take on unique missions such as unconventional warfare, security force assistance, and foreign internal defense.<sup>125</sup> Familiarity and continued involvement with the SF unit’s plans and operations will help guide legal advice.<sup>126</sup> Unconventional warfare poses unique

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Revocation of SF Tabs and MOS Reclassification Actions Due to Misconduct (12 Aug. 2009).

<sup>109</sup> See U.S. DEP’T OF ARMY, REG. 614-200, ENLISTED ASSIGNMENTS AND UTILIZATION MANAGEMENT, para. 5-5 (26 Mar. 2009) (RAR 11 Oct. 2011).

<sup>110</sup> *Id.* paras. 5-5.n(5), 5-5.o.

<sup>111</sup> See All Army Activities Message, 284/2013, 251955Z Oct. 13, U.S. Dep’t of Army, subject: Establishment of Additional Skill Identifier (ASI) K9 (Special Operations Support).

<sup>112</sup> FM 1-04, *supra* note 4, paras. 5-39, 5-44.

<sup>113</sup> LOREDO ET AL., *supra* note 10, at 18.

<sup>114</sup> *Id.*

<sup>115</sup> Interview with Captain Swords, *supra* note 62.

<sup>116</sup> Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375, § 1208, 118 Stat. 1811, 2086 (2004); OPLAW HANDBOOK, *supra* note 100, at 241. See Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, § 1208 (2014).

<sup>117</sup> 10 U.S.C. § 2011 (2012). See CONTRACT & FISCAL LAW DEP’T, THE JUDGE ADVOCATE GEN.’S LEGAL CTR. & SCH., U.S. ARMY, FISCAL LAW DESKBOOK 10-11 (2014).

<sup>118</sup> See generally U.S. SPECIAL OPERATIONS COMMAND, DIR. 350-3, JOINT COMBINED EXCHANGE TRAINING (18 Nov. 2005) (superseded).

<sup>119</sup> Interview with Captain Swords, *supra* note 62.

<sup>120</sup> See generally *Acquisition and Cross-Servicing Agreements*, INTELINK, [https://intellipedia.intelink.gov/wiki/Acquisition\\_and\\_Cross-Servicing\\_Agreements\\_](https://intellipedia.intelink.gov/wiki/Acquisition_and_Cross-Servicing_Agreements_) (last accessed May 15, 2016).

<sup>121</sup> See U.S. DEP’T OF DEF., DIR 1005.13, GIFTS AND DECORATIONS FROM FOREIGN GOVERNMENTS para. 4.4, encl. 3 (19 Feb. 2002) (C1, 6 Dec. 2002). See also U.S. DEP’T OF ARMY, REG. 37-47, OFFICIAL REPRESENTATION FUNDS OF THE SECRETARY OF THE ARMY para. 2-1 (18 Oct. 2012).

<sup>122</sup> See Andru E. Wall, *Demystifying the Title 10-Title 50 Debate: Distinguishing Military Operations, Intelligence Activities & Covert Action*, 3 HARV. NAT’L SEC. J. 85, 94 & n.19 (2011).

<sup>123</sup> FM 1-04, *supra* note 4, paras. 5-14 to 5-15, 5-19 to 5-20, 5-22 to 5-25, 5-27.

<sup>124</sup> JP 3-05, *supra* note 15, at IV-11. See ADRP, *supra* note 128, paras. 1-37 to 1-38; Walsh, *supra* note 50, at 5.

<sup>125</sup> See generally Captain Rimas Radius et al., *1st SFG(A) Operational Cycle: The Continuous Execution of FID and UW*, SPECIAL WARFARE, Jan.-Mar. 2014, at 29.

<sup>126</sup> Ryan, *Thoughts on Leadership*, *supra* note 35, at 44; Interview with Captain Schellack, *supra* note 3. See Judge James E. Baker, *LBJ’s Ghost: A Contextual Approach to Targeting Decisions and the Commander in Chief*, 4 CHI. J. INT’L L. 407, 423-24 (2003).

legal issues.<sup>127</sup> Unconventional warfare is “activities conducted to enable a resistance movement or insurgency to coerce, disrupt, or overthrow a government or occupying power by operating through or with an underground, auxiliary, and guerrilla force in a denied area.”<sup>128</sup> Security force assistance is a SF “core activity” that encompasses “activities that contribute to unified action by the U.S. Government to support the development of the capacity and capability of foreign security forces and their supporting institutions.”<sup>129</sup> Foreign internal defense is a SF “core operation” that supports “another government or other designated organization to free and protect its society from subversion, lawlessness, insurgency, terrorism, and other threats to its security.”<sup>130</sup>

### 1. Home-Station Training

A battalion JA should become familiar with 1st SFC(A) Regulation 350-1 and battalion training policy letters. Regulation 350-1 governs training and sets forth unique requirements and timelines for training concepts to be approved.<sup>131</sup> Two training events in particular need significant lead-time: realistic military training (RMT) and training civilian law enforcement agencies (CLEA).<sup>132</sup>

Military units can conduct RMT off military installations or federal property with proper approval.<sup>133</sup> Training in certain environments not available on U.S. Government lands can benefit SF units uniquely.<sup>134</sup> A commander at the proper

level with prior coordination with certain civilian officials can authorize RMT.<sup>135</sup> In preparing for RMT, the battalion JA should support the Operations Officer (S-3) and company planners.<sup>136</sup> Just as with RMTs, CLEAs require lead-time for proper approval and proper execution.<sup>137</sup> If SF units train with CLEA, then the battalion JA should brief his SF units on the Rules for the Use of Force,<sup>138</sup> and posse comitatus.<sup>139</sup> Beyond training, CLEA may request the assistance of SF units to help respond to emergencies and other CLEA operations.<sup>140</sup>

### 2. Training Abroad and Deployed Operations

The foundation for these operations is authorities. At a minimum, these authorities will reside in an EXORD or deployment order (DEPOD).<sup>141</sup> Once a battalion JA understands his commander’s intent and the established authorities,<sup>142</sup> the JA can help advocate through technical channels for any additional authorities or appropriate approval levels the unit might need.

A key restriction in training operations is that SF Soldiers may not train foreign units that have committed gross human rights violations.<sup>143</sup> Vetting will occur before the mission begins, but the battalion JA will have to brief his SF units on what constitutes “gross human rights violations”<sup>144</sup> and what to do if SF units observe them.<sup>145</sup>

<sup>127</sup> See generally Michael N. Schmitt & Andru E. Wall, *The International Law of Unconventional Statecraft*, 5 HARV. NAT’L SEC. J. 349 (2014). See also FM 1-04, *supra* note 4, para. 14-12.

<sup>128</sup> ADRP 3-05, *supra* note 13, para. 2-2.

<sup>129</sup> *Id.* para. 2-19. See generally FM 1-04, *supra* note 4, ch. 15.

<sup>130</sup> ADRP 3-05, *supra* note 13, paras. 2-1, 2-5. See also FM 1-04, *supra* note 4, para. 14-13. “Core operations are the military missions for which SOF have unique modes of employment, tactical techniques, equipment, and training to orchestrate effects, often in concert with conventional forces.” ADRP 3-05, *supra* note 13, para. 2-1.

<sup>131</sup> See generally U.S. ARMY SPECIAL FORCES COMMAND (AIRBORNE), REG. 350-1, TRAINING (8 Apr. 2014).

<sup>132</sup> *Id.* paras. 6-12.h(5)(b), 6-15.b(2).

<sup>133</sup> See generally U.S. DEP’T OF DEF., INSTR. 1322.28, REALISTIC MILITARY TRAINING (RMT) OFF OF FEDERAL REAL PROPERTY encl. 3, fig. (18 Mar. 2013) (C2, 13 May 2014) [hereinafter DODI 1322.28].

<sup>134</sup> See Press Release, USSOCOM Public Affairs, UPDATED PRESS RELEASE: Exercise readies SOF for threats abroad (Apr. 20, 2015), [http://www.army.mil/article/146794/UPDATED\\_PRESS\\_RELEASE\\_\\_Exercise\\_readies\\_SOF\\_for\\_\\_\\_/](http://www.army.mil/article/146794/UPDATED_PRESS_RELEASE__Exercise_readies_SOF_for___/). See also J. David McSwane, *In Jade Helm operation, Texas gives early lessons on the ‘human domain’*, STARS & STRIPES (May 8, 2015), <http://www.stripes.com/news/us/in-jade-helm-operation-texas-gives-early-lessons-on-the-human-domain-1.345361>.

<sup>135</sup> DODI 1322.28, *supra* note 133, encl. 3, fig.

<sup>136</sup> See generally UW-JAG, <https://www.milsuite.mil/book/groups/baldwin> (last visited May 15, 2016).

<sup>137</sup> U.S. DEP’T OF DEF., INSTR. 3025.21, DEFENSE SUPPORT OF CIVILIAN LAW ENFORCEMENT AGENCIES encl. 3, para. 1.f (27 Feb. 2013); Policy Memorandum 05-17, Headquarters, U.S. Special Operations Command, subject: United States Special Operations Command (USSOCOM) Policy on Military Support and Assistance to Domestic Law Enforcement Agencies (7 Dec. 2005) (superseded).

<sup>138</sup> See generally CTR. FOR LAW & MILITARY OPERATIONS, THE JUDGE ADVOCATE GEN.’S LEGAL CTR. & SCH., U.S. ARMY, DOMESTIC OPERATIONAL LAW ch.4, 10 (2013) [hereinafter DOMOPS LAW HANDBOOK].

<sup>139</sup> 10 U.S.C. §§ 371–82 (2012); 18 U.S.C. § 1385 (2012).

<sup>140</sup> See generally DOMOPS LAW HANDBOOK, *supra* note 138, ch.8.

<sup>141</sup> JOINT PUB. 1-02, *supra* note 9, at 72, 91; JOINT CHIEFS OF STAFF, JOINT PUB. 5-0, JOINT OPERATION PLANNING xvi, II-15 to II-17 (11 Aug. 2011) [hereinafter JP 5-0]; Interview with Captain McKenna, *supra* note 65. See Chairman of the Joint Chiefs of Staff Manual (CJCSM) 3122.01 series publications for the format for EXORDs and DEPODs. JP 5-0, *supra*, at xvi, II-15 to II-17.

<sup>142</sup> See Wall, *supra* note 122, at 86 n.2; JOINT CHIEFS OF STAFF, J7, INSIGHTS & BEST PRACTICES FOCUS PAPER, AUTHORITIES 6-19 (July 2013).

<sup>143</sup> Memorandum from Sec’y of Def. to Sec’ies of Mil. Dep’ts et al., subject: Implementation of Section 8057, DoD Appropriations Act, 2014 (division C of Public Law 113-76) (18 Aug. 2014) [hereinafter DoD Leahy Law Memo].

<sup>144</sup> *Id.* at Tab A, p. 2.

<sup>145</sup> *Id.* at Tab A, p. 1.

All SF groups have a regional focus, so the battalion JA should be attuned to the international agreements and the legal systems<sup>146</sup> of nations that SF Soldiers visit, train, and operate in. This familiarity extends to any applicable status of forces agreements (SOFAs) or defense cooperation agreements (DCAs). Soldiers need to be aware of their status protections or absence thereof.<sup>147</sup>

A battalion JA can help prepare SF Soldiers for tough decisions when he finds an opportunity to provide advanced training vignettes on rules of engagement (ROE)<sup>148</sup> or similar directives. This training presupposes the JA's fluency with ROE, targeting, fires, close air support, and close combat attacks.<sup>149</sup> Along with these directives, the battalion JA should understand the legal considerations of non-standard uniforms.<sup>150</sup>

### 3. Intelligence Law<sup>151</sup>

Title 10, Title 50, and Executive Order (E.O.) 12,333 empower the Secretary of Defense to conduct intelligence activities.<sup>152</sup> Army Regulation 381-10 implements E.O. 12,333 and DoD Regulation 5240.1-R.<sup>153</sup> Combatant Command regulations potentially add to the body of authorities that govern intelligence operations. Under this umbrella, SF units pursue their unique "intelligence requirements."<sup>154</sup> Special Forces units have identified and validated that "intelligence necessary for operations against specific individuals is best derived from the time-consuming

work of establishing relationships with indigenous personnel."<sup>155</sup> In addition to "intelligence activities," SF units may be called on to conduct "traditional military activities"<sup>156</sup> (TMA) such as "operational preparation of the environment," "preparation of the environment," "advanced force operations," and other operations as required.<sup>157</sup>

### 4. Detainee and Interrogation Operations<sup>158</sup>

In both fixed-facility detention and detainee collection points, the battalion JA needs to have anticipated the potential legal pitfalls. A firewall stands between military police and intelligence operations.<sup>159</sup> Statute establishes Field Manual 2-22.3 as the law in this area, and DoD directives are similarly well established.<sup>160</sup> Only trained and certified interrogators are permitted to interrogate (as distinguished from tactical questioning),<sup>161</sup> which applies not only to military police but also to SF Soldiers.<sup>162</sup> Moreover, in a mature theater, interagency relationships will play a significant role.

Special forces units taking detainees while moving behind enemy lines presents tough legal issues. The battalion JA can best serve his unit by preparing vignettes ahead of time.<sup>163</sup> Special Forces Soldiers may also encounter civilians in this situation. Civilians may give away SF Soldiers' presence, resulting in the Soldiers' deaths. This is not an

<sup>146</sup> See, e.g., *Guide to Law Online: Nations*, LIBRARY OF CONGRESS, <http://www.loc.gov/law/help/guide/nations.php> (last visited May 31, 2016).

<sup>147</sup> See generally OPLAW HANDBOOK, *supra* note 100, ch. 7.

<sup>148</sup> FM 1-04, *supra* note 4, paras. 7-39 to 7-40. See Major Winston S. Williams, *Training the Rules of Engagement for the Counterinsurgency Fight*, ARMY LAW., Jan. 2012, at 42, 46-47.

<sup>149</sup> See FM 1-04, *supra* note 4, ch. 7. See generally JOINT CHIEFS OF STAFF, JOINT PUB. 3-09, JOINT FIRE SUPPORT (12 Dec. 2014).

<sup>150</sup> W. Hays Parks, *Special Forces Wear of Non-Standard Uniforms*, 4 CHI. J. INT'L L. 493, 512-13 (2003); Walsh, *supra* note 50, at 7; INT'L & OPERATIONAL LAW DEP'T, THE JUDGE ADVOCATE GEN.'S LEGAL CTR. & SCHOOL, U.S. ARMY, LAW OF ARMED CONFLICT DESKBOOK 164, 164 n.37 (2014).

<sup>151</sup> See generally MARK M. LOWENTHAL, INTELLIGENCE: FROM SECRETS TO POLICY (6th ed. 2014); U.S. DEP'T OF DEF., DIR. 5143.01, UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE (24 Oct. 2014); U.S. DEP'T OF DEF., DIR. 5240.01, DoD INTELLIGENCE ACTIVITIES (27 Aug. 2007) (C1, 29 Jan. 2013); FM 1-04, *supra* note 4, paras. 2-22, 5-28.

<sup>152</sup> Exec. Order No. 12,333, 3 C.F.R. § 200 (1981) (as amended). Usually referenced as "twelve-triple-three." Ali Watkins, *Most of NSA's Data Collection Authorized by Order Ronald Reagan Issued*, MCCLATCHYDC (Nov. 21, 2013) <http://www.mcclatchydc.com/news/nation-world/national/national-security/article24759289.html>.

<sup>153</sup> See generally U.S. DEP'T OF DEF., 5240.1-R, PROCEDURES GOVERNING THE ACTIVITIES OF DoD INTELLIGENCE COMPONENTS THAT AFFECT UNITED STATES PERSONS (7 Dec. 1982); U.S. DEP'T OF ARMY, REG. 381-10, U.S. ARMY INTELLIGENCE ACTIVITIES (3 May 2007).

<sup>154</sup> TUCKER & LAMB, *supra* note 17, at 149.

<sup>155</sup> See *id.* at 138.

<sup>156</sup> COLONEL RICHARD C. GROSS, DIFFERENT WORLDS: UNACKNOWLEDGED SPECIAL OPERATIONS AND COVERT ACTION 7 (2009).

<sup>157</sup> JOINT PUB. 3-05, *supra* note 15, at II-4 to II-5; ADRP 3-05, *supra* note 128, paras. 1-44 to 1-47, 2-36. See 10 U.S.C. § 167(j)(10) (2012). For further study on the advanced subjects of "intelligence activities" vs. "traditional military activities," and Title 50 vs. Title 10, see generally Lieutenant Colonel Joseph B. Berger, III, *Covert Action: Title 10, Title 50, and the Chain of Command*, JOINT FORCES Q., 4th Quarter, 2012, at 32; GROSS, *supra* note 156; Wall, *supra* note 122.

<sup>158</sup> See generally DEP'T OF DEF., DIR. 2310.01E, DoD DETAINEE PROGRAM (19 Aug. 2014); U.S. DEP'T OF ARMY, FIELD MANUAL 2-22.3, HUMAN INTELLIGENCE COLLECTOR OPERATIONS para. 4-12 (6 Sept. 2006) [hereinafter FM 2-22.3]; U.S. DEP'T OF ARMY, FIELD MANUAL 3-63, DETAINEE OPERATIONS (28 Apr. 2014), FM 1-04, *supra* note 4, ch. 8.

<sup>159</sup> FM 2-22.3, *supra* note 158, para. 4-12.

<sup>160</sup> The Detainee Treatment Act of 2005, Pub. L. No. 109-163, § 1402(a), 119 Stat. 3136, 3475 (2006); DEP'T OF DEF. DIR. 3115.09 DoD INTELLIGENCE INTERROGATIONS, DETAINEE DEBRIEFINGS, AND TACTICAL QUESTIONING (11 Oct. 2012) (C1 15 Nov. 2013).

<sup>161</sup> FM 2-22.3, *supra* note 158, para. 1-17. "Tactical questioning is expedient initial questioning for information of immediate tactical value. Tactical questioning is generally performed by members of patrols, but can be done by any [Department of Defense] DoD personnel." *Id.*

<sup>162</sup> FM 2-22.3, *supra* note 158, para. 1-20.

<sup>163</sup> Walsh, *supra* note 50, at 7.

unusual circumstance and the battalion JA needs to train SF Soldiers on the proper procedures.<sup>164</sup>

## V. Conclusion

With the above information, any situation resembling the opening vignette becomes less daunting. The unknown unknowns focus into known unknowns. The newly assigned SF battalion JA has a basic understanding of his duly appointed Army client and his Army client's needs. He has enough substantive insight to ask questions, research, and reason across all legal disciplines. Service as a SF battalion JA is a great opportunity to develop and to practice as a broadly skilled judge advocate for those who want the challenge of providing legal support to Special Forces.

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<sup>164</sup> See George R. Lucas, Jr., *"This is Not Your Father's War"*—*Confronting the Moral Challenges of "Unconventional" War*, 3 J. NAT'L SEC. L. & POL'Y 329, 333-34 (2009).

## Appendix. Suggested Readings

The following resources can further the reader's understanding of the various topics in this article.<sup>165</sup> Hyperlinks, where available, help ease access to the resources.

### I. Statutes

10 U.S.C. § 167 (2012), *available at* [http://uscode.house.gov/view.xhtml?req=\(title:10 section:167 edition:prelim\) OR \(granuleid:USC-prelim-title10-section167\)&f=treesort&edition=prelim&num=0&jumpTo=true#sourcecredit](http://uscode.house.gov/view.xhtml?req=(title:10+section:167+edition:prelim)OR(granuleid:USC-prelim-title10-section167)&f=treesort&edition=prelim&num=0&jumpTo=true#sourcecredit)

50 U.S.C. § 3038 (Supp. I 2013), *available at* [http://uscode.house.gov/view.xhtml?req=\(title:50 section:3038 edition:prelim\) OR \(granuleid:USC-prelim-title50-section3038\)&f=treesort&edition=prelim&num=0&jumpTo=true](http://uscode.house.gov/view.xhtml?req=(title:50+section:3038+edition:prelim)OR(granuleid:USC-prelim-title50-section3038)&f=treesort&edition=prelim&num=0&jumpTo=true)

50 U.S.C. § 3093 (Supp. I 2013), *available at* [http://uscode.house.gov/view.xhtml?req=\(title:50 section:3093 edition:prelim\) OR \(granuleid:USC-prelim-title50-section3093\)&f=treesort&edition=prelim&num=0&jumpTo=true](http://uscode.house.gov/view.xhtml?req=(title:50+section:3093+edition:prelim)OR(granuleid:USC-prelim-title50-section3093)&f=treesort&edition=prelim&num=0&jumpTo=true)

### II. Executive Order

Exec. Order 12,333, 3 C.F.R. § 200 (1981) (as amended), *available at* <http://www.archives.gov/federal-register/codification/executive-order/12333.html>

### III. Joint Chiefs of Staff Doctrinal Publications

JOINT CHIEFS OF STAFF, JOINT PUB. 3-05, SPECIAL OPERATIONS (16 Jul. 2014), *available at* [http://www.dtic.mil/doctrine/new\\_pubs/jp3\\_05.pdf](http://www.dtic.mil/doctrine/new_pubs/jp3_05.pdf)

JOINT CHIEFS OF STAFF, JOINT PUB. 5-0, JOINT OPERATION PLANNING (11 Aug. 2011), *available at* [http://www.dtic.mil/doctrine/new\\_pubs/jp5\\_0.pdf](http://www.dtic.mil/doctrine/new_pubs/jp5_0.pdf)

JOINT CHIEFS OF STAFF, J7, INSIGHTS & BEST PRACTICES FOCUS PAPER, AUTHORITIES 6–19, *available at* <https://www.milsuite.mil/book/servlet/JiveServlet/download/124112-1-408900/Authorities-%20JS%20J7%20Deployable%20Training%20Division.pdf>.

### IV. Department of Defense Directives and Instructions

DEP'T OF DEF. DIR. 3115.09 DoD INTELLIGENCE INTERROGATIONS, DETAINEE DEBRIEFINGS, AND TACTICAL QUESTIONING (11 Oct. 2012) (C1, 15 Nov. 2013), *available at* <http://www.dtic.mil/whs/directives/corres/pdf/311509p.pdf>

U.S. DEP'T OF DEF. DIR. 2310.01E, DoD DETAINEE PROGRAM (19 Aug. 2014), *available at* <http://www.dtic.mil/whs/directives/corres/pdf/231001e.pdf>

U.S. DEP'T OF DEF., INSTR. 1322.28, REALISTIC MILITARY TRAINING (RMT) OFF OF FEDERAL REAL PROPERTY (18 Mar. 2013) (C2, 13 May 2014), *available at* <http://www.dtic.mil/whs/directives/corres/pdf/132228p.pdf>

U.S. DEP'T OF DEF., INSTR. 2200.01, COMBATING TRAFFICKING IN PERSONS (CTIP) (15 Sept. 2010), *available at* <http://www.dtic.mil/whs/directives/corres/pdf/220001p.pdf>

U.S. DEP'T OF DEF., INSTR. 2310.008E, MEDICAL PROGRAM SUPPORT FOR DETAINEE OPERATIONS (6 June 2006), *available at* <http://www.dtic.mil/whs/directives/corres/pdf/231008p.pdf>

U.S. DEP'T OF DEF., INSTR. 3025.21, DEFENSE SUPPORT OF CIVILIAN LAW ENFORCEMENT AGENCIES (27 Feb. 2013), *available at* <http://www.dtic.mil/whs/directives/corres/pdf/302521p.pdf>

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<sup>165</sup> E-mail from Lieutenant Colonel Terri Erisman, Staff Judge Advocate, U.S. Army Special Forces Command (Airborne), to author (Oct. 5, 2014 09:46 EST) (on file with author).

Memorandum from Sec'y of Def. to Sec'ies of Mil. Dep'ts et al., subj: Implementation of Section 8057, DoD Appropriations Act, 2014 (division C of Public Law 113-76) ("the DoD Leahy law") (18 Aug. 2014), *available at* <https://www.milsuite.mil/book/servlet/JiveServlet/downloadBody/162850-102-1-315005/Leahy%20Vetting%20Guidance.pdf>.

#### V. United States Special Operations Command Directives, Publications, and Policies, and Web Sites

USSOCOM PUB. 1, DOCTRINE FOR SPECIAL OPERATIONS,  
[https://jdeis.js.mil/jdeis/socom\\_pdf/USSOCOM%20Pub%201.pdf](https://jdeis.js.mil/jdeis/socom_pdf/USSOCOM%20Pub%201.pdf)

*Course Information*, JOINT SPECIAL OPERATIONS UNIV.,  
[https://jsou.socom.mil/Pages/CourseInformation.aspx?CourseName=Joint Special Operations Legal Advisor Course](https://jsou.socom.mil/Pages/CourseInformation.aspx?CourseName=Joint%20Special%20Operations%20Legal%20Advisor%20Course) (last visited May 31, 2016)

*Course Information*, JOINT SPECIAL OPERATIONS UNIV.,  
[https://jsou.socom.mil/Pages/CourseInformation.aspx?CourseName=Introduction to Special Operations Forces \(Fully On Line\)](https://jsou.socom.mil/Pages/CourseInformation.aspx?CourseName=Introduction%20to%20Special%20Operations%20Forces) (last visited May 31, 2016)

*Course Information*, JOINT SPECIAL OPERATIONS UNIV.,  
[https://jsou.socom.mil/Pages/CourseInformation.aspx?CourseName=Introduction to Irregular Warfare - Distance Learning \(Pilot\)](https://jsou.socom.mil/Pages/CourseInformation.aspx?CourseName=Introduction%20to%20Irregular%20Warfare) (last visited May 31, 2016)

#### VI. U.S. Army Regulations

U.S. DEP'T OF ARMY, DA PAM. 600-3, COMMISSIONED OFFICER PROFESSIONAL DEVELOPMENT AND CAREER MANAGEMENT ch.16 (3 Dec. 2014), *available at* [http://www.apd.army.mil/pdffiles/p600\\_3.pdf](http://www.apd.army.mil/pdffiles/p600_3.pdf)

U.S. DEP'T OF ARMY, PAM 600-25, U.S. ARMY NONCOMMISSIONED OFFICER PROFESSIONAL DEVELOPMENT GUIDE ch. 8 (28 July 2008), *available at* [http://www.apd.army.mil/pdffiles/p600\\_25.pdf](http://www.apd.army.mil/pdffiles/p600_25.pdf)

#### VII. 1st Special Forces Command (Airborne) Regulations, Policies, Publications, and Web Sites

U.S. ARMY SPECIAL FORCES COMMAND (AIRBORNE), REG. 350-1, TRAINING (8 Apr. 2014)

Special Insert, *U.S. Army Special Operations Command ARSOF 2022, Part II*, SPEC. WARFARE, Jul.-Sept. 2014, *available at* <http://www.dvidshub.net/publication/issues/22683>

SF HISTORY PAGE, <http://www.soc.mil/USASFC/SFhistory.html>.

#### VIII. U.S. Army Doctrinal Publications

U.S. DEP'T OF ARMY, FIELD MANUAL 1-04, LEGAL SUPPORT TO THE OPERATIONAL ARMY (18 Mar. 2013), *available at* [http://armypubs.army.mil/doctrine/DR\\_pubs/dr\\_a/pdf/fm1\\_04.pdf](http://armypubs.army.mil/doctrine/DR_pubs/dr_a/pdf/fm1_04.pdf)

U.S. DEP'T OF ARMY, FIELD MANUAL 6-0, COMMANDER AND STAFF ORGANIZATION AND OPERATIONS (5 May 2014), *available at* [http://armypubs.army.mil/doctrine/DR\\_pubs/dr\\_a/pdf/fm6\\_0.pdf](http://armypubs.army.mil/doctrine/DR_pubs/dr_a/pdf/fm6_0.pdf)

U.S. DEP'T OF ARMY, DOCTRINE PUB. 3-05, SPECIAL OPERATIONS (31 Aug. 2012), *available at* [http://armypubs.army.mil/doctrine/DR\\_pubs/dr\\_a/pdf/adp3\\_05.pdf](http://armypubs.army.mil/doctrine/DR_pubs/dr_a/pdf/adp3_05.pdf);

U.S. DEP'T OF ARMY, DOCTRINE REFERENCE PUB. 3-05, SPECIAL OPERATIONS (31 Aug. 2012), *available at* [http://armypubs.army.mil/doctrine/DR\\_pubs/dr\\_a/pdf/adrp3\\_05.pdf](http://armypubs.army.mil/doctrine/DR_pubs/dr_a/pdf/adrp3_05.pdf);

U.S. DEP'T OF ARMY, TECHNIQUES PUB. 3-05.1, UNCONVENTIONAL WARFARE (6 Sept. 2013), *available at* [https://armypubs.us.army.mil/doctrine/DR\\_pubs/dr\\_c/pdf/atp3\\_05x1.pdf](https://armypubs.us.army.mil/doctrine/DR_pubs/dr_c/pdf/atp3_05x1.pdf);

U.S. DEP'T OF ARMY, TECHNIQUES PUB. 3-05.20, SPECIAL OPERATIONS INTELLIGENCE (3 May 2013), *available at* [https://armypubs.us.army.mil/doctrine/DR\\_pubs/dr\\_c/pdf/atp3\\_05x20.pdf](https://armypubs.us.army.mil/doctrine/DR_pubs/dr_c/pdf/atp3_05x20.pdf)

U.S. DEP'T OF ARMY, FIELD MANUAL 3-05, ARMY SPECIAL OPERATIONS (9 Jan. 2014), *available at* [https://armypubs.us.army.mil/doctrine/DR\\_pubs/dr\\_c/pdf/fm3\\_05.pdf](https://armypubs.us.army.mil/doctrine/DR_pubs/dr_c/pdf/fm3_05.pdf)

U.S. DEP'T OF ARMY, FIELD MANUAL 3-63, DETAINEE OPERATIONS (28 Apr. 2014), *available at* [https://armypubs.us.army.mil/doctrine/DR\\_pubs/dr\\_d/pdf/fm3\\_63.pdf](https://armypubs.us.army.mil/doctrine/DR_pubs/dr_d/pdf/fm3_63.pdf)

U.S. DEP'T OF ARMY, TRAINING CIRCULAR 18-01, SPECIAL FORCES UNCONVENTIONAL WARFARE (28 Jan. 2011), *available at* [https://armypubs.us.army.mil/doctrine/DR\\_pubs/dr\\_c/pdf/tc18\\_01.pdf](https://armypubs.us.army.mil/doctrine/DR_pubs/dr_c/pdf/tc18_01.pdf)

## IX. Secondary Sources

### A. Books

DOUGLAS O. LINDER & NANCY LEVIT, *THE GOOD LAWYER* (2014)

MARK M. LOWENTHAL, *INTELLIGENCE: FROM SECRETS TO POLICY* (6th ed. 2014)

ANDY MCNAB, *BRAVO TWO ZERO* (1993)

LINDA ROBINSON, *MASTERS OF CHAOS* (2005)

LINDA ROBINSON, *ONE HUNDRED VICTORIES* (2014)

JAMES N. ROWE, *FIVE YEARS TO FREEDOM* (1971)

DOUG STANTON, *HORSE SOLDIERS* (2009)

DAVID TUCKER & CHRISTOPHER J. LAMB, *UNITED STATES SPECIAL OPERATIONS FORCES* (2007)

### B. Articles and Miscellaneous Sources

Captain Gregory Raymond Bart, *Special Operations Forces and Responsibility for Surrogates' War Crimes*, 5 HARV. NAT'L SEC. J. 513 (2014), *available at* <http://harvardnsj.org/wp-content/uploads/2014/01/Bart-Special-Operations-Forces.pdf>

Commander Gregory Raymond Bart, *Special Operations Commando Raids and Enemy Hors de Combat*, ARMY LAW., July 2007, at 33, *available at* [http://www.loc.gov/rr/frd/Military\\_Law/pdf/07-2007.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/07-2007.pdf)

Lieutenant Colonel Joseph B. Berger, III, *Covert Action: Title 10, Title 50, and the Chain of Command*, JOINT FORCES Q., 4th Quarter, 2012, at 32, *available at* [http://ndupress.ndu.edu/Portals/68/Documents/jfq/jfq-67/JFQ-67\\_32-39\\_Berger.pdf](http://ndupress.ndu.edu/Portals/68/Documents/jfq/jfq-67/JFQ-67_32-39_Berger.pdf)

Robert Chesney, *Military-Intelligence Convergence and the Law of the Title 10/Title 50 Debate*, 5 J. NAT'L SEC. L. & POL. 539 (2012), *available at* <http://jnslp.com/wp-content/uploads/2012/01/Military-Intelligence-Convergence-and-the-Law-of-the-Title-10Title-50-Debate.pdf>

Stephen Deakin, *Wise Men and Shepherds: A Case for Taking Non-Lethal Action Against Civilians Who Discover Hiding Soldiers*, 10 J. MIL. ETHICS 110 (2009)

Major Stephen P. Dunn, *A Forward-Deployed Military Attorney with Special Operations Forces*, MICH. B.J., Sept. 2014, at 30, *available at* <http://www.michbar.org/journal/pdf/pdf4article2434.pdf>

COLONEL RICHARD C. GROSS, *DIFFERENT WORLDS: UNACKNOWLEDGED SPECIAL OPERATIONS AND COVERT ACTION* (2009), *available at* <http://fas.org/man/eprint/gross.pdf>

Major Ryan T. Howard, *Acquisition and Cross-Servicing Agreements in an Era of Fiscal Austerity*, ARMY LAW., Oct. 2013, at 26, *available at* [http://www.loc.gov/rr/frd/Military\\_Law/pdf/10-2013.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/10-2013.pdf)

Commander Todd C. Huntley & Commander Andrew D. Levitz, *Controlling the Use of Power in the Shadows: Challenges in the Application of Jus in Bello to Clandestine and Unconventional Warfare Activities*, 5 HARV. NAT'L SEC. J.

461 (2014), available at <http://harvardnsj.org/wp-content/uploads/2014/01/Huntley-Levitz-Controlling-the-Use-of-Power-in-the-Shadows.pdf>

Captain Israel D. King, *Gentlemen Bastards: On the Ground with America's Elite Special Forces*, ARMY LAW., August 2014, at 44 (book review), available at [http://www.loc.gov/rr/frd/Military\\_Law/pdf/08-2014.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/08-2014.pdf)

ELVIRA N. LOREDO ET AL., RAND CORP., AUTHORITIES AND OPTIONS FOR FUNDING USSOCOM OPERATIONS 3-4 (2014), available at <https://www.dtic.mil/DTICOnline/downloadPdf.search?collectionId=tr&docId=ADA602677>

W. Hays Parks, *Special Forces Wear of Non-Standard Uniforms*, 4 CHI. J. INT'L L. 493 (2003)

COLONEL KATHRYN STONE, "ALL NECESSARY MEANS"—EMPLOYING CIA OPERATIVES IN A WARFIGHTING ROLE ALONGSIDE SPECIAL OPERATIONS FORCES (2003), available at [www.dtic.mil/dtic/tr/fulltext/u2/a415779.pdf](http://www.dtic.mil/dtic/tr/fulltext/u2/a415779.pdf)

MICHAEL D. TISDEL ET AL., THEATER SPECIAL OPERATIONS COMMAND REALIGNMENT 4 (2014), available at <http://www.dtic.mil/docs/citations/ADA607289>

Michael N. Schmitt & Andru E. Wall, *International Law of Unconventional Statecraft*, 5 HARV. NAT'L SEC. J. 349, 356 (2014), available at <http://harvardnsj.org/wp-content/uploads/2014/01/Schmitt-Wall-International-Law-of-Unconventional-Statecraft.pdf>

Andru E. Wall, *Demystifying the Title 10-Title 50 Debate: Distinguishing Military Operations, Intelligence Activities & Covert Action*, 3 HARV. NAT'L SEC. J. 85, 86 (2011), available at <http://harvardnsj.org/wp-content/uploads/2012/01/Vol-3-Wall.pdf>

Major Gary L. Walsh, *Role of the Judge Advocate in Special Operations*, ARMY LAW., Aug. 1989, at 4, available at [http://www.loc.gov/rr/frd/Military\\_Law/pdf/08-1989.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/08-1989.pdf)

STAFF OF H. ARMED SERV. COMM., 100TH CONG., UNITED STATES AND SOVIET SPECIAL OPERATIONS: A STUDY (Comm. Print 1987) (primarily written by John M. Collins), available at <http://babel.hathitrust.org/cgi/pt?id=mdp.39015039055655;view=1up;seq=1>

John M. Collins, U.S. Special Operations (Personal Opinions), Address at 1st Battalion, 1st Special Warfare Training Group, Camp Mackall, North Carolina (Dec. 11, 2008), available at <http://smallwarsjournal.com/blog/journal/docs-temp/148-collins.pdf>

### C. Web Sites

ACQUISITION AND CROSS-SERVICING AGREEMENTS, [https://intellipedia.intelink.gov/wiki/Acquisition\\_and\\_Cross-Servicing\\_Agreements\\_](https://intellipedia.intelink.gov/wiki/Acquisition_and_Cross-Servicing_Agreements_) (last visited May 31, 2016).

INTELINK, <https://www.intelink.gov/my.policy> (last visited May 31, 2016)

*Intelligence Community Legal Reference Book - 2012*, OFFICE OF THE DIRECTOR OF NAT'L INTELLIGENCE, <https://www.dni.gov/index.php/about/organization/ic-legal-reference-book-2012> (last visited May 31, 2016)

*Green Berets*, JOHN F. KENNEDY PRESIDENTIAL LIBRARY & MUSEUM, <http://www.jfklibrary.org/JFK/JFK-in-History/Green-Berets.aspx> (last visited May 31, 2016)

*SOF Truths*, U.S. SPECIAL OPERATIONS COMMAND, <http://www.socom.mil/Pages/SOFTruths.aspx> (last visited May 31, 2016)

*Trafficking in Persons Report 2014*, U.S. DEP'T OF STATE, <http://www.state.gov/j/tip/rls/tiprpt/2014/index.htm> (last visited May 31, 2016)