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Major Michael J. O'Connor

Avoiding the Rush to Failure: The Judge Advocate's Role in Emergency Operations Center
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Lore of the Corps

"I Want That Man Shot": A War Crime in Vietnam?

Fred L. Borch
Regimental Historian & Archivist

On 22 September 1968, a wounded and unarmed Vietnamese man who had been captured by a patrol of troopers from the 82d Airborne Division, and was thought to be a Viet Cong (VC) guerrilla, was shot and killed. The shooting occurred after the company commander, Captain (CPT) John Kapranopoulos, made this radio transmission to the Soldiers holding the man: "Damn it, I don't care about prisoners; I want a body count. I want that man shot."[1]

About the same time, Kapranopoulos sent out a second patrol to intercept another suspected VC insurgent. When asked by one Soldier in that patrol what he wanted them to do if the Vietnamese man did not have identification papers proving that he was an innocent civilian, Kapranopoulos replied: "Are you sh[******] me?" As a result, after capturing this suspected VC and apparently failing to find proof that their prisoner was a civilian, the American Soldiers shot and killed him too.[2]

What follows is the story of CPT Kapranopoulos's general court-martial for the premeditated murder of these two Vietnamese civilians, a two-day affair that occurred shortly after Thanksgiving 1968 at the "Plantation" compound located east of Long Binh, Vietnam.[3]

The accused, twenty-seven year old CPT John Kapranopoulos, was described in a contemporary newspaper as "short" and "bespectacled."[4] He was called "Captain K" by his men, as they apparently found his Greek surname too complicated to pronounce. At the time of the killings, Kapranopoulos was in command of Company A, 2d Battalion, 505th Infantry, 82d Airborne Division, and had a reputation as a "gung ho infantry commander [who was] loved by his men and admired by his superiors."[5] This was his second tour in Vietnam; Kapranopoulos had previously served with the 173d Airborne Brigade in 1966, and been awarded the Purple Heart after being wounded in action.[6]

The facts presented at trial, which began on Friday, 29 November, and finished the following day, were that on 22 September 1968, A Company troopers "spotted four Vietnamese with packs on their backs entering a woodline in the vicinity of Pho Loc."[7] Since the four men had backpacks and since Pho Loc was "in Charlie-infested country"[8] near the city of Hue, CPT Kapranopoulos ordered artillery fire into the woods. Moments later, the four Vietnamese emerged from the woods. They no longer were carrying their packs, and they started running from the artillery.

First Lieutenant (1LT) Ralph Loomis, a platoon leader in the company, was ordered by CPT Kapranopoulos to pursue the fleeing Vietnamese with a squad of men. Two escaped. The third man, however, fell back "and tried to cut across behind" Loomis and his Soldiers while the fourth Vietnamese, who was faster, tried to make his getaway by outrunning the Americans chasing him.

Kapranopoulos, who was observing the pursuit from the top of a nearby hill, ordered 1LT Loomis to leave two of his Soldiers behind to capture the straggler while the rest of the squad chased the faster man. In pursuing the faster man, the Americans fired several rounds from their M-16 rifles, wounding the fleeing Vietnamese in the left hand. First Lieutenant Loomis testified at trial that "the injured man dived behind a bush," but as the GIs got closer, "he came out with his hands up."[9]

As Loomis related under oath, he then radioed Kapranopoulos "and told the captain that we had the man captured, that he was wounded and unarmed." As Loomis testified, Kapranopoulos replied as follows: "Damn it. I don't care about prisoners. I want a body count. I want that man shot."[10] Since the troopers in A Company wore buttons on their jungle fatigues emblazoned with the slogan "Wine,

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[1] *Looies Claim CO Ordered Unarmed Men Killed—'I Want That Man Shot,'* OVERSEAS WKLY. (PAC. EDITION), Dec. 21, 1968, at 3. [hereinafter *Looies Claim*].

[2] *Id.*

[3] Telephone Interview with Colonel (Retired) Herbert J. Green (July 10, 2014).

[4] *Looies Claim, supra* note 1.

[5] *Id.*

[6] *Id.* Kapranopoulos had enlisted in the Army and was subsequently commissioned in the Infantry after graduating from Officer Candidate School at Fort Benning, Georgia.

[7] *Id.*

[8] "Charlie" was a moniker attached by U.S. troops to the Viet Cong guerrillas—the "Charlie" originating from the radio alphabet as in "Victor Charlie."

[9] *Looies Claim, supra* note 1.

[10] At this time during the Vietnam war, the Army was pursuing an attrition strategy——the theory being that the enemy could be defeated if sufficient numbers of his personnel were wounded or killed. This led to battlefield success being measured in terms of "body count," i.e. the higher the number of enemy bodies, the more successful a fight with the enemy was considered to have been. For more on the attrition strategy, see JOHN PRADOS, VIETNAM 181–82 (2009).

Women, Body Count,"[11] one might think that CPT Kapranopoulos' order was simply a reflection of the mindset in his unit.

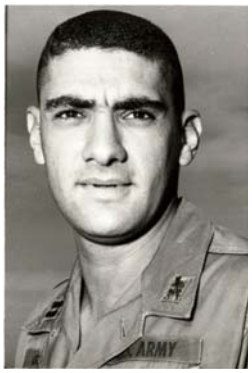
Despite CPT Kapranopoulos's order to kill the unarmed prisoner, 1LT Loomis instructed his men not to fire. But Private First Class Joseph Mattaliano, who was serving as the radio-telephone operator or "RTO" and had heard Kapranopoulos' order, began firing his weapon. As Loomis remembered: "The first couple [of rounds] missed. The others hit the man in the neck and rib cage."[12]

As for the second Vietnamese, who had fallen back and attempted to evade 1LT Loomis and his men, he was captured not by the two men that Loomis had left behind but by a squad led by Sergeant Teofilo Colon. Captain Kapranopoulos had sent Colon and his men to intercept this second man who, Kapranopoulos thought, might succeed in evading Loomis' men.[13]

At trial, 1LT Joe E. Harris, an artillery forward observer assigned to Kapranopoulos' company, testified that he had been standing next to CPT Kapranopoulos and had heard all the radio transmissions from Kapranopoulos to 1LT Loomis; Harris' in court testimony consequently corroborated what Loomis told the panel. Additionally, 1LT Harris testified that he used a pair of binoculars to watch Colon's squad in action. According to Harris, he saw that Colon's men had captured the suspected VC guerrilla, and that the man was on his knees on the ground with his hands tied behind his back. As Harris watched, "a GI in the squad fired a short execution burst, followed a few seconds later by another. The Vietnamese fell dead."[14]

As Harris put it, he put down the binoculars, turned to CPT Kapranopoulos, and said: "If I were you, I'd untie him." Captain Kapranopoulos then "radioed instructions to Colon that the ropes should be removed from the corpse's wrists."[15]

After the trial counsel, Captain Herbert J. Green, presented the testimony of 1LT Loomis and 1LT Harris, the defense counsel, Major Jon N. Kulish, presented his case.



CPT Herbert J. Green

Specialist Five John Thielemann, a medic who had been with 1LT Loomis' men when they captured the wounded and unarmed Vietnamese man, testified that he had slipped while jumping a gully and dropped his weapon. Private First Class Mattaliano then testified that after Thielemann had dropped his rifle, the Vietnamese in their custody "made a suspicious move toward [the weapon], so he opened fire to protect his buddy." In any event, Mattaliano said, there had been no radio transmission from CPT Kapranopoulos; there had been no orders to kill any prisoner.[16]

As for the Vietnamese captured by Colon's squad? Sergeant Colon testified that this man had been killed during the chase and that there had never been any order from CPT Kapranopoulos that prisoners were not to be taken in combat. Several other men who had participated in the capture of the two suspected VC insurgents also testified that "they didn't hear any orders to kill [prisoners]."[17]

Lieutenant Colonel Robert Hurley, CPT Kapranopoulos's battalion commander, testified that Kapranopoulos was "the best company leader 'I've seen in my 19 ½ years of military service."[18] Hurley also undercut 1LT Loomis' credibility with the panel hearing the case when he testified that Loomis once told him "he wasn't sure he could kill anyone or have anyone killed." This statement, said Hurley, "was a real shock to me." It likely was somewhat surprising to the panel members as well, given their professions and current location. Hurley's good character evidence was buttressed by the testimony of Brigadier General Alexander R. "Bud" Bolling, the commander of the 82d Airborne Division's 3d Brigade. Bolling, who testified before Hurley took the stand, told the panel that Kapranopoulos "was one of the most outstanding company commanders I've ever had in my command."[19]

[11] Telephone Interview with Colonel Green, *supra* note 3.

[12] *Looies Claim*, *supra* note 1.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

Not surprisingly, Major Kulish called CPT Kapranopoulos to the stand to testify on his own behalf. After swearing to tell the whole truth and nothing but the truth, Kapranopoulos "told the court that he never said a word to Loomis or Colon about killing the prisoners." As for 1LT Loomis, CPT Kapranopoulos said that he "was a lousy platoon leader" and had fabricated the story of a radio transmission. Since a number of Soldiers, in addition to LTC Hurley, testified that "Loomis had a mighty funny attitude toward combat because he didn't like to kill people," this probably undercut 1LT Loomis' credibility with the panel.[20] There was, however, no attack on 1LT Harris' veracity, and his testimony about the substance of CPT Kapranopoulos's radio transmissions was unrebutted.

After Colonel Jack Crouchet, the law officer assigned to the court-martial, instructed the panel, the court closed for deliberation. The eight officer members spent just thirty minutes before returning with their verdict: not guilty of the charge and its two specifications of premeditated murder. Kapranopoulos, who would have been sentenced to life imprisonment if he had been convicted as charged, walked out of the small, air-conditioned courtroom as a free man.[21]

Had CPT Kapranopoulos been found guilty, the government intended to try PFC Mattaliano for his part in the shooting. After the acquittal, however, the case against Mattaliano was dropped.

What explains the result in *United States v. Kapranopoulos*? Did a war crime occur? Was the evidence sufficient for a finder of fact to conclude—beyond a reasonable doubt—that the accused was guilty of ordering the unlawful killing of two prisoners? If so, why would the panel of officers acquit him?

The evidence—testimony from two lieutenants who had no motivation to lie or concoct a story incriminating CPT Kapranopoulos—was overwhelming. But from the outset, the senior Army lawyer involved in the case knew a successful prosecution would be problematic. The Tet Offensive of January 1968—in which vicious, coordinated VC and North Vietnamese attacks had been defeated but with heavy U.S. and Army of Vietnam (ARVN) losses—was still fresh in everyone's mind and attitudes toward the enemy had hardened.[22] Additionally, at this time, all courts-martial were heard by panels (there was no option for trial by military judge until 1969) and, for trials held in Vietnam, this meant panels consisting, at least in part, of combat commanders—men who had seen hard fighting and consequently not only would be sympathetic to CPT Kapranopoulos's predicament but would be loathe to find him guilty of war-related misconduct.

Major General Kenneth J. Hodson and Major Barney L. Brannen, Jr.

This explains, at least in part, why Major (MAJ) Barney L. Brannen, Jr., the Staff Judge Advocate at II Field Force, told the convening authority, Lieutenant General Walter T. "Dutch" Kerwin that, although he (Brannen) believed Kapranopoulos would be found not guilty, "we had no choice but to try him anyway."[23] In Brannen's view, there was no question that CPT Kapranopoulos had ordered the killings and was guilty; this alone was sufficient reason to try him by general court-martial. But an additional reason for prosecuting him was that Captain Kapranopoulos's "we don't take prisoners in combat" order was now common knowledge, and failing to prosecute him would send the message that such an attitude was acceptable in the II Field Force. General Kerwin saw it the same way, and so the case went to trial.[24]

Later, after the acquittal of CPT Kapranopoulos, the president of the court-martial told MAJ Brannen that "we [the panel] thought CPT Kapranopoulos was guilty, but we just couldn't find him guilty." Just why this officer told

[20] *Id.*

[21] *Id.* Jack Crouchet, the judge advocate who served as law officer in the trial (the law officer was the forerunner of today's military judge), later included the *Kapranopoulos* court-martial in a book he authored about his experiences in Vietnam. According to Crouchet, "there was great rejoicing" in CPT Kapranopoulos's unit when news of his acquittal reached the Soldiers. JACK CROUCHET, VIETNAM STORIES 134 (1997). Since Crouchet changed the names of the participants in his book, his re-telling of the event is somewhat different from the version reported in *Overseas Weekly*.

[22] On 30 January 1968, the beginning of the lunar New Year (or Tet), VC and their North Vietnamese allies launched a series of coordinated attacks designed to destroy the ARVN and encourage the civilian population to rise up against the South Vietnamese government. The VC and North Vietnamese struck five major cities, thirty-six provincial capitals, sixty-four district capitals, and fifty villages. They also attacked Ton Son Nhut Air Base outside Saigon and successfully penetrated the U.S. Embassy grounds in Saigon. Although the enemy forces were decisively defeated (more than 50,000 VC and North Vietnamese were killed or wounded), U.S. and ARVN losses were heavy (20,000 killed or wounded in action). For more on Tet, see ERIC M. HAMMEL, FIRE IN THE STREETS (1991).

[23] E-mail from Colonel (Retired) Barney L. Brannen, Jr., to author (July 23, 2014, 5:53 PM (on file with author).

[24] *Id.*

Brannen that the panel had engaged in an act of jury nullification is an open question, but the man apparently felt comfortable in sharing this information.[25]

Time magazine later pointed to the result in *Kapranopoulos* as proof that "military courts sometimes follow the unofficial 'mere gook' rule, which devalues Vietnamese lives."[26] According to *Time*, "atrocities" like the killings in the CPT Kapranopoulos court-martial occurred because "the tension of being feared and hated in a remote, racially different Asian country . . . pushed many Americans toward a tribalistic logic—all "gooks" are enemies and therefore killable."[27]

What became of some of the players in this event? Walter T. "Dutch" Kerwin, Jr. reached four star rank and was the Army Vice Chief of Staff before retiring in 1978. He died in 2008. Alexander R. "Bud" Bolling finished his distinguished career as a major general. He retired in 1973 and died in 2011. The II Field Force Staff Judge Advocate, MAJ Barney Brannen, retired as a colonel in 1979; he finished his career in our Corps as the Commandant of The Judge Advocate General's School. The trial counsel, Captain Herbert "Herb" Green, is perhaps best remembered for his many years as a trial judge. He retired as a colonel in 1994 and now works as an administrative law judge for the Social Security Administration. As for then CPT Kapranopoulos? A quick Internet search shows that he apparently retired as a lieutenant colonel and today lives in Arizona.

More historical information can be found at

The Judge Advocate General's Corps
Regimental History Website

Dedicated to the brave men and women who have served our Corps with honor, dedication, and distinction.

https://www.jagcnet.army.mil/8525736A005BE1BE

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[25] *Id.*

[26] *Legal Orders*, TIME, Apr. 12, 1971, at 18.

[27] *Id* "Gook" was a pejorative moniker for all Vietnamese (and Asians) used by GIs during the war in Southeast Asia. The derogatory term originated during the Spanish-American War, when U.S. troops in the Philippines began using it to refer to Filipinos. PAUL DICKSON, WAR SLANG 29 (2007).

A Judge Advocate's Guide to Operational Planning

"No plan of operations extends with certainty beyond the first encounter with the enemy's main strength." [1]

Major Michael J. O'Connor[*]

I. Introduction

As staff officers, whether at brigade or higher headquarters, judge advocates (JAs) are frequently pulled into ad hoc meetings and planning sessions. Frequently, it starts with the executive officer or operations officer saying something like, "Hey Judge, get your stuff and go to the brigade conference room. We are doing some planning. We are going to start with some mission analysis (MA),[2] go into wargaming,[3] course of action development (COA DEV),[4] and then work the orders piece with future operations (FUOPs)."[5] This is the start to operational planning, and the JA must be well-versed in its terms and procedures to succeed as an effective advisor to the command. Hence, serving as a junior JA on a staff consisting of senior, post Command and General Staff College (CGSC) majors,[6] many of whom have spent time as planners, can be an overwhelming experience.

Operational planning is the process of analyzing operational requirements, command intentions, and other factors to develop executable plans to accomplish the defined operational end-state or military objective.[7] Put simply, operational planning is the way a commander and his staff determine how to accomplish a particular task or achieve a specified military objective. From conducting a weapons range or unit urinalysis to complex, multi-echelon, joint combat operations, operational planning provides the means to align available forces, equipment, and capabilities in time and space in a concerted effort to obtain a desired end-state.

Over time, the Army has moved from the simple "sand table"[8] approach to plan and execute missions to an increasingly complex approach involving numerous power point presentations and slideology.[9] Unfortunately, from a training standpoint, many JAs on headquarters' staff frequently do not have the same foundational training—from West Point,[10] Reserve Officer Training Corps (ROTC),[11] the Officer Basic Course (OBC),[12] the Captains Career Course,[13]

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[*] Judge Advocate, U.S. Army. Presently assigned as Deputy Chief, International and Operational Law, U.S. Army-Europe, Wiesbaden, Germany.

[1] 2 HELMUTH KARL BERNHARD GRAF VON MOLTKE, MILITAERISCHE WERKE pt. 2, at 33–40, *in* MOLTKE ON THE ART OF WAR: SELECTED WRITINGS (Daniel Hughes, ed. 1993). In the authors opinion, this idea can be applied to a JAs time with a brigade as - The best plan does not survive contact with the Brigade staff.

[2] *See infra* Part V.B.

[3] *See infra* Part V.C.

[4] *See infra* Part V.C.

[5] *See infra* Part III.C.1.

[6] U.S. DEP'T OF ARMY, ARMY COMMAND AND GENERAL STAFF COLLEGE, OFFICE OF THE REGISTRAR REG. 350-1, COMMAND AND GENERAL STAFF COLLEGE COURSE CATALOG 7 (Sept. 29, 2010), *available at* http://www.cgsc.edu/ile/summary.asp (last visited Aug. 6, 2014). Post-ILE (Intermediate Level Education) majors are field grade officers who have completed ILE or Command and General Staff College (CGSC), if attended in residence at Fort Leavenworth, Kansas. Intermediate Level Education is a military school for field grade officers with approximately thirteen years of commissioned service. The school's

> purpose is to prepare all field grade officers with a warrior ethos and warfighting focus for leadership positions in Army, Joint, interagency, intergovernmental, and multi-national organizations executing full spectrum operations. The CGSC faculty also educates and trains branch officers attending the ILE credentialing course, Advanced Operations Course (AOC). Its purpose is to develop operations career field officers with a warfighting focus for battalion and brigade command capable of conducting full scale operations in Joint, interagency, and multinational environments, and educate officers so they have the requisite competencies to serve successfully as division through echelon-above-corps-level staff officers.

Id. See also U.S. ARMY OFFICE OF THE JUDGE ADVOCATE GEN., JAGC PUB. 1-1, PERSONNEL POLICIES sec. 7-7A1b, at 36 (1 Jan. 2014) (stating that "CGSC is the Army's preparatory course for successful service as staff officers in division through echelons-above-corps. Though CGSC is not a prerequisite for any position, it is excellent preparation for service in key positions at divisions, corps, and higher headquarters.") *Id.*

[7] OXFORD ENGLISH DICTIONARY 342 (7th ed. 2011). Military planning is defined as "[t]he devising of plans for military operations and other actions by military forces, to include the thorough coordination of such plans and activities with all concerned agencies."

[8] MERRIAM-WEBSTER DICTIONARY 296 (rev. ed. 2007). Sand table is defined as "a table bearing a relief model of a terrain built to scale for study or demonstration especially of military tactics."

[9] *See generally* NANCY DUARLE, SLIDE:OLOGY: THE ART AND SCIENCE OF CREATING GREAT PRESENTATIONS (O'Reilly Media, Inc., Aug. 8, 2008) (detailing the use and creation of effective power point presentations).

[10] *See* U. S. MILITARY ACADEMY AT WEST POINT, *available at* http://www.usma.edu/dmi/SitePages/Home.aspx (last visited May 15, 2014).

[11] *See* RESERVE OFFICER TRAINING CORPS HOMEPAGE, *available at* http://www.goarmy.com/rotc/courses-and-colleges/curriculum.html (outlining Reserve Officer Training Corps (ROTC) objectives and curriculum) (last visited May 15, 2014).

[12] *See* U.S. DEP'T OF ARMY, REG. 350-1, ARMY TRAINING AND LEADER DEVELOPMENT (RAR 4 Aug. 2011) (detailing officer training programs). *See also* U. S. ARMY TRAINING AND DOCTRINE COMMAND (TRADOC), REG. 350-10, INSTITUTIONAL LEADER TRAINING AND EDUCATION (12 Aug. 2012) [hereinafter TRADOC REG. 350-10]. *See also* Officer Basic Course, *available at* http://usmilitary.about.com/library/milinfo/arofficerinfo/blcompanygrade.htm (last visited May 15, 2014). It states:

to Intermediate Level Education[14]—as other staff officers. This article seeks to help JAs understand the basics of staff work with a focus on operational planning.

Overall, this article focuses on current operational planning theory and practices while offering practical information for JAs new to staff roles in operational units. Part II provides an overview and description of operational planning and its importance to the successful application of military power. Part III focuses on the key players involved in the planning process, their roles in various stages of mission planning and execution, and the role of primary and special staff officers. Part III also describes the Warfighting Functions (WFFs) involved in operations. Part IV describes campaign design, while Part V discusses Operational Planning and the Military Decision Making Process (MDMP). Part VI focuses on the role of JAs in the planning process. It also outlines Legal Analysis of the Operational Mission, which details the importance of legal authorities, both as enabling and limiting factors, to the conduct of the proposed mission, as well as the Operational Analysis of the Legal Mission, which examines operational factors, such as geography, unit disposition, and legal manning, in order to provide legal support to the command. Part VII discusses Legal Annexes and Operations Order reviews. Part VIII details the need for JAs to have continued involvement in the operations process. Finally, Part IX concludes with a discussion on the need for JAs to embrace their role in operational planning and to capitalize on their unique, law school-trained analytical skills to help staffs in the formation of plans.

II. Planning Overview

In preparing for battle, I have always found that plans are useless, but planning is invaluable.[15]

Planning "is the art and science of understanding a situation, envisioning a desired future, and laying out effective ways of bringing about that future."[16] It is one of the major steps in the operations process, along with preparing, executing and assessing, and serves as the foundation for staffing and conducting operations.[17] Planning incorporates the commander's intent, situational awareness of the environment, and potential courses of action, both friendly and enemy, in order to prioritize efforts and task organized military forces to meet specified objectives.

Planning occurs at all levels, from the strategic to the tactical, and consists of three distinct parts: campaign design using Army Design Methodology (at the strategic level), operational planning using MDMP (at the operational level), and troop leading procedures (at the tactical level).[18] Campaign design is the overall approach to meeting the strategic and military goals of the command; operational planning is the process of changing desired goals, articulated in the campaign, into actionable tasks, which can be properly executed and measured. Troop Leading Procedures (TLP) is a small-unit planning model, typically for a company-sized element with no supporting staff, involving the commander, first sergeant and executive officer.[19] Due to its limited planning, TLP will not be discussed in this article. However, operational design and operational planning are discussed below.

> The Officer Basic Course (OBC) marks the beginning of an officer's formal military professional development training following commissioning. The branch OBC prepares officers for their first duty assignment and provides instruction on methods for training and leading individuals, teams, squads and platoons. Additionally, the course provides officers with a detailed understanding of equipment, tactics, organization and administration at the company, battery or troop level.

Id.

[13] TRADOC REG. 350-10, *supra* note 12, at 33. The Captains Career Course has two phases. The branch phase consists of eighteen weeks of branch-specific technical and tactical training with integrated common core instruction. This training prepares officers to command and train at the company, battery, or troop level and to serve as staff officers at the battalion and brigade levels. The six-week staff process phase prepares officers to function as staff officers at battalion, brigade, and division levels. The course goals are to improve an officer's ability to analyze and solve military problems, improve the ability to interact and coordinate as a member of a staff, improve communication skills, and understand Army organizations, operations, and procedures. *Id.*

[14] *See supra* note 12.

[15] RICHARD NIXON, SIX CRISES (Richard Nixon Library ed., Touchstone Publishers 1990) (quoting Dwight D. Eisenhower).

[16] U.S. DEP'T OF ARMY, ARMY DOCTRINE PUB. 3-0, UNIFIED LAND OPERATIONS 10 (Oct. 2011) [hereinafter ADP 3-0].

[17] U.S. DEP'T OF ARMY, ARMY DOCTRINE PUB. 5-0, THE OPERATIONS PROCESS 2-5 (May 2012) [hereinafter ADP 5-0] (stating that "A plan is a continuous, evolving framework of anticipated actions that maximize opportunities and guide subordinates through each phase of the operation.").

[18] *See* U.S. DEP'T OF DEF., JOINT PUB. 5-0, JOINT OPERATION PLANNING (11 Aug. 2011) [hereinafter JP 5-0]. For those assigned to Joint Commands, judge advocates will need to become familiar with the Joint Operations Planning Process (JOPP). The JOPP operates in a similar fashion to the Army planning model. *Id.*

[19] U.S. DEP'T OF ARMY, ARMY TACTICS, TECHNIQUES AND PROCEDURES (ATTP) 5-0.1, COMMANDER AND STAFF OFFICER GUIDE 5-1 (14 Sept. 2011) [hereinafter ATTP 5-0.1] (detailing troop leading procedures (TLP) and comparing it to the Military Decision Making Process (MDMP)).

III. Key players

The best executive is the one who has sense enough to pick good people to do what he wants done, and self-restraint to keep from meddling with them while they do it.[20]

Planning the actions of a military organization involves various key players, depending on the position of the organization in the overall military hierarchy. From a squad level, involving a squad leader and two team leaders, to the joint staff, involving hundreds of planners, the level of responsibility and the complexity of the anticipated plan will dictate the scope of the planning effort and the amount of personnel involved. At the company level, planning would typically involve the company commander, first sergeant, executive officer (XO), and platoon leaders/platoon sergeants. Organizations above company level will involve the commander, XO, the operations officer, and other staff elements, involving subject matter experts (SMEs) in key areas and WFFs,[21] as discussed below.

The typical structure of a unit is:[22]

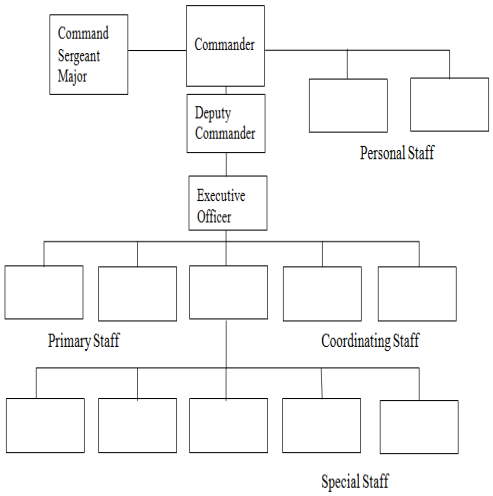

Figure 1. Staff Structure

A. Commander

The commander is responsible for the actions of his unit. Through mission command, a commander exercises authority to employ forces to achieve stated objectives.[23] Commanders focus on mission command and execution of the plan. Essentially, the commander owns the plan.[24]

A commander will shape the initial planning effort by articulating his intent, which is based on a commander's evaluation of the tactical situation and his desired end-state.[25] The commander will then assess his available assets and forces and designate the key tasks needed to achieve the end-state as defined. The commander will then issue planning guidance which serves as the basis for staff planning efforts.

Throughout the planning process and into the execution phase, the commander will tailor the plan, approve changes, and prioritize efforts across the command. Future tailoring of the planning effort could occur in large meetings or smaller meetings between the commander, executive officer and the operations officer.

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[20] Theodore Roosevelt, *available at* http://theodorerooseveltclub.com/index.php/theodore-roosevelts-legacy/ (last visited June 5, 2014).

[21] *See* Part III.E (discussing war fighting functions (WFF)).

[22] ATTP 5-0.1, *supra* note 19, fig.2-1 (detailing command structure).

[23] ADP 3-0, *supra* note 16, at 10.

> Commanders are the central figures in mission command. Under the mission command warfighting function, they perform three primary tasks to integrate all military functions and actions: Drive the operations process through their activities of understanding, visualizing, describing, directing, leading, and assessing operations; Develop teams, both within their own organizations and with joint, interagency, and multinational partners; and Inform and influence audiences, inside and outside their organizations."

Id.

[24] ATTP 5-0.1, *supra* note 19, para. 2-27, at 2-4.

> Commanders are responsible for all their staffs do or fail to do. A commander cannot delegate this responsibility. The final decision, as well as the final responsibility, remains with the commander. When commanders assign a staff member a task, they delegate the authority necessary to accomplish it. Commanders provide guidance, resources, and support. They foster a climate of mutual trust, cooperation, and teamwork.

Id.

[25] ADP 5-0 *supra* note 17, at 3-5.

> The commander's intent links the mission and concept of operations. It describes the end-state and key tasks that, along with the mission, are the basis for subordinates' initiative. Commanders may also use the commander's intent to explain a broader purpose beyond that of the mission statement. The mission and the commander's intent must be understood two echelons down.

Id.

B. Chief of Staff or Executive Officer[26]

The chief of staff (COS) at division or higher headquarters, or the XO at battalion or brigade, owns the planning effort. He is responsible for synchronizing and supervising staff efforts to meet the commander's needs. He sets the planning timeline and ensures staff compliance with meeting it. He also supervises the staff's involvement in planning and their production of planning products. Field Manual 5-0 states that "[t]he COS (XO) manages and coordinates the staff's work and provides quality control . . . [t]he COS (XO) must clearly understand the commander's intent and guidance because COSs (XOs) supervise the entire process."[27] The COS will interact with the staff and, in particular, the operations officer to ensure that the commander's intent is understood and incorporated into the planning process.[28]

C. Operations Officer/S3

In *Animal Farm*, George Orwell wrote, "All animals are equal, but some animals are more equal than others."[29] On a staff, the Operations Officer (or the "S3" or simply "the 3") is "more equal than others." While assigned as a staff member, he is not equivalent to other staff members, particularly in the planning arena. The S3 has tasking authority, derived from the commander, over all other staff elements. He is also responsible for the majority of the efforts within the organization and has a staff appropriate to that scope of responsibility.[30] These include an operations sergeant major,[31] future operations (FUOPS) personnel, current operations (CUOPS) personnel, battle captains, and other staff members.

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[26] ATTP 5-0.1, *supra* note 19, at 2-28.

> Division and higher units are assigned a COS. Brigade and battalions are assigned an XO. They are responsible to coordinate and direct the work of the staff, to include: Establish and monitor the headquarters battle rhythm for effective planning support, decision-making, and other critical functions; Represent the commander when authorized; Formulate and disseminate staff policies; Ensure effective liaison exchanges with higher, lower, and adjacent units and other organizations as required; Supervise the sustainment of the headquarters and activities of the headquarters and headquarters battalion or company; Supervise staff training and integration programs; and In division through Army Service component command headquarters, the COS personally supervises the knowledge management, operations research and system analysis, red team, and special staff sections.

Id.

[27] *Id.* at B-2.

[28] Frequently, divisions and higher commands have a deputy commanding general (DCG) assigned who may supervise the planning effort, while the chief of staff (COS) or executive officer (XO) supervises the staff in non-planning related activities. Brigades may also have deputy commanding officers (DCOs) assigned.

[29] GEORGE ORWELL, ANIMAL FARM (Secker & Warburg, London, England 1945).

[30] ATTP 5-0.1, *supra* note 19, at 2-51.

> The G-3 (S-3) has responsibilities for plans and operations. Overall, this officer prepares, coordinates, authenticates, publishes, reviews, and distributes written operation orders and plans. This includes the command [standard operating procedure (SOP)], plans, orders (including fragmentary orders and warning orders), exercises, terrain requirements, and products involving contributions from other staff sections. The G-3 (S-3) provides coordination, integrates reconnaissance and surveillance, and allocates resources.

Id.

[31] U.S. DEP'T OF ARMY, CENTER FOR ARMY LESSONS LEARNED PUB. 08-15, BATTLE STAFF NCO HANDBOOK 6 (Mar. 2008) (detailing job description for an operations sergeant major). *See also Job Description for Operations Sergeant*, *available at* http://www.ehow.com/list_6556166_duties-s3-operation-sergeant.html (last visited June 4, 2014).

> While not discussed in detail in the text, the Operations Sergeant Major (Ops SGM) is a vital member of the Operations Section. The S3 Operation Sergeant is the senior non-commissioned officer, monitoring and supervising the performance of the enlisted staff. He assists the S3 Operations Officer. He prepares, authenticates and publishes the overall tactical Standard Operating Procedures from regiment through battalion level, and recommends priorities regarding allocation of resources. He monitors the army's surveillance activities and coordinates all aspects of maneuver, such as boundaries, locations of command posts, and areas for putting up quarters. He prepares operational records and reports, and ensures the implementation of administrative policies and procedures. The S3 unit ensures the readiness of the whole command. The S3 Operations Sergeant identifies internal and external training programs. He carries out training programs according to the proposed syllabus and exercises. He conducts training tests, inspections and evaluations, and is responsible for recording and compiling training records and reports. After the implementation of the training programs, he assesses the readiness of the units and reports results to the S3 Operations Officer. The S3 Operations Sergeant Major maintains statistics of the unit's capabilities and performance. He is involved in assigning, attaching and detaching teams and units. He documents the force and makes recommendations regarding organization and equipment. He recommends, establishes and equips unit forces with the proper unit members, and organizes the command unit's records.

Id.

1. FUOPS and the Plans Cell ("The Planners")[32]

There are two sets of planners on a staff: future operations and the plans cell. The plans cell focuses efforts on the long-range planning effort, while the (near) future operations focuses planning for the mid-range planning efforts.[33] While not specifically defined in regulation, these two areas vary based on proximity to the present time and the level of uncertainty (see Figure 2 below).[34] At a brigade, FUOPS and plans will usually be combined into one element.

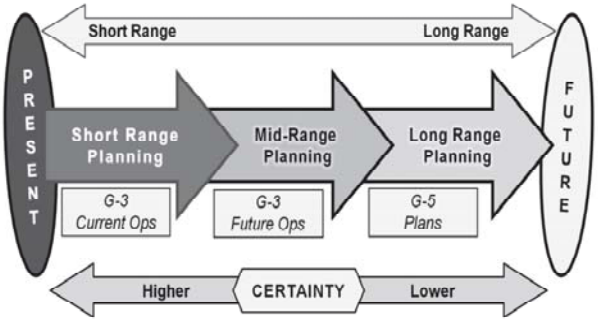

Figure 2. Certainty Diagram

Working with the S3, FUOPS participates in operational planning through the MDMP. Logically, FUOPS is responsible for summarizing current situation reports (SITREPs)[35] of all units, working task organization, developing operational timeline, completing S3 mission analysis products, and consolidating other staff products for inclusion into the complete mission analysis. They monitor ongoing operations in the event that they impact future planned operations. They also continue to refine existing plans, based on updated information, and brief the commander as needed.

Upon completion and approval of a plan, FUOPs will coordinate with staff sections for ongoing estimates and reviews of products, such as fragmentary orders (FRAGOs) and operations orders (OPORDs),[36] and then conduct a "battle handover" to CUOPS. When the operational plan (OPLAN) enters the execution window, the OPLAN is transferred to the CUOPS, or the Tactical Operations Center (TOC) floor, to apply their execution matrix[37] and monitor the execution of the plan.

2. Current Operations Integration Cell and Current Operations Section (COIC and CUOPS)

The Current Operations Section is responsible for ongoing operations within the organization. Current Operations, through the battle captains[38] and assigned noncommissioned officers (NCOs), maintains the operational picture for the command, conducts information

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[32] ATTP 5-0.1, *supra* note 18, at 3-41. The future operations (FUOPS) cell is responsible for planning operations in the mid-range planning horizon. It focuses on adjustments to the current operation—including the positioning or maneuvering of forces in depth—that facilitates continuation of the current operation. The cell consists of a core group of planners led by an assistant operations officer (the chief of future operations). All staff sections assist as required. Divisions and higher headquarters have a future operations cell. Battalion and brigade headquarters do not. *See also id.* 3-42, which provides,

> In many respects, the future operations cell serves as a fusion cell between the plans and current operations integration cells. The future operations cell monitors current operations and determines implications for operations within the mid-range planning horizon. In coordination with the current operations integration cell, the future operations cell assesses whether the ongoing operation must be modified to achieve the current phase's objectives. Normally, the commander directs adjustments to the operation, but the cell may also recommend options to the commander. Once the commander decides to adjust the operation, the cell develops the fragmentary order necessary to implement the change. The future operations cell also participates in the targeting working group since the same planning horizons normally concern them both. The future operations cell updates and adds details to the branch plans foreseen in the current operation and prepares any orders necessary to implement a sequel to the operation.

Id.

[33] *Id.* fig.3-2 (Defining mid-range as weeks to months in the planning horizon.).

[34] U.S. DEP'T OF ARMY, ARMY TECHNIQUES PUB. (ATP) 4-94, THEATER SUSTAINMENT COMMAND fig.2-2 (28 June 2013).

[35] U.S. DEP'T OF ARMY, FIELD MANUAL 6-99, ARMY REPORTS AND MESSAGE FORMATS app. A (Aug. 2013), *available at* http://armypubs.army.mil/doctrine/DR_pubs/dr_a/pdf/fm6_99.pdf (last visited May 15, 2014) (detailing types of reports including situation reports (SITREPs)).

[36] *See* Appendix A (Plans and Orders) (providing types of orders); *see also* Appendix B (Sample Army OPLAN/OPORD Format).

[37] U.S. DEP'T OF ARMY, ARMY DOCTRINE REFERENCE PUB. 5-0, THE OPERATIONS PROCESS (May 2012) [hereinafter ADRP 5-0].

> An *execution matrix* is a visual and sequential representation of the critical tasks and responsible organizations by time. An execution matrix could be for the entire force, such as an air assault execution matrix, or it may be specific to a warfighting function, such as a fire support execution matrix. The current operations integration cell uses the execution matrix to determine which friendly actions to expect forces to execute in the near term or, in conjunction with the decision support matrix, which execution decisions to make.

Id. para.4-21.

See also U.S. DEP'T OF ARMY, FIELD MANUAL 101-5, STAFF ORGANIZATION AND OPERATIONS, at H–8 (31 May 1997) (stating "An execution matrix depicts when and where specific supporting actions must occur.").

[38] U.S. DEP'T OF ARMY, FIELD MANUAL 3-21.20, THE INFANTRY BATTALION 9-15 (13 Dec. 2006) (describing duties and responsibilities of battle captains).

sharing with higher headquarters and subordinate units, and tracks execution of plans and orders. In addition, the COIC coordinates with neighboring headquarters to deconflict actions and synchronize efforts to the greatest extent possible.

Typically, the COIC consists of representatives from each of the staff elements. For example, the COIC, or TOC, has representatives from the S1, S2, Fires, etc., in order to support operations. They are also tasked with monitoring incoming orders, FRAGOs, etc., and disseminating the information to the commander and staff.[39]

D. Primary, Special, and Personal Staff

The staff of a battalion headquarters, or any higher echelon, consists of different types of staff officers: primary staff officers, also known as coordinating staff officers; special staff officers; and personal staff officers.[40] The role of the staff is to serve as SMEs advising the commander on matters in their particular area or warfighting function. Thus, ATTP 5-0.1 states, "All staff sections, to include personal and special staff, have common responsibilities to provide advice and support to the commander in their area of expertise,"[41] including staff analysis, assessment of operations, etc.

At the battalion or brigade, the primary staff consists of personnel (S1), intelligence (S2), operations (S3), logistics (S4), signal/communications (S6), inform and influence activities (IIA) (S7), and civil affairs (S9). Additionally, higher headquarters have a separate plans section (G5) and Resource Management (RM) (G8), among others. Special staff typically consists of the aviation officer, engineer, provost marshal officer (PMO), and other specialists. Personal staff consists of the chaplain, safety officer, and JA, among others.[42] Despite their designation, all of these staff members are expected to use their expertise to support planning efforts.[43]

E. Warfighting Functions

In addition to fulfilling the staff functions specified above, the staff also comes together to make up different functional areas, called warfighting functions. A WFF is a "group of tasks and systems (people, organizations, information, and processes) united by a common purpose that commanders use to accomplish missions."[44] There are six WFFs: (1) intelligence, (2) movement and maneuver, (3) sustainment, (4) fires, (5) protection, and (6) command and control.[45] Each WFF involves different members of the staff, from primary to special staff officers. For example, the sustainment WFF typically involves the personnel, logistics, financial management, engineer and Surgeon, while the protection WFF involves the Engineer (for force protection), the anti-terrorism/force protection officer, the PMO, and others.[46] Regardless of its composition, the WFF is responsible for synchronizing efforts and managing resources within the WFF. While doctrinally distinct, these areas frequently overlap and require varying degrees of legal support.

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[39] ADP 5-0, *supra* note 17, app. B, at B-4. "As soon as a unit receives a new mission (or when the commander directs), the current operations integration cell alerts the staff of the pending planning requirement." *Id.* at B-16.

[40] ATTP 5-0.1, *supra* note 19, at 2-5.

[41] *Id.* at 2-30. Each staff section has specific duties and responsibilities by area of expertise.

> However, all staff sections share a set of common duties and responsibilities: Advising and informing the commander; Building and maintaining running estimates; Providing recommendations; Preparing plans, orders, and other staff writing; Assessing operations; Managing information within area of expertise; Identifying and analyzing problems; Coordinating staff; Conducting staff assistance visits; Performing composite risk management; Performing intelligence preparation of the battlefield; Conducting staff inspections; Completing staff research; Performing staff administrative procedures; and Exercising staff supervision over their area of expertise.

Id.

[42] *Id.* at 2-5 to 2-28 (discussing primary and special staff officers and their responsibilities).

[43] *Id.* para. 2-4, at 2-1.

> [E]ach staff section provides control over its area of expertise within the commander's intent. While commanders make key decisions, they are not the only decisionmakers. Trained, trusted staff members, given decision-making authority based on the commander's intent, free commanders from routine decisions, enabling commanders to focus on key aspects of the operations. These staff members support and advise the commander by assisting the commander within their area of expertise.

Id.

[44] ADP 3-0, *supra* note 16, at 11.

[45] *Id.* at 9.

[46] U.S. DEP'T OF ARMY, ARMY DOCTRINE REFERENCE PUB. 3-0, UNIFIED LAND OPERATIONS ch. 3 (May 2012) (describing the composition of the WFFs).

1. Intelligence[47]

The intelligence WFF is tasked with leveraging information to provide situational understanding to the commander, as well as to analyze data and to offer predictions on future enemy courses of action.[48] The goal is to obtain as much information about the tactical situation and the enemy, while also denying the enemy access to information related to friendly forces. The intelligence WFF involves collection, analysis, and counter-intelligence functions, and develops the intelligence preparation of the battlefield (IPB), as discussed in Part IV.B. below.

Intelligence also provides support to force protection (FP).[49] While FP is tasked with developing base defense plans, improving base defenses, and running force protection programs and battle drills, intelligence provides "threat warnings" and analytics to help identify "inside-the-wire threats."[50] Intelligence also works to identify trends, indicators, and behaviors related to "green-on-blue"[51] incidents to provide the force with warning signs to better protect the force.

2. Movement and Maneuver[52]

The movement and maneuver WFF has distinct responsibilities, based on force projection, depending on the phase of the operation. Prior to the operation, the movement WFF is responsible for the mobilization and deployment of a combat-capable force.[53] This includes identifying training and deployment requirements, scheduling movement of personnel, and conducting reception, staging, onward movement, and integration (RSOI)[54] operations.

During operations, movement WFF is responsible for employment of forces. This involves movement and maneuver, terrain access and denial operations, terrain occupation, and employment of direct fires.[55] This WFF is directly tasked with employing forces to take and hold territory while denying the enemy freedom of movement.[56]

Following completion of the mission, the movement and maneuver WFF has the task of redeploying the force to home station.[57] In addition to redeployment, the movement and maneuver WFF is responsible for the management of the Army Force Generation (ARFORGEN) cycle within the unit. The ARFORGEN cycle focuses on resetting and training the unit to prescribed standards so that it may return to a ready and available status for future operations.[58]

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[47] For an introduction to this area, the author recommends reading the following in order: U.S. DEP'T OF ARMY, REG. 381-10, U.S. ARMY INTELLIGENCE ACTIVITIES (3 May 2007); U.S. DEP'T OF ARMY, REG. 381-20, THE ARMY COUNTERINTELLIGENCE PROGRAM (15 Nov. 1993); U.S. DEP'T OF DEF., DIR. 5240.1-R, PROCEDURES GOVERNING THE ACTIVITIES OF DOD INTELLIGENCE COMPONENTS THAT AFFECT US PERSONS (25 Apr. 1988); U.S. DEP'T OF DEFENSE, DIR. (DODD) 5200.27, ACQUISITION OF INFORMATION CONCERNING PERSONS AND ORGANIZATIONS NOT AFFILIATED WITH THE DEPARTMENT OF DEFENSE (7 Jan. 1980); U.S. DEP'T OF DEFENSE, DIR. (DODD) 5205.7, SPECIAL ACCESS PROGRAM (SAP) POLICY (1 July 2010); and U.S. DEP'T OF DEFENSE, JOINT PUB. 2-01.3, JOINT INTELLIGENCE PREPARATION OF THE OPERATIONAL ENVIRONMENT (16 June 2009). *See also* UNITED STATES ARMY OFFICE OF THE JUDGE ADVOCATE GEN., THE JUDGE ADVOCATE GEN.'S LEGAL CENTER AND SCH. (TJAGLCS), INTELLIGENCE LAW COURSE INFORMATION, *available at* https://www.jagcnet2.army.mil/8525736A005BC8F9/0/84843E08984787C18525735500653845?opendocument&noly=1 (last visited May 15, 2014).

[48] AR 381-10, *supra* note 47, at 3.

[49] *Id.*

[50] *See id.*; AR 381-20, *supra* note 47.

[51] *See generally* U.S. DEP'T OF ARMY REG. 381-12 THREAT AWARENESS AND REPORTING PROGRAM (4 Oct. 2012); *Insider Threats in Partnering Environments: A Guide for Military Leaders*, GA 90-01-031 (FOUO), Center for Army Lessons Learned (CALL)(June 2011), *available at* https://call2.army.mil/toc.aspx?document=6744

[52] For an introduction to this area, the author recommends reading the following in order, ADP 3-0, *supra* note 16; ADP 5-0, *supra* note 17; U.S. DEP'T OF ARMY, FIELD MANUAL 3-93, THEATER ARMY OPERATIONS (15 July 2010) [hereinafter FM-3-93]; and U.S. ARMY TRAINING AND DOCTRINE COMMAND (TRADOC), TRADOC PAM. 525-3-6, THE UNITED STATES ARMY FUNCTIONAL CONCEPT FOR MOVEMENT AND MANEUVER (13 Oct. 2010) [hereinafter TRADOC PAM. 525-3-6], *available at* http://www.tradoc.army.mil/tpubs/ pams/tp525-3-6.pdf.

[53] *See* ADP 3-0, *supra* note 16.

[54] U.S. DEP'T OF DEF., JOINT PUB. 3-35, DEPLOYMENT AND REDEPLOYMENT OPERATIONS, at VI-6 (31 Jan. 2013) [hereinafter JP 3-35], *available at* http://www.dtic.mil/doctrine/new_pubs/jp3_35.pdf (detailing Reception, Staging, Onward Movement, and Integration (RSOI)).

[55] FM 3-93, *supra* note 52.

[56] TRADOC PAM. 525-3-6, *supra* note 52.

[57] JP 3-35, *supra* note 54, at VI-6.

[58] U.S. DEP'T OF ARMY, REG. 525-29, ARMY FORCE GENERATION (ARFORGEN) para. 1-17 (14 Mar. 2011).

> The ARFORGEN process is the structured progression of unit readiness over time to produce trained, ready, and cohesive units prepared for operational deployment in support of (ISO) the combatant commander (CCDR) and other Army requirements. The ARFORGEN process is the Army's core process for force generation, executed with supporting-to-supported relationships, that cycles units through three force pools: RESET, Train/Ready, and Available. Each of the three force pools contains a balanced force capability to provide a sustained flow of forces for current commitments and to hedge against unexpected contingencies. ARFORGEN establishes the basis to plan and execute Army-wide unit resourcing. As a model,

3. Sustainment[59]

The Sustainment WFF incorporates the Combat Service Support responsibility to "feed, fuel, and arm" the force.[60] It extends the capability of the combat force and provides systems to resupply the force with supplies and personnel. It also supports the health of the force, including the mental, medical, and spiritual health of personnel.[61] Sustainment activities include logistics, resource management, the Commanders' Emergency Response Program (CERP), religious support, personnel matters, and health support.[62]

At a Combat Arms brigade, such as a Stryker Brigade Combat Team, the majority of the sustainment functions are handled by the Brigade Support Battalion (BSB), while the planning efforts related to the operational mission will be handled at both the brigade and BSB.[63] Legal planners should engage the sustainment planners, such as the BDE S4, early in the process and attend their logistics synchronization meetings, if possible.

4. Fires[64]

The Fires WFF involves the employment of lethal and non-lethal effects against approved targets. The Fires WFF is "the related task and systems that provide collective and coordinated use of Army indirect fires, air and missile defense, and joint fires through the targeting process."[65] Joint Publication 3-09, Fires, states, "Fires are the use of weapons systems to create a specific lethal or nonlethal effect on a target,"[66] while "[j]oint fires are fires delivered during the employment of forces from two or more components in coordinated action to produce desired effects in support of a common objective."[67]

Lethal fires, such as mortars, rockets, and artillery, are employed against authorized enemy targets to destroy enemy personnel, equipment or infrastructure or to conduct shaping operations in support of the movement and maneuver WFF. By contrast, nonlethal fires or effects can include targeting of combatant and non-combatants. Non-lethal effects involve the use of a variety of means, including information operations, electronic warfare, and psychological operations, against identified targets. For example, information operations could target the local population with efforts and messages directed at building confidence in their government or at encouraging the local population to turn from the enemy or vote in an election, for example.

> ARFORGEN supports the Army's planning, programming, budgeting, and execution (PPBE) process. As a process, it synchronizes the Army's efforts to provide land forces and other capabilities required by our Nation.

Id. See also id. para. 1-7, at 1 ("The Army is transforming its units into modular theater armies and theater subordinate commands, corps and division headquarters, brigade combat teams (BCTs), and multifunctional and functional support brigades (BDEs) based on standardized organizational designs for the Active Army (AA) and Reserve Component (RC)."). *Id.* The ARFORGEN cycle typically involves reset, train and ready periods. For active army units, the reset period is six months while the train and ready is twenty-four months, followed by a twelve-month period of availability, i.e., available to deploy or be tasked. For reserve army units, the reset period is twelve months while the train and ready is thirty-six months, followed by a twelve-month period of availability, i.e., available to deploy or be tasked. *See id.* fig.1-2, at 7. The reset period consists of manning units, fielding new equipment, conducting individual and institutional training, and reintegrating Soldiers. The train and ready period consists of continuing to man units and field equipment, conducting collective unit training, and participating in a Mission Rehearsal Exercise (MRE) at a Combined Training Center, such as the National Training Center, Fort Irwin, or the Joint Military Readiness Center, Fort Polk. The available period consists of actions to prepare to deploy or actual deployment of units if ordered. *See id.*

[59] For an introduction to this area, the author recommends reading the following: U.S. DEP'T OF ARMY, FIELD MANUAL 1-04, LEGAL SUPPORT TO THE OPERATIONAL ARMY 4-2 (Mar. 2013) [hereinafter FM 1-04]; U.S. DEP'T OF ARMY, ARMY DOCTRINE REFERENCE PUB. 4-0, SUSTAINMENT (July 2012) [hereinafter ADP 4-0], U.S. DEP'T OF ARMY, ARMY TACTICS, TECHNIQUES AND PROCEDURES (ATTP) 4-0.1. ARMY THEATER DISTRIBUTION (20 May 2011); U.S. DEP'T OF ARMY, FIELD MANUAL 1-01, GENERATING FORCE SUPPORT FOR OPERATIONS (2 Apr. 2008); U.S. DEP'T OF ARMY, FIELD MANUAL 1-05, RELIGIOUS SUPPORT (18 Apr. 2003); U.S. DEP'T OF ARMY, FIELD MANUAL 3-04.111 AVIATION BRIGADES (7 Dec. 2007), U.S. DEP'T OF ARMY, FIELD MANUAL 3-05, ARMY SPECIAL OPERATIONS FORCES (1 Dec. 2010); U.S. DEP'T OF ARMY, FIELD MANUAL 3-28, CIVIL SUPPORT OPERATIONS (20 Aug. 2010): U.S. DEP'T OF ARMY, FIELD MANUAL 3-34, ENGINEER OPERATIONS (4 Aug. 2011); U.S. DEP'T OF ARMY, FIELD MANUAL 3-35, ARMY DEPLOYMENT AND REDEPLOYMENT (21 Apr. 2010); U.S. DEP'T OF ARMY, FIELD MANUAL 3-93, THEATER ARMY OPERATIONS (12 Oct. 2011); U.S. DEP'T OF ARMY, FIELD MANUAL 4-90, BRIGADE SUPPORT BATTALION (31 Aug. 2010); U.S. DEP'T OF ARMY, FIELD MANUAL 4-92, CONTRACTING SUPPORT BRIGADE (12 Feb. 2010); U.S. DEP'T OF ARMY, FIELD MANUAL 4-94, THEATER SUSTAINMENT COMMAND (12 Feb. 2010); and U.S. DEP'T OF ARMY, ARMY TECHNIQUES PUBLICATION (ATP) 4-93.2, SUSTAINMENT BRIGADE (Aug. 2013) [hereinafter ATP 4-93.2], *available at* http://armypubs.army.mil/doctrine.

[60] ADP 4-0, *supra* note 59, at 4.

[61] *See generally* ADP 4-0, *supra* note 59.

[62] *See id.*

[63] *See* U.S. DEP'T OF ARMY, FIELD MANUAL 4-90, BRIGADE SUPPORT BATTALION 40 (31 Aug. 2010). *See also* ATP 4-93.2, *supra* note 59, at 32.

[64] For an introduction to this area, the author recommends reading the following: U.S. DEP'T OF ARMY, FIELD MANUAL 27-10, THE LAW OF LAND WARFARE (July 1956); U.S. DEP'T OF ARMY, ARMY DOCTRINE PUB. 3-09, FIRES (Aug. 2012) [hereinafter ADP 3-09]; U.S. ARMY TRAINING AND DOCTRINE COMMAND (TRADOC), TRADOC PAM. 525-73, CONCEPT FOR NON-LETHAL CAPABILITIES IN ARMY OPERATIONS (1 Dec. 1996); U.S. DEP'T OF ARMY, FIELD MANUAL 6-20-10, TACTICS, TECHNIQUES, AND PROCEDURES FOR THE TARGETING PROCESS (8 May 1996); U.S. DEP'T OF ARMY, FIELD MANUAL 3-05.40, CIVIL AFFAIRS OPERATIONS (29 Sept. 2006); U.S. DEP'T OF ARMY, FIELD MANUAL 3-05.401, CIVIL AFFAIRS TACTICS, TECHNIQUES, AND PROCEDURES (5 July 2007); and U.S. DEP'T OF ARMY, FIELD MANUAL 3-13, INFORM AND INFLUENCE ACTIVITIES (25 Jan. 2013) [hereinafter FM 3-31], *available at* http://armypubs.army.mil/doctrine.

[65] ADP 3-0, *supra* note 16, at 1.

[66] U.S. DEP'T OF DEF., JOINT PUB. 3-09, JOINT FIRE SUPPORT, at I-1 (30 June 2010), *available at* http://www.dtic.mil/doctrine/new_pubs/jp3_09.pdf (last visited June 4, 2014).

[67] *Id.* at I-2.

5. Protection[68]

The protection WFF focuses on protecting the combat force from enemy actions and to mitigate risks to U.S. personnel.[69] "Protection determines the degree to which potential threats can disrupt operations and counters or mitigates those threats. Emphasis on protection increases during preparation and continues throughout execution. Protection is a continuing activity; it integrates all protection capabilities to safeguard bases, secure routes, and protect forces."[70]

Frequently, the protection WFF is consolidated into a protection cell led by the PMO and the engineer. The protection cell "is generally responsible for integrating or coordinating the tasks and systems that fall under the protection warfighting function. Protection cells help craft protection strategies that are reflected in the concept of protection included in the base order and appropriate annexes and appendixes."[71] The protection WFF includes engineer activities, anti-terrorism and force protection, personnel recovery, operations security (OPSEC), and chemical, biological, radiological, and nuclear (CBRN) activities.[72]

6. Command and Control/Mission Command[73]

While a specified WFF, mission command is a function that unifies and synchronizes the other WFF. "Through command and control, commanders integrate all warfighting functions to accomplish the mission."[74] Mission command is the exercise of authority and direction by the commander using mission orders to enable disciplined initiative within the commander's intent to empower agile and adaptive leaders in the conduct of unified land operations.[75] Mission command involves the processes and system to execute operations and to control the force. Army Doctrine Reference Publication 6-0, states that mission command involves "tasks and systems that support commanders in exercising authority and direction."[76] The Mission Command WFF incorporates the commander's use of the operations process, communication and information management systems, inform and influence activities (IIA), and other activities, tasks, and systems that allow for "directing and leading subordinates"[77] and the employment and control of a military unit.[78]

All of these areas require legal support in different ways.[79] For example, the Fires WFF focuses on the employment of lethal and non-lethal effects and targeting. For the legal planner, this will require knowledge of the Rules of Engagement, Targeting, Collateral Damage Assessments (CDA)[80] and Estimates (CDE),[81] and IIA.[82] The Sustainment WFF focuses on sustaining a force capable of performing the assigned mission, including personnel support, logistics, medical, and legal support. For the legal planner, this involves conducting an analysis on how to provide legal support to the command throughout the area of operations. Ultimately, the legal planner has to provide support across WFF; but in order to do that, JAs must understand operational design, planning, and mission analysis.

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[68] For an introduction to this area, the author recommends reading the following: U.S. DEP'T OF ARMY, ARMY DOCTRINE REFERENCE PUB. 3-37, PROTECTION (31 Aug. 2012) and U.S. DEP'T OF ARMY, ARMY TECHNIQUES PUB. 5-19, RISK MANAGEMENT (22 Apr. 2014), *available at* http://armypubs.army.mil/doctrine.

[69] U.S. DEP'T OF ARMY, FIELD MANUAL 3-37, PROTECTION 1-1 (30 Sept. 2009), *available at* http://www.fas.org/irp/doddir/army/fm3-37.pdf (last visited June 4, 2014).

[70] *Id.* para. 5-1.

[71] *Id.* para. 5-2.

[72] *See id.*

[73] For an introduction to this area, the author recommends reading the following in order: U.S. DEP'T OF ARMY, ARMY DOCTRINE REFERENCE PUB. 6-0, MISSION COMMAND (28 Mar. 2014) [hereinafter ADRP 6-0]; U.S. DEP'T OF ARMY, FIELD MANUAL 6-0. MISSION COMMAND: COMMAND AND CONTROL OF ARMY FORCES (11 Aug. 2003) (superceded by U.S. DEP'T OF ARMY DOCTRINE PUB. 6-0, MISSION COMMAND (May 2012) [hereinafter ADP 6-0]; U.S. DEP'T OF ARMY, REG. (AR) 600-20, ARMY COMMAND POLICY (18 Mar. 2008); U.S. DEP'T OF DEF., JOINT PUB. 1, DOCTRINE FOR THE ARMED FORCES OF THE UNITED STATES (2 May 2007) [hereinafter JP-1] (incorporating C1, 20 Mar. 2009); U.S. DEP'T OF DEF., JOINT PUB. 3-0, JOINT OPERATIONS (11 Aug. 2011); and ATTP 5-0.1, *supra* note 19. These publications are, available at http://armypubs.army.mil/doctrine.

[74] ADP 3-0, *supra* note 16, at 3. *See also Mission Command WFF*, Ctr. for Army Lessons Learned (CALL), *available at* http://usacac.army.mil/cac2/call/thesaurus/toc.asp?id=33287.

[75] *Mission Command*, *supra* note 74, at 1.

[76] ADRP 6-0, *supra* note 73, at 1-2.

[77] *Id.*

[78] *Mission Command*, *supra* note 74, at iv. The Mission Command System involves (1) personnel, (2) facilities and equipment, (3) networks, (4) information systems, and (5) processes and procedures. *See also id.* at 8 ("Although staffs perform many tasks, they use knowledge and information management practices to provide commanders the information they need to create and maintain their understanding and make effective decisions.") In order to meet these requirements, staff members must understand the systems that the command uses to communicate, such as Command Post of the Future (CPOF), transverse, BFT, etc. *Id.*

[79] *See infra* Part VI (discussing the legal support provided to each WFF).

[80] ADP 3-09, *supra* note 64, at 15.

[81] *Id.*

[82] *See* Part III.A.

IV. Campaign Design

Operational design consists of command and staff efforts to develop and implement actions, strategies and provide instructions to subordinate units to meet strategic and operational objectives.[83] Design is a "bridge between the strategic end-state and the execution of tactical tasks."[84] Specifically, operational design consists of (1) the specific goals (strategic, operational and tactical), (2) the desired end-state, and (3) an operational concept to meet these goals.[85] It involves problem framing, formulating the design, and then refining the design as situations change.[86] For example, an operational design could consist of a desired end-state, such as a stable, secure Afghanistan; specific strategic goals, such as a legitimate government, capable security forces, etc., and operational goals, such as decimation of enemy forces in the area and an increase in the operational capability of security forces in a particular province.

A. Problem Framing[87]

The first step in operational design is framing the problem. It involves an assessment of the operational area, the anticipated mission and timeline, and the overall purpose of the operation. Utilizing the campaign plan or design of a higher headquarters, the unit should determine the objectives that must be achieved and the effects needed to advance the plan within their operating area, as well as to synchronize, or "nest," their efforts within the larger plan.[88]

In conducting an assessment of the operational area, a commander focuses on the geographical data, historical trends and analysis, mission variables, commonly called METT-TC,[89] enemy information (critical capabilities, critical requirements, critical vulnerabilities, and centers of gravity),[90] as well as the human and societal facts that might impact the operation. Planners review the operational and mission variables, as well as civil considerations, involving human and societal factors. These areas are analyzed by looking at political, military, economic, social, information, infrastructure, physical environment and time (PMESII-PT) (pronounced pem-e-SEE) (which applies to operational variables), METT-TC (which applies to mission variables, including mission, enemy, terrain, and troops available) and ASCOPE (defined as areas, structures, capabilities, organizations, people, and events and pronounced A scope),[91] which involves the political, military, economic and other societal and infrastructure factors, known as civil considerations.[92]

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[83] ADP 5-0, *supra* note 17, paras. 2-46 to 2-48 (discussing the Design and the Military Decision Making Process Interface). *See also* U.S. DEP'T OF THE ARMY, OPERATIONAL LAW HANDBOOK (2013) [hereinafter OPLAW HANDBOOK].

[84] *See* ADP 3-0, *supra* note 16, at 9. *See also id.* at 9-10 (stating "Operational art—the creative expression of informed vision to integrate ends, ways, and means across the levels of war—is fundamental to the Army's ability to seize, retain, and exploit the initiative while concurrently creating and preserving the conditions necessary to restore stability."). *Id.*

[85] *See id.*

[86] T.C. Greenwood, *War Planning for Wicked Problems, Where Joint Doctrine Fails*, ARMED FORCES J. (Dec. 2009), *available at* http://www.armedforcesjournal.com/?s=com/?s=Greenwood (last visited Aug. 28, 2014).

[87] U.S. DEP'T OF ARMY, ARMY TACTICS, TECHNIQUES AND PROCEDURES (ATTP) 5-0, OPERATIONS 24 (15 Mar. 2010) ("It identifies what the command must accomplish, when and where it must be done and, most importantly, why—the purpose of the operation.").

[88] ATTP 5-0.1, *supra* note 19, at 4-4 to 4-6.

[89] U.S. DEP'T OF ARMY, FIELD MANUAL INSTR. (FMI) 3-42.1, TACTICS IN COUNTERINSURGENCY 1-6 (12 Mar. 2009) [hereinafter FMI 3-42.1] (discussing mission variables). Mission variables include: mission, enemy, terrain and weather, troops and support available, time available, and civil considerations, commonly called mission, enemy, terrain, and troops available (METT-TC). *Id.*

> When commanders and staff receive a specific mission, or identify a particular problem, they can draw relevant information from their ongoing analysis of their OE (using operational variables) to further complement their analysis of mission variables. Use of the mission variables, combined with the knowledge of the operational variables, enables leaders to understand the threat, act effectively, and anticipate the consequences of their operations before and during mission execution.

Id.

[90] *Id.* at 1-3 n.75 (describing centers of gravity). *See also* ADP 3-0, *supra* note 16 (stating that COG is "the set of characteristics, capabilities, and sources of power from which a system derives its moral or physical strength, freedom of action, and will to act.") Note this description does not only apply to an adversary, but rather any system, such as an economic or political system. *Id. See also* Colonel Dale C. Eikmeier, *A Logical Method for Center-of-Gravity Analysis*, MIL. REV., Sept.–Oct. 2007, *available at* http://challenge2050.files.wordpress.com/2013/08/ends-ways-means_-militaryreview_20071031_art009.pdf (last visited May 15, 2014) (describing center of gravity analysis in operational planning). *See also* Richard G. Pierce & Robert C. Coon, *Understanding the Link Between Centers of Gravity and Mission Accomplishment*, MIL. REV., June–Aug. 2011, *available at* http://www.carlisle.army.mil/usawc/dmspo/Publications/Center%20of%20Gravity%20Article.pdf (last visited May 15, 2014) (describing center of gravity and articulating need to review approaches to mission accomplishment by attacking enemy centers of gravity).

[91] FMI 3-42.1, *supra* note 89, at 1-3 (defining PMESII-PT as Political, Military, Economic, Social, Infrastructure, and Information-Physical Environment and Time) and *id.* at 1-8 (defining Ascope as Areas, Structures, Capabilities, Organizations, People, and Events). *Id.* at 1-3 PMESII-PT is used to understand the "operational environment," in which operations will take place. *Id.* Field Manual Instruction 3-42.1 also states that "During intelligence preparation of the battlefield (IPB), the commander and staff analyze civil considerations from several perspectives—the population, the insurgents, and the counterinsurgents—to determine the effects on friendly and enemy courses of action." *Id.* at 1-8. *See also The Targeting Process: D3A and F3EAD*, SMALL WARS J. (July 16, 2011), *available at* http://smallwarsjournal.com/blog/journal/docs-temp/816-gomez.pdf (defining targeting considerations).

[92] FMI 3-42.1, *supra* note 89.

During problem framing, all staff officers are expected to contribute to the assessment. Staff members review higher headquarters' orders and design and contribute relevant information from their WFF. Judge advocates can expect to contribute information on legal authorities in the area of operations (AOR), the rules of engagement, targeting information, as well as information in areas of PMESII, including political structures, legal entities, and legal systems that might assist the commander in developing an operational approach to meet mission requirements.

B. Formulating the Design

Once the initial assessment has been conducted, the commander gives guidance on the operational approach to be taken.[93] The operational approach varies depending on the mission. For counterinsurgency (COIN) missions, the operational approach could focus on displacing insurgents and marginalizing their effect on the local populace. For direct combat operations, the operational approach would be to close with and destroy the enemy through direct engagement of an enemy force, destruction of enemy capabilities, and securing territory.

Finally, the design develops lines of operation (LOOs) and lines of effort (LOEs) that serve as a basis for tactical plans, thereby "putting troops to task" to meet the commander's intent towards particular centers of gravity.[94] For example, if a center of gravity is the populace, the operational approach could be to directly engage the populace, with IIA efforts,[95] community "outreach" and key leader engagements (KLEs),[96] while simultaneously targeting insurgents and undermining their support mechanisms, such as community and financial support. For the JA practicing rule of law, it may focus on creating and bolstering institutional legal systems to eliminate "shadow courts."[97]

C. Lines of Effort[98]

Lines of effort are derived from a commander's desired end-state, or those specified in the orders of a higher headquarters. Working backwards from the desired end-state, planners attempt to develop strategic lines that will achieve the end-state. Once the strategic lines are created, planners break down these lines into objectives, or milestones, which should be obtained en route to the end-

[93] ADRP 5-0, *supra* note 37, at 1-4.

[94] ADP 3-0, *supra* note 16, at 6-72. It states:

> Commanders use both lines of operations and lines of effort to connect objectives to a central, unifying purpose. Lines of operations portray the more traditional links between objectives, decisive points, and centers of gravity. However, lines of operations do not project the operational design beyond defeating enemy forces and seizing terrain. Combining lines of operations and lines of effort allows commanders to include nonmilitary activities in their operational design. This combination helps commanders incorporate stability tasks that set the end-state conditions into the operation. It allows commanders to consider the less tangible aspects of the operational environment where the other instruments of national power dominate. Commanders can then visualize concurrent and post-conflict stability activities. Making these connections relates the tasks and purposes of the elements of full spectrum operations with joint effects identified in the campaign plan. The resulting operational design effectively combines full spectrum operations throughout the campaign or major operation.

Id.

[95] *See id.*

[96] *Id.*

[97] *See generally* U.S. ARMY OFFICE OF THE JUDGE ADVOCATE GEN., RULE OF LAW HANDBOOK: A PRACTITIONER'S GUIDE FOR JUDGE ADVOCATES (2011). *See also* Stephanie Nijssen, *The Taliban's Shadow Government in Afghanistan* (Sept. 2011), *available at* https://www.cimicweb.org/Documents/CFC%20AFG%20Governance%20Archive/CFC_AFG_Shadow_Governance_September11.pdf (last visited June 20, 2014). Shadow courts are quasi-judicial courts run by the Taliban. It states

> The Taliban has offered an alternative to GIRoA's justice system, which the . . . is often viewed with mistrust. The Taliban drafted a new Constitution of the Islamic Emirate of Afghanistan in December 2006 and also makes use of mobile courts. The mobile courts appoint an individual, frequently a religious leader, to serve as the judge. This judge makes decisions on criminal matters after which the Taliban will offer assistance in implementing any sentence which is determined."

Id.

[98] CENTER FOR ARMY LESSONS LEARNED, *available at* http://usacac.army.mil/cac2/call/thesaurus/toc.asp?id=33845.

> Lines of effort has replaced "logical lines of operations." A line of effort links multiple tasks and missions using the logic of purpose and "cause and effect" to focus efforts toward establishing operational and strategic conditions. Lines of effort are essential to operational design when positional references to an enemy or adversary have little relevance. In operations involving many nonmilitary factors, lines of effort may be the only way to link tasks, effects, conditions, and the desired end-state. Lines of effort are often essential to helping commanders visualize how military capabilities can support the other instruments of national power. Commanders use lines of effort to describe how they envision their operations creating the more intangible end-state conditions. These lines of effort show how individual actions relate to each other and to achieving the end-state. Ideally, lines of effort combine the complementary, long-term effects of stability or civil support tasks with the cyclic, short-term events typical of offensive or defensive tasks.

Id.

state, i.e., in furtherance of the LOEs.[99] Commanders use these objectives to plan actions, through the planning process, that meet the stated objectives.

For example, in Figure 3, below, planners may determine that governance is a LOE in a greater COIN[100] campaign. The lead action officer for governance will frequently be the Non-Lethal Effects Chief,[101] with the JA, PMO, Department of State (DOS) representative, etc., in support.[102] These planners would then evaluate the elements of adequate governance and how to best create or improve these elements. Once the overall elements of governance have been determined, planners would then dissect the LOE into smaller objectives that would further the LOE. For governance, the objectives could be (1) establishing a district center, (2) holding successful elections, (3) having town meetings or shuras, etc. The objectives, based on the LOE elements, can be numerous; in addition, they can be narrow or broad depending on the intent of the commander. The commander could directly task subordinate units to carry out specific actions or could provide his command intent and the overall LOE, thus empowering his subordinate commanders to determine the actions necessary to meet that intent. See the example below:[103]

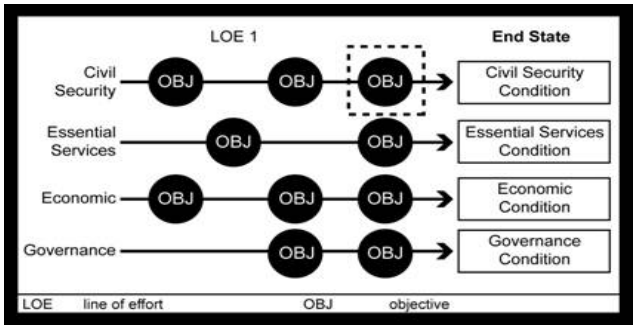

Figure 3. Sample Modified Box Method Using Lines of Effort

D. Lines of Operation

Lines of operation are the tactical-level actions that support the LOEs; LOOs involve aligning available forces and synchronizing their efforts to advance objectives along specified LOEs.[104] Lines of operation are nested with the LOEs to advance command objectives.[105] For example, if a LOE is to protect the populace, then the LOOs could involve orders to subordinate units to develop plans to attack enemy strongholds, displace insurgents, establish checkpoints, conduct joint patrols with host nation forces, etc. For planners, LOOs are the foundation for specific plans to achieve LOEs.

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[99] *Id.*

[100] FM 3-42.1, *supra* note 89.

[101] ATTP 5-0.1, *supra* note 19, at 2-11. The Non-Lethal Effects Chief, usually the S5 or S7, is the lead for non-lethal targeting, including using Inform and Influence Activities (IIA), PSYOPs, Military Deception, Civil Affairs, etc. *Id.* Paragraph 2-12 states:

> G-5 (S-5) is the principal staff officer for all matters concerning civil-military operations (CMO). The G-5 (S-5) establishes the civil-military operations center, evaluates civil considerations during mission analysis (identifying the civil centers of gravity), and prepares the groundwork for transitioning the AO from military to civilian control. The G-5 (S-5) advises the commander on the military's effect on civilians in the AO, relative to the complex relationship of these people with the terrain and institutions over time. The G-5 (S-5) is responsible for enhancing the relationship between Army forces and the civil authorities and people in the AO. The G-5 (S-5) is required at all echelons from battalion through corps, but authorized only at division and corps. Once deployed, units below division level may be authorized an S-5.

Id. See also id. at 2-13 (describing the duties of the S7).

> The ACOS, G-7 (S-7) is the principal staff officer for all matters concerning information operations, including current operations, plans, and IO-related targeting. . . . Synchronizing and coordinating offensive and defensive IO with the overall operation; Assessing the effects of offensive and defensive IO throughout the operations process; recommending IO adjustments as required; Coordinating and synchronizing tactical IO with theater-strategic and operational-level IO; Coordinating IO elements and related activities for the COS (XO); Integrating intelligence from the G-2 (S-2) into IO; Coordinating the attachment of the 1st IOC(L) Field Support Team and other specialized IO teams; Monitoring execution of IO tasks to ensure delivery of massed information effects when needed. G-7 (S-7) responsibilities related to targeting include: Participating in targeting meetings and [R]ecommending IO effects to influence adversary perceptions, decisions, and actions. The G-7 (S-7) has the following staff planning and supervisory responsibilities: Establishing and supervising an IO cell; Coordinating IO with other agencies (such as the US Information Agency, US Agency for International Development, and US ambassador.

Id.

[102] *Id.*

[103] *Id.*

[104] ADRP 5-0, *supra* note 37, at 5-10.

[105] *Id.*

E. Measures of Effectiveness and Measures of Performance

Once the LOEs and LOOs have been determined, the staff element responsible for the particular LOE will create measures of effectiveness (MOEs) and measures of performance (MOPs).[106] These are assessment tools to evaluate proposed concept of operations (CONOPs)[107] relative to the LOEs. Once plans are developed and executed, MOEs will help to determine whether objectives have been performed as instructed, and whether the successful achievement of the objective has been effective in advancing the LOE.[108] These MOEs can exist at various levels, from strategic to tactical, to inform the appropriate commander of the progress toward a particular LOE. Figure 4 is a sample of measures of effectiveness:

Measures of Effectiveness: The Need to Measure Progress		
Strategic Level Criteria	**Operational Level Criteria**	**Tactical Level Criteria**
Accountable to the American people for defining and measuring progress towards defeating terrorism and meeting national security goals.	Accountable to the strategic level for measuring operational success and providing linkage to strategic goals.	Responsible to the operational level for measuring tactical success and providing linkage to operational goals.
Examples: • Prevention of the insurgency from receiving aid or re-sources from other international groups. • A functioning national government. • Amount of international support and aid to reconstruction. • Number of nations contributing manpower to coalition forces.	Examples: • Host-nation security forces trained and equipped. • Denial of the merging of insurgent forces with terrorist groups. • Amount and distribution of— • Electricity. • Liquid propane gas. • Gasoline. • Functioning provincial governments.	Examples: • Number of insurgent forces in the AO neutralized. • Reduced attacks on coalition forces in the AO. • Reduced civilian-on-civilian violence in the AO. • Host-nation security force recruitment goals met. • Host-nation security force training goals met. • Number of reliable human intelligence walk-ins. • Amount of unexploded explosive ordnance cleared. • Functioning neighborhood and district advisory councils.

Figure 4. Sample Measures of Effectiveness

Upon establishment of LOOs, MOEs, and MOPs, the campaign design is ready to serve as a foundation for actual operational planning efforts using the MDMP.

V. Operational Planning using the Military Decision Making Process

Once a command has received the campaign design, operational-level planners will develop plans to meet the objectives of the design. These plans can be short-range or longer-range operations depending on the complexity of the overall operation. In order to facilitate planning, multi-echelon, concurrent or otherwise, the Army follows a standardized process, known as the military decision making process,[109] which provides a step-by-step process for conducting staff planning.

Since 1972, MDMP has provided an established framework, and "common language," for planning that allows staff efforts to be synchronized between echelons of command and across WFF. The MDMP consists of seven steps: (1) receipt of mission, (2) mission analysis, (3) course of action (COA) development, commonly called COA DEV, (4) COA analysis/war gaming, (5) COA comparison, (6) COA approval, and (7) Orders production. The figure below details the steps of MDMP, key inputs, and the key outputs for the staff:[110]

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[106] *Id.*

[107] *See* Appendix A.

[108] ADRP 5-0, *supra* note 37, at 5-10.

> A *measure of effectiveness* is a criterion used to assess changes in system behavior, capability, or operational environment that is tied to measuring the attainment of an end-state, achievement of an objective, or creation of an effect (JP 3-0). MOEs help measure changes in conditions, both positive and negative. MOEs help to answer the question "Are we doing the right things?" MOEs are commonly found and tracked in formal assessment plans.

Id. Thus, MOPs are used to determine how well a task has been completed, while MOEs are measures of the effect of that task, or other tasks, on the desired end-state. *Id.*

[109] *Id.* at 2-11; U.S. DEP'T OF ARMY, FIELD MANUAL 5-0, ARMY PLANNING AND ORDERS PRODUCTION 3-1 (20 Jan. 2005) [hereinafter FM 5-0] (superseded by ADRP 5-0, *supra* note 37). The MDMP is an

> established and proven analytical planning process . . . that establishes procedures for analyzing a mission, developing, analyzing, and comparing courses of action against criteria of success and each other, selecting the optimum course of action, and producing a plan or order." MDMP "is an iterative planning methodology that integrates the activities of the commander, staff, subordinate headquarters, and other partners to understand the situation and mission; develop and compare courses of action; decide on a course of action that best accomplishes the mission; and produce an operation plan or order for execution.

Id.

[110] ATTP 5-0.1, *supra* note 19, fig.4-1, at 4-3. *See also* Christopher R. Paparone, *U.S. Army Decisionmaking: Past, Present and Future*, MIL. REV., July–Aug. 2001 (detailing the history of military planning and the development of the MDMP process).

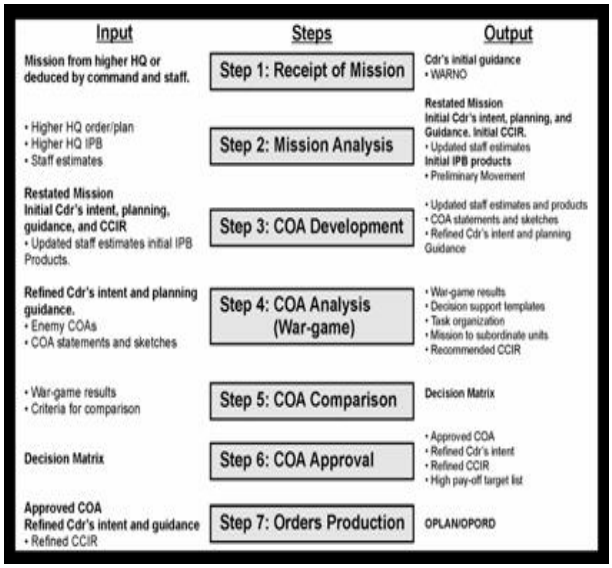

Figure 5. MDMP Steps with Key Input and Key Output

A. Receipt of Mission

Upon receipt of the mission, the FUOPS cell notifies the XO and S3. Concurrently, planners begin by preparing the initial IPB.[111] The IPB focuses on analyzing the threats, battlefield environment, battlefield effects, and potential enemy courses of action within the geographical area of operations, all of which serves as the foundation for further planning. The IPB is led by the Intelligence Officer (S2) and his staff. Staff officers contribute to the IPB within their areas of expertise. Following the IPB, the FUOPS Cell issues a Warning Order (WARNO) to the unit and subordinate units. The IPB will serve as the foundation for mission analysis that follows.

B. Mission Analysis in Detail

Planners conduct an analysis of the mission as articulated by the commander in his initial guidance. Using the commander's guidance and the IPB, staff officers begin mission analysis by developing initial staff estimates.[112] The initial staff estimate contains

> an assessment of the situation and an analysis of those courses of action a commander is considering that best accomplishes the mission. It includes an evaluation of how factors in a staff section's functional area influence each [course of action (COA)] and includes conclusions and a recommended COA to the commander.[113]

This staff estimate also includes a review of the tasks that must be accomplished, critical facts and assumptions, available assets and resources, and any constraints on mission accomplishment.

1. Specified, Implied, and Essential Tasks

Specified tasks are those that have been directed by higher headquarters; this can occur through an order[114] or during collaborative planning sessions. They can also be requirements by regulation. Implied tasks are tasks that are required to complete specified tasks.[115] An example of a specified task is an order that states "Occupy area XX." Implied tasks related to that specified task could be maneuver by road from point YY to area XX, set up security, etc. Essential tasks are those specified and implied tasks that must be performed to complete the assigned mission.[116] For a legal planner, a specified task could be "all operations will comply with the LOAC," with an implied task being "train soldiers on LOAC" or "JAG reviews all CONOPs for compliance with the LOAC."

2. Critical Facts and Assumptions

All plans and decisions rely on their underlying facts. Facts are statements of truth, or believed to be true at the time that they are made.[117] In mission analysis, facts form the foundation for understanding the operational area and informing the decision-maker. Facts are constantly reviewed to ensure their continued validity and their relevance to planning efforts. By contrast, an assumption is a "supposition on the current situation or a presupposition on

[111] ATTP 5-0.1, *supra* note 18, at 4-4 ("Staff officers carefully review the reference sections . . . of the higher headquarters' OPLANs and OPORDs to identify documents (such as theater policies and memoranda) related to the upcoming operation.").

[112] ADRP 5-0, *supra* note 37, para. 3-37, at 3-10. "A staff estimate is an assessment of the situation and an analysis of those courses of action a commander is considering that best accomplishes the mission. It includes an evaluation of how factors in a staff section's functional area influence each COA and includes conclusions and a recommended COA to the commander." *Id.*

[113] *See id.* Using their specialized WFF knowledge, planners provide initial input regarding the initial commander's intent and proposed COAs. *Id.*

[114] ATTP 5-0.1, *supra* note 19, at 12-3 (detailing types of orders and formats). *See also* OPLAW HANDBOOK, *supra* note 81, at 460–62 (discussing reviews of orders). *See also* Appendix A (illustrating types of orders).

[115] ATTP 5-0.1, *supra* note 19, at 4-8.

[116] JP 5-0, *supra* note 18, at IV-8 and IV-9 (discussing specified tasks, implied tasks, and mission statements and providing a sample). Specified tasks can be included in the mission statement. *Id.*

[117] *Id.* at IV-10.

the future course of events."[118] Since the operational area is ever evolving, assumptions complement facts in contributing to the commander's understanding of the environment, mission, threats, and other operational variables. Throughout the planning process, staff members should be working to validate assumptions, by determining them to be true and therefore facts, or to invalidate assumptions and replace them with valid facts or assumptions.

3. Assets and Resources

Planners review the task organization of the unit, its current capabilities, supporting or supported relationships,[119] and potential shortfalls. In addition to the capabilities organic to the unit in question, planners also evaluate the capabilities of higher headquarters, subordinate and adjacent units, civilian agencies, as well as joint and coalition partners.[120] They review command and operational relationships to evaluate assets, resources and levels of support across the area of operations. This can include assets that can be tasked or requested, or even ones that can "assist" without tasking, such as assets from other agencies (for instance, DOS, United States Agency for International Development (USAID), etc. Staff officers also review capability shortfalls and provide recommended solutions to the commander.[121] For example, a brigade JA could conduct mission analysis, determine the need for a third attorney, and provide a "sourcing solution"[122] to the brigade commander.

4. Constraints

During mission analysis, staff officers identify all applicable constraints and develop viable options to meet mission objectives while complying with the constraints.[123] Simply put, constraints are limitations on a commander's authority and thus restrict independent action by a commander.[124] They are either directive or restrictive. For example: "Conduct an assault on Objective Alpha no later than a specified time" is directive, while "No houses will be entered or searched during nighttime" or "No fires beyond phase line delta" are restrictive. Common examples include rules of engagement (ROE)/rules on the use of force (RUF), law of war (LOW) limitations, limitations on targeting and weapon systems, and detainee handling requirements.

In addition to their individual staff estimates, planners conduct mission analysis and produce the following: a proposed mission statement, initial commander's intent, initial planning guidance, updated IPB, essential elements of friendly information (EEFIs), and commander's critical information requirements (CCIRs), as demonstrated in Figure 5 above.[125] While EEFI consists of information that, if compromised, would jeopardize the mission,[126] CCIRs are elements of information that directly impact the mission and consist of priority information requirements (PIR) and friendly force information requirements (FFIRs).[127] The

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[118] *See* U.S. DEP'T OF DEF., JOINT PUB. 1-02, DEPARTMENT OF DEFENSE DICTIONARY OF MILITARY AND ASSOCIATED TERMS (8 Nov. 2010 (as amended 15 February 2014) (defining assumptions). If an assumption is not necessary to the decision-making process, it should be discarded. *Id.*

[119] *See supra* Part V.A.6.a.

[120] ATTP 5-0.1, *supra* note 19, at 4-8 and 4-16.

[121] *Id.*

[122] FM 1-04, *supra* note 59. The typical sourcing solution is to request a third attorney, either active duty or an activated Reserve judge advocate, through the Personnel, Plans, and Training Office (PPTO).

[123] JP 5-0, *supra* note 18, at IV-10.

[124] *Id.*

[125] *Id.* at IV-4.

> The primary inputs to mission analysis are: the higher headquarters' planning directive; other strategic guidance; and the commander's initial planning guidance . . . . The primary products of mission analysis are staff estimates, the mission statement, a refined operational approach, the commander's intent statement, updated planning guidance, and the commander's critical information requirements (CCIRs).

Id.

[126] ADRP 6-0, *supra* note 73, at 9.

[127] *Id.* at 8.

> Commanders determine information requirements and set information priorities by establishing commander's critical information requirements. Commanders and staff interpret information received to gain understanding and to exploit fleeting opportunities, respond to developing threats, modify plans, or reallocate resources. Staffs use information and knowledge management practices to assist commanders in collecting, analyzing, and disseminating information. This cycle of information exchange provides the basis for creating and maintaining understanding.

Id. See also KEITH W. WILSON (MAJOR), THE OPERATIONS PROCESS: A GUIDE TO THE MDMP FOR BRIGADE AND BATTALION STAFFS (n.d.), *available at* http://www.benning.army.mil/mcoe/dot/mc3/reserve/content/pdf/A%20Guide%20to%20the%20MDMP.pdf.

> Information requirements are all information elements the commander and staff require to successfully conduct operations; that is, all elements necessary to address the factors of METT-TC (FM 6-0). Some IRs are of such importance to the commander that they are nominated to the commander to become a commander's critical information requirement (CCIR).

Id. See also U.S. DEP'T OF DEF., JOINT PUB. 2-0, JOINT INTELLIGENCE 16 (22 Oct. 2013) (defining PIR). Priority information requirements (PIR) consist of "those intelligence requirements stated as a priority for intelligence support that the commander and staff need to understand the adversary or the operational environment." *Id. See also* ADRP 5-0, *supra* note 37, at 1-6 (defining friendly force information requirements (FFIR)). Similar to essential elements of friendly information

products are presented to the commander for approval during the mission analysis briefing.

C. COA DEV/Wargaming and Approval

Upon completion of mission analysis, the commander receives briefings on the analysis and issues refined guidance to the staff. The staff incorporates the stated intent into planning efforts and begins to develop COAs, which are simply proposed solutions to the overall "problem set."[128]

Staff members "war-game" the COAs to assess their viability.[129] Formally called COA analysis and comparison, the XO runs the war game to review available assets, align forces against objectives, and determine the supportability of the each COA. When there are COAs that cannot be supported or that fail to adequately meet the commander's intent, they are discarded. For the JA, the war game is a chance to work as a staff officer and apply critical thinking to proposed COAs. In addition, JAs must be involved to ensure that the staff "does not go down the rabbit hole" by pursuing a COA without supporting legal authority.

When the staff completes the war-game, or COA comparison, the surviving COAs are packaged for a COA briefing to the commander. At that briefing, the commander assesses the COAs, staff recommendations, and his understanding of higher headquarters guidance, and selects the most appropriate COA to meet his intent.[130] The commander makes a decision, and the S3/FUOPS, with staff input and reviews, develops the approved COA into an order for the unit to execute.[131]

Upon issuance of an order, CUOPS monitors execution of the operation, while staff planners may potentially begin or resume other planning efforts.[132] Staff planners also monitor the operation execution within their WFF, update their running estimates, and prepare to conduct post-operation assessments. With this understanding of general staff responsibilities in the MDMP, this article now turns its focus on the specific role of JAs in the planning process.

VI. Judge Advocates in the Planning Process/MDMP

Judge advocates must be involved in the planning process for two reasons. First, JAs advise commanders and must therefore remain operationally aware and relevant.[133] While not initially conversant in all of these Army acronyms, JAs are particularly suited to conduct planning utilizing MDMP. While the methodology and terminology may seem foreign to JAs, the underlying processes are also used in analyzing legal issues. Comparatively, the steps of MDMP and standard legal analysis follow:

MDMP	Legal Analysis (i.e., a UCMJ case)
1. Receipt of mission	1. Receive report of misconduct
2. Mission analysis	2. Conduct factual analysis
3. COA Development	3. Identify potential offenses
4. COA Analysis	4. Analyze offenses
5. COA Comparison	5. Compare possible offenses, review lesser included offenses
6. COA Approval	6. Determine most appropriate charges (supported by the evidence) commander briefed makes decision
7. Orders production	7. Prepare charge sheet

Similar to reviewing a case file or investigation, legal planners must review all available information pertaining to operations. This review should include review of higher headquarters' policies and orders, the IPB (discussed above), base order, and all annexes to ensure that sufficient legal authority supports the contemplated COAs. In the event that a COA does not have sufficient legal authority, the legal planner should provide alternatives or the means to request the required authority.

For mission analysis, legal planners should pay particular attention to two areas: operations and sustainment. Legal tasks, specified and implied, can be contained in any part of the order or cited authorities. However, they are most frequently found in the operations annex and the sustainment annex. The operations portion is where the legal authorities and limitations, to include the rules of engagement and detainee handling information, to military operations are contained. Sustainment is where the plan for legal support to the organization is contained. These areas are discussed below.

(EEFI), FFIR consist of "information the commander and staff need to understand the status of friendly force and supporting capabilities." *Id.*

[128] ATTP 5-0.1, *supra* note 19, 4-14.

[129] *Id.* at 4-22 to 4-25 (detailing the war gaming process).

[130] *Id.* at 4-34.

[131] *See* Appendix A (providing various types of orders and plans).

[132] *See* ATTP 5-0.1, *supra* note 19, at 4-39.

[133] FM 1-04, *supra* note 59, para. 6-10. "Judge advocates support the design process by developing an understanding of the operational environment and collaborating with the commander and other staff sections to assist in framing the environment and the problem." *Id.*

A. Operations—Legal Analysis of the Operational Mission ("Authorities Law")

"Judge, what are my authorities?"[134]

Because orders and policies provide the authority to conduct military actions, operational law could easily be viewed as "authorities" law.[135] Commanders want to bring all elements, including military, civilian and interagency, to bear on a particular mission. However, the commander must understand his specified and inherent command authorities, the limitations of those authorities, and the means to request the appropriate authorities to affect his battle plan. For example, in coalition operations, a commander may want to direct actions of coalition forces, share intelligence, arm coalition or security forces, or spend money to support coalition activities. Without the proper authorities, the commander will overstep his bounds, undermine his command and control, and jeopardize his battle plan (along with getting relieved from command). JAs can assist their commanders by being involved early in the planning process and coordinating for the authorities that the battle plan may require or to identify the impermissible activities so that the plan can be adjusted accordingly.

Since the battle plan can encompass many functional areas, legal planners should be prepared to analyze the entirety of the operational environment, to include analysis in cooperation with the staff officers of different WFF. This requires reviews of annexes, and the authorities on which they are based, to ensure that the proposed actions are legally permissible. The areas of particular focus are discussed below.

1. Intelligence

Support to intelligence operations includes legal reviews of "special programs,"[136] routine intelligence operations, and counter-intelligence (CI) operations. Given their unique capabilities of intelligence operations, legal planners must employ a multi-dimensional approach to legal support.[137] Legal planners need to be familiar with the fiscal authorities related to intelligence collection, counter-intelligence authorities, commander's force protection authorities, labor law, and a host of other authorities across the spectrum of legal practice that can be impacted by intelligence collection activities.

Examples of common contributions by JAs during mission analysis include the following:

a. Only certified interrogators can conduct interrogations
b. Special programs in effect
c. CI activities robust and require legal oversight
d. Detainee transfer requests within 24 hours (requires Brigade Commander signature)
e. Small rewards program in effect

2. Movement and Maneuver

Legal support in this area is dependent on the phase of the operation. Prior to the operation, legal support will focus on the training and readiness requirements as directed by higher headquarters. This will include current LOW, law of armed conflict (LOAC) training, ROE training, and legal readiness processing (wills, powers of attorney, etc.). During the operation, legal support will focus on ROE and compliance with the LOW/LOAC. It can also focus on refresher training of these areas, investigations, and the requirement to report violations.

Examples of common contributions by JAs during mission analysis include the following:

a. Soldier Readiness Program (SRP) must include legal readiness and ROE/LOAC training
b. Restricted travel near X
c. No Escalation of Force (EOF) with laser pointers
d. Movement restricted within 25 km of border
e. Claims card are required for all vehicles

3. Sustainment

Legal support to sustainment requires review of authorities to conduct various activities in support of operations. Primarily in the areas of fiscal and administrative law, these issues require working with other staff sections, including the S1, S4, and the Resource Management Officer (RMO).[138] Legal planners must identify contracting requirements, timelines, and fiscal limitations on planned activities such as contracting for security or food services. In addition, depending on the type

[134] This is a common question posed to operational judge advocates.

[135] *See* Lieutenant Colonel Bryan Hernandez, *Tips on Planning at the Strategic Level for Judge Advocates*, JAGCNET.ARMY.MIL (24 Mar. 2009), *available at* www.jagcnet.army.mil.

[136] *See generally* U.S. DEP'T OF DEFENSE, DIR. (DODD) 5205.7, SPECIAL ACCESS PROGRAM (SAP) POLICY (1 July 2010); and U.S. DEP'T OF DEFENSE, JOINT PUB. 2-01.3, JOINT INTELLIGENCE PREPARATION OF THE OPERATIONAL ENVIRONMENT (16 June 2009).

[137] Ensure legal personnel have the appropriate clearances and are read onto all of the programs available to the command.

[138] An example of this could be the resource management annex which will highlight the approval thresholds for various "pots of money." To a lesser extent, sustainment mission analysis requires the legal planner to review authorities related to the provision of medical care (MED ROE or Medical Rules of Eligibility), chaplaincy, and rear detachment activities (including family readiness groups).

of mission, sustainment, coupled with operations, could involve humanitarian assistance (HA), funding and equipping other forces through security force assistance, exercise support, and other areas.

In addition to the support to Logistics, planners must also provide support to the personnel management system. Along with unit leaders, legal personnel must identify "legal non-deployables" and give that information to the S1. This information is critical for the commander to understand the actual force capability at his disposal.

Personnel support also requires the planner to identify requirements related to personnel management. From Line of Duty (LOD) and Army Regulation (AR) 15-6 investigations to combat injury or death battle drills, planners must provide analysis of authorities and requirements related to serious injuries and combat and non-combat related deaths, and other personnel matters. Legal planners must anticipate events and draft appropriate AR 15-6 investigation policies that should be incorporated into the final order. For example, planners must identify the commander's serious incident report (SIR)[139] requirements and make sure that they are distributed to subordinate units.

Examples of common JA contributions for mission analysis include the following:

a. Contracts above $XXX go to the Joint Acquisition Review Board (JARB)
b. Humanitarian assistance requires CG approval
c. AR 15-6s require O4 Investigating Officer (IO) for GoB Killed in Action (KIA) cases
d. MED ROE (Rules of Eligibility) in effect
e. Money as a Weapons System (MAAWS) in effect

4. Fires

In order to support the Fires WFF, planners must understand the targeting process. The targeting process, involves deciding on targets, detecting them, delivering the effect, and assessing the outcome of that effort.[140] Planners must understand the restrictive measures, LOW/LOAC, ROE, and other limitations on the employment of force. Legal planners should be involved in Fires and Non-Lethal Effects Working Groups to provide legal guidance to the use of fires, including the ROE.

Legal planners should work with the fire support officer (FSO), IIA officer, and FIRES cell to ensure that effects are legally permissible and carried out in accordance with policy and law. Legal planners must be able to work with the FSO to evaluate target selection, the weapon system to be employed, and other factors related to the employment of effects. In order to properly advise on targeting and fires, legal advisors must know the authorities for all available weapon systems, and limitations on employment authority.

Examples of common JA contributions for mission analysis include the following:

a. Indirect fires limited to Troops in Contact (TIC) or approved concept of operations (CONOP)
b. Battle damage assessments required unless not tactically feasible
c. No fire zones are in effect in Area Y
d. All structures, including grape huts, are to be considered civilian and occupied until established otherwise
e. Fires within 300M of a structure require O6 approval

5. Protection

Support to the protection WFF includes legal reviews of proposed building projects, safety investigations, force protection activities, and use of force issues. Legal planners need to be familiar with the various authorities related to anti-terrorism and force protection activities, detainee operations, safety, and fiscal issues related to force protection. Depending on the nature of the operation, legal planners will have to provide advice on the ROE/RUF, "installation-type" law, including searches, base policies, and authorities related to Department of Defense (DOD) and non-DOD personnel residing on military installations.

This can include reviewing base defense plans and policies, conducting investigations into "inside the wire" allegations and incidents, and providing legal support to safety investigations as appropriate. In addition, legal personnel should be familiar with the operations of the Base Defense Operations Center (BDOC) as well as take part in battle drills.

Examples of common JA contributions for mission analysis include the following:

a. Detainees require two escorts each
b. Released detainees must be returned to point of capture or home
c. Detainees must be moved to temporary holding facility (THF, pronounced TIFF) within 24 hours
d. Non-lethal munitions are authorized
e. RCAs are only authorized in rear areas

6. Command and Control/Mission Command

The most important element of mission command is command relationships. Because command and control (C2)

[139] *See* FM 6-99 *supra* note 35.

[140] ADP 3-09, *supra* note 64, at 3-1 (describing targeting and mission planning relationship).

relationships are used to direct the employment of forces and to influence the operational environment, it is vital that judge advocates understand command relationship and how C2 is exercised within an organization.

7. Command Relationships

There are several types of C2: operational control (OPCON), tactical control (TACON), and administrative control (ADCON) being particularly important. Understanding the type of command authority that goes with the particular relationship is vital to the JA. These relationships will dictate authority over operations, tactical employment of troops, responsibility for sustainment, responsibility for life support, Uniform Code of Military Justice (UCMJ) authority, etc.

8. Operational Control and Tactical Control

A commander with OPCON has the authority to "organiz[e] and employ[] commands and forces, assign[] tasks, designat[e] objectives, and giv[e] authoritative direction over all aspects of military operations and joint training necessary to accomplish the mission."[141] The most important element of OPCON is the authority of a commander to "plan for, deploy, direct, control, and coordinate the actions of subordinate forces."[142] Notably, OPCON also provides the "authority to organize and employ commands and forces as the commander considers necessary to accomplish assigned missions." However, the delegation of OPCON over forces does not automatically provide ADCON over those forces.

Contained within a commander's operational control is tactical control, defined as is "controlling and directing the application of force or tactical use of combat support assets."[143] Additionally, TACON is limited in duration and scope, usually limited to a particular approved CONOP or mission. This type of control is directive in nature, such as, "Unit X will move to point X and establish a security checkpoint." When TACON is exercised, the granting unit retains all other types of control.

9. Administrative Control

Administrative control refers to the provision of supplies, services and support.[144] Thus, ADCON includes: resourcing and equipping the force, administration, personnel management, logistics, unit and individual training, mobilization, military discipline, and other readiness functions.[145] Sometimes, ADCON may also be referred to as "Title 10 authority." This type of control can be split among different organizations. For JAs, ADCON is very important for the exercise of UCMJ, the authority (for a commander) to appoint and approve AR 15-6, LOD, and financial liability investigation of property loss (FLIPL) investigations, and other administrative and training requirements.[146]

10. Attached and Assigned

Another consideration in understanding command relationships is the designation of units. Units can be organic, assigned or attached to their higher headquarters. Organic units, "are assigned to and form[] an essential part of a military organization," are part of the unit's headquarters, are on the Modified Table of Organization and Equipment (MTOE),[147] and are under the OPCON of the parent unit. Similar to organic units, assigned units are used for situations that are "relatively permanent, and/or where such organization controls or administers the unit or personnel for the primary functions of the unit."[148] Assigned units are also under the OPCON of the unit. By contrast, attached units are temporary additions to the higher headquarters to perform a specific task or for a specific duration.[149] An example of an attached unit would be a

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[141] JP-1, *supra* note 73, at V-6.

[142] *Id.*

[143] *Id.*

[144] JP 5-0, *supra* note 19, at 6.

> ADCON is the direction or exercise of authority over subordinate or other organizations with respect to administration and support, including organization of Service forces, control of resources and equipment, personnel management, logistics, individual and unit training, readiness, mobilization, demobilization, discipline, and other matters not included in the operational missions of the subordinate or other organizations. ADCON is synonymous with administration and support responsibilities identified in Title 10, USC. This is the authority necessary to fulfill Military Department statutory responsibilities for administration and support.

Id.

[145] *Id.* at 6 (detailing Title 10 responsibilities).

[146] *See* U.S. DEP'T OF ARMY, REG. 220-1, ARMY UNIT STATUS REPORTING AND FORCE REGISTRATION-CONSOLIDATED POLICIES (15 Apr. 2010), *available at* http://www.apd.army.mil/pdffiles/r220_1.pdf. This includes providing "legal non-deployable" information to the Unit Status Report (USR). *Id.*

[147] *See* U.S. DEP'T OF ARMY, REG. 71-32, FORCE GENERATION AND DOCUMENTATION (1 July 2013), *available at* http://www.apd.army.mil/pdffiles/r71_32.pdf.

[148] ADRP 5-0, *supra* note 37, glossary.

[149] *See* Charles T. Barry, Jr., *Understanding OPCON* (3 May 2010), *available at* http://www.army.mil/article/38414/Understanding_OPCON/. *See also* http://www.fas.org/man/dod-101/army/unit/overview.htm. U.S. DEP'T OF DEF., JOINT PUBLICATION 0-2, UNIFIED ACTION ARMED FORCES (UNAAF) (10 July 2001) [hereinafter JP 0-2].

deployed unit that receives a platoon of military police to support a particular operation. Upon completion of the operation, the military police platoon would be "released" from the unit and return to the control of their parent unit. During the period of attachment, "the commander of the unit that receives the attachment is responsible for the sustainment and logistics support that is beyond the capability of the attached unit."[150] Attachment orders must specify whether or not UCMJ authority is part of the attachment (see discussion above related to ADCON).

11. Support Relationships

There are other types of relationships that are used to coordinate and prioritize command efforts. These relationships are support relationships.[151] They do not have command authority, like ADCON and OPCON discussed above. Instead, a higher headquarters creates support relationships where one unit (supporting unit) is tasked to support the efforts of another unit (supported unit). This allows for making one unit the "lead" with other units in support.

There are several types of support relationships: general support: general support reinforcing: reinforcing: and direct support.[152] Field Manual 3-0 states that "support relationships are graduated" based on the level of coordination and support that is required for a particular mission. The designation of a support relationship does not alter ADCON. For planners, support relationships are important to understand where assets are coming from and what other units are involved in operations.

12. Direct Liaison Authorized (DIRLAUTH)[153]

When DIRLAUTH is used, it means that a commander has granted permission or authority to a subordinate, either on his staff or a subordinate unit, to coordinate with entities outside the organization. Frequently, the commander will limit the authority to certain entities, such as coordination with a higher or neighboring unit. Therefore, DIRAUTH is a coordination tool, and does not have command authority, i.e., decision-making authority.

An example of the complexity of command relationships is reflected in the employment of Security Force Assistance Teams (SFATs).[154] These are small units of advisors whose primary mission is to assist the development of national security forces, in countries such as Afghanistan.[155] Further, SFATs are usually part of one brigade tasked with providing a large number of SFATs. Once deployed, the SFATs are routinely attached to the battle space owner (BSO),[156] which is a different brigade with whom they often have no habitual relationship.

In the usual case of SFATs, the supported brigade has OPCON, the brigade's subordinate battalion has TACON, and ADCON can be split between the supported brigade and the organic brigade. For example, ADCON would specify that personnel replacements would come from the organic brigade, while deployed awards, evaluations, UCMJ authority, and other "in theater" personnel actions would be handled by the supported brigade.

A similar example is the employment of combat arms, or conventional, battalions with Special Forces in support of

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> Organic assets are assigned to and forming an essential part of a military organization. Organic assets are those listed in the unit's MTOE, and are in this command relationship when conducting missions in support of their own unit.
>
> Assigned is to place units or personnel in an organization where such placement is relatively permanent, and/or where such organization controls or administers the unit or personnel for the primary functions of the unit. As in organic, units will have this relationship when C2 is exercised by their parent headquarters.
>
> Attached is the placement of units or personnel in an organization where such placement is relatively temporary. The commander of the unit that receives the attachment is responsible for the sustainment and logistics support that is beyond the capability of the attached unit.

Id.

[150] *Id.*

[151] JP 0-2, *supra* note 14 at III-9 (discussing support relationships).

[152] *Id.*

[153] FM 1-04, *supra* note 59, at 4-8 (detailing relationships between judge advocates at different echelons). It states that "[u]nder Title 10, U.S. Code, section 806(b) (2010), the [Staff Judge Advocate (SJA)] or legal officer of any command is entitled to communicate directly with the SJA or legal officer of a superior or subordinate command, or with [The Judge Advocate General (TJAG)]." *Id.* Essentially, Judge Advocates (JAs) s have direct liaison authorized (DIRLAUTH)-like authority given through the technical channel via regulation.

[154] U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-13-381, SECURITY FORCE ASSISTANCE: MORE DETAILED PLANNING AND IMPROVED ACCESS TO INFORMATION NEEDED TO GUIDE EFFORTS OF ADVISOR TEAMS IN AFGHANISTAN 3 (Apr. 4, 2013), *available at* http://www.gao.gov/assets/660/654289.pdf (last visited May 15, 2014). *See generally* COMMANDER'S HANDBOOK FOR SECURITY FORCE ASSISTANCE, JOINT CENTER FOR SECURITY FORCE ASSISTANCE (14 July 2008), *available at* http://usacac.army.mil/cac2/Repository/Materials/SFA.pdf (last visited June 4, 2014).

[155] *See* Pete Escamilla & Eric Lopez, *Securing the Security Force Assistance Advisors in Afghanistan*, SMALL WARS J. (Sept. 10, 2013), *available at* http:// smallwarsjournal.com/jrnl/art/securing-the-security-force-assistance-advisors-in-afghanistan (discussing SFATs and the threats against them).

[156] DOCTRINE UPDATE 2-12, COMBINED ARMS CTR. 5 (3 Apr. 2012), *available at* http://usacac.army.mil/cac2/adp/Repository/Army%20Doctrine%20Update%202-12.pdf (last visited June 4, 2014) (defining BSO).

village stability operations (VSO).[157] The battalion would be OPCON to the Special Operations Task Force (SOTF), with TACON to the supported A Company, with ADCON split between the SOTF and the originating brigade. The SOTF would be responsible for most ADCON functions, primarily supply, with the brigade providing personnel replacement and some other personnel functions.

Mission analysis requires knowledge of operational considerations, including command relationships, proposed task organization (TASKORG), WFFs, and applicable authorities and their impacts on the proposed mission. With this knowledge, planners can develop legally supported courses of action that can be war-gamed and approved. Legal planners can also use this knowledge to understand the nature and expanse of the operation that will require legal support. As legal planners conduct mission analysis of the proposed operation, they must also examine how the legal assets will be used to support operations.

B. Sustainment—Operational Analysis of the Legal Mission (Legal Support to Operations)

"Judge, how are we going to court-martial guys downrange?"[158]

While conducting mission analysis on the operational mission, legal planners must also conduct an operational analysis of the legal mission. The previous section focused on the authorities to conduct operations. This section focuses on the capabilities required to support operations. In other words, legal planners must analyze how they are going to meet the legal needs of the unit while it conducts operations. This section sets forth an analysis of the supported unit, its operational requirements, its location in relation to other units capable of providing legal support, as well as forecasting or planning for future operations and events that may occur.

Legal support planning follows the same steps as operational mission planning. First, planners receive the mission. The mission is dictated by the commander and the orders that he has been given. As such, planners should review the orders and policies from their higher headquarters. For the legal mission, planners should review all orders, including subsequently published FRAGOs and policies that apply to their unit. Policies covering topics such as the ROE, targeting, detainee operations, and AR 15-6 investigation requirements are particularly important to determine that amount of legal support that will be required.

Upon receipt of the mission, planners should go into mission analysis. Legal planners should prepare a staff estimate for legal support, one for operational issues, or combine the two into one staff estimate. Practically, since legal support may be briefed independent of the operational mission analysis, it is best to conduct a separate staff estimate solely for the legal support plan.

Planners must evaluate and determine facts and assumptions that relate to legal support. These facts and assumptions provide the basis for determining how limited legal assets will be employed to provide support to operations, and support to the force. These should include things like location of units, personnel and staffing requirements, and ongoing legal missions, such as Rule of Law and claims.

Examples of facts and assumptions include the following:

a. TOC requires 24 hour support
b. BDE will be dispersed over the entire Kandahar region
c. Claims have remained consistent and require a JA in support
d. Civil Affairs/CERP projects require legal reviews

Once the underlying facts and assumptions are complete, planners should develop their lists of specified, implied, and essential tasks. Many tasks are included in the operations annex and the legal support appendix of the sustainment annex.[159] These tasks are requirements that the legal section must satisfy or be prepared to support. For example, the operations annex may have tasks such as "all targeting packets must comply with ROE," which has an implied task that they will be legally reviewed prior to submission. Planners should also include reporting and investigating requirements since they will require legal support.

Examples of tasks could include the following:

a. Ensure all plans, orders, target lists, policies, and procedures comply with applicable law and policy, including the law of war and ROE
b. Component commanders will ensure that a JA reviews all target lists to ensure compliance with the LOW and ROE, and that a JA is a member of the component's targeting cell
c. Each subordinate brigade will have a Single Member Foreign Claims Commission appointed by the U.S. Army Claims Service.

[157] *See* Colonel Ty Connett & Colonel Bob Cassidy, *Village Stability Operations: More than Village Defense*, U.S. ARMY JOHN F. KENNEDY SPECIAL WARFARE CTR. & SCH., *available at* http://www.soc.mil/swcs/swmag/archive/SW2403/SW2403VillageStabilityOperations_MoreThanVillageDefense.html (last visited June 4, 2014) (describing how Special Operations Forces conduct VSO).

[158] This is a common question posed to operational JAs.

[159] OPLAW HANDBOOK, *supra* note 83, at 464–69 (providing an example).

d. Provide support and services in all legal disciplines and operational law

After determining the legal requirements, planners must review the assets and resources available. Planners should review the unit strength, assigned and authorized positions of manning documents, and personnel replacement forecasts with the S1. Assets can include legal and non-legal assets. For example, a claims mission will require both types of assets. A claims mission requires a JA to adjudicate the claims, paralegal support, as well as pay agents in the field and possibly a security detail.

Planners should also determine available assets that are not contained within the organic unit. These will include centralized legal assistance offices, Trial Defense Services, other in-theater and garrison legal support, as well as SMEs from other agencies, such as USAID and DOS for Rule of Law missions. When reviewing assets, or capabilities, it is important to identify shortfalls and research possible sources of additional assets and capabilities.[160]

Examples of assets could include the following:

a. District HQ has a DoS Rule of Law SME
b. Two inbound 27Ds will bring unit to 100%
c. DIV prepared to support with personnel during leave period, if needed
d. Third attorney augmentation available (takes three months to source)[161]

Using the facts, assumptions, tasks, and resources, legal planners should evaluate any area that constrains the legal mission. Constraints could be based on requirements, logistics, geography, personnel staffing, and even the experience of personnel. Identifying these constraints, and viewing the legal team as a legal office, helps to identify means to address and overcome these limitations.

Planners should consider what authorities or policies could be needed to facilitate the mission. For example, the commander may want to put specific AR 15-6 reporting requirements and SIRs in place. Additionally, it could be useful to obtain a delegation of authority from the commander to the XO to appoint AR 15-6 investigating officers.

Examples of constraints could include the following:

a. AR 15-6 policy requires O4 IOs for death investigations
b. Courts-martial will only be held at Forward Operating Base (FOB) X
c. Trial Defense Service (TDS) only available at Camp Victory
d. Legal assistance is limited within the brigade (support available at HHQ)

Once mission analysis is complete, legal planners should continue following the MDMP and develop courses of action to support operations. These COAs will vary in their complexity depending on mission. For a brigade, the COAs could be as simple as having a consolidated versus geographically dispersed legal office, requesting additional manning, while also planning support for the rear detachment. By comparison, for a division or corps, the COAs could include conducting split operations, establishing dispersed legal offices, requesting TASKORG changes to add legal assets, and a host of other issues.[162] These COAs should also be war-gamed to assess their viability and then a proposed legal support plan should be presented to the commander for approval.

VII. Legal Annex Development and OPORD Review

The final step of the MDMP is orders production, which turns an approved course of action into an order for units to execute. Staff planners, with FUOPS, prepare portions of orders along their WFF. The legal planner must prepare two parts of the order: the ROE, Appendix 11 of the Operations Annex, and the Legal Support Appendix, Tab C, Appendix 2 of the Sustainment Annex.[163] After the draft order has been produced, all staff sections review the document before it is provided to the Commander. The Legal Support Appendix and the process to legally review an OPORD are discussed below (for a discussion on ROE, refer to the Operational Law Handbook[164]).

A. Legal Support Appendix (Sustainment Annex)

The Legal Support Appendix (LSA) is the JA's opportunity to turn a concept of support into an actual order from the commander. A standard order includes the following sections: mission, execution, concept, tasks, coordinating instructions, administration, and command and control. Subsequent orders and FRAGOs will also contain these sections but reference the base order. Judge advocates should follow this format to lay out the legal support plan and requirements to subordinate units.

[160] *See* FM 1-04, *supra* note 59. "When faced with situations where the brigade legal section cannot provide the proper breadth of service, the brigade judge advocate should use the brigade chain of command and JAGC technical channels to address shortfalls." *Id.*

[161] For example only. Sourcing timeline is determined by timeliness of submission and availability of assets.

[162] These COAs could include support to detainee operations, Rule of Law efforts, etc.

[163] U.S. DEP'T OF ARMY, FIELD MANUAL 6-0, COMMANDER AND STAFF ORGANIZATION AND OPERATIONS (May 2014).

[164] *Id.*

For the legal planner, the mission section should include a general statement regarding the provision of legal support. This section can also include particular focus areas of legal support that are relevant to the operation. For example, "On order, the Brigade Operational Legal Team, 2nd CAB provides direct legal support to operations, including, but not limited to targeting, the ROE, detainee operations, and provides legal support to commander and his staff on all matters related to Operation X."

The execution section should include a scheme of support, which details how the legal section is going to execute their mission. This section should also include the location of all legal assets within the TASKORG of the originating command. The execution section can also include tasks to subordinate units, such as provide office space, computer, etc., for assigned paralegals or "provide one officer or senior NCO to serve as claims pay agent."

The task section should include specific guidance on functional areas that are involved in the operation. Legal tasks will include compliance with international law, claims, handling of confiscated weapons, detainee policies, military justice, and a host of other issues. This section should provide detailed instructions and references on these issues.

Coordinating instructions can be used to specify responsibilities for assisting in the legal support mission. They can include requirements for staff sections or subordinate units to inform and coordinate certain activities with the legal office, including appointing Summary Court-Martial Officers (SCMO), initiating FLIPLs, and reviewing SIRs prior to submission. In addition, they can be used to address logistical matters related to legal operations. For example, coordinating instructions can detail that one battalion could coordinate with another battalion to assist with soldiers visiting TDS, Legal Assistance, etc., at their FOB.

The administration section of the order is the place to specify reporting requirements. This section should incorporate AR 15-6 reporting requirements, senior leader misconduct notification, sexual assault reporting requirements, and other requirements specified in regulation or policy. This section should also be used for other JA-specific reports that must be filed, such as reports on claims and Military Justice Online (MJO).

By utilizing orders, JAs can ensure that legal requirements and a support plan become prescriptive in nature. The use of a support plan, incorporated into an order, can address possible areas of contention with subordinate units to avoid problems during operations. Once a commander issues such an order, subordinate leaders and units are required to comply. This places command emphasis on the order. Since orders are a commander's exercise of his authority, all staff officers, particularly the JA, must ensure the order is proper.

B. Reviewing OPORDS[165]

Staff planners review the orders of higher headquarters during the mission analysis phase of operational planning. When conducting OPORD review, staff planners should review these again and reconcile the current proposed order with the higher orders. The JA should review the higher order, current order, and all appropriate policies and ensure that they are providing sufficient legal basis for the order. The current order will be derivative of the higher order, but will also provide greater specificity in terms of tasks.

Judge advocates should begin their review with a review of authorities. There are two types of authorities contained in orders that form the basis for an OPORD: authority to conduct the mission and authority to order units. The authority to conduct a particular mission is based on the orders of a higher headquarters, domestic policy, and domestic and international law, such as the LOAC. The authority to order units derives from a commander's authority over his forces. To ensure proper authority, JAs must understand the TASKORG and delineated command relationships.[166]

Following the review of general authorities, JAs should review the specific authorities contained in the reference section. These references will provide the framework for the operation and should be thoroughly reviewed. The JA should then review the proposed mission and mission statement for compliance with the regulatory and legal authorities contained in the references. For example, in a humanitarian assistance mission, JAs would ensure that the commander's authority meets the stated mission, including the provision of supplies, who can receive assistance, interagency support, and allocation of funds.

After reviewing the base order, JAs should review the individual annexes. Judge advocates must pay particular attention to the operations and sustainment annexes, but other annexes should also be reviewed. It is important to ensure that there is sufficient authority for the proposed actions within each annex. Upon completion of the orders review, staff officers work with the XO, S3, and FUOPS to address any outstanding issues. Then, FUOPS obtains the commander's approval and publishes the order through operations channels.

VIII. Continuing Involvement in the Operations Process

The conclusion of the planning effort and the review and issuance of an OPORD does not end the involvement of

[165] For a discussion, see *id.* at 462–64.

[166] Judge advocates must also ensure that the Uniform Code of Military Justice (UCMJ) jurisdictional memo, and supporting assignment and attachment orders, reflects that TASKORG.

staff officers. In particular, JAs must continue to be involved in the other phases of the operations process. Also, JAs must continue to advise during the execution phase of the operation. This includes advising on targeting, detainee issues, the ROE, and a host of other issues across all WFFs. The JA continues to be involved in the assessment's phase, including updating estimates, conducting assessments, and running battle drills.

A. Running Estimate

Throughout the planning and execution phases of operations, staff members should continually assess the current operational environment and its relationship to the original staff estimate. This ongoing assessment, known as the running estimate,[167] is conducted throughout the process and results in a continually evolving operational picture. It is not a "snapshot in time," but rather an analysis of trends as they relate to the ongoing execution. It is intended to provide the decision-maker, the commander, with information to assist in his decision-making process.

The legal running estimate should be focused on legal issues as they impact operations. This is not simply an opportunity to show statistics; instead, it requires ongoing activities, trend analysis of events and an evaluation of their effects on operations. Examples include the following:

1. ROE changes ("There have been five times, all following civilian casualties (CIVCAS), where indirect fire was restricted. The restriction lasted for 72 hours. In the event of CIVCAS in any province, we can expect to have restrictions.")[168]
2. Increase in amount of detainees
3. Increase in releases of detainees by review boards (increases need for escorts, thereby decreasing combat power)
4. Claims have increased in X province (could affect outreach in the area, but proves that IA activities regarding the community centers is reaching the population)
5. Court-martial in A Company (will require air travel to Kandahar, involving 10 members of 1st Platoon, reducing A Company to 75% of combat power; also involves 3 other senior leaders from other battalions, who are serving as court-martial members)

B. Assessments

Regardless of the WFF, staffs must continue to assess the outcome of operations. One of the most critical assessments is using the MOPs/MOEs discussed in Part IV.E. above to evaluate progress toward the campaign's desired end-state. This is the area where statistics, assessments, staff oversight and trackers come into play. For MOPs, this could involve mission back-briefs,[169] after action reviews (AARs),[170] reporting requirements, staff visits, and, in the case of contracted projects, such as CERP[171] and Civil Affairs projects, inspections by the contracting representative or engineer. Regarding MOEs, it focuses on the effect of the unit's efforts to advance a particular LOE. For example, governance MOEs can involve number of civilian trials, visits to district centers, availability of attorneys, etc. which can be measured with empirical data. Frequently, the JA may work with Civil Affairs, Rule of Law personnel, and Law Enforcement Professionals (LEPs)[172] to measure these data points. Also, JAs should consider incorporating subjective questions regarding local populace opinions and support for

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[167] ATTP 5-0.1, *supra* note 19, at 6-1.

> A *running estimate* is the continuous assessment of the current situation used to determine if the current operation is proceeding according to the commander's intent and if planned future operations are supportable (FM 5-0). The commander and each staff section maintain a running estimate. In their running estimates, the commander and each staff section continuously consider the effects of new information and update the following: Facts, Assumptions, Friendly force status, Enemy activities and capabilities, Civil considerations, and Conclusions and recommendations.

Id. See also id. at 6-2.

> The base running estimate addresses information unique to each functional area. It serves as the staff section's initial assessment of the current readiness of equipment and personnel and of how the factors considered in the running estimate affect the staff's ability to accomplish the mission. Each staff section identifies functional area friendly and enemy strengths, systems, training, morale, leadership, and weather and terrain effects, and how all these factors impact both the operational environment and area of operations. Because the running estimate is a picture relative to time, facts, and assumptions, each staff section constantly updates the estimate as new information arises, as assumptions become facts or are invalidated, when the mission changes, or when the commander requires additional input. Running estimates can be presented verbally or in writing.

Id.; *see also* Appendix D (Sample Deployment Staff Estimate).

[168] A helpful tool is to use a Stoplight Chart in the concept of operations (CONOPs) and in the COIC to demonstrate current ROE in effect. *See* Appendix E (Sample ROE Stoplight Chart).

[169] ATTP 5-0.1, *supra* note 19, at 8-2.

[170] *See* U.S. DEP'T OF ARMY, REG. 11-33, ARMY LESSONS LEARNED PROGRAM (ALLP) (17 Oct. 2006), *available at* http://www.apd.army.mil/pdffiles/r11_33.pdf (last visited June 4, 2014) (detailing AARs and their value).

[171] OPLAW HANDBOOK, *supra* note 83, at 238–40; *see also* Appendix C (Sample NEO Quad Chart).

[172] *See* Timothy Hsia, *Law-Enforcement Professional and the Army*, ARMY COMBINED ARMS CTR. (July 2008), *available at* http://usacac.army.mil/cac2/call/docs/11-20/ch_6.asp(last visited June 4, 2014) (discussing LEP program).

governmental efforts into Civil Affairs or Human Terrain Team (HTT)[173] assessments and surveys.

Simultaneous with conducting assessments along the MOPs/MOEs, JAs should also be assessing the quality of legal support provided to the command. Operations process for legal support involves planning support, preparing and executing the legal mission, and assessing the provision of legal support.

Assessments can also include analysis of AR 15-6 investigation findings and publishing that information to the unit via FRAGO or other command means. As an example: "Of 30 negligent discharges, 20 occurred with M249s, an open bolt weapon" would be helpful to unit leaders to identify training requirements, and, in the process, potentially reduce legal requirements, including initiating and reviewing AR15-6 investigations and processing general officer memorandums of reprimand (GOMORs).

C. Battle Drills

Another helpful assessment tool is the battle drill.[174] At the headquarters level, battle drills are established procedures that detail the actions a staff will take in response to a given situation. It is used to test command and legal systems and to improve command responsiveness. Judge advocates should review the organization's battle drills and insert legal requirements as appropriate. This can involve actual actions to be taken by legal personnel, notification requirements or other areas based on legal requirements. For example, a Troops in Contact (TIC) battle drill would involve notification of the JA to provide advice, if needed, on ROE and targeting, while a LOAC violation battle drill would involve notification of a JA, initiating SIRs, notifying Criminal Investigation Division (CID) and higher headquarters, and providing forces to secure the scene, if needed.

Legal planners should also consider developing internal battle drills for legal support. For example, JAs and paralegals could develop battle drills on the steps to take when notified of a servicemember's death, either combat- or non-combat-related. This could include coordinating for a SCMO, an AR 15-6 IO, drafting appropriate appointment memorandums, sending out information and forms, and scheduling a time to conduct in-briefs for the appointed officers.

By using running estimates, assessments, and battle drills, JAs can identify shortcomings in the operational plan in terms of authorities and provide a means to overcome the limitations. These will also identify limitations in operational processes and procedures and allow for future efforts to address them. Combined, these can provide valuable lessons learned for future operational planning.

IX. Conclusion

Operational planning can be an uncomfortable area for JAs. Like walking into a court hearing for the first time, it can cause anxiety. However, JAs possess finely honed analytical skills that serve them well in mastering the planning process and becoming an active planner in an operational headquarters. Ultimately, by understanding the planning process, JAs will be able to better advise their commanders, interact on equal footing with the staff, and, ultimately, become a "force enabler" in support of the command's mission.

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[173] *See generally* HUMAN TERRAIN TEAM HANDBOOK (Sept. 2008), *available at* http://www.vho.org/aaargh/fran/livres9/humterrainhandbo.pdf (last visited June 4, 2014). Human Terrain Teams (HTTs) consist of five to nine personnel deployed to support field commanders. *Id.* These teams fill the socio-cultural knowledge gap in the commander's operational environment and interpret key events in his operating area. *Id.*

[174] ATTP 5-0.1, *supra* note 19, at 3-5 (discussing typical battle drills).

Appendix A

Plans and Orders

TYPES OF PLANS[175]

"A *plan* is a design for a future or an anticipated operation. Plans come in many forms and vary in scope, complexity, and length of planning horizons. Strategic plans cover the overall conduct of a war. Operational or campaign plans cover a series of related military operations aimed at accomplishing a strategic or operational objective within a given time and space. Tactical plans cover the employment of units in operations, including the ordered arrangement and maneuver of units in relation to each other and to the enemy in order to use their full potential.

An *operation plan* is any plan for the preparation, execution, and assessment of military operations. An OPLAN becomes an OPORD when the commander sets an execution time. Commanders may begin preparation for possible operations by issuing an OPLAN.

A *service support plan* is a plan that provides information and instructions covering service support for an operation. Estimates of the command's operational requirements are the basis for a service support plan. The service support plan becomes a service support order when the commander sets an execution time for the OPLAN that the service support plan supports.

A *supporting plan* is an operation plan prepared by a supporting commander or a subordinate commander to satisfy the requests or requirements of the supported commander's plan (JP 5-0).

A *contingency plan* is a plan for major contingencies that can reasonably be anticipated in the principal geographic sub-areas of the command (JP 1-02). Army forces prepare contingency plans as part of all operations. Contingency plans may take the form of branches or sequels. Operations never proceed exactly as planned. Commanders prepare contingency plans to gain flexibility. Visualizing and planning branches and sequels are important because they involve transitions—changes in mission, type of operation, or forces required for execution. Unless conducted (planned, prepared, executed, and assessed) efficiently, transitions can reduce tempo, slow momentum, and give up the initiative.

A *branch* is a contingency plan or course of action (an option built into the basic plan or course of action) for changing the mission, disposition, orientation, or direction of movement of the force to aid success of the current operation, based on anticipated events, opportunities, or disruptions caused by enemy actions. Army forces prepare branches to exploit success and opportunities, or to counter disruptions caused by enemy actions (FM 3-0). Although commanders cannot anticipate every possible threat action, they prepare branches for the most likely ones. Commanders execute branches to rapidly respond to changing conditions.

Sequels are operations that follow the current operation. They are future operations that anticipate the possible outcomes—success, failure, or stalemate—of the current operation (FM 3-0). A counteroffensive, for example, is a logical sequel to a defense; exploitation and pursuit follow successful attacks. Executing a sequel normally begins another phase of an operation, if not a new operation. Commanders consider sequels early and revisit them throughout an operation. Without such planning during current operations, forces may be poorly positioned for future opportunities, and leaders unprepared to retain the initiative. Branches and sequels have execution criteria. Commanders carefully review them before execution and update them based on assessment of current operations.

TYPES OF ORDERS

An *order* is a communication that is written, oral, or by signal, which conveys instructions from a superior to a subordinate. In a broad sense, the terms "order" and "command" are synonymous. However, an order implies discretion as to the details of execution, whereas a command does not (JP 1-02). Combat orders pertain to operations and their service support. Combat orders include—

[175] *See id.* at 12-2 to 12-5.

• OPORDs.
• Service support orders.
• Movement orders.
• Warning orders (WARNOs).
• Fragmentary orders (FRAGOs).

OPERATION ORDERS

An *operation order* is a directive issued by a commander to subordinate commanders for the purpose of effecting the coordinated execution of an operation (JP 1-02). Traditionally called the five paragraph field order, an OPORD contains, as a minimum, descriptions of the following:

• Task organization.
• Situation.
• Mission.
• Execution.
• Administrative and logistic support.
• Command and signal for the specified operation.

OPORDs always specify an execution date and time

SERVICE SUPPORT ORDERS

A *service support order* is an order that directs the service support of operations, including administrative movements. Service support orders form the basis for the orders of supporting commanders to their units. They provide information on combat service support (CSS) to supported elements. Service support orders are issued with an OPORD. They may be issued separately, when the commander expects the CSS situation to apply to more than one OPLAN/OPORD. At division and corps levels, a service support order may replace an OPORD's service support annex. In those cases, paragraph 4 of the OPORD refers to the service support order. Staffs at brigade and lower levels may cover all necessary CSS information in paragraph 4 of the OPORD. The service support order follows the same format as the OPORD. It is usually in writing and may include overlays, traces, and other annexes.

The logistics officer has primary coordinating responsibility for preparing, publishing, and distributing the service support order. Other staff officers, both coordinating and special, prepare parts of the order concerning their functional areas.

MOVEMENT ORDERS

A *movement order* is an order issued by a commander covering the details for a move of the command (JP 1-02). Movement orders usually concern administrative moves (see FM 3-90). Normally, these movements occur in the communications zone or rear area. The logistics officer has primary coordinating staff responsibility for planning and coordinating movements. This includes preparing, publishing, and distributing movement orders. Other coordinating and special staff officers assist the logistics officer. These may include the operations officer, provost marshal, transportation officers, and movement control personnel.

When conducting ground movements in the rear area of the combat zone where enemy interference is expected, a movement order may become an annex to an OPORD or service support order. (Under the North Atlantic Treaty Organization (NATO), this annex is called the movement annex.) The operations officer plans and coordinates these tactical movements.

WARNING ORDERS

The *warning order* is a preliminary notice of an order or action, which is to follow (JP 1-02). WARNOs help subordinate units and staffs prepare for new missions. They increase subordinates' planning time, provide details of the impending operation, and detail events that accompany preparation and execution. The amount of detail a WARNO includes depends on the information and time available when it is issued and the information subordinate commanders need for proper planning and preparation. The words "warning order" precede the message text. With the commander's (or chief of staff's or executive officer's) approval, a coordinating or special staff officer may issue a WARNO.

A WARNO informs recipients of tasks they must do now or notifies them of possible future tasks. However, a WARNO does not authorize execution other than planning unless specifically stated. A WARNO follows the OPORD format.

It may include some or all of the following information:

• Series numbers, sheet numbers and names, editions, and scales of maps required (if changed from the current OPORD).
• The enemy situation and significant intelligence events.
• The higher headquarters' mission.
• Mission or tasks of the issuing headquarters.
• The commander's intent statement.
• Orders for preliminary actions, including intelligence, surveillance, and reconnaissance (ISR) operations.
• Coordinating instructions (estimated timelines, orders group meetings, and the time to issue the OPORD).
• Service support instructions, any special equipment needed, regrouping of transport, or preliminary unit movements.

FRAGMENTARY ORDERS

A *fragmentary order* is an abbreviated form of an operation order (verbal, written, or digital) usually issued on a day-to-day basis that eliminates the need for restating information contained in a basic operation order. It may be issued in sections. It is issued after an operation order to change or modify that order or to execute a branch or sequel to that order (JP 1-02). FRAGOs include all five OPORD paragraph headings. After each heading, state either new information or "no change." This ensures that recipients know they have received the entire FRAGO. Commanders may authorize members of their staff to issue FRAGOs in their name.

FRAGOs differ from OPORDs only in the degree of detail provided. They address only those parts of the original OPORD that have changed. FRAGOs refer to previous orders and provide brief and specific instructions. The higher headquarters issues a new OPORD when there is a complete change of the tactical situation or when many changes make the current order ineffective."

Appendix B

Sample Army OPLAN/OPORD Format[176]

[CLASSIFICATION]

Place the classification at the top and bottom of every page of the OPLAN or OPORD. Place the classification marking (TS), (S), (C), or (U) at the front of each paragraph and subparagraph in parentheses. Refer to AR 380-5 for classification and release marking instructions.

Copy ## of ## copies
Issuing headquarters
Place of issue
Date-time group of signature
Message reference number

The first line of the heading is the copy number assigned by the issuing headquarters. Maintain a log of specific copies issued to addressees. The second line is the official designation of the issuing headquarters (for example, 1st Infantry Division). The third line is the place of issue. It may be a code name, postal designation, or geographic location. The fourth line is the date or date-time group that the plan or order was signed or issued and becomes effective unless specified otherwise in the coordinating instructions. The fifth line is a headquarters internal control number assigned to all plans and orders in accordance with unit standard operating procedures (SOPs).

OPERATION PLAN/ORDER [number] [(code name)] [(classification of title)]

Number plans and orders consecutively by calendar year. Include code name, if any.

(U) References: *List documents essential to understanding the OPLAN or OPORD. List references concerning a specific function in the appropriate attachments.*

(a) *List maps and charts first. Map entries include series number, country, sheet names, or numbers, edition, and scale.*

(b) *List other references in subparagraphs labeled as shown.*

(U) Time Zone Used Throughout the OPLAN/OPORD: *State the time zone used in the area of operations during execution. When the OPLAN or OPORD applies to units in different time zones, use Greenwich Mean (ZULU) Time.*

(U) Task Organization: *Describe the organization of forces available to the issuing headquarters and their command and support relationships. Refer to Annex A (Task Organization) if long or complicated.*

1. (U) <u>Situation</u>. *The situation paragraph describes the conditions of the operational environment that impact operations in the following subparagraphs:*

a. (U) <u>Area of Interest</u>. *Describe the area of interest. Refer to Annex B (Intelligence) as required.*

b. (U) <u>Area of Operations</u>. *Describe the area of operations (AO). Refer to the appropriate map by its subparagraph under references, for example, "Map, reference (b)." Refer to the Appendix 2 (Operation Overlay) to Annex C (Operations) as required.*

(1) (U) <u>Terrain</u>. *Describe the aspects of terrain that impact operations. Refer to Annex B (Intelligence) as required.*

(2) (U) <u>Weather</u>. *Describe the aspects of weather that impact operations. Refer to Annex B (Intelligence) as required.*

[page number]
[CLASSIFICATION]

[176] ATTP 5-0.1, *supra* note 19.

[CLASSIFICATION]

OPLAN/OPORD [number] [(code name)]—[issuing headquarters] [(classification of title)]

Place the classification and title of the OPLAN or OPORD and the issuing headquarters at the top of the second and any subsequent pages of the base plan or order.

c. (U) Enemy Forces. *Identify enemy forces and appraise their general capabilities. Describe the enemy's disposition, location, strength, and probable courses of action. Identify known or potential terrorist threats and adversaries within the AO. Refer to Annex B (Intelligence) as required.*

d. (U) Friendly Forces. *Briefly identify the missions of friendly forces and the objectives, goals, and missions of civilian organizations that impact the issuing headquarters in following subparagraphs:*

(1) (U) Higher Headquarters Mission and Intent. *Identify and state the mission and commander's intent for headquarters two levels up and one level up from the issuing headquarters.*

(a) (U) Higher Headquarters Two Levels Up. *Identify the higher headquarters two levels up the paragraph heading (for example, Joint Task Force-18).*

1. (U) Mission.

2. (U) Commander's Intent.

(b) (U) Higher Headquarters. *Identify the higher headquarters one level up in the paragraph heading (for example, 1st [U.S.] Armored Division).*

1. (U) Mission.

2. (U) Commander's Intent.

(2) (U) Missions of Adjacent Units. *Identify and state the missions of adjacent units and other units whose actions have a significant impact on the issuing headquarters.*

e. (U) Interagency, Intergovernmental, and Nongovernmental Organizations. *Identify and state the objective or goals and primary tasks of those non-Department of Defense organizations that have a significant role within the AO. Refer to Annex V (Interagency Coordination) as required.*

f. (U) Civil Considerations. *Describe the critical aspects of the civil situation that impact operations. Refer to Appendix 1 (Intelligence Estimate) to Annex B (Intelligence) as required.*

g. (U) Attachments and Detachments. *List units attached to or detached from the issuing headquarters. State when each attachment or detachment is effective (for example, on order, on commitment of the reserve) if different from the effective time of the OPLAN or OPORD. Do not repeat information already listed in Annex A (Task Organization).*

h. (U) Assumptions. *List assumptions used in the development of the OPLAN or OPORD.*

2. (U) Mission. *State the unit's mission—a short description of the who, what (task), when, where, and why (purpose) that clearly indicates the action to be taken and the reason for doing so.*

3. (U) Execution. *Describe how the commander intends to accomplish the mission in terms of the commander's intent, an overarching concept of operations, schemes of employment for each warfighting function, assessment, specified tasks to subordinate units, and key coordinating instructions in the subparagraphs below.*

[page number]
[CLASSIFICATION]

[CLASSIFICATION]

OPLAN/OPORD [number] [(code name)]—[issuing headquarters] [(classification of title)]

a. (U) Commander's Intent. *Commanders develop their intent statement personally. The commander's intent is a clear, concise statement of what the force must do and conditions the force must establish with respect to the enemy, terrain, and civil considerations that represent the desired end state. It succinctly describes what constitutes the success of an operation and provides the purpose and conditions that define that desired end state. The commander's intent must be easy to remember and clearly understood two echelons down.*

b. (U) Concept of Operations. *The concept of operations is a statement that directs the manner in which subordinate units cooperate to accomplish the mission and establishes the sequence of actions the force will use to achieve the end state. It is normally expressed in terms of decisive, shaping, and sustaining operations. It states the principal tasks required, the responsible subordinate units, and how the principal tasks complement one another. Normally, the concept of operations projects the status of the force at the end of the operation. If the mission dictates a significant change in tasks during the operation, the commander may phase the operation. The concept of operations may be a single paragraph, divided into two or more subparagraphs, or if unusually lengthy, summarize here with details located in Annex C (Operations). If the concept of operations is phased, describe each phase in a subparagraph. Label these subparagraphs as "Phase" followed by the appropriate Roman numeral, for example, "Phase I." If the operation is phased, all paragraphs and subparagraphs of the base order and all annexes must mirror the phasing established in the concept of operations. The operation overlay and graphic depictions of lines of effort help portray the concept of operations and are located in Annex C (Operations).*

c. (U) Scheme of Movement and Maneuver. *Describe the employment of maneuver units in accordance with the concept of operations. Provide the primary tasks of maneuver units conducting the decisive operation and the purpose of each. Next, state the primary tasks of maneuver units conducting shaping operations, including security operations, and the purpose of each. For offensive operations, identify the form of maneuver. For defensive operations, identify the type of defense. For stability operations, describe the role of maneuver units by primary stability tasks. If the operation is phased, identify the main effort by phase. Identify and include priorities for the reserve. Refer to Annex C (Operations) as required.*

(1) (U) Scheme of Mobility/Countermobility. *State the scheme of mobility/countermobility including priorities by unit or area. Refer to Annex G (Engineer) as required.*

(2) (U) Scheme of Battlefield Obscuration. *State the scheme of battlefield obscuration, including priorities by unit or area. Refer to Appendix 9 (Battlefield Obscuration) to Annex C (Operations) as required.*

(3) (U) Scheme of Reconnaissance and Surveillance. *Describe how the commander intends to use reconnaissance and surveillance to support the concept of operations. Include the primary reconnaissance objectives. Refer to Annex L (Reconnaissance and Surveillance) as required.*

*(***Note:** *Army forces do not conduct reconnaissance and surveillance within the United States and its territories. For domestic operations, this paragraph is titled "Information Awareness and Assessment" and the contents of this paragraph comply with Executive Order 12333.)*

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d. (U) Scheme of Intelligence. *Describe how the commander envisions intelligence supporting the concept of operations. Include the priority of effort to situation development, targeting, and assessment. State the priority of intelligence support to units and areas. Refer to Annex B (Intelligence) as required.*

e. (U) Scheme of Fires. *Describe how the commander intends to use fires to support the concept of operations with emphasis on the scheme of maneuver. State the fire support tasks and the purpose of each task. State the priorities for, allocation of, and restrictions on fires. Refer to Annex D (Fires) as required.*

f. (U) Scheme of Protection. *Describe how the commander envisions protection supporting the concept of operations. Include the priorities of protection by unit and area. Include survivability. Address the scheme of operational area security, including security for routes, bases, and critical infrastructure. Identify tactical combat forces and other reaction forces. Use subparagraphs for protection categories (for example, air and missile defense and explosive ordnance disposal) based on the situation. Refer to Annex E (Protection) as required.*

g. (U) Stability Operations. *Describe how the commander envisions the conduct of stability operations in coordination with other organizations through the primary stability tasks. (See FM 3-07.) If other organizations or the host nation are unable to provide for civil security, restoration of essential services, and civil control, then commanders with an assigned AO must do so with available resources, request additional resources, or request relief for these requirements from higher headquarters. Commanders assign specific responsibilities for stability tasks to subordinate units in paragraph 3i (Tasks to Subordinate Units) and paragraph 3j (Coordinating Instructions). Refer to Annex C (Operations) and Annex K (Civil Affairs Operations) as required.*

h. (U) Assessment. *Describe the priorities for assessment and identify the measures of effectiveness used to assess end state conditions and objectives. Refer to Annex M (Assessment) as required.*

i. (U) Tasks to Subordinate Units. *State the task assigned to each unit that reports directly to the headquarters issuing the order. Each task must include who (the subordinate unit assigned the task), what (the task itself), when, where, and why (purpose). Use a separate subparagraph for each unit. List units in task organization sequence. Place tasks that affect two or more units in paragraph 3j (Coordinating Instructions).*

j. (U) Coordinating Instructions. *List only instructions and tasks applicable to two or more units not covered in unit SOPs.*

(1) (U) Time or condition when the OPORD becomes effective.

(2) (U) Commander's Critical Information Requirements. *List commander's critical information requirements (CCIRs).*

(3) (U) Essential Elements of Friendly Information. *List essential elements of friendly information (EEFIs).*

(4) (U) Fire Support Coordination Measures. *List critical fire support coordination or control measures.*

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OPLAN/OPORD [number] [(code name)]—[issuing headquarters] [(classification of title)]

(5) (U) Airspace Coordinating Measures. *List critical airspace coordinating or control measures.*

(6) (U) Rules of Engagement. *List rules of engagement. Refer to Appendix 11 (Rules of Engagement) to Annex C (Operations) as required.*

*(***Note:** *For operations within the United States and its territories, title this paragraph "Rules for the Use of Force").*

(7) (U) Risk Reduction Control Measures. *State measures specific to this operation not included in unit SOPs. They may include mission-oriented protective posture, operational exposure guidance, troop-safety criteria, and fratricide avoidance measures. Refer to Annex E (Protection) as required.*

(8) (U) Personnel Recovery Coordination Measures. *Refer to Appendix 2 (Personnel Recovery) to Annex E (Protection) as required.*

(9) (U) Environmental Considerations. *Refer to Appendix 5 (Environmental Considerations) to Annex G (Engineer) as required.*

(10) (U) Themes and Messages. *List information themes and messages.*

(11) (U) Other Coordinating Instructions. *List in subparagraphs any additional coordinating instructions and tasks that apply to two or more units, such as the operational timeline and any other critical timing or events.*

4. (U) Sustainment. *Describe the concept of sustainment, including priorities of sustainment by unit or area. Include instructions for administrative movements, deployments, and transportation—or references to applicable appendixes—if appropriate. Use the following subparagraphs to provide the broad concept of support for logistics, personnel, and Army health system support. Provide detailed instructions for each sustainment sub-function in the appendixes to Annex F (Sustainment) listed in Table E-2.*

a. (U) Logistics. *Refer to Annex F (Sustainment) as required.*

b. (U) Personnel. *Refer to Annex F (Sustainment) as required.*

c. (U) Army Health System Support. *Refer to Annex F (Sustainment) as required.*

5. (U) Command and Signal.

a. (U) Command.

(1) (U) Location of Commander. *State where the commander intends to be during the operation, by phase if the operation is phased.*

(2) (U) Succession of Command. *State the succession of command if not covered in the unit's SOPs.*

(3) (U) Liaison Requirements. *State liaison requirements not covered in the unit's SOPs.*

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OPLAN/OPORD [number] [(code name)]—[issuing headquarters] [(classification of title)]

b. (U) Control.

(1) (U) Command Posts. *Describe the employment of command posts (CPs), including the location of each CP and its time of opening and closing, as appropriate. State the primary controlling CP for specific tasks or phases of the operation (for example, "Division tactical command post will control the air assault").*

(2) (U) Reports. *List reports not covered in SOPs. Refer to Annex R (Reports) as required.*

c. (U) Signal. *Describe the concept of signal support, including location and movement of key signal nodes and critical electromagnetic spectrum considerations throughout the operation. Refer to Annex H (Signal) as required.*

ACKNOWLEDGE: *Include instructions for the acknowledgement of the OPLAN or OPORD by addressees. The word "acknowledge" may suffice. Refer to the message reference number if necessary. Acknowledgement of a plan or order means that it has been received and understood.*

[Commander's last name]
[Commander's rank]

The commander or authorized representative signs the original copy. If the representative signs the original, add the phrase "For the Commander." The signed copy is the historical copy and remains in the headquarters' files.

OFFICIAL:

[Authenticator's name]
[Authenticator's position]

Use only if the commander does not sign the original order. If the commander signs the original, no further authentication is required. If the commander does not sign, the signature of the preparing staff officer requires authentication and only the last name and rank of the commander appear in the signature block.

ANNEXES: *List annexes by letter and title. Army and joint OPLANs or OPORDs do not use Annexes I and O as attachments and in Army orders label these annexes "Not Used." Annexes Q, T, W, X, and Y are available for use in Army OPLANs or OPORDs and are labeled as "Spare." When an attachment required by doctrine or an SOP is unnecessary, label it "Omitted."*

Annex A – Task Organization
Annex B – Intelligence
Annex C – Operations
Annex D – Fires
Annex E – Protection
Annex F – Sustainment
Annex G – Engineer
Annex H – Signal
Annex I – Not Used
Annex J – Inform and Influence Activities
Annex K – Civil Affairs Operations
Annex L – Reconnaissance and Surveillance

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OPLAN/OPORD [number] [(code name)]—[issuing headquarters] [(classification of title)]

Annex M – Assessment
Annex N – Space Operations
Annex O – Not Used
Annex P – Host-Nation Support
Annex Q – Spare
Annex R – Reports
Annex S – Special Technical Operations
Annex T – Spare
Annex U – Inspector General
Annex V – Interagency Coordination
Annex W – Spare
Annex X – Spare
Annex Y – Spare
Annex Z – Distribution

DISTRIBUTION: *Furnish distribution copies either for action or for information. List in detail those who are to receive the plan or order. Refer to Annex Z (Distribution) if lengthy.*

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Appendix C

Sample NEO[177] Quad Chart[178]

Legal Mission Analysis (NEO)

Facts / Assumptions

(A) Atlantis is permissive environment
(B) RUF is in effect
(C) NEO of AMCITS only
(D) Entry into territory of X authorized
(E) TOC requires 24 hour support
(F) BDE will be dispersed over the entire region
(G) Claims will require a Judge Advocate in support
Civil Affairs/CERP projects require legal reviews.
Non-lethal munitions are authorized

Specified / Implied Tasks

(I) All participants cleared through legal/SRP prior to deployment
(I) All personnel received LOAC/RUF training prior to deployment
Advise commanders on RUF during operation
Establish claims operation

Constraints / Limitations

(C) Entry into Neighboring Countries is restricted (requires DOS coordination)
(C) NEO of 3rd Parties is restricted
(C) Asylum can only be approved by CTF CDR
RCAs are only authorized for FP
Humanitarian Assistance requires CG approval
Movement restricted within 25 km of border

Assets

[177] Non-Combatant Evacuations Operations.

[178] Developed by author.

Appendix D

Sample Deployment Staff Estimate[179]

Staff Section: BDE SJA	Prepared By:	DTGL:

Facts:	Assumptions (RFI):
- Current ROE in effect - Rules of Engagement not affected by Security Agreement - Change in ROE card – Detention Authority - US CENTCOM General Order Number 1A in effect - MNC-I General Order Number 1 in effect - Brigade Commander approval authority for Micro-grants of $5,000 or less	

Tasks (Specified/Implied/Essential)	S	I/E	LOCATION IN THE ORDER
- Provide support and services in all legal disciplines and operational law	X		Annex I, App. 5, (2)
- Supervise and conduct ROE/LOW/GO #1/Code of Conduct training in train-the-trainer format (Phase I)	X		Annex I, App. 5, (4)
- Reporting requirements: provide flash report within one hour: suspected/known ROE violations; detention of civilians; friendly fire incidents; completed investigations (Phase IV)	X		Annex I, App. 5, (5)
- AR 15-6 Investigations required: Class A accidents; Friendly Fire incidents; Blue/Green – Green/Blue; Non-combat death/serious injury of foreign nationals; Potential LOW violations; Loss of sensitive items; Negligent discharge; ROE violations; (Phase IV)	X		Annex I, App. 5, (5)
- Brigade appointed Program Manager and Pay Agent for each pot of money	X		Annex I, App. 5 (3) 5
- Battalion appointed Pay Agent and PPO at each battalion for each pot of money	X		Annex I, App. 5 (Tab K)
- Brigade must provide pre-approved micro-reward payment criteria describing criteria under which reward will be approved	X		

Constraints	Assets Available	Issues/Outstanding Key RFIs
- Public works and infrastructure; Religious/cultural sites - Warrant process - Cerp/ I Cerp/ Rewards/ Micro-Grants approval limits - Mosque Entry		

[179] Created by 3-2 Stryker Brigade Combat Team Legal Section.

Appendix E

Sample ROE Stoplight Chart

ROE	Status	Comments
ROE #1: Declared Hostile		
ROE #2: Self Defense		
ROE #3: Entry into Land and Airspace		
ROE #4: Entry into Neighboring Country's Land and Airspace		Requires DOD approval
ROE #5: Indirect Fires		Restricted within 100M of structures
ROE #6: Warning Shots		Not authorized
ROE #7: Defense of Third Parties		

Avoiding the Rush to Failure: The Judge Advocate's Role in the Emergency Operations Center

Major Jennifer A. McKeel[*]

"By failing to prepare, you are preparing to fail."[1]

I. Introduction

"Extreme weather disasters have hammered the United States with increasing frequency [and cost] in recent years."[2] In the years 2011 and 2012, natural disasters cost the federal government almost $25 billion.[3] Military installations are not immune to the impact of weather-related events. Examples of such incidents include the High Park and Waldo Canyon Wildfires near Fort Carson, Colorado, in the summer of 2012,[4] and the super tornado near Tinker Air Force Base (AFB), Oklahoma, in the spring of 2013.[5] The potential impact of these natural and man-made disasters upon nearby military installations is significant in terms of both potential and actual loss of life and damage to property. As installation commanders become aware of a possible weather-related event, such as a tornado, wildfire, or hurricane, the use of an emergency operations center (EOC) to coordinate and manage the installation's response to these events becomes necessary.

The role of the judge advocate (JA) as a member of the EOC staff requires a broad spectrum of knowledge.[6] Waiting until an emergency arises to train, develop, and integrate into the EOC staff is too late. The JA's early and continuous involvement throughout the emergency response process is essential to the successful development and execution of the response plan. This primer discusses the role of the JA as a member of the EOC staff during a natural or man-made disaster; addresses the common legal and ethical issues the JA faces during that response; and presents the best practices a JA can employ if called upon to serve in an EOC.

This primer is not designed to be all-inclusive as to every legal issue that could arise during an emergency response operation. Rather, it delves into several of the more common issues encountered during an emergency response and outlines the steps that should be followed to resolve them and the resources available to assist JAs. Part III specifically identifies areas of importance and surveys issues the JA will encounter during an emergency response. In particular, it focuses on those issues that appear frequently and regularly during the initial emergency response and follow-on recovery support efforts. Throughout, the primer will also address best practices, with an emphasis on ensuring that the JA is an integral member of the EOC staff during the planning, response, and recovery processes.

Before integrating into the EOC staff, JAs must have a basic understanding of the authorities and limitations that apply to domestic support missions when weather-related events occur on or near a military installation. Therefore, this primer begins with an overview of the federal emergency response authorities and a brief discussion of the Defense Support to Civil Authorities (DSCA) mission within the National Response Framework (NRF). This is followed by a review of the Federal Emergency Management Agency's (FEMA) history, its authorities under the Stafford Act, and its responsibilities as the lead federal agency during an emergency response and recovery operation. Finally, this primer provides an overview of the EOC, its function during the response and recovery effort, and a discussion of the common issues encountered by JAs during previous emergencies.

II. Overview of Emergency Response

A. Background

The Department of Defense (DoD) recognizes two priority missions for its activities in the homeland from 2012 to 2020: (1) to defend U.S. territory from direct attack by state and non-state actors; and (2) to provide assistance to domestic civil authorities in the event of natural or man-

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[1] BRAINY QUOTE, http://www.brainyquote.com/quotes/quotes/b/benjaminfr138217.html (last visited Mar. 15, 2014) (quote attributed to Benjamin Franklin).

[2] Katherine Bagley, *FEMA: Caught Between Climate Change and Congress*, INSIDE CLIMATE NEWS (Jan. 27, 2014), http://insideclimatenews.org/news/20140127/fema-caught-between-climate-change-and-congress?page=show.

[3] *Id.*

[4] *Disaster Declarations for 2012*, FEMA.GOV, http://www.fema.gov/disasters/grid/year/2012?field_disaster_type_term_tid_1=All (last visited Mar. 15, 2014).

[5] *Disaster Declarations for 2013*, FEMA.GOV, http://www.fema.gov/disasters/grid/year/2013?field_disaster_type_term_tid_1=All (last visited Mar. 15, 2014).

[6] Judge advocates (JAs) assigned as operational or administrative law attorneys might be better suited to support the emergency response mission since they are familiar with the issues, they are integrated into the staff sections, and they are involved in the mission planning. Further discussion can be found in Part II.C.

made disasters.[7] While the DoD's Homeland Defense (HD) function is outside the scope of this primer, it is important to note that the HD mission often directly impacts the DoD's DSCA mission; likewise, DSCA actions may contribute to ongoing HD activities.[8] However, for the purpose of this primer, discussion is limited to the DSCA mission as it relates to the DoD's response to a natural or man-made disaster on or near a military installation.

B. Emergency Response Authorities

When a disaster strikes on or near a military installation, commanders will frequently seek out ways to provide assistance not only to their own Soldiers living on-post, but also to those who live in the immediate vicinity of the installation. Judge advocates must be involved from the very beginning so they can give relevant, accurate, and timely advice about the commander's authority to act and provide such assistance. While there are many sources from which command authority is derived, every commander has the inherent authority to provide for the safety and welfare of people under his command.[9] However, when responding to a weather-related event beyond the installation's gates, commanders must operate within the applicable authorities. Commanders may provide emergency support in accordance with their immediate response authority (IRA), usually lasting no more than seventy-two hours after receiving and reviewing the request for assistance from local authorities.[10] A commander's IRA is designed to fill a gap left by local first responders until that aid can be provided by other agencies. Judge advocates can better serve their commanders by having a basic understanding of their commanders' limited authorities and how federal agencies operate within the DSCA framework and under the Stafford Act.

1. The DSCA Framework

The DoD's DSCA mission is not new; in fact, the Army played a direct role in several historically significant events, including the Great Chicago Fire in 1871; the Charleston, South Carolina, earthquake in 1886; and the Johnstown Flood in 1889.[11] While the active component military is uniquely trained and prepared to support such actions, its response is governed by very specific guidance outlined in statutes, executive orders, DoD regulations, and policy matters.[12] Judge advocates must understand the framework through which the active component can provide support to civil authorities, as well as the legal, fiscal, and policy constraints in place that limit the DoD's involvement in a domestic support operation.[13]

The primary reference for DoD support to civil authorities is DoD Directive (DoDD) 3025.18.[14] This directive "authorizes immediate response authority for providing DSCA, when requested."[15] As previously mentioned, IRA allows DoD commanders to provide assistance to civil authorities for a period of no more than seventy-two hours upon request from civil authorities.[16] Other forms of DSCA support must be authorized by the Secretary of Defense, unless approval authority is otherwise delegated, before providing assistance.[17] For JAs, this is an opportunity to be proactive in reviewing and determining whether the request complies with the law, conforms to fiscal restraints, and remains within the ethics guidelines. Additionally, JAs must know under which authorities the commander will operate and how that commander will work within the Federal Response Structure throughout the emergency response.[18]

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[7] U.S. DEP'T OF DEF., STRATEGY FOR HOMELAND DEFENSE AND DEFENSE IN SUPPORT OF CIVIL AUTHORITIES 1 (Feb. 2013), *available at* http://www.defense.gov/news/Homelanddefensestrategy.pdf.

[8] CTR. FOR LAW & MILITARY OPERATIONS, THE JUDGE ADVOCATE GEN.'S LEGAL CTR. & SCH., U.S. ARMY, THE DOMESTIC OPERATIONAL LAW 2013 HANDBOOK FOR JUDGE ADVOCATES 2 (Oct. 2013) [hereinafter DOMOPS HANDBOOK].

[9] *See* U.S. CONST. art. I, § 8 (granting Congress the power to defend the United States and declare war); Art. II, § 2 ("The President shall be the Commander in Chief of the Army and Navy of the United States."). While some statutes grant authority, e.g., 10 U.S.C. §§ 331–334 (2012) (insurrection statutes), others limit that authority, such as the Posse Comitatus Act, 10 U.S.C. § 1385 (2011), which restricts the Army and Air Force from engaging in law enforcement activities. When a grant or limitation on authority cannot be found, case law recognizes inherent command authority. *See* Cafeteria and Rest. Workers Union v. McElroy, 367 U.S. 886 (1961) (explaining that a commander's power over an installation is "necessarily extensive and practically exclusive, forbidding entrance and controlling residence as the public interest may demand").

[10] U.S. DEP'T OF DEF., DIR. 3025.18, DEFENSE SUPPORT OF CIVIL AUTHORITIES (DSCA) para. 4.g–4.g.2 (29 Dec. 2010) (C1, 21 Sept. 2012) [hereinafter DSCA].

[11] DOMOPS HANDBOOK, *supra* note 8, at 3.

[12] *Id.* While not within the scope of this primer, the National Guard, under the control of their respective states' governor and adjutant general, is usually the first military component capable of responding to emergencies occurring within their state. National Guard personnel responding to such emergencies operate under a different command and control structure, while active component personnel continue to operate under their normal chain of command, but in a supportive role to the civilian authorities responding to the emergency event. *Id.*

[13] *Id.* at 4.

[14] DSCA, *supra* note 10.

[15] *Id.* para. 1.e.

[16] *Id.* para. 4.g.2. The commander's Immediate Response Authority (IRA) is discussed in further detail in Part II.B.4. *See* Appendix C (Request for Assistance Flowchart) (illustrating the process used to request assistance and the necessary approval authority).

[17] *Id.* para. 4.d.

[18] THE FED. EMERGENCY MGMT. AGENCY PUB. 1, THE FED. EMERGENCY MANAGEMENT AGENCY 30 (Nov. 2010) (providing an overview of the federal response mission and an explanation of how "the Federal Government has become increasingly involved in supporting State, Tribal, and local governments in responding to major disasters and emergencies" *Id.*).

2. The Federal Response Structure

The current Federal Response Structure, with FEMA as the federal government's single agency dedicated to emergency management, is a relatively new creation.[19] The federal government's role in emergency management and response grew dramatically from its initial involvement in the 1802 fire in Portsmouth, Massachusetts.[20] Since that event, over 100 different federal departments and agencies were created to assist in the coordination of disaster response and recovery, with similar agencies working at the state, local, and tribal level. [21] Coordinating the response effort among the numerous agencies became so complicated that often the requested and necessary help would arrive either unprepared or too late to assist.[22] As a result, President Carter eventually created FEMA through executive order after being pressed by state governments to streamline the process and to centralize federal emergency management functions.[23]

During its first years, FEMA faced considerable challenges and added responsibilities from Congress.[24] Both Congress and the President soon realized that even with a centralized agency, responsibility for emergency preparedness and response needed to be formally assigned.[25] Further, they recognized that a plan for continuity of government in the event of a national security emergency was necessary.[26] On November 18, 1988, President Ronald Reagan promulgated Executive Order (EO) 12,656, which not only addressed these issues, but also became the foundation for what is now known as the NRF.[27] After its establishment in 2002, EO 12,656 and its amendments gave the Department of Homeland Security the responsibility of coordinating the efforts of federal emergency response.[28]

Pursuant to the Homeland Security Act of 2002, President George W. Bush issued Homeland Security Presidential Directive 5 (HSPD-5) in 2003.[29] This directive tasked the Secretary of Homeland Security to create a unified approach to the management of domestic incidents, as well as "consolidating existing Federal Government emergency response plans into a single, coordinated" National Response Plan (NRP).[30] The NRP was eventually superseded by the NRF in 2008.

> The NRF organizes governmental response to natural and man-made disasters and incidents occurring in the United States, the District of Columbia, and U.S. territories and possessions . . . . [It] is designed to be used by the whole community, since engaging the whole community is essential for the Nation's success in maintaining resilience and preparedness.[31]

Then in 2011, President Barack Obama issued Presidential Policy Directive 8 (PPD-8), specifically directing the Secretary of Homeland Security to develop the National Preparedness Goal (NPG), as well as to develop a National Preparedness System (NPS) to assist the Nation in achieving the NPG.[32] The NRF was updated in 2013 to reflect the intent of PPD-8 by creating a "whole community" concept in the development and implementation of a response plan to national disaster events and is now part of the NPS.[33] The NRF organizes governmental response to disasters and describes the roles and responsibilities for the responding agencies.[34] The NRF is always in effect and can be implemented at any time in whole or in part, allowing for

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[19] *Id.*

[20] *Id.* at 3 (providing a succinct history of the creation and development of FEMA, as well as identifying FEMA's ethos, core values, principles).

[21] *Id.* at 6. Examples include the National Weather Service Community Preparedness Program, the Federal Disaster Assistance Administration, and the Federal Insurance Administration of Housing and Urban Development. *Id.* at 7.

[22] *Id.* at 6.

[23] *Id.* at 7.

[24] *Id.* at 8.

[25] *Id.*

[26] Exec. Order No. 12,656, 3 C.F.R. 585 (1988).

[27] *Id.*

[28] DOMOPS HANDBOOK, *supra* note 8, at 9–10 (referencing The Homeland Security Act of 2002, Pub. L. No. 107-29, 116 Stat. 2135 (2002) (as amended) This legislation established the Department of Homeland Security (DHS), as well as reorganized and consolidated incident management functions, assets, and personnel under a single Department. *Id.* Note that Exec. Order No. 13,228, 66 Fed. Reg. 51,812 (Oct. 10, 2001) establishing the Office of Homeland Security and the Homeland Security Council preceded the Homeland Security Act of 2002, later inheriting key functions of FEMA pursuant to Exec. Order No. 13,286, 68 Fed. Reg. 10,619 (Mar. 5, 2003).

[29] HOMELAND SECURITY PRESIDENTIAL DIR. 5, MANAGEMENT OF DOMESTIC INCIDENTS 229 (Feb. 28, 2003), *available at* http://www.gpo.gov/fdsys/pkg/PPP-2003-book1/pdf/PPP-2003-book1-doc-pg229.pdf.

[30] The Homeland Security Act of 2002 § 502, Pub. L. No. 107-296, 116 Stat. 2135 (2002) (as amended).

[31] U.S. DEP'T HOMELAND SEC., NATIONAL RESPONSE FRAMEWORK (2d ed. May 2013) [hereinafter NRF], *available at* http://www.fema.gov/national-response-framework. The National Response Framework (NRF) consists of a base document, the Emergency Support Function document (organizes federal and state governments by their response resources and capabilities), support annexes, and incident annexes. *Id*

[32] PRESIDENTIAL POL'Y DIR. 8, NATIONAL PREPAREDNESS (Mar. 30, 2011), *available at* http://www.dhs.gov/presidential-policy-directive-8-national-preparedness.

[33] NRF, *supra* note 31.

[34] *Id.*

the appropriate-sized response for each incident.[35] Despite being a robust document that establishes the roles and responsibilities of all the agencies involved throughout the response and recovery processes, the NRF contains no specific legal authority by which to grant federal assistance to state and local governments. However, one source of such authority is found in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (The Stafford Act).[36]

3. The Stafford Act

The Stafford Act aims "to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters."[37] This assistance is extended upon request, usually from a state governor, when the consequences of a disaster are such that the state or local government cannot adequately respond.[38] The Stafford Act defines emergency[39] differently from major disaster,[40] and depending on the type of declaration, the President's powers can differ greatly.[41] Upon issuance of a declaration, DHS may request other federal agencies to deploy to the affected area to assess, monitor, and coordinate the response until the need for assistance is scaled back and transitioned into recovery operations.[42] During operations, the Stafford Act provides for immunity from liability for "any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the federal government in carrying out" its duties, as defined within the Act.[43]

Generally, assistance under the Stafford Act will not occur until local officials determine that their own resources are not sufficient to address the emergency situation.[44] After coordination between State, Federal and local officials, a formal request for a declaration of a major disaster or emergency is made.[45] Once that request is received and approved, then the NPS is activated and the necessary response requirements are assigned to the respective federal agencies with FEMA in the lead.[46] When circumstances are such that time is of the essence and state or local governments require a more immediate response, a request for support can be made to local military commanders under their IRA.

4. Immediate Response Authority

As noted above, DoDD 3025.18 generally allows DoD commanders to provide assistance to civil authorities only upon request from state or local officials. Often, however, emergencies or major disasters will require an installation commander to respond to a request before approval from higher authority can be obtained. When such conditions arise, commanders may use their IRA to "temporarily [employ] the resources under their control, subject to any supplemental direction provided by higher headquarters, to save lives, prevent human suffering, or mitigate great property damage within the United States."[47] Requests for IRA must still be evaluated by the commander, often with the servicing JA's advice, using the CARRLL factors: cost, appropriateness, risk, readiness, legality, and lethality.[48] Upon making the decision to provide support, the commander is responsible for notifying the National Joint Operations and Intelligence Center, through the chain of command.[49]

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[35] *Id.*

[36] The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (1974) (as amended by the Post-Katrina Emergency Management Reform Act of 2006, Pub. L. No. 109-295, 120 Stat. 1355 (2007), and the Sandy Recovery Improvement Act of 2013, Pub. L. No. 113-2, 127 Stat. 4 (2013)) [hereinafter Stafford Act].

[37] *See id.* § 5121.

[38] *Id.*

[39] An emergency declaration by the President means that "[f]ederal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States." *Id.* § 5122(1).

[40] A major disaster is defined as "any natural catastrophe, . . . or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance." *Id.* § 5122(2).

[41] Unlike a major disaster declaration, "emergency assistance is more limited . . . and total assistance may not exceed $5 million for a single emergency, unless the President determines there is a continuing and immediate risk . . . and necessary assistance will not otherwise be provided on a timely basis." DOMOPs HANDBOOK, *supra* note 8, at 33 (citing The Stafford Act § 5193 (2011)).

[42] *Overview of Stafford Act Support to States*, FEMA.GOV, *available at* http://www.fema.gov/pdf/emergency/nrf/nrf-stafford.pdf (last visited Mar. 15, 2014) [hereinafter *Overview*].

[43] Stafford Act, *supra* note 36. *See* Appendix A (Stafford Act Process) (illustrating the process used to request and provide support in accordance with The Stafford Act).

[44] *Overview*, *supra* note 42.

[45] *Id.*

[46] *Id.*

[47] DSCA, *supra* note 10, para. 4.g.

[48] *Id.* para. 4.e. Judge advocates should evaluate the request using the factors: cost, appropriateness, risk, readiness, legality, and lethality, to determine whether the request fits within the guidance found in DoDD 3025.18, stating that the plan "shall be compatible with . . . the National Incident Management System . . . or Department of Defense (DoD) issuances governing DSCA operations." *Id.* para. 4.f. *See* DSCA, *supra* note 10 (providing complete guidance on the full request procedures and approval authorities for each type of domestic support operation).

[49] *Id.* para. 4.g.1.

The type of support the commander may provide will vary based on the situation. However, any support provided must not put the commander or his command at risk of subjecting civilians to the use of military power in violation of law, such as the Posse Comitatus Act (PCA).[50] The PCA, as implemented through statute and DoD directives, restricts military personnel in federal status from being directly involved in civilian law enforcement activities, unless authorized by the Constitution or an act of Congress.[51] When commanders operate within the confines of domestic authorities, the PCA will limit their ability to support local law enforcement agencies.[52] These limitations also affect which resources commanders can provide to local first responders during an emergency. Additionally, they will greatly limit the involvement that military personnel in federal status will have with the local populace in support of civil law enforcement.

Despite its limitations, requests by local authorities are commonly made to use military personnel in ways that may violate the PCA. For example, when a massive tornado hit Moore, Oklahoma, in 2013, the local police requested military personnel from Tinker AFB to perform sentry duty.[53] Similarly, local authorities requested that military personnel from Fort Carson, Colorado perform traffic control duties if a massive evacuation became necessary due to nearby wildfires.[54] In both cases, astute JAs recognized the potential PCA violations and took immediate action to deny the requests.[55]

Once the commander's IRA has expired and the NRF is in place, any further requests from local authorities should be routed through the Defense Coordinating Officer (DCO).[56] "The DCO serves as the FEMA's single point of contact for the DoD's support within the Regions."[57] Judge advocates should become familiar with their FEMA Region and develop a professional relationship with the assigned DCO before an emergency happens. Things move very quickly once a crisis occurs, making it difficult to determine what stage the response is in and what authorities are available at any given moment.[58] The DCO can be a great resource for that information and can provide a rundown of the DoD and federal agencies participating in the response. Having this information will help to ensure that the installation's response is synchronized with that of the overall federal response, which is usually achieved through combined coordination in the EOC.

C. The Emergency Operations Center

To maintain situational awareness on day-to-day operations for the installation or senior commander, major military installations will have an established operations or command center. Often these command centers (commonly referred to as Installation Operations Centers (IOCs)) are minimally manned and only become fully operational during a training exercise or in response to an event on the installation. The installation's Office of the Staff Judge Advocate (OSJA) will typically have a permanent seat inside the IOC, a position frequently filled by an operational law attorney. The JA's role within the IOC will vary based upon its current mission and who the command center is supporting.

During an emergency response and recovery mission, the IOC will establish a temporary EOC for the duration of the mission. While the IOC is a flexible organization, setting up a separate command center should be considered when an emergency arises; allows the staff working within the EOC to focus their efforts on the emergency response and recovery effort, while the IOC continues its normal operations.[59] In that case, a decision as to which commander will be in charge of each operations center should be determined well in advance to avoid confusion once the response effort is under way.[60]

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[50] The Posse Comitatus Act, 18 U.S.C. § 1385 (2011).

[51] *Id.* The Posse Comitatus Act (PCA) only restricts the Army and Air Force from direct participation in civilian law enforcement activities. However, through operation of law, Congress extended that restriction to both the Navy and Marine Corps. *See* 10 U.S.C. § 375 (2012); *see also* U.S. DEP'T OF DEF., DIR. 3025.12, MILITARY ASSISTANCE FOR CIVIL DISTURBANCES (MACDIS) (4 Feb. 1994) (superseded by U.S. DEP'T OF DEF., INSTR. 3025.21, DEFENSE SUPPORT OF CIVILIAN LAW ENFORCEMENT AGENCIES (27 Feb. 2013)); *see also* DOMOPS HANDBOOK, *supra* note 8, ch. 4 (discussing the history behind the PCA, its application to the military, as well as limitations and exceptions).

[52] *See* Appendix B (PCA Applicability) (providing an overview of the applicable statutory and regulatory exceptions to the PCA).

[53] CTR. FOR LAW & MILITARY OPERATIONS, THE JUDGE ADVOCATE GEN.'S LEGAL CTR. & SCH., U.S. ARMY, TINKER AIR FORCE BASE (AFB), 72ND AIR BASE WING, RESPONSE TO MOORE, OKLAHOMA TORNADOES AFTER ACTION REPORT (AAR) 7 (31 July 2013) [hereinafter TINKER AFB TORNADOES AAR].

[54] CTR. FOR LAW & MILITARY OPERATIONS, THE JUDGE ADVOCATE GEN.'S LEGAL CTR. & SCH., U.S. ARMY, FORT CARSON OSJA/U.S. AIR FORCE ACADEMY/NORTHCOM COLORADO WILDFIRES AAR JUNE 2012–JULY 2012, at 10 (10–11 Oct. 2012) [hereinafter FORT CARSON WILDFIRES AAR].

[55] *Id.* at 11; TINKER AFB TORNADOES AAR, *supra* note 53, at 7.

[56] DOMOPS HANDBOOK, *supra* note 8, at 21.

[57] *Role of the Federal Coordinating Officer in Disaster Operations*, *available* at http://www.fema.gov/region-ii-federal-coordinating-officers-and-defense-coordinating-officers (last visited Mar. 15, 2014).

[58] FORT CARSON WILDFIRES AAR, *supra* note 54, at 8.

[59] *Id.* at 15–16.

[60] *Id.* (discussing how during the response to the 2012 Colorado Wildfires, Fort Carson initially ran two separate command centers in response to the emergency). The IOC was manned by installation personnel and commanded by the installation commander and the EOC manned by the 4th Infantry Division staff and commanded by the 4th Infantry Division commander. At times, each command center was performing the same functions, resulting in duplication of efforts. In the end, the EOC became

Installation IOCs will establish their own battle rhythm, with the staff participating in the working groups are responsible for planning, writing, and disseminating the orders the installation depends upon to operate. The JAs working in the IOC often attend these working groups and participate in the Military Decision Making Process (MDMP).[61] Judge advocates can provide valuable input by "preparing legal estimates . . . writing legal annexes . . . and reviewing plans and orders."[62] Ultimately though, the JA's "primary responsibility is to identify legal considerations (authorities, restraints, and constraints) . . . early in the planning process" to avoid developing a plan that is not legally feasible.[63] Judge advocates who remain engaged in these working groups can work proactively with the staff to prevent potential legal issues early in the planning process. Collaborating early and often in the MDMP and providing sound legal advice and alternatives will go far in building a JA's credibility with the IOC staff and the commander.

When an emergency does occur, the JA who can "work proactively to promote the mission" and is knowledgeable as both a Soldier and a lawyer[64] will be sought out to support the response and recovery operation. The primary mission of the EOC is to provide a centralized location for the coordinating effort during emergency response and to promote efficient and effective management of the current situation.[65] The EOC receives information from within the operational area to create a common operating picture for those responding to the event.[66] This allows for the collaborative effort of the staff sections to successfully and efficiently address issues as they arise, while coordinating the flow of information and resources to those in the field.[67] However, before the EOC's staff can respond to any emergency, a plan must exist, and the staff must be trained and prepared to execute that plan.

the primary command center, but it was obvious that the mostly civilian IOC staff was better trained to handle domestic response issues than the military personnel manning the EOC. *Id.*

[61] U.S. DEP'T OF ARMY, DOCTRINE PUB. 5–0, THE OPERATIONS PROCESS para. 32 (17 May 2012) (describing the military decision making process (MDMP) as an iterative planning methodology to understand the situation and mission, develop a course of action, and produce an operation plan or order; consisting of seven steps meant to encourage input and continual assessment of the plan as it is developed into an operation plan or order).

[62] U.S. DEP'T OF ARMY, DOCTRINE PUB. 1–04, LEGAL SUPPORT TO THE OPERATIONAL ARMY para. 5–20 (18 Mar. 2013).

[63] JOINT CHIEFS OF STAFF, JOINT PUB. 1–04, LEGAL SUPPORT TO MILITARY OPERATIONS, at II-11 (17 Aug. 2011).

[64] *Id.* at vi.

[65] *Fusion Centers and Emergency Operations Centers*, U.S. DEP'T OF HOMELAND SECURITY, http://www.dhs.gov/fusion-centers-and-emergency-operations-centers (last visited Mar. 15, 2014).

[66] *Id.*

[67] *Id.*

III. Emergency Response and the Judge Advocate

A. Preparation is Key

Failing to prepare is preparing to fail[68] and this is no less true than when an installation is faced with responding to a crisis without having developed a sufficient response plan. Certainly, no one expects to be affected by a wildfire, tornado, or other disaster, but facing an emergency without a plan can result in higher losses of life, limb, or property. "A successful organizational preparedness program needs: a clear vision; actionable objectives and goals; defined deliverables and timelines; regular reviews; [and] identify potential obstacle [sic] and challenges." [69] These plans are developed by the working groups using the MDMP and require buy-in from the commander.

Once the commander approves the plan, it must be continually reviewed, practiced, and reassessed to ensure that the risks are identified, contingencies are considered, and potential pitfalls are discovered and remedied. Judge advocates play a crucial part in this process by reviewing the plan for completeness and legality. However, to reach that level of expertise, credibility, and flexibility, JAs must be provided the opportunity to receive proper training and given access to the necessary resources and support.

1. Training for the Operational Law Attorney

The OSJA is responsible for training its JAs and ensuring that they are properly resourced. Judge advocates assigned to an IOC as operational law attorneys would benefit from a training program that focuses on "[S]oldier skill proficiency, familiarity with the core legal disciplines for military operations, and an understanding of the judge advocate's role in the [operational law] mission."[70] Specifically, training should focus on the MDMP and domestic operations. Training can be obtained from on-the-job experience and reaching out to colleagues, as well as, attending office or installation-level professional development programs.

Additionally, JAs can receive formalized continuing legal education at a military legal institution, such as the Army's The Judge Advocate General's Legal Center and School (TJAGLCS). Currently, TJAGLCS offers a number of specialized courses, including courses focused on administrative law for military organizations, fiscal law, and

[68] BRAINY QUOTE, *supra* note 1.

[69] *Ready Responder*, READY.GOV, *available at* http://www.ready.gov/responder (last visited Mar. 15, 2014).

[70] Major Edward K. Lawson IV, CLAMO Note, *OPLAW Attorney Training: A Program for Non-Deployable Legal Offices*, ARMY LAW., July 2000, at 44.

domestic operational law.[71] These courses provide JAs with an overview of the current law and issues that are being addressed in the field and allow JAs to network with their peers. Judge advocates should never underestimate the value of building a network of peers from whom they can seek out for assistance and guidance, or someone they can turn to for support. While formalized training is always preferred, JAs can benefit just as much from reaching out to their peers, seeking on-the-job training, and accessing the number of written materials available both on-line and at OSJAs across the force.[72] However, planning, training and research can only go so far; the true value of both the plans developed during the MDMP and the JA's effectiveness can best be realized during an installation training exercise.

2. Exercising the Plan

Training exercises allow the staff to practice operational standards, to test and refine plans, and to identify lessons learned in a controlled environment. Exercises also allow commanders to determine whether their intent was met and to evaluate overall force readiness and mobilization preparedness.[73] Participating in these exercises provides JAs a chance to see the plan in action and to discover any potential shortfalls that must be fixed before execution. It is also an opportunity for JAs to test their knowledge and assess their level of preparation. Further, the exercise will give them a chance to discover any gaps in support that may cause significant issues during an actual emergency and determine whether drafting certain documents or agreements beforehand could fill those gaps.[74]

3. Getting All Your "Docs" in a Row

The Center for Law and Military Operations (CLAMO), located at TJAGLCS, is charged with collecting data and producing after action reviews (AARs) relating to legal issues arising in military operations.[75] The Center for Law and Military Operations's recent efforts include compiling the observations and comments of legal professionals involved in the military's responses to natural and man-made disasters. While not necessarily meant to be transferable or applicable to all legal operations, AARs do provide JAs with a checklist of sorts regarding possible issues that should be addressed during the planning and exercise phases of orders development. For example, one common theme throughout these AARs was a failure to create new or review existing Memoranda of Agreement (MOAs) and Mutual Aid or Assistance Agreements (MAAs) between the military installation and local organizations.[76] These agreements are generally made among agencies, organizations, and jurisdictions and they provide a mechanism to obtain emergency assistance in the form of personnel, equipment, materials, and other associated services.[77] Further, these agreements should discuss which services require reimbursement and the method by which to receive such reimbursement.

It is always good practice for newly assigned JAs to review the existing plan and any existing MOAs. Taking the time before an emergency to determine whether the existing MOAs are adequate for the response required or whether there is a gap in needed support is crucial in avoiding unnecessary stress and a delay in response during an emergency event. One document to consider updating or, if absent, drafting, is a Mutual Aid or Assistance Agreement. As authorized by statute, MAAs allow agency heads (e.g., installation or division commanders) with the duty to provide fire protection for any property of the United States to enter into reciprocal agreements with local fire-fighting organizations to provide mutual aid in providing fire protection.[78] These agreements will often include the authority to provide local fire-fighting organizations with the use of military equipment and personnel for fire-fighting purposes. An important aspect of these agreements is that they would allow the local commander to provide emergency fire-fighting support over an extended period of time, as opposed to the limited time allowed for similar assistance using IRA.[79]

Another recommendation is to create an MOA between

[71] THE JUDGE ADVOCATE GEN.'S LEGAL CTR. & SCH., U.S. ARMY, COURSE CATALOG (FY 2014), at 17–18, *available at* https://www.jagcnet.army.mil/8525736A005BD5DA/0/D5835B60BE18C5CC85257BCD0074CC6B/$file/FY14%20TJAGLCS%20Course%20Catalog%20-%20Approved.pdf (last visited Mar. 15, 2014). Some of the relevant courses offered include the Domestic Operational Law Course, Administrative Law for Military Organizations Course, and Fiscal Law Course. *Id.*

[72] Two helpful resources for JAs with access to a CAC-enabled computer are MilSuite's and the Center for Law and Military Operations' (CLAMO's) document library. Milsuite, https://www.milsuite.mil/book/community/spaces/armyjag (last visited Mar. 15, 2014) (requiring the user to set up an account); CLAMO, https://www.jagcnet.army.mil/CLAMO (last visited Mar. 15, 2014) (requiring the user to log into the website).

[73] U.S. DEP'T OF ARMY, REG. 350–28, ARMY EXERCISES para. 2–1 (9 Dec. 1997).

[74] *Id.* para. 4–11.

[75] CLAMO, https://www.jagcnet.army.mil/CLAMO (last visited Mar. 17, 2014).

[76] FORT CARSON WILDFIRES AAR, *supra* note 54, at 3, 13. *See also* TINKER AFB TORNADOES AAR, *supra* note 53, at 7.

[77] *Preparedness*, FEMA.GOV, *available at* http://www.fema.gov/preparedness-0 (last visited Mar. 15, 2014). Examples of memoranda of agreement (MOAs) and mutual aid agreements (MAAs) can be found at FEMA.gov and at most state government websites.

[78] 42 U.S.C.A. § 1856a (West, Westlaw through Pub. L. No. 113-72 (excluding Pub. L. Nos. 113-66 and 113-67)).

[79] *Id.*

the installation and local facilities for use as shelters-in-place. This may quickly become necessary when an emergency requires the installation commander to issue evacuation orders for individuals residing on the installation. To save time and to avoid missing a crucial element in drafting the MOA, JAs should consider introducing this course of action early in the planning phase of the MDMP. Taking the time to develop the MOA to ensure that it addresses specific needs (e.g., size of population that may be displaced, proximity to installation, contingency locations, etc.) will pay dividends in the event the need arises.[80]

In the summer of 2012, encroaching wildfires threatened Fort Carson, Colorado, forcing the installation commander to issue evacuation orders for non-essential personnel working and living on the base. However, the large exodus of individuals from the installation into the local community quickly began to take its toll on the availability of lodging facilities, making additional shelter options an essential requirement. In this instance, the JA working in the EOC assisted in drafting the MOAs between the installation and local area schools to utilize their gymnasiums as temporary shelters for personnel evacuating from Fort Carson.[81]

Judge advocates should also consider drafting a template for evacuation orders that can be used, should the need arise, during the course of the emergency response. While evacuation orders may initially be given verbally by the commander, they will need to be reduced into written orders as soon as practicable. At a minimum, the written evacuation orders should include the basis for the order, the effective date, how long it will remain in effect, who is being evacuated and from what location, maximum safe haven distances, and funding cites.[82] Having a template prepared beforehand will help avoid the potential omission of critical information and ensure timely dissemination of the orders to facilitate efficient submission of travel vouchers.[83] When the emergency has passed and evacuation is no longer required, the commander must terminate the order to effectively stop the entitlements afforded to the evacuees. Judge advocates can assist in this process by tracking the issued orders and reminding the commander to terminate them when appropriate. Finally, JAs should consider creating a quick reference guide, which could include sample MOAs, claims cards for personal property damages, and information papers discussing common issues or lessons learned.[84]

B. Common Issues

While each installation's response to an emergency is unique, the issues encountered will often be similar. Therefore, it is critical for the EOC staff, including the JA, to keep an on-going log of issues and recommended solutions throughout any event, whether it is a training exercise or a real event. Taking the time to capture these issues[85] and compiling them into an AAR will pay significant dividends during the planning and execution of future emergency response missions. These AARs are an excellent source for spotting potential issues during the planning phase and can be a quick resource for addressing any issues during an emergency response. A review of the most recent AARs covering the military's response to natural and man-made disasters reveals similar issues across the spectrum of disciplines. In general, the most common issues involved interagency coordination, ethics and administrative law concerns, and questions relating to intelligence oversight.

1. Interagency Coordination

Most emergency responses require the assistance of the local first responders, utility companies, and local and state emergency management agencies. If a national emergency or disaster is declared, then federal agencies deploy as well, with DHS/FEMA in the lead.[86] While not all emergency responses mandate a Presidential declaration, most response operations do require the installation EOC to coordinate and work alongside these agencies. Ensuring that the installation's response does not impede the lead agencies from responding appropriately requires continuous communication with the right people. Determining who that is and developing those relationships beforehand is critical to ultimate mission success.

During the recent responses to the Fort Carson wildfires and the Tinker AFB tornado near Moore, Oklahoma, prior

[80] FORT CARSON WILDFIRES AAR, *supra* note 54, at 4, 12.

[81] E-mail from Captain Connor J. Bidwill, Chief, Operational and Int'l Law, Office of the Staff Judge Advocate, 4th Infantry Div., to author (Nov. 9, 2013, 12:14 EST) (on file with author).

[82] FORT CARSON WILDFIRES AAR, *supra* note 54, at 12–13.

[83] Evacuation entitlements for all military and civilian personnel and their dependants can be found in the JOINT FED. TRAVEL REG., vol. 1, (Uniformed Personnel) (C297) (2012) and the JOINT TRAVEL REG., vol. 2 (Dep't of Def. Civ. Personnel) (C551) (2012).

[84] This list is not all inclusive of the documents that could be drafted in support of an emergency preparedness plan. Instead, it is meant to act as a starting point for JAs who are reviewing the existing agreements or who are supporting the planning process for their installations' emergency preparedness plan. An overview of Disaster Claims Preparedness and links to helpful claims resources can be found at JAGCNET, https://www.jagcnet.army.mil/Sites/jagc.nsf/homeDisplay.xsp?open&documentId=A2ACB9CDEA393C69852579CF004FDA7D (last visited Mar. 17, 2014).

[85] Often, staff judge advocate offices will incorporate these lessons learned into quick reference guides and information papers. Additionally, CLAMO will develop an AAR, which can found in its document repository. Finally, JAs can reach out to their peers at other installations as well as within their own offices.

[86] DOMOPS HANDBOOK, *supra* note 8, at 34–35.

interagency coordination played a vital role in the success of the missions. In particular, the EOC staff at Tinker AFB commented in its AAR that having an excellent relationship with the local first responders greatly aided the DSCA effort.[87] They developed MAAs in advance and participated on the Local Emergency Planning Committee, as well as invited the local responders to their installation exercises.[88] However, one shortfall noted was the failure to reach out beyond the agencies within the immediate vicinity of the installation, making both their response and interaction with such agencies more difficult.[89] Significant weather-related events often affect more than one community at a time. Therefore, developing a working relationship with non-DoD counterparts within the surrounding communities beforehand can positively aid in the response and recovery efforts.

Similarly, the JAs working the Fort Carson wildfires found that staying linked into the EOC to review incoming requests for assistance was crucial to success of the mission.[90] They were integral to the review process and were able to explain the commander's authority to assist the local community.[91] Further, the JAs would maintain the lines of communication with their counterparts at higher headquarters to ensure that any support provided by their commander would fit into the overall DoD response.[92] Ensuring that they were not duplicating the effort was crucial to developing a unified DoD response and it allowed the local and federal authorities to take the lead.[93] Having open lines of communication and strong interagency relationships in place during the response is especially important when addressing the common fiscal and ethics issues that routinely arise.

2. Accepting Donations

Emergencies always seem to bring the best out of people, and while the outpouring of support is appreciated, JAs will have to address the issues associated with donations of goods, money, and services. Gift offers will raise many ethical concerns, including appearance issues, gift value limits, and proper disposal of surplus donations.[94] But no matter the type of gift or donation, JAs must remain mindful that the emergency situation does not change the gift acceptance analysis.[95]

Developing a plan to address these issues and having it in place in advance will free up the JA to focus on more pressing issues during the response. One possible solution is to develop an MOA with the installation's Morale, Welfare, and Recreation (MWR) or local non-federal entities such as the Red Cross. Once an emergency arises, the Public Affairs Office can advise the public to provide donations to those entities instead of donating items to on-post units.[96] Working proactively to reduce the amount of donations to on-post units reduces the JA's workload significantly, while building goodwill within the local community by diverting the donations to the community at large.

3. Collecting Intelligence and Intelligence Oversight

While a full analysis of intelligence oversight is beyond the scope of this paper, JAs must at least be able to spot the potential issues involved with using intelligence assets during domestic operations. "Judge advocates must recognize that collecting domestic intelligence by necessity entails collecting information on U.S. persons."[97] Due to its complexity, intelligence oversight questions should not be answered without full consideration of the existing authorities. At a minimum, JAs should carefully review all requests by local authorities or their commanders which include (or which may include) the use of intelligence assets and components to gain situational awareness of the space in which they will be operating.[98] Obtaining this information may result in the collection of information on U.S. persons, which could violate the intelligence oversight rules.[99] Judge advocates should familiarize themselves with these rules and the framework for reviewing requests.[100] Having a grasp of the basic framework of intelligence collection law and procedures will provide a starting point from which to analyze the issue, and help JAs recognize the request should

[87] TINKER AFB TORNADOES AAR, *supra* note 53, at 6–7.

[88] *Id.*

[89] *Id.*

[90] FORT CARSON WILDFIRES AAR, *supra* note 54, at 7.

[91] *Id.*

[92] *Id.*

[93] *Id.*

[94] TINKER AFB TORNADOES AAR, *supra* note 53, at 9.

[95] A great resource for ethics and administrative legal issues is the *General Administrative Law Deskbook*, which can be found online at https://www.jagcnet2.army.mil/Sites%5C%5Cadministrativelaw.nsf/0/C2881C97920E63AF85257B2E0071458C/%24File/General%20Administrative%20Law%20(GAL)%20Deskbook.pdf (last visited Mar. 15, 2014) (log-in required).

[96] FORT CARSON WILDFIRES AAR, *supra* note 54, at 4.

[97] DOMOPS HANDBOOK, *supra* note 8, at 164.

[98] *Id.*

[99] *See* Exec. Order No. 12,333, 3 C.F.R. 1981 Comp. 200 (1981) (as amended by Executive Orders 13,284 (2003), 13,355 (2004), and 13,470(2008)); *see also* U.S. DEP'T OF DEF., REG. 5240.1-R, PROCEDURES GOVERNING THE ACTIVITIES OF DOD INTELLIGENCE COMPONENTS THAT AFFECT U.S. PERSONS (Dec. 1982); U.S. DEP'T OF ARMY, REG. 381-10, U.S. ARMY INTELLIGENCE ACTIVITIES (3 May 2007).

[100] *See* DOMOPS HANDBOOK, *supra* note 8, ch. 9 (providing an overview of the Intelligence Oversight rules).

be forwarded to a higher or outside authority for review and approval.[101]

IV. Conclusion

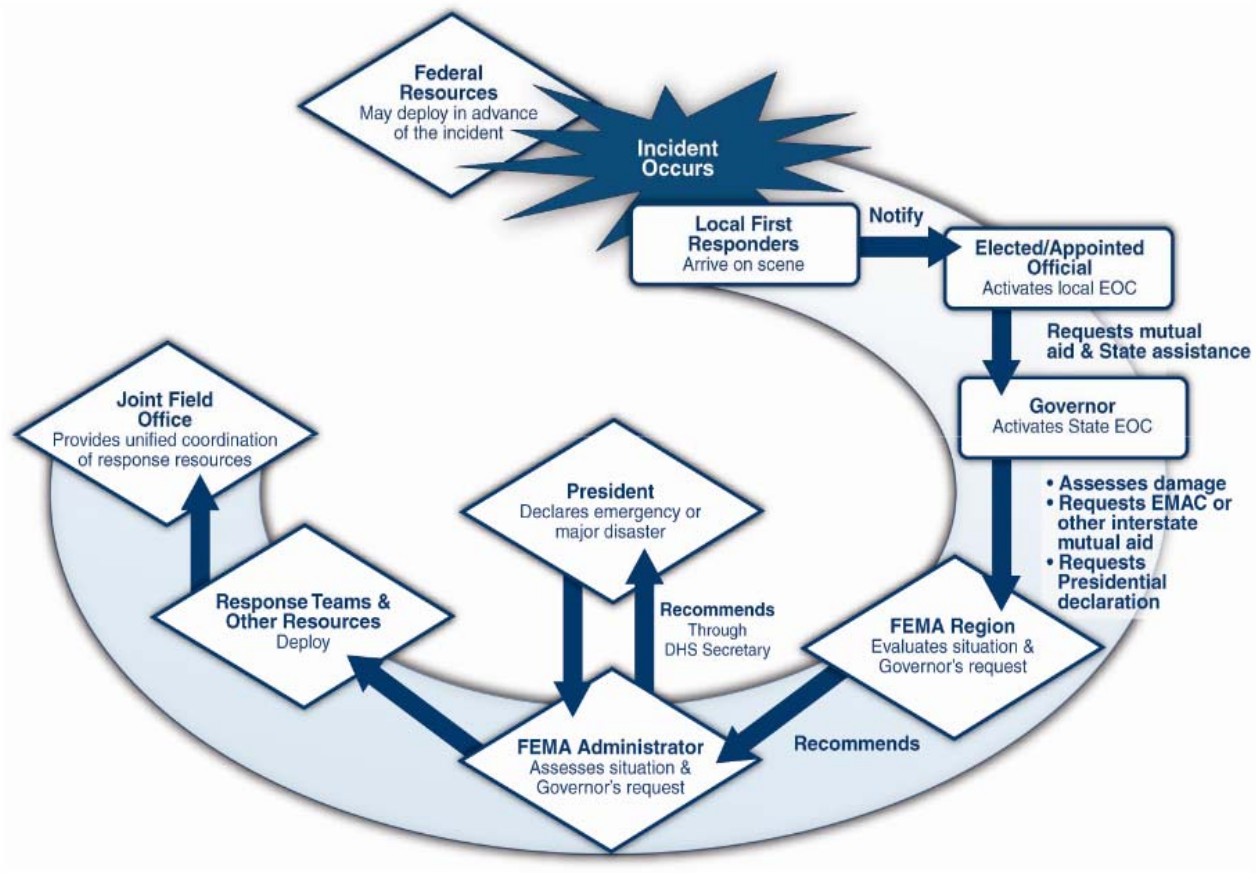
The EOC can be a formidable place for any JA unfamiliar with its dynamic mission and shifting requirements. While intimidating at first, JAs can quickly integrate into the EOC staff with a well-stocked tool kit and a general understanding of the common issues that may develop. The middle of an emergency is not the time for on-the-job training; early involvement and preparation are critical to successful integration with the Plans and Operations staff. While not always practicable or available, formal DOMOPs and DSCA training is the best means of receiving the most current information in this area of law. Additionally, JAs should familiarize themselves with the operations center and its staff, as well as participate in the planning process and installation training exercises whenever practicable. Maintaining that presence will allow the JA to recognize, address, and confidently resolve legal concerns before they become significant issues during an emergency.

Judge advocates have proven to be crucial members of the EOC staff, as evidenced during past events. Judge advocates assisted with the development of evacuation orders and dealt competently with the potential fiscal issues, oftentimes coordinating with interagency counterparts. Their advice ensured a smooth transition from the initial DoD assistance to a fully developed federal response. Looking to the lessons learned from past events further allows JAs to quickly identify potential areas of dispute and give timely relevant advice. So next time you are called upon to serve in the EOC, take advantage of those lessons learned and available training, insert yourself early and often in the day-to-day operations of the IOC, and engage the IOC staff during the planning process to avoid potential legal pitfalls. Do not rush to failure by failing to prepare.

[101] *See* CTR. FOR LAW & MILITARY OPERATIONS, THE JUDGE ADVOCATE GEN.'S LEGAL CTR. & SCH., U.S. ARMY, U.S. ARMY NORTH, OFFICE OF THE STAFF JUDGE ADVOCATE, SUPER STORM SANDY RESPONSE AAR OCTOBER–NOVEMBER 2012, at 11 (20–21 Feb. 2013) (providing a brief discussion on the request for the use of DoD intelligence assets during the Hurricane Super Storm Sandy response and recovery efforts).

Appendix A

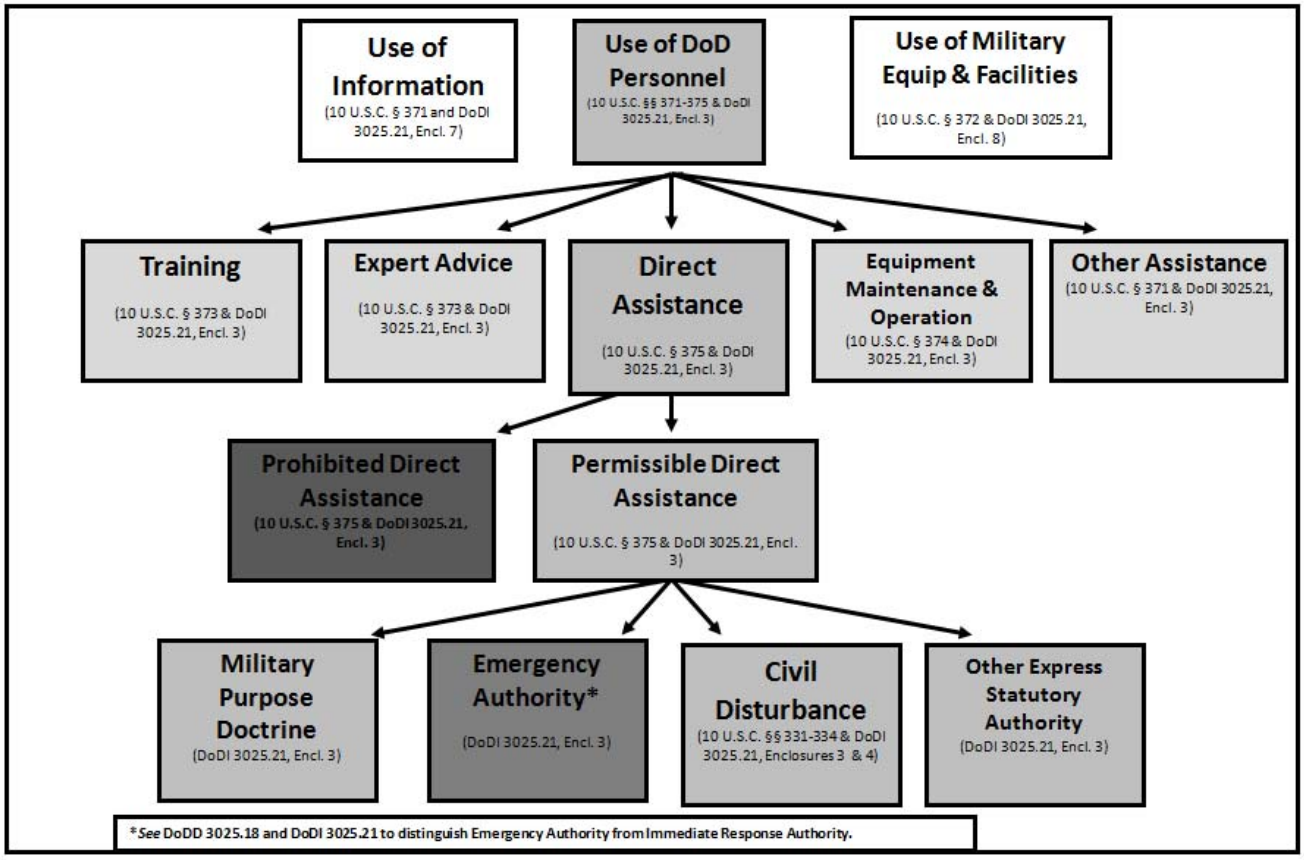
Stafford Act Process[102]



[102] *Overview of Stafford Act Support to States*, FEMA.GOV, *available at* http://www.fema.gov/pdf/emergency/nrf/nrf-stafford.pdf (last visited Mar. 15, 2014).

Appendix B

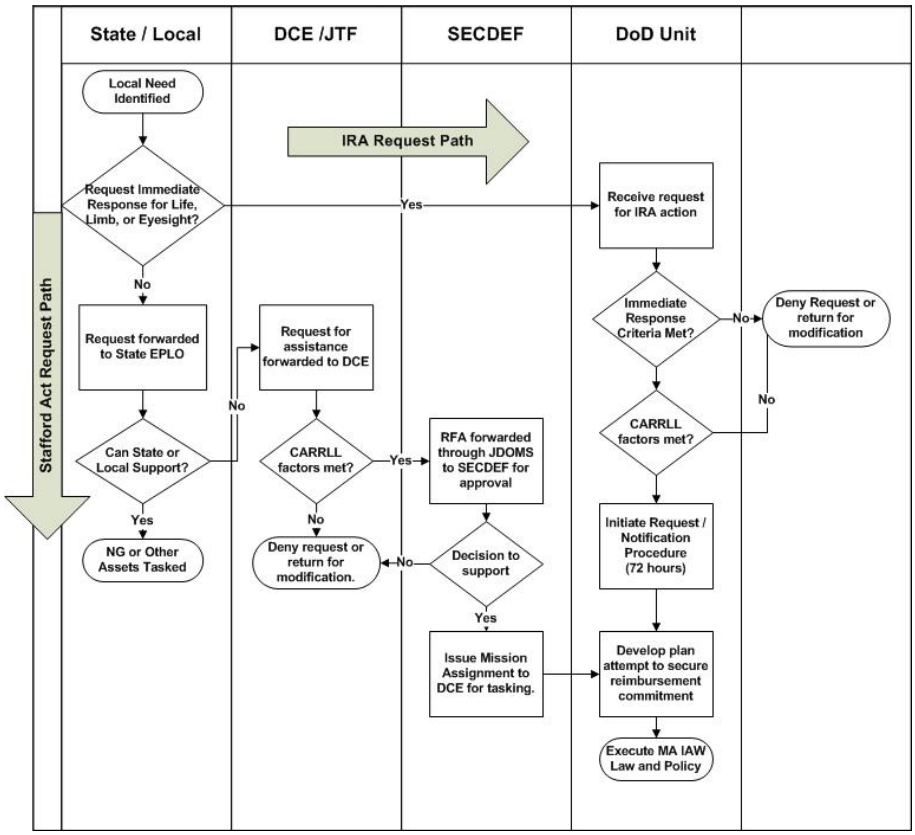
PCA Applicability[103]



[103] PowerPoint Presentation of Major Owen Bishop, Int'l and Operational Law Dep't, The Judge Advocate Gen.'s Legal Ctr. & Sch., U.S. Army, on Defense Support of Civil Authorities, at slide 18 (Mar. 6, 2014) (on file with author).

Appendix C

Request for Assistance Flowchart[104]



[104] DOMOPS HANDBOOK, *supra* note 8, at 37.

Ending Wars Well: Order, Justice, and Conciliation in Contemporary Post-Conflict[1]

Reviewed by *Major Michael E. Korte*[*]

"I can't say if the use of force [in Iraq] would last five days or five weeks or five months, but it certainly isn't going to last any longer than that."[2]

Introduction

While there was much discussion over the importance of going to war in Iraq, lacking in that discussion was a moral and strategic framework for making planning decisions for post-conflict Iraq. Eric Patterson,[3] in writing *Ending Wars Well*, highlights this failure of U.S. leadership going into Iraq[4] while noting that it is a failure shared worldwide. He seeks to change this. Patterson's overarching theme is that leaders need "a prudential, ethically sound framework for ending wars well because 'wars end best when they actually end.'"[5] To meet this goal, he provides and defines a framework to end wars well: (1) Order, (2) Justice, and (3) Conciliation. He then sets out an ambitious goal to make his post-conflict advice a guide for an audience that includes students, aid workers, diplomats, soldiers, and statesmen.[6]

Patterson states that we are going into war more often but that post-war instability continues due to failures to anticipate common peace and security issues.[7] To provide a solution, he proposes an "Order-Justice-Conciliation" model for a "moral, pragmatic, robust, and flexible approach to post-conflict policies" that uses a "new, just war thinking."[8]

Patterson's organizational structure in *Ending Wars Well* leads the reader logically from problems to solutions. In chapter two, he describes new just war thinking on post-conflict decision-making, reviews U.S. post-conflict mistakes, and provides several explanations. In chapters three through five, he develops the concepts of Order, Justice, and Conciliation, identifies successes and failures of the past through a scholarly interpretation of historical events, and supplies the reader with a framework for the future. Finally, Patterson pulls these *jus post bellum* ("justice after war") concepts together by comparing them to other approaches and looking to real-world 21st Century challenges to ending wars well.[9]

The goal of this review is to examine Patterson's effectiveness at providing a logical and practical framework to improve oft-overlooked post-conflict planning. Using the post-conflict failures that Patterson identified in the last two decades of intra-state and inter-state conflicts, this review then gauges the effectiveness of Patterson's "Order-Justice-Conciliation" framework for leaders in academia, politics, and the military.[10]

Ending Wars Well & Just War Thinking on Post-Conflict

The 2003-2011 Iraq war post-conflict failure was not an isolated event. Patterson asserts that the United States has carried out policies that are "weakening the historic inviolability of state sovereignty in favor of protecting human life."[11] The classic international law principle of "carte blanche sovereignty" has been superseded where "morally abhorrent states" that "are not legitimate authorities" threaten their own citizens.[12] Patterson paraphrases author Samuel Huntington's illumination of the difficulties of this policy shift vis-à-vis global humanitarian intervention.[13] He further argues that just war tradition's

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[1] ERIC D. PATTERSON, ENDING WARS WELL (2012).

[2] *Rumsfeld: Saddam Would 'Like to See' Terrorist Attacks if U.S. Goes to War*, FOXNEWS.COM, Nov. 15, 2002, http://www.foxnews.com/story/2002/11/15/rumsfeld-saddam-would-like-to-see-terrorist-attacks-if-us-goes-to-war. The final U.S. Soldiers left Iraq nearly 105 months after the 2002 invasion.

[3] Eric Patterson, Ph.D. is Dean of the School of Government at Regent University and Research Fellow at Georgetown University's Berkley Center for Religion, Peace & World Affairs. He is an Air National Guard officer and published nine books, including *Just War Thinking* (2007) and *Ethics Beyond War's End* (2012). *Eric Patterson*, BERKLEY CENTER FOR RELIGION, PEACE & WORLD AFFAIRS, http://berkleycenter.georgetown.edu/people/eric-patterson (last visited Aug. 13, 2014).

[4] Patterson notes that even President Obama's Nobel Peace Prize acceptance speech, which discussed the merits of going to war, failed to discuss the post-conflict phase. PATTERSON, *supra* note 1, at 20.

[5] *Id.* at 16.

[6] *Id.* at ix.

[7] *Id.* at 15. Patterson argues that the last thirty years have seen an increase in the number of international conflicts but that few peaceful and secure post-conflict scenarios have occurred quickly and without significant financial cost.

[8] *Id.* at 2.

[9] This review focuses less on other post-conflict approaches considered within and more on the Order-Justice-Conciliation model presented in depth in chapters 1–5, which best aligns with Patterson's thesis.

[10] PATTERSON, *supra* note 1, at 2.

[11] These interventionist policies include those of Presidents Clinton (Bosnian War), Bush (Iraq, North Korea, Burma, Sudan, and Iran), and Obama (Libya). *Id.* at 11.

[12] *Id.*

[13] Patterson notes that "the thrill of decolonization or conflict termination evaporates quickly when Western political institutions . . . fail to rapidly deliver Western-level economic benefits." *Id.* at 8–9 (citing SAMUEL P. HUNTINGTON, POLITICAL ORDER IN CHANGING SOCIETIES (1968)).

historic neglect of *jus post bellum* traces back to its original principles of sovereignty and non-intervention.[14] Before the recent expansion of armed conflict and the piercing of carte blanche sovereignty, international politics did not concern itself with a state's actions in its own territory at wars end.[15] Now it must.

After explaining the cause of the historical neglect of post-conflict planning, Patterson engages in a philosophical rescue-mission to save just war theory. After comparing the three main philosophies of war in Western tradition – namely, the theories of holy war, pacifism, and just war – Paterson argues that the just war philosophy remains the most rational of the three philosophies. First, he introduces the extreme views on warfare of both holy warriors and pacifists. He then contrasts those views with just war theorists, ultimately proclaiming just war theory the moral and pragmatic champion. Patterson notes that a holy war is often a reaction to threats to its warriors' basic ideals, such as Western cultural and political expansion.[16] For a holy warrior, love for faith justifies actions of war, however severe.[17] Patterson states the obvious challenge holy war presents to the just war model: holy wars can only end with either victory or vanquishment.[18] In turn, pacifism is a commitment against violence, even in self-defense. Presented as holy wars philosophical opposite, Patterson claims first that his argument is not a pacifism critique but then quickly dismisses pacifism as a failed method for dealing with critical issues of national security or foreign policy.[19] Just war theory is declared the middle ground between pacifism and holy war because just war theory seeks to avoid the costly and brutal effects of war while acknowledging that there are moral justifications to go to war.

Patterson next organizes recent just war thinking on war's end using the three dimensions of *jus post bellum*: Order, Justice, and Conciliation. He balances his recounting of recent scholarship on post-conflict with events starting in the 1990s, which he argues is when, after years of costly neglect, just war thinking was first extensively applied to post-war operations.[20]

Unfortunately, Patterson only briefly touches upon this scholarship. Patterson cites Michael Walzer, who coined the phrase "just occupation," to argue that occupiers and the international community have a moral obligation to quickly provide order, establishing a government that is stable, authentic, autonomous, and legitimate.[21] For justice, Patterson notes the scholarship of Doug McReady and Davida Kellogg, who view tribunal punishment for aggressors as the pinnacle of justice.[22] Finally for conciliation, he cites philosopher Brian Orend, who argues for long-term financial and political guarantees from the conflict victors.[23] As a whole, this section lacked development from these other authors.

Patterson identified the post-conflict flaws and their origins, absolved the philosophy of just war theory as the culprit of recent post-conflict neglect, and provided insight into the leading scholarship on Order, Justice, and Conciliation. Though his account of recommended post-conflict scholarship lacks depth, he dedicates the remainder of the book to developing the Order-Justice-Conciliation model for post-conflict decision-making.

Jus Post Bellum: The Primacy of Order

The U.S.-led Coalition that invaded Iraq in 2003 overpowered Iraq's armed forces within six weeks.[24] The victory was short-lived, as the Coalition leadership violated a fundamental principle by failing to preserve order. Lawlessness spread quickly, with troops watching the citizenry loot, assault, and kill. Patterson successfully argues that order is the first and most important principle of *jus post bellum*, and that stability and security are vital to end wars well.[25] A lack of focus on that requirement, before and during the "hot conflict," led to post-conflict instability.[26]

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[14] *Id.* at 34–35.

[15] *Id.*

[16] *Id.* at 22–24.

[17] *Id*. at 23–24.

[18] *Id.* at 24. This zero-sum game leaves little room for compromise, peace, or stability. Post-conflict "peace" after a holy war often includes totalitarian regimes that force "intolerant" political and social codes. *Id.* at 25.

[19] *Id.* at 26–27. Ironically, Patterson uses text from a Nobel Peace Prize acceptance speech to criticize pacifism: "[M]ake no mistake: evil does exist in the world. A non-violent movement could not have halted Hitler's armies." President Barack Obama, Nobel Peace Prize Acceptance Speech (Dec. 10, 2009), *available at* http://www.whitehouse.gov/the-press-office/remarks-president-acceptance-nobel-peace-prize.

[20] Events of the 1990s that spurred expanded scholarship on post-conflict just war theory include Bosnia, Rwanda, Congo, Kashmir, Sri Lanka, East Timor, Sudan, Haiti, and Somalia. PATTERSON, *supra* note 1, at 35.

[21] MICHAEL WALZER, ARGUING ABOUT WAR 163 (2004).

[22] Patterson declines the opportunity to develop McReady and Kellogg's claim that war crimes tribunals are "the natural, logical, and morally indispensable end stage of just war." PATTERSON, *supra* note 1, at 36.

[23] Orend assumes seven tenets of jus post bellum: (1) vindication of the rights of victims; (2) full public disclosure of post-war aims and all settlements; (3) principles of discrimination; (4) proportionality informing post-conflict policies; (5) punishment; (6) compensation; and (7) political rehabilitation. *Id.*

[24] *Id.* at 38–39.

[25] *Id.*

[26] *Id*. at 38–40.

Patterson begins his deeper analysis of Order, Justice, and Conciliation with a discussion on the primacy of order. He cites recent examples in Kosovo and Sudan to make a specific call to "slow down" and not take order for granted.[27] Before justice, conciliation, forgiveness, and the benefits of democracy can take hold, order must be established for basic security.[28] In the first section of the chapter, Patterson discusses the three dimensions to order: military (traditional security),[29] governance (domestic politics),[30] and international security conditions.[31] He defines each, providing clear-cut, measurable standards for political and military leaders to determine whether order has been achieved.

Patterson notes that Order begins with stopping the killing, which allows for space to provide essential services and basic security. He relies on the historical literature of Aristotle, Augustine, Hobbes, and Grotius to argue that humanity can be "beastly" outside the rule of law and argues that it is impossible for domestic politics to flourish without Order.[32]

Patterson uses the Iraq (2003) example to show the interaction among the three dimensions. Patterson cites Coalition Provisional Authority czar Paul Bremer's decision to dismantle Iraq's institutions and banish Ba'ath party members from roles in government, convincingly asserting that this decision weakened both governance and military security.[33]

Patterson argues that the aftermath of the Kosovo War was a positive example of the international community patiently planning and executing an expensive post-conflict plan.[34] Patterson applauds the effort, which started with (1) the North Atlantic Treaty Organization coordinating security; (2) outside actors monitoring the rehabilitation of legal institutions and a constitution; and (3) United Nations and non-governmental organization support of economic development and juridical proceedings against gross human rights abusers.[35] Patterson lays out the details of the significant expenses incurred to achieve lasting peace in the decade-long post-conflict period, a prerequisite for obtaining justice.

Jus Post Bellum: Justice Through Restitution and Punishment

Justice means incurring what one deserves, and, if successful, justice implements law and policy that reinforces and protects the fragile post-conflict order.[36] In this chapter, Patterson examines the application of post-conflict justice strategies in both civil and interstate conflicts that are designed to bring about the end of wars.[37] He successfully uses the Rwandan civil conflict and both international conflicts in Iraq (1991 and 2003-2011) as case studies in how just war theory either acts or omits to pursue post-conflict Justice.[38] Before analyzing the cases, Patterson first reflects on restitution and punishment, which serve as separate forms of Justice. Patterson provides a warning about the dangers of treating restitution and punishment as mutually exclusive concepts in post-war decision-making.

Restitution is a subset of justice, which is designed to hold aggressors accountable.[39] *Ending Wars Well*, citing Oliver O'Donovan's *The Just War Revisited*, explicitly warns of its limitations and the calamitous risk of disproportionate post-conflict action:[40]

> [T]he victor must think of himself as a judge sitting in judgment between two commonwealths, one the injured party and the other the offender; he must not pass

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[27] *Id.* at 40.

[28] *Id.*

[29] The military dimension of order requires all belligerents agree to the cessation of conflict, requires the absence of organized, armed spoilers or insurgents waiting to destabilize the peace, and requires leaders of all sides in the conflict support the new security arrangements and not challenge it militarily. *Id.* at 40, 46.

[30] The governance dimension of order involves the imposition and maintenance of the domestic rule of law. Its goals are achieved when a national entity exercises sovereignty over the legitimate use of force and political sovereignty in relations with its neighbors. *Id.* at 40, 47.

[31] The goals of the international security dimension are achieved when the state no longer faces an imminent threat from foreign and domestic enemies and the state is no longer a threat to its neighbors. *Id.*

[32] Aristotle declared that "just as, when perfected, a human is the best of animals, so also when separated from law and justice, he is the worst of all." ARISTOTLE, POLITICS 1253a31-3 (Benjamin Jowett trans., 1983).

[33] Patterson notes the failures to provide basic public services in Iraq eight years after the invasion. PATTERSON, *supra* note 1, at 48.

[34] *Id.* at 49–50. Slobodan Miloŝević shuttered Albanian-language media and replaced the Kosovar government with Serbians. His campaign against Kosovo and ethnic Albanians escalated into military action, ethnic cleansing, and mass expulsion. After the NATO bombing campaign and Serbian withdrawal, NATO and Russian peacekeepers began the arduous task of maintaining post-conflict order.

[35] *Id.* at 53–54.

[36] *Id.* at 69–70.

[37] Patterson rightly acknowledges the constant tension between post-conflict order and the desire for justice. Justice at wars end should buttress political order, resulting in increased security and stability. *Id.* at 77.

[38] A lack of justice may lead to renewed conflict and may reignite long-standing grievances. *Id.*

[39] Reparations will not return loved ones to grieving families, Patterson argues, but they are still a just mechanism for enhancing peace, in part because they provide victims "vindication of their righteous indignation, suffering and loss." *Id.* at 71–72.

[40] *Id.* at 73. Patterson offers Post-WWI Germany as the prime example of when a counterproductive reparations regime contributed to insecurity. The Treaty of Versailles ended the war but required Germany to accept humiliating war guilt, sacrifice lands to its neighbors, disarm, and pay reparations to the Allies. *Id.* at 75.

> sentence as the prosecutor, but as the judge. He must give satisfaction to the injured, but as far as possible without causing the utter ruin of the guilty commonwealth.[41]

Restitution in the form of reparations, which involve payments to individual or government victims, puts a punishing burden on governments. Patterson aptly focuses the discussion on ensuring leaders do not use reparations as a mere substitute for punishment.[42]

Jus Post Bellum: Conciliation

Patterson, having thoroughly advised on the importance of establishing order and justice, turns to conciliation as another means to establishing long-term post-conflict prosperity. Conciliation is coming to terms with the past. Within or between states, conciliation is an acknowledgment that the past cannot be changed and an understanding that the past need not define the present and future.[43] Patterson describes the conditions under which conciliation happens between the belligerents in both intra-state and inter-state conflicts and the relationship of Conciliation to Order and Justice. His style does not assume the reader is an expert on just war theory. To instruct, Patterson employs a style that defines the terminology, purpose, goals, results, and tensions using significant historical examples.

An essential conciliation tool, "conciliation events" are "costly, novel, voluntary, and irrevocable signals for peace."[44] Patterson readily concedes that these events are rare, often only occurring decades after the conflict,[45] but he enthusiastically maintains their importance as a means to secure long-term peace. He expertly discusses conciliation in the context of Egyptian President Sadat's Egyptian-Israeli public signal for peace, which led to official meetings and ultimately lasting peace.[46] Despite the historical challenges, Patterson succeeded in his efforts to promote conciliation events as a useful endeavor to end wars well.

Conclusion

Ending Wars Well is a concise and educational post-conflict book for political, diplomatic, and military leaders alike. Patterson synthesizes a variety of scholarly material to provide the answers to post-conflict questions that have not been asked in decades. He outlines and simplifies *jus post bellum* into the intimately interconnected Order-Justice-Conciliation model, with key concepts and real-world examples to provide a pragmatic framework for momentous philosophical discussion. The civil and international conflicts Patterson uses as examples are historically significant and culturally relevant. The background information and source development was abbreviated, much like a text book, but this sole deficiency did not significantly detract from Patterson's overall thesis or support. Complete coverage of the topic would require further independent study into the sources cited. The book met its narrow, yet important, goal to be a relevant text on just war theory and *jus post bellum* for a diverse audience. Patterson's scholarship and professional style is logical, consistent, and practical. *Ending Wars Well* excels as a guide in a long-neglected field. Politicians, military leaders, Soldiers, and diplomats ignore Patterson's lessons and warnings at their peril.

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[41] OLIVER O'DONOVAN, THE JUST WAR REVISITED 55 (Cambridge Univ. Press 2003) (quoting FRANCISCO DE VITORIA, POLITICAL WRITINGS 327 (Anthony Pagden & Jeremy Lawrence eds. & trans., 1991)).

[42] Reparations can and should be used in conjunction with punishment. PATTERSON, *supra* note 1, at 74.

[43] *Id.* at 107.

[44] *Id.* at 123.

[45] *Id.* at 106. *See* William J. Long & Peter Brecke, *War and Reconciliation: Reason and Emotion in Conflict Resolution*, 25(2) INT'L INTERACTIONS 95–117 (July 1999). Long and Brecke surveyed over 400 wars, finding only a few dozen reconciliation events and only seven that resulted in long-term peace.

[46] PATTERSON, *supra* note 1, at 118–24. Egypt and Israel had been at war, trading invasions of each other, from the 1948 Arab-Israeli War to the 1956 Suez Crisis to the 1967 Six-Day War. Remarkably, since the 1978 conciliation event and subsequent treaty they have maintained peace.

CLE News

1. Resident Course Quotas

a. Attendance at resident continuing legal education (CLE) courses at The Judge Advocate General's Legal Center and School, U.S. Army (TJAGLCS) is restricted to students who have confirmed reservations. Reservations for TJAGLCS CLE courses are managed by the Army Training Requirements and Resources System (ATRRS), the Army-wide automated training system. If you do not have a confirmed reservation in ATRRS, attendance is prohibited.

b. Active duty servicemembers and civilian employees must obtain reservations through their directorates' training office. U.S. Army Reserve (USAR) and Army National Guard (ARNG) Soldiers must obtain reservations through their unit training offices.

c. Questions regarding courses should be directed first through the local ATRRS Quota Manager or the ATRRS School Manager, Academic Department, at (800) 552-3978, extension 3172.

d. The ATTRS Individual Student Record is available on-line. To verify a confirmed reservation, log into your individual AKO account and follow these instructions:

Go to Self Service, My Education. Scroll to ATRRS Self-Development Center and click on "Update" your ATRRS Profile (not the AARTS Transcript Services).

Go to ATTRS On-line, Student Menu, Individual Training Record. The training record with reservations and completions will be visible.

If you do not see a particular entry for a course that you are registered for or have completed, see your local ATTRS Quota Manager or Training Coordinator for an update or correction.

e. The Judge Advocate General's School, U.S. Army, is an approved sponsor of CLE courses in all states that require mandatory continuing legal education. These states include: AL, AR, AZ, CA, CO, CT, DE, FL, GA, ID, IN, IA, KS, KY, LA, ME, MN, MS, MO, MT, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, WA, WV, WI, and WY.

2. Continuing Legal Education (CLE)

The armed services' legal schools provide courses that grant continuing legal education credit in most states. Please check the following web addresses for the most recent course offerings and dates:

a. The Judge Advocate General's Legal Center and School, U.S. Army (TJAGLCS).

Go to: https://www.jagcnet.army.mil. Click on the "Legal Center and School" button in the menu across the top. In the ribbon menu that expands, click "course listing" under the "JAG School" column.

b. The Naval Justice School (NJS).

Go to: http://www.jag.navy.mil/njs_curriculum.htm. Click on the link under the "COURSE SCHEDULE" located in the main column.

c. The Air Force Judge Advocate General's School (AFJAGS).

Go to: http://www.afjag.af.mil/library/index.asp. Click on the AFJAGS Annual Bulletin link in the middle of the column. That booklet contains the course schedule.

3. Civilian-Sponsored CLE Institutions

For additional information on civilian courses in your area, please contact one of the institutions listed below:

AAJE:	American Academy of Judicial Education P.O. Box 728 University, MS 38677-0728 (662) 915-1225
ABA:	American Bar Association 750 North Lake Shore Drive Chicago, IL 60611 (312) 988-6200
AGACL:	Association of Government Attorneys in Capital Litigation Arizona Attorney General's Office ATTN: Jan Dyer 1275 West Washington Phoenix, AZ 85007 (602) 542-8552
ALIABA:	American Law Institute-American Bar Association Committee on Continuing Professional Education 4025 Chestnut Street Philadelphia, PA 19104-3099 (800) CLE-NEWS or (215) 243-1600
ASLM:	American Society of Law and Medicine Boston University School of Law 765 Commonwealth Avenue Boston, MA 02215 (617) 262-4990
CCEB:	Continuing Education of the Bar University of California Extension 2300 Shattuck Avenue Berkeley, CA 94704 (510) 642-3973
CLA:	Computer Law Association, Inc. 3028 Javier Road, Suite 500E Fairfax, VA 22031 (703) 560-7747
CLESN:	CLE Satellite Network 920 Spring Street Springfield, IL 62704 (217) 525-0744 (800) 521-8662
ESI:	Educational Services Institute 5201 Leesburg Pike, Suite 600 Falls Church, VA 22041-3202 (703) 379-2900
FBA:	Federal Bar Association 1815 H Street, NW, Suite 408 Washington, DC 20006-3697 (202) 638-0252

FB:	Florida Bar 650 Apalachee Parkway Tallahassee, FL 32399-2300 (850) 561-5600
GICLE:	The Institute of Continuing Legal Education P.O. Box 1885 Athens, GA 30603 (706) 369-5664
GII:	Government Institutes, Inc. 966 Hungerford Drive, Suite 24 Rockville, MD 20850 (301) 251-9250
GWU:	Government Contracts Program The George Washington University Law School 2020 K Street, NW, Room 2107 Washington, DC 20052 (202) 994-5272
IICLE:	Illinois Institute for CLE 2395 W. Jefferson Street Springfield, IL 62702 (217) 787-2080
LRP:	LRP Publications 1555 King Street, Suite 200 Alexandria, VA 22314 (703) 684-0510 (800) 727-1227
LSU:	Louisiana State University Center on Continuing Professional Development Paul M. Herbert Law Center Baton Rouge, LA 70803-1000 (504) 388-5837
MLI:	Medi-Legal Institute 15301 Ventura Boulevard, Suite 300 Sherman Oaks, CA 91403 (800) 443-0100
MC Law:	Mississippi College School of Law 151 East Griffith Street Jackson, MS 39201 (601) 925-7107, fax (601) 925-7115
NAC	National Advocacy Center 1620 Pendleton Street Columbia, SC 29201 (803) 705-5000
NDAA:	National District Attorneys Association 44 Canal Center Plaza, Suite 110 Alexandria, VA 22314 (703) 549-9222

NDAED:	National District Attorneys Education Division 1600 Hampton Street Columbia, SC 29208 (803) 705-5095
NITA:	National Institute for Trial Advocacy 1507 Energy Park Drive St. Paul, MN 55108 (612) 644-0323 (in MN and AK) (800) 225-6482
NJC:	National Judicial College Judicial College Building University of Nevada Reno, NV 89557
NMTLA:	New Mexico Trial Lawyers' Association P.O. Box 301 Albuquerque, NM 87103 (505) 243-6003
PBI:	Pennsylvania Bar Institute 104 South Street P.O. Box 1027 Harrisburg, PA 17108-1027 (717) 233-5774 (800) 932-4637
PLI:	Practicing Law Institute 810 Seventh Avenue New York, NY 10019 (212) 765-5700
TBA:	Tennessee Bar Association 3622 West End Avenue Nashville, TN 37205 (615) 383-7421
TLS:	Tulane Law School Tulane University CLE 8200 Hampson Avenue, Suite 300 New Orleans, LA 70118 (504) 865-5900
UMLC:	University of Miami Law Center P.O. Box 248087 Coral Gables, FL 33124 (305) 284-4762
UT:	The University of Texas School of Law Office of Continuing Legal Education 727 East 26th Street Austin, TX 78705-9968
VCLE:	University of Virginia School of Law Trial Advocacy Institute P.O. Box 4468 Charlottesville, VA 22905

4. Information Regarding the Judge Advocate Officer Advanced Course (JAOAC)

a. The JAOAC is mandatory for all Reserve Component company grade JA's career progression and promotion eligibility. It is a blended course divided into two phases. Phase I is an online nonresident course administered by the Distributed Learning Division (DLD) of the Training Developments Directorate (TDD) at TJAGLCS. Phase II is a two-week resident course at TJAGLCS each December.

b. Phase I (nonresident online): Phase I is limited to USAR and ARNG JAs who have successfully completed the Judge Advocate Officer's Basic Course (JAOBC) and the Judge Advocate Tactical Staff Officer Course (JATSOC). Prior to enrollment in Phase I, students must have obtained at least the rank of CPT and must have completed two years of service since completion of JAOBC, unless, at the time of their accession into the JAGC, they were transferred into the JAGC from prior commissioned service. Other cases are reviewed on a case-by-case basis. Phase I is a prerequisite for Phase II. For further information regarding enrollment in Phase I, please contact the Judge Advocate General's University Helpdesk accessible at https://jag.learn.army.mil.

c. Phase II (resident): Phase II is offered each December at TJAGLCS. Students must have submitted by 1 November all Phase I subcourses, to include all writing exercises, and have received a passing score to be eligible to attend the two-week resident Phase II in December of the following year.

d. Students who fail to submit all Phase I non-resident subcourses by 2400 hours, 1 November 2014, will not be allowed to attend the December 2014 Phase II resident JAOAC. Phase II includes a mandatory APFT and height and weight screening. Failure to pass the APFT or height and weight may result in the student's disenrollment.

e. If you have additional questions regarding JAOAC, contact MAJ T. Scott Randall, commercial telephone (434) 971-3359, or e-mail thomas.s.randall2.mil@mail.mil.

5. Mandatory Continuing Legal Education

a. Judge advocates must remain in good standing with the state attorney licensing authority (i.e., bar or court) in at least one state to remain certified to perform the duties of an Army JA. This individual responsibility may include requirements the licensing state has regarding continuing legal education (CLE).

b. To assist attorneys in understanding and meeting individual state requirements regarding CLE, the Continuing Legal Education Regulators Association (formerly the Organization of Regulatory Administrators) provides an exceptional website at www.clereg.org (formerly www.cleusa.org) that links to all state rules, regulations, and requirements for Mandatory Continuing Legal Education.

c. The Judge Advocate General's Legal Center and School (TJAGLCS) seeks approval of all courses taught in Charlottesville, VA, from states that require prior approval as a condition of granting CLE. For states that require attendance to be reported directly by providers/sponsors, TJAGLCS will report student attendance at those courses. For states that require attorneys to self-report, TJAGLCS provides the appropriate documentation of course attendance directly to students. Attendance at courses taught by TJAGLCS faculty at locations other than Charlottesville, VA, must be self-reported by attendees to the extent and manner provided by their individual state CLE program offices.

d. Regardless of how course attendance is documented, it is the personal responsibility of JA to ensure that their attendance at TJAGLCS courses is accounted for and credited to them and that state CLE attendance and reporting requirements are being met. While TJAGLCS endeavors to assist JA in meeting their CLE requirements, the ultimate responsibility remains with individual attorneys. This policy is consistent with state licensing authorities and CLE administrators who hold individual attorneys licensed in their jurisdiction responsible for meeting licensing requirements, including attendance at and reporting of any CLE obligation.

e. Please contact the TJAGLCS CLE Administrator at (434) 971-3309 if you have questions or require additional information.

Current Materials of Interest

1. The USALSA Information Technology Division and JAGCNet

a. The USALSA Information Technology Division operates a knowledge management, and information service, called JAGCNet. Its primarily mission is dedicated to servicing the Army legal community, but alternately provides Department of Defense (DoD) access in some cases. Whether you have Army access or DoD-wide access, all users will be able to download TJAGLCS publications available through JAGCNet.

b. You may access the "Public" side of JAGCNet by using the following link: http://www.jagcnet.army.mil. Do not attempt to log in. The TJAGSA publications can be found using the following process once you have reached the site:

(1) Click on the "Legal Center and School" link across the top of the page. The page will drop down.

(2) If you want to view the "Army Lawyer" or "Military Law Review," click on those links as desired.

(3) If you want to view other publications, click on the "Publications" link below the "School" title and click on it. This will bring you to a long list of publications.

(4) There is also a link to the "Law Library" that will provide access to additional resources.

c. If you have access to the "Private" side of JAGCNet, you can get to the TJAGLCS publications by using the following link: http://www.jagcnet2.army.mil. Be advised that to access the "Private" side of JAGCNet, you MUST have a JAGCNet Account.

(1) Once logged into JAGCNet, find the "TJAGLCS" link across the top of the page and click on it. The page will drop down.

(2) Find the "Publications" link under the "School" title and click on it.

(3) There are several other resource links there as well. You can find links the "Army Lawyer," the "Military Law Review," and the "Law Library."

d. Access to the "Private" side of JAGCNet is restricted to registered users who have been approved by the Information Technology Division, and fall into one or more of the categories listed below.

(1) Active U.S. Army JAG Corps personnel;

(2) Reserve and National Guard U.S. Army JAG Corps personnel;

(3) Civilian employees (U.S. Army) JAG Corps personnel;

(4) FLEP students;

(5) Affiliated (U.S. Navy, U.S. Marine Corps, U.S. Air Force, U.S. Coast Guard) DoD personnel assigned to a branch of the JAG Corps; and, other personnel within the DoD legal community.

e. Requests for exceptions to the access policy should be e-mailed to: itdservicedesk@jagc-smtp.army.mil.

f. If you do not have a JAGCNet account, and meet the criteria in subparagraph d. (1) through (5) above, you can request one.

(1) Use the following link: https://www.jagcnet.army.mil/Register.

(2) Fill out the form as completely as possible. Omitting information or submitting an incomplete document will delay approval of your request.

(3) Once you have finished, click "Submit." The JAGCNet Service Desk Team will process your request within 2 business days.

2. The Judge Advocate General's Legal Center and School (TJAGLCS)

a. The Judge Advocate General's Legal Center and School (TJAGLCS), Charlottesville, Virginia, continues to improve capabilities for faculty and staff. We have installed new computers throughout TJAGLCS, all of which are compatible with Microsoft Windows 7 Enterprise and Microsoft Office 2007 Professional.

b. The faculty and staff of TJAGLCS are available through the Internet. Addresses for TJAGLCS personnel are available by e-mail at jagsch@hqda.army.mil or by accessing the JAGC directory via JAGCNet. If you have any problems, please contact the Information Technology Division at (703) 693-0000. Phone numbers and e-mail addresses for TJAGLCS personnel are available on TJAGLCS Web page at http://www.jagcnet.army.mil/tjagsa. Click on "directory" for the listings.

c. For students who wish to access their office e-mail while attending TJAGLCS classes, please ensure that your office e-mail is available via the web. Please bring the address with you when attending classes at TJAGLCS. It is mandatory that you have an AKO account. You can sign up for an account at the Army Portal, http://www.jt cnet.army.mil/tjagsa. Click on "directory" for the listings.

d. Personnel desiring to call TJAGLCS can dial via DSN 521-7115 or, provided the telephone call is for official business only, use the toll free number, (800) 552-3978; the receptionist will connect you with the appropriate department or directorate. For additional information, please contact the TJAGLCS Information Technology Division at (434) 971 -3264 or DSN 521-3264.

3. Additional Materials of Interest

a. Additional material related to the Judge Advocate General's Corps can be found on the JAG Corps Network (JAGCNet) at www.jagcnet.army.mil.

b. In addition to links for JAG University (JAGU) and other JAG Corps portals, there is a "Public Doc Libraries" section link on the home page for information available to the general public.

c. Additional information is available once you have been granted access to the non-public section of JAGCNet, via the "Access" link on the homepage.

d. Contact information for JAGCNet is 703-693-0000 (DSN: 223) or at itdservicedesk@jagc-smtp.army.mil.

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