

**Future Concepts Directorate**  
*The Judge Advocate General's Legal Center and School*

*Doctrine Practice Note*

**Publication of Field Manual 1-04**  
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**Introduction**

Field Manual (FM) 1-04, *Legal Support to the Operational Army*, revises keystone doctrine for The Judge Advocate General's Corps (JAGC).<sup>2</sup> Field Manual 1-04 replaces FM 27-100, *Legal Support to Operations*, and reflects the evolving role judge advocates, legal administrators, and paralegal Soldiers play in providing legal support to the modular force.<sup>3</sup> Lessons learned from recent contingency operations and the ongoing transformation process have resulted in significant changes across the Army in the doctrine, organization, training, material, leadership and education, personnel, and facilities (DOTMLPF)<sup>4</sup> spectrum. Field Manual 1-04 provides the framework for how the JAGC will be organized and how the Corps will provide support to clients across all core disciplines during operations.<sup>5</sup> This note provides a basic overview of how FM 1-04 is organized and the significant changes it makes to the provision of legal support.

**The Importance of Doctrine**

Joint Publication 1-02 defines doctrine as the “[f]undamental principles by which the military forces or elements thereof guide their actions in support of national objectives. It is authoritative but requires judgment in application.”<sup>6</sup> Doctrine serves to describe how organizational elements “are intended to work in pursuit of a larger idea.”<sup>7</sup> Field Manual 3-0, *Operations*, contains a helpful appendix designed to provide perspective for how doctrine should be read and how it may influence decision-making in all aspects of military operations.<sup>8</sup>

Doctrine is comprised of multiple elements. It blends historical information, including lessons learned or best practices, with force structure and situational understanding of current operations and policies. Doctrine is an intellectual tool which is meant to “foster initiative and creative thinking.”<sup>9</sup> In short, doctrine is developed from the vast array of resources available to an organization and serves as a helpful tool to understanding “how to think—not what to think.”<sup>10</sup>

**Legal Support Doctrine**

Before the release of FM 1-04, the primary source of Army legal doctrine was FM 27-100, which was last published on 1 March 2000. Field Manual 27-100 reflected a JAGC organizational structure that pre-dated both Operation Enduring Freedom and Operation Iraqi Freedom, as well as the Army's transformation to a more flexible and responsive modular force

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<sup>2</sup> U.S. DEP'T OF ARMY, FIELD MANUAL 1-04, LEGAL SUPPORT TO THE OPERATIONAL ARMY (15 Apr. 2009) [hereinafter FM 1-04].

<sup>3</sup> Under the modular force concept, brigade combat teams (BCTs)—as opposed to larger units such as divisions or corps—serve as “the building block[s] of land combat power.” *Id.* para. 3-5. Each BCT may serve as a “self-contained task force or it may fall in on a higher headquarters element” in a “plug and play system” designed to provide greater flexibility. *Id.* para. 3-6.

<sup>4</sup> Doctrine, Organization, Training, Materiel, Leadership and Education, Personnel and Facilities. See JOINT CHIEFS OF STAFF, JOINT PUB. 1-02, DEPARTMENT OF DEFENSE DICTIONARY OF MILITARY AND ASSOCIATED TERMS A-44 (19 Aug. 2009) [hereinafter JP 1-02].

<sup>5</sup> Lieutenant General Scott C. Black, *Army Field Manual (FM) 1-04, Legal Support to the Operational Army*, TJAG SENDS, A MESSAGE FROM THE JUDGE ADVOCATE GENERAL, vol. 37, no. 21 (May 2009) [hereinafter TJAG SENDS].

<sup>6</sup> JOINT PUB. 1-02, *supra* note 4, at 171.

<sup>7</sup> TJAG SENDS, *supra* note 5.

<sup>8</sup> See U.S. DEP'T OF ARMY, FIELD MANUAL 3-0, OPERATIONS app. D (27 Feb. 2008) [hereinafter FM 3-0].

<sup>9</sup> *Id.* para. D-2.

<sup>10</sup> *Id.* para. D-1.

design based around the brigade combat team (BCT). Field Manual 27-100 was intended to provide guidance on how judge advocates should perform in light of the Army's strategic analysis plan, known as Joint Vision 2010.<sup>11</sup> Joint Vision 2010, however, did not anticipate protracted conflicts in irregular warfare environments, such as counterinsurgency or stability operations.<sup>12</sup> Instead, Joint Vision 2010 was designed to encourage the development of Army capabilities in joint environments with a focus on continuing technical and information superiority over traditional foes.<sup>13</sup>

Organizational restructuring (i.e., transformation) significantly altered certain organizational relationships within the Army. The designation of the BCT as the primary unit of action in military operations necessitated a review of the methodology behind legal support operations at all echelons, particularly at the modular BCT and division levels. Acknowledging the organizational realities of transformation, The Judge Advocate General (TJAG), U.S. Army, established a policy in early 2006 regarding the assignment of judge advocates to BCTs.<sup>14</sup>

The new doctrine in FM 1-04 makes some significant changes to JAGC operations and structure. It also includes minor revisions that may not have an immediate impact on legal support, but will, over time, impact the development of force structure and training methodologies for judge advocates, paralegal Soldiers, and legal administrators. The following sections discuss the primary changes implemented in the initial edition of FM 1-04.

### *Core Disciplines*

Field Manual 1-04 significantly alters the formal alignment of core legal disciplines across the JAGC. Six official core disciplines now form the basis for operations, training, and education: international and operational law, administrative and civil law, contract and fiscal law, military justice, claims, and legal assistance.<sup>15</sup> This doctrinal restructuring was designed to emphasize particular aspects of military legal practice and to highlight the relationships between functional areas. Defining the core disciplines in this way should facilitate training and help in the acquisition of resources to meet mission requirements.

### *Transformation*

Field Manual 1-04 focuses primarily on the evolving relationship of legal personnel at the BCT. The organic assignment of judge advocates to BCTs, rather than to division-level legal offices that support the BCTs, sets the stage for dramatic changes in operations. As a result of transformation, brigade commanders are provided dedicated legal counsel and are no longer completely reliant on division-level legal offices. Assigning judge advocates to BCTs essentially provided BCT commanders with legal advisors capable of directly advising them across all six legal core disciplines. This change also created a new dynamic between division-level staff judge advocates (SJAs) and brigade judge advocates (BJAs), who had previously served within the division-level offices of the staff judge advocate (OSJAs).

Brigade combat teams also benefitted from the change in other ways. By incorporating BJAs into the operational planning processes, brigade attorneys are able to gain insight into the BCTs' mission and requirements. Brigade combat team commanders can also more readily develop a rapport with a judge advocate that may help strengthen the level of trust between the commander and legal adviser. The presence of judge advocates at the BCT level also allows for far greater flexibility in analyzing and completing missions in non-standard environments, including circumstances where a modular brigade is task organized to a separate organization (e.g., a division other than its "parent").

As the primary legal advisers to brigade commanders, BJAs serve as officers-in-charge (OIC) of brigade legal sections (BLS). The BLS evolved from the brigade operational law team (BOLT), which defined the personnel and mission structure of brigade-level legal support. The term "brigade operational law team" encouraged a perception of more limited types of

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<sup>11</sup> JOINT CHIEFS OF STAFF, JOINT VISION 2010 (1996), available at <http://www.dtic.mil/jv2010/jv2010.pdf>.

<sup>12</sup> See *id.*

<sup>13</sup> *Id.*

<sup>14</sup> Policy Memorandum 06-7, The Judge Advocate General, subject: Location, Supervision, Evaluation, and Assignment of Judge Advocates in Modular Force Brigade Combat Teams (10 Jan. 2006) [hereinafter TJAG Policy 06-7].

<sup>15</sup> FM 1-04, *supra* note 2, ch. 5.

legal support. The reflagging of a BOLT as a BLS was designed to enhance the provision of support across all six core legal disciplines while eliminating the perception that the offices were narrowly focused.

### *Rating Relationships*

Prior to the establishment of the BJA position, division trial counsel were assigned specific jurisdictions and maintained working relationships with particular units, including units at brigades. Typically, trial counsel were not assigned or attached to supported units, and administrative responsibility for personnel actions, such as awards and evaluations were completed by the division OSJA, with input from the brigade. This relationship would often persist during deployments.

The relationship of BJAs to the brigades is different. Initially, BJAs at BCTs were placed under a rating scheme similar to the rating chain of other brigade-level staff officers. Brigade judge advocates were rated by the brigade executive officer, who served as their first-line supervisor, and were senior-rated by the brigade commander. Between the brigade executive officer and the brigade commander, the division SJA served as an intermediate rater ensuring that the BJA was properly mentored by another lawyer familiar with the military legal profession. Unfortunately, this rating system created a perception of potential for friction between a BJA, who was no longer assigned to a division staff, and an SJA who may have felt that opinions and advice were being disregarded by a former subordinate.

In order to address this possible friction, TJAG published Policy Memo 08-1, which defined the standard rating relationships for BJAs and brigade trial counsel, specified duty locations, and addressed BCT assignment considerations.<sup>16</sup> In addition, he directed the drafting and publication of FM 1-04 to give the JAGC clear guidance on working relationships. Chapter 4 of FM 1-04 addresses the “Roles, Responsibilities and Working Relationships” of JAGC personnel. The basic rating chain for attorneys assigned to BCTs is as follows: BJAs are rated by the SJA and senior-rated by the brigade commander; trial counsel are rated by the BJA and senior rated by the SJA. Both attorneys may receive intermediate ratings from the brigade executive officer, if the situation requires.<sup>17</sup> The rating system and directives issued regarding duty locations and assignments are designed to provide a structure that allows a BLS to operate in support of its brigade while ensuring coordinated support from higher echelon legal offices.

### *Planning*

Chapter 6 of FM 1-04 focuses on the involvement of judge advocates in planning for operations and the basics of the military decision-making process (MDMP).<sup>18</sup> As discussed above, judge advocates at the BCT level are more involved in planning for military operations now than ever before;<sup>19</sup> However, judge advocate education and training has historically lacked focus on MDMP.<sup>20</sup> Since the Combined Arms and Services Staff School (CAS<sup>3</sup>) was eliminated in 2004, newer BJAs have found themselves a step behind other staff officers, particularly at BCTs.<sup>21</sup> Consequently, FM 1-04 stresses the importance of the planning process and emphasizes the importance of being involved in decision-making before the actual execution of missions. The update to FM 1-04, the implementation of the Judge Advocate Tactical Staff Officer Course (JATSOC), and the recently developed pre-deployment training program (PDP) demonstrate the Corps’ emphasis on training lawyers to understand the purpose and function of MDMP and to enable them to inject legal analysis into pre-decisional staff advice to commanders.<sup>22</sup>

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<sup>16</sup> Policy Memorandum 08-1, The Judge Advocate General, subject: Location, Supervision, Evaluation, and Assignment of Judge Advocates in Modular Force Brigade Combat Teams (17 Apr. 2008) [hereinafter TJAG Policy 08-1].

<sup>17</sup> FM 1-04, *supra* note 2, para. 4-10.

<sup>18</sup> U.S. DEP’T OF ARMY, FIELD MANUAL 5-0, ARMY PLANNING AND ORDERS PRODUCTION (20 Jan. 2005) [hereinafter FM 5-0].

<sup>19</sup> TJAG SENDS, *supra* note 5.

<sup>20</sup> Lieutenant Colonel Mike Ryan, *Creating Legal Pentathletes: An Argument in Favor of an Operations Training Course for Judge Advocates (JAs)*, ARMY LAW., Apr. 2007, at 22–23.

<sup>21</sup> *Id.*

<sup>22</sup> The Judge Advocate Tactical Staff Officer Course (JATSOC) is accessible from The Judge Advocate General’s University website (password required), available at <https://jag.learn.army.mil>.

## Appendices

Field Manual 1-04 contains appendices that address areas not previously covered in FM 27-100. These new appendices discuss detention operations, stability operations, and rule of law.<sup>23</sup> While the remaining appendices<sup>24</sup> contain updated information, this note focuses on the three new appendices and examines the significant changes in these practice areas since the last revision of FM 27-100.

Appendix B addresses detainee operations and begins with a brief discussion of the foundational requirements of detainee operations. Judge advocates are the subject matter experts concerning detainee operations on issues bearing on detainees' fates. Legal personnel have primary responsibility for training commanders and Soldiers on the international legal standards associated with detention and detainee case file processing. Judge advocates are also responsible for providing training on the Geneva Conventions, the legal bases for detention, and the procedures required to ensure a detainee's legal status is properly characterized and respected. Judge advocates must be familiar with the Detainee Treatment Act of 2005<sup>25</sup> and the Military Commissions Act of 2006, which affect the treatment of detainees.<sup>26</sup>

Appendix C addresses the emerging concept of stability operations and discusses the blending of traditional JAGC tasks with stability operations requirements. In general, "stability operations" is "an overarching term encompassing various military missions, tasks, and activities conducted outside the United States in coordination with other instruments of national power to maintain or reestablish a safe and secure environment, provide essential governmental services, emergency infrastructure reconstruction, and humanitarian relief."<sup>27</sup> Field Manual 1-04 incorporates the newly defined status of stability operations, which are now considered on equal footing with offensive and defensive operations.<sup>28</sup> Stability operations, however, present significant challenges for judge advocates. Stability operations are typically complex and may be conducted at the same time as offensive and defensive operations. Training legal personnel to understand their functions within stability operations and training units to incorporate legal capabilities into their planning and military decision making processes represents one step towards ensuring the success of stability operations.

Appendix D discusses the evolving concept of rule of law. Field Manual 1-04 defines rule of law as "a principle under which all persons, institutions, and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and that are consistent with international human rights principles."<sup>29</sup> Rule of law activities generally involve a variety of different organizations, both civilian and military. In addition, rule of law activities are situation-dependent and vary considerably based on factors ranging from international cultural considerations to the rapport between the various personnel.<sup>30</sup> Appendix D does not seek to provide any specific task guidance. Rather, it tries to provide a basic foundation for JAGC personnel upon which they can build a plan to suit their mission.

## Conclusion

Since the last version of JAGC doctrine was published in 2000, substantial changes have occurred in the overall landscape of legal operations. Transformation to the modular force and the advent of less conventional military operations, such as stability operations and counterinsurgency, have fundamentally impacted commanders' requirements for legal support. Judge advocates, serving at the BCT level, are increasingly involved in the tactical planning process. The core legal disciplines have evolved and expanded. New types of operations have emerged. The JAGC, which continually

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<sup>23</sup> Detainee Operations is Appendix B; Stability Operations is Appendix C; and Rule of Law is Appendix C.

<sup>24</sup> Appendix A is Rules of Engagement, Rules for the Use of Force, and Targeting; Appendix E covers Legal Support in civil affairs units; Appendix G discusses financial management and deployment contracting; Appendix H relates the updated format for JAGC lessons learned.

<sup>25</sup> Pub. L. No. 109-148, 119 Stat. 2680.

<sup>26</sup> Pub. L. No. 109-366, 120 Stat. 2600.

<sup>27</sup> FM 1-04, *supra* note 2, para. C-1 (citing to JP 3-0).

<sup>28</sup> U.S. DEP'T OF DEF., DIR. 3000.05, MILITARY SUPPORT FOR STABILITY, SECURITY, TRANSITION, AND RECONSTRUCTION (SSTR) OPERATIONS 2 (28 Nov 2005) [hereinafter DoDI 3000.05].

<sup>29</sup> *Id.* para. D-4 (citing to FM 3-07).

<sup>30</sup> See also CENTER FOR LAW AND MILITARY OPERATIONS, RULE OF LAW HANDBOOK: A PRACTITIONER'S GUIDE FOR JUDGE ADVOCATES (Kate Gorove & Captain Thomas B. Nachbar, eds., 2008).

examines its organization and methodology to ensure it can meet its obligations in current operational environments, promulgated FM 1-04 to reflect the most current guidance on legal support to the modular force.