

Operational Law in Practice: Observations from the Mission Command Training Program¹

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I. Introduction

The U.S. Army Judge Advocate General's (JAG) Corps has a long and rich history of providing legal support to commanders in operational environments. Since the attacks of 9/11, the JAG Corps has seen incomparable involvement at all levels of command and commanders have come to value their Judge Advocates to an extraordinary degree. During this time of rapid expansion of Operational and International Law (OPLAW)², the JAG Corps responded by providing a steady stream of well-qualified Judge Advocates prepared to execute myriad legal responsibilities in theater. This response was particularly commendable considering the fairly rudimentary (compared say, to Military Justice) organizational OPLAW structure.

In the last ten years, the JAG Corps has strengthened this construct by establishing and implementing Brigade Judge Advocate positions, increasing the number of dedicated OPLAW practitioners, and developing new and constantly updated blocks of instruction at The Judge Advocate General's Legal Center and School (TJAGLCS). There are now approximately 130 Judge Advocates who practice OPLAW exclusively, and dozens more who practice the discipline on a regular basis.³

Another important aspect of the burgeoning OPLAW structure is Judge Advocate participation in Combined Training Center (CTC) rotations. While most Judge Advocates are familiar with the National Training Center and the Joint Readiness Training Center, many are unfamiliar with the Mission Command Training Program (MCTP). All active duty division and corps, and most functional and multi-functional brigade legal sections, will execute a MCTP rotation at least once every two years.

The intent of this article is thus two-fold. First to provide background on what a MCTP-run exercise is; how it works and what can be expected of Judge Advocates participating in the exercise. Second, this article seeks to share substantive

insights gained from observing hundreds of Judge Advocates executing operational law in a multitude of scenarios and all levels of command.

This article proceeds in three sections. The first section provides a brief history of the CTC program, with particular focus on MCTP. The second section discusses Army doctrine and its relevance to the JAG Corps. These sections provide important context for the final section of the article, which discusses the major Judge Advocate related observations made over the last several years. Where possible, this article seeks to articulate broad themes that are applicable to legal sections at all echelons.

II. The Combined Arms Training Centers

The establishment of the CTCs in the 1980s signaled a sea-change in the way the Army trains. The CTCs provide Army commanders a realistic, doctrine-based training environment designed to generate unit readiness and develop leadership.⁴ The CTCs have also served as a forum for the development and implementation of new doctrine.

MCTP is one of the four CTCs, the others being the National Training Center (NTC) in Fort Irwin, California; the Joint Readiness Training Center (JRTC) in Fort Polk, Louisiana; and the Joint Multinational Readiness Center (JMRC) in Grafenwoehr, Germany. Collectively, the CTCs are designed "to generate ready units and agile leaders who are confident in their ability to operate in complex environments."⁵ MCTP specifically is a mobile CTC designed to create "training experiences that enable the Army's senior mission commanders to develop current, relevant, and campaign-quality, Joint and expeditionary mission command instincts and skills."⁶

MCTP executes a wide variety of exercises, including Warfighter exercises (WFX), Unified Endeavor exercises, Army Service Component Command (ASCC) exercises, culminating training exercises (CTE), and Army National

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¹ The author would like to thank Lieutenant Colonel Lance Turlington and Major Brett Farmer for their invaluable contributions to this article.

² For the purposes of this memorandum, operational law (OPLAW) refers to the practice of all international law issues, legal issues affecting military operations, the law of war, intelligence activities and information activities, stability operations and rule of law.

³ This number is taken from the author's analysis of the U.S. Army Judge Advocate General's Corps *Personnel Directory*. OFF. OF THE JUDGE ADVOCATE GENERAL, JAGC PUBLICATION 1-1, PERSONNEL POLICIES (28 Aug. 2014).

⁴ U.S. DEP'T OF ARMY, ARMY TRAINING STRATEGY 15 (3 October 2012).

⁵ U.S. DEP'T OF ARMY, REG. 350-50, COMBAT CENTER TRAINING PROGRAM para. 1-5 (3 Apr. 2013).

⁶ *Id.*

Guard (ARNG) Brigade Warfighter Exercises.⁷ These exercises are distributed, simulation driven, Master Scenario Events List (MSEL) supported, multi-echelon tactical command post training events. Training audiences fight against a live, free-thinking hybrid enemy. That is, an enemy fighting with conventional weapons as well as cyber weapons and information operations. The World-Class Opposing Forces (WCOPFOR) element of MCTP facilitates the free-play component of the Warfighter Exercise simulation. The WCOPFOR can compensate for the training audience's planning and decision-making processes with human reason and intuition, not just artificial intelligence (i.e., the computer simulation).

The computer simulation takes place in an austere theater of operations necessitating forcible entry, development of logistics and lines of communication. Preparation for an exercise starts approximately a year out. The commander and primary staff meet with MCTP to discuss the design of the scenario and the commander's training objectives. MCTP then designs the exercise scenario to focus on these objectives. There are normally three planning sessions between MCTP and the unit before an exercise commences.

Training is focused on developing core war-fighting competencies in accordance with the commander's training objectives. Thus, exercises are generally oriented to force-on-force engagements, with a focus on Phase III operations. By way of example, below are the training objectives from recent active duty division rotation:

- Conduct Mission Command (DMAIN, DTAC, BDE, and BN)
- Develop and maintain accurate Common Operating Picture
- Improve and enhance C4I systems, improving interoperability with partner units
- Knowledge Management across staff and with MSCs
- Staff coordination and synchronization with MSC and partner units.
- Plan, synchronize, and conduct Weapons of Mass Destruction – Elimination (WMD-E) operations
- Integrate geographically isolated units into Division operations⁸

⁷ Each type of exercise has a slightly different focus and construct. For example, Vibrant Response exercises are field training exercises designed to confirm the operational and tactical capabilities of integrated elements across DoD for support to civil authorities; Unified Endeavor exercises are for Joint Task Force Component Commanders and their staffs to train at the operational level in preparation for upcoming deployments; and Army

For a Brigade Judge Advocate, anticipate your unit to do what it is designed to do (e.g., artillery will fire, sustainers will sustain, etc.) Once the simulation “turns on”, scenario managers from MCTP and the exercise director (typically an active duty General Officer) will control the scenario to ensure the commander's training objectives are being met.

In a typical scenario, about 80% of what occurs is the computer simulation and 20% is based on scripted injects. Injects are used by MCTP to test a particular system or identify unit weaknesses; often related to communications systems. For example, if MCTP notices a unit doesn't understand the restrictions on cross-border operations, they may inject a scenario which has the unit receiving fire from a cross-border enemy. The intent is to see how the unit reacts and then use the scenario as a teaching point.

The exercise itself typically occurs over a ten day period. After the first four days, MCTP will conduct a formal, 2-hour long, after action review (AAR) with the entire unit. MCTP will conduct another, final AAR, on the tenth day of the exercise. At the mid-point and end, MCTP OPLAW conducts an informal “Green Book AAR” with only the participating legal sections.

The Observer, Coach, Trainers (OC/Ts) from MCTP OPLAW observe and discuss the legal section's functionality, horizontal and vertical unit integration, staff integration, command relationship, etc. Nothing observed or discussed during an exercise is reported to the JAG Corps leadership or outside MCTP. With coordination with the training audience's senior legal advisor, MCTP OPLAW will occasion make comments to the unit commander that relate to the legal section. For instance, such comments may concern the unit's failure to adequately equip the legal section.

III. Army Doctrine and the Judge Advocate

Exercises are grounded in Army doctrine. A Judge Advocate must have a strong understanding of JAG Corps-related doctrine, and a working knowledge of other fundamental aspects of Army Doctrine.

A. Mission Command

The concept of “mission command” is relatively new. Many Judge Advocates will be familiar with the terms “battle command” and “command and control.” Due to an evolution in doctrine,⁹ in 2011 the Army formally adopted mission command as both a philosophy of command (e.g., exercise of

Service Component Command Exercises are typically planning only exercises, with no computer simulation.

⁸ Headquarters, 2nd Infantry Division, Warpath III Training Objectives (8 Sept. 2013).

⁹ In 2001, “battle command was defined as ‘the exercise of command in operations against a hostile, thinking enemy.’” Michael Barbee, *The CTC*

command authority using mission orders) and as a Warfighting Function (replacing Command and Control).¹⁰

The philosophy of mission command is the foundation of unified land operations—the Army’s *raison d’être*.¹¹ JAG Corps doctrine also reflects the central importance of mission command, noting that: “the practice of operational law has become an essential component of mission command”¹² In practice, however, most Judge Advocates are unfamiliar with the term and confused when their commanders talk about mission command.

The Army defines mission command as “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.”¹³ As an organizing principle, the philosophy of mission command holds that command is exercised through “shared understanding and purpose.”¹⁴ More concisely, the mission command philosophy can be understood as the exercise of direction via mission orders to enable decentralized execution.¹⁵ The key to this definition is the phrase “mission orders” which refers to orders “that emphasize to subordinates the results to be attained, not how they are to achieve them.”¹⁶

Doctrine divides up “responsibility” for Mission Command between the staff and the commander. Commanders are charged with three tasks. First, commanders “drive the operations process through their activities of understanding, visualizing, describing, directing, leading, and assessing operations.”¹⁷ Second, commanders “[d]evelop teams, both within their own organizations and with joint, interagency, and multinational partners.”¹⁸ And finally,

Program: Leading the March into the Future, MILITARY REVIEW, July-Aug. 2013 at 21 (quoting U.S. DEP’T OF THE ARMY, FIELD MANUAL 3-0, OPERATIONS para. 4-1 (14 June 2001)). This definition proved too rigid for the increasingly nuanced and complex international environment, and in 2008 the Army introduced the concept of “mission command,” which was designated as the “preferred means of battle command.” U.S. DEP’T OF THE ARMY, FIELD MANUAL 3-0, OPERATIONS para. 4-1 (14 June 2001)..

¹⁰ This, in-turn, led to the change in name from *Battle Command Training Program* to the *Mission Command Training Program*.

¹¹ U.S. DEP’T OF THE ARMY, DOCTRINE PUBLICATION 6-0, MISSION COMMAND 1 (May 2012) [hereinafter ADP 6-0] (“Unified land operations is the Army’s operational concept . . . the mission command philosophy of command is one of the foundations of unified land operations.”).

¹² U.S. DEP’T OF THE ARMY, FIELD MANUAL 1-04, LEGAL SUPPORT TO THE OPERATIONAL ARMY 1-2 (18 Mar. 2013) [hereinafter FM 1-04].

¹³ ADP 6-0, *supra* note 11, 1.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 2-4.

¹⁷ U.S. DEP’T OF THE ARMY, DOCTRINE REFERENCE PUB. 6-0, MISSION COMMAND v (May 2012) [hereinafter ADPR 6-0].

commanders conduct “[i]nform and influence audiences, inside and outside their organizations.”¹⁹ Staff, conversely, are charged with conducting the “operations process,”²⁰ synchronizing “information-related capabilities,”²¹ and conducting “cyber electromagnetic activities.”²²

B. The Warfighting Functions

The tasks related to mission command are facilitated on most staffs by organization into warfighting functions. Warfighting functions are “a group of tasks and systems (people, organizations, information, and processes) united by a common purpose that commanders use to accomplish missions and training objectives.”²³ The Army has six warfighting functions: mission command, movement and maneuver, intelligence, fires, sustainment, and protection.²⁴ There is also some discussion of creating a seventh warfighting function entitled “Engagement.”²⁵ Warfighting functions are typically used to divide various staff functions within the Command Post. And while warfighting functions are a relatively new organizational principle, MCTP has seen this concept embraced by virtually all units from brigade to Army Service Component Command.

Understanding these functions and where legal services falls is imperative to properly integrating on a staff. Each unit applies the concept slightly differently, but generally warfighting functions have been used to physically divide the space within a headquarters footprint, to allocate resources, and to execute shift change briefs. Legal services are classified under the *sustainment* warfighting function.²⁶

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at vi.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ ADPR 3-0, *supra* note 9, 1-9.

²⁵ See U.S. DEP’T OF THE ARMY, TRAINING AND DOCTRINE COMMAND PAM. 525-8-5, U.S. ARMY FUNCTIONAL CONCEPT FOR ENGAGEMENT (24 Feb. 2015).

²⁶ ADPR 6-0, *supra* note 17; Legal Services are classified under the “personal services” portion of the sustainment warfighting function, which includes “sustainment functions that man and fund the force, maintain Soldier and Family readiness, promote the moral and ethical values of the nation, and enable the fighting qualities of the Army.” U.S. DEP’T OF THE ARMY, DOCTRINE REFERENCE PUB. 4-0, SUSTAINMENT 1-2 (July 2012). (The sustainment warfighting function “is the related tasks and systems that provide support and services to ensure freedom of action, extend operational reach, and prolong endurance.” *Id.*, 1-1.

There appears, however, to be some doctrinal divergence over this classification, with some doctrine suggesting legal services are better classified as a function of mission command.²⁷ Field Manual 1-04 (Legal Support to Operational Army), for instance, appears to support the idea that legal services are perhaps better organized under the mission command function. FM 1-04, for instance, notes that “Soldier discipline is one component of the *mission command* warfighting function.”²⁸ This manual further declares that “the practice of operational law has become an essential component of mission command.”²⁹ These statements further track a passage from Army Tactics, Techniques, and Procedures (ATTP) 5-0.1, The Military Decision Making Process, which lists “Staff Judge Advocate” as a position “responsible for aspects of mission command.”³⁰

Given the breadth of functions performed by a unit legal office, there exists a reasonable question as to which warfighting function it is best classified under. It is unclear why legal services are considered part of the sustainment warfighting function. Presumably it is because legal services contribute to “Soldier and Family readiness, [and] promote the moral and ethical values of the nation.”³¹ While a portion of the legal services practice—Military Justice, Ethics, and Legal Assistance—relate to these goals, these represent only a fraction of the legal services provided to a command and staff. Operational Law, at a minimum, is likely a better fit under the mission command warfighting function.³²

The current warfighting function doctrine creates concrete problems in an operational environment. At various MCTP exercises, Judge Advocates are virtually always assigned to the unit’s Sustainment Chief—not Executive Officer—for staffing purposes. Further, legal sections are typically relegated to the Army Logistics Operations Center (ALOC), far from the command post. As the OPLAW practitioner attempts to integrate with current operations, this doctrinal ambiguity can be an obstacle.

²⁷ U.S. DEP’T OF THE ARMY TACTICS, TECHNIQUES, AND PROCEDURES 5-0.1, THE MILITARY DECISIONMAKING PROCESS (14 Sept. 2011) [hereinafter ATTP 5-0.1]. (The mission command warfighting function is organized to “support the commander’s decision making; collect, create, and maintain relevant information and prepare knowledge products to support the commander’s and leaders’ understanding and visualization; prepare and communicate directives; and establish the means by which commanders and leaders communicate, collaborate, and facilitate the functioning of teams.”)

²⁸ FM 1-04, *supra* note 12.

²⁹ *Id.*

³⁰ ATTP, *supra* note 27, 4-25.

³¹ ADPR 4-0, *supra* note 26, 1-2

³² *Id.*, 9 The mission command warfighting function is defined as “the related tasks and systems that develop and integrate those activities enabling a commander to balance the art of command and the science of

C. Special and Personal Staff

The second doctrinal issue concerns the position of the Judge Advocate on the staff. AR 27-1;³³ FM 3-90.6;³⁴ ATTP 5-0.1;³⁵ and Joint Publication 1-04³⁶ all indicate the legal advisor is a member of the commander’s *personal* staff. Field Manual (FM) 1-04, however, notes that the Brigade Judge Advocate is a member of the “brigade commander’s personal and special staff.”³⁷ Further complicating the question is FM 101-5 which refers to the legal advisor at times as a member of the personal staff and at other times, a member of the special staff.³⁸ Given the role of the Judge Advocates on a battle staff, they should perhaps be considered as members of both the personal and special staff. Regardless of the outcome of this doctrinal discussion, practitioners should be aware that some confusion exists on the issue.

IV. Observations

A. Staff Integration

As noted above, commanders *drive* the operations process, the staff *conducts* the operations process, including planning, preparation, execution, and assessment. Army-wide, one of the reoccurring issues with the conduct of the operations process is the compartmentalization of planning efforts. Deficient collaboration and cross-functional discussion leads to flaws in the planning process.

Staffs at all levels frequently fail to integrate special and personal staff sections during the planning process. The suboptimal integration is a result of two factors. First, Judge Advocates often don’t understand the operations process and the role that they play. As a result, they frequently fail to attend the staff planning meetings and unit rehearsals. Further, when they do attend they are unaware of how they can be value added to the process. The flipside of this is the staff and Executive Officer (XO)/Chief of Staff (CoS) fail to understand where and how Judge Advocates can be value added. Commanders should ensure that staffs, and staff leadership, are familiar with the roles and responsibilities

control in order to integrate the other warfighting functions.” The purpose is to “support the commander and subordinate commanders in understanding situations, decision-making, and implementing decisions throughout the conduct of operations.”

³³ U.S. DEP’T OF THE ARMY REGULATION 27-1, JUDGE ADVOCATE LEGAL SERVICES (RAR 13 Sept. 2011).

³⁴ U.S. DEP’T OF THE ARMY, FIELD MANUAL 3-90.6, BRIGADE COMBAT TEAM (Sept. 2010).

³⁵ ATTP, *supra* note 27.

³⁶ JOINT CHIEFS OF STAFF, JOINT PUB. 1-04, LEGAL SUPPORT TO MILITARY OPERATIONS (17 Aug. 2011) [hereinafter JOINT PUB. 1-04].

³⁷ FM 1-04, *supra* note 12, 3-3.

³⁸ U.S. DEP’T OF THE ARMY, FIELD MANUAL 101-5, STAFF ORGANIZATION AND OPERATIONS (31 May 1997).

filled by legal section, and that the staff is in-fact deeply integrated.

Many Judge Advocates incorrectly assume that the role of an Operational Law attorney is simply administering the Rules of Engagement and providing advice in the targeting process. The role of the Judge Advocate in operations, however, is far broader as discussed at length below.

B. Staff Organization, Equipping, and Planning

Field Manual 1-04 tasks Judge Advocates to “[p]rovide the commander and staff with legal support and advice in decisive action-oriented operations.”³⁹ This is accomplished in two parts: support to planning, and support to operations. In the first part—support to operational planning—Judge Advocates prepare legal estimates, design the operational legal support architecture, write legal annexes, assist in the development and training of rules of engagement, and reviewing plans and orders.⁴⁰ The key to success here is the proper organization and equipping of the legal section.

1. Staff Organization

Task organization is the “is the act of configuring an operating force, support staff, or sustainment package of specific size and composition to meet a unique task or mission.”⁴¹ It is at this stage in the planning process—perhaps months before operations commence—that units make decisions impacting the size, location, staffing, and equipping of legal sections and other staff sections. Legal sections frequently arrive at an exercise only to find themselves tucked away in the sustainment cell without any computer or means of communication. It is critical that Judge Advocates are actively engaged in the planning process in order to articulate the operational needs for the legal section. At a minimum it is recommended that every legal section have a dedicated NIPRNET, SIPRNET, DSN, SVOIP, and Command Post of the Future (CPOF)⁴² system.

2. Equipping

Why not strictly and aspect of planning, it is worth noting the importance of the CPOF system. Perhaps the most consistent MCTP AAR comment received from training audiences is the lack of connectivity for the legal section. This is unsurprising given that, “the abilities to

communicate and receive information represent the judge advocates primary materiel requirements to deliver timely legal support in garrison and in a deployed environment.”⁴³ In a deployed environment, communications is focused on three systems—NIPRNET, SIPRNET, and CPOF. NIPR/SIPR are simply the unclassified and classified military internet systems, which need no special equipment or instruction. CPOF, however, is a unique operating system that is in no way intuitive. In a recent exercise, for example, all paralegals from six separate units noted the importance of CPOF training and lamented the fact that they never received CPOF training during their paralegal training.

Operations—particularly Unified Land Operations—are characterized by a dynamic environment which demands a high degree of situational awareness. In the modern Army Current Operations Integration Cell (COIC), the central system for maintaining situational awareness is the CPOF system. Having a dedicated Judge Advocate CPOF system with trained operators is important for a number of reasons. First, all significant acts (SIGACTS) are reported through the CPOF system. Legal sections must have the instant ability to see relevant SIGACTS (law of armed conflict violations, detainee issues, civilian casualties, claims incidents, etc.) and take appropriate actions.

Second, the legal section acts as the “hub” on the staff for all investigations. The legal section should have the best situational awareness of investigations throughout the unit formation. CPOF allows users to not only see all SIGACTs, but also provides the ability to graphically depict these events. The legal section is well positioned to identify trends on behalf of the commander.

Finally, among other duties of the legal section, the SJA is tasked to “provide the commander and staff with legal support and advice in decisive action-oriented operations.”⁴⁴ This requirement demands real time situational awareness of the battle. Legal advisors cannot give guidance to commanders and staff on ongoing operations, troops in contact, counter-battery fire, etc. without having good battlefield situational awareness.

3. Operational Planning

Army doctrine notes that planning helps leaders to: “[u]nderstand and develop solutions to problems, [a]nticipate events and adapt to changing circumstances, [and] task-

³⁹ FM 1-04, *supra* note 12.

⁴⁰ *Id.*

⁴¹ U.S. DEP’T OF THE ARMY, ARMY DOCTRINE REFERENCE PUBLICATION 5-0, THE OPERATIONS PROCESS PARA. 2-2 (17 May 2012) [hereinafter ADRP 5-0] (citing U.S. DEP’T OF THE ARMY, ARMY DOCTRINE REFERENCE PUBLICATION 3-0, UNIFIED LAND OPERATIONS (16 May 2012)).

⁴² For a general discussion of CPOF, see Harry Greene et al., *Command Post of the Future: Successful Transition of a Science and Technology Initiative to a Program of Record*, DEFENSE ACQUISITION UNIVERSITY, Jan. 2010.

⁴³ FM 1-04, *supra* note 12.

⁴⁴ *Id.*

organize the force and prioritize efforts.”⁴⁵ All three aspects occur throughout planning efforts, but it’s particularly critical for Judge Advocates to understand that at the earliest stages of planning commanders and staff are focused on task organization.

It is hard to overstate the importance of Judge Advocate participation in the planning process. It is imperative that Judge Advocates understand the process and become involved early and often. Field Manual 1-04 succinctly summarizes this: “Key to effective legal support ... is judge advocates who demonstrate initiative, integrate themselves into the staff, actively participate in the design and planning processes, and work to understand the operational environment.”⁴⁶ For a given operation, the planning may begin months or even a year before commencement of operations.

Military operations are complex endeavors which demand formal systems designed to assist participants (e.g., commanders and staff) in “understanding a situation, envisioning a desired future, and laying out effective ways of bringing that future about.”⁴⁷ Major Michael O’Connor has drafted an outstanding article articulating the role of the Judge Advocate in operations planning.⁴⁸ It is beyond the scope of the instant article to essentially recount what MAJ O’Connor has so deftly written. The intent here is to highlight the importance of the planning process and provide a brief overview of how and where Judge Advocates participate in the process.

Another good resource on this point is Joint Publication 1-04, which provides a chronological depiction of Judge Advocate support to the planning process. As opposed to Army Doctrine, Joint Doctrine breaks out the Judge Advocate role in both Crisis Action Planning and in Deliberate Planning. To wit:⁴⁹

Deliberate Planning	Crisis Action Planning
Review planning documents	Develop situational awareness
Review applicable laws, policies, treaties, and Agreements	Review planning documents
Coordinate legal issues with counterparts	Review applicable laws, policies, treaties, agreements, and arrangements in all affected areas of responsibility (AORs)
Review the commander's strategic concept for	Summarize relevant legal considerations

⁴⁵ ADPR 5-0, *supra* note 41, para. 2-2.

⁴⁶ FM 1-04, *supra* note 12.

⁴⁷ ADPR 5-0, *supra* note 41, para. 2-1.

compliance with law and policy and make appropriate recommendations	(authorities, restraints, and constraints) and provide them to the crisis action team, combatant commanders, and counterparts
Assist the staff judge advocates	Incorporate legal considerations and instructions for developing ROE and RUF in the combatant commander's planning guidance
Review the supported command's OPLAN for legal sufficiency and make appropriate recommendations	Review the combatant commander's estimate for compliance with law and policy and make appropriate recommendations
Crosswalk supporting plans to ensure that they are legally correct, complete, and consistent, and make appropriate recommendations	Review and validate any judge advocate joint task force joint manning document requirements and synchronize joint legal support
	Monitor operations for legal issues as required

In the first portion of the operations process—planning—it is imperative that Judge Advocates understand and aggressively involve themselves in the planning process. As FM 1-04 notes, “Judge advocates must be proactive and heavily involved in the planning phase of all operations. Judge Advocates ensure commanders fully understand and account for [legal issues] during the planning of operations.”⁵⁰ This requires an understanding of the Operations Process (ADRP 5-0) and the Military Decision Making Process (MDMP). Without a working understanding of these concepts, it will be impossible for Judge Advocates to identify where and when they can provide assistance to the staff.

A useful example can be seen in the recent development of the U.S. policy regarding the use of anti-personnel landmines. In a typical exercise, landmines—anti-personnel and otherwise—play an important part in unit’s plans. Recently, both the President and the Secretary of Defense made public statements indicating the U.S. “will not use anti-

⁴⁸ Michael J. O’Connor, *A Judge Advocate’s Guide to Operational Planning*, ARMY LAW., Sept. 2014, at 5.

⁴⁹ Joint Pub. 1-04, *supra* note 36.

⁵⁰ *Id.*

personnel landmines outside the Korean Peninsula.”⁵¹ In two recent exercises, the planners were not tracking this change in policy. Had the Judge Advocates not been closely integrated with the planners, the unit would have planned an operation that they could not have executed.

C. Situational Awareness

The second portion of the operations process—the conduct of operations—has Judge Advocates maintaining situational awareness, advising and assisting with lethal and nonlethal targeting, and advising and assisting with ROE implementation, and conducting detainee operations.⁵² The concept of “situational awareness” in a combat environment broadly indicates that a given member of the staff should have sufficient information in order to do their job. For the personalist, this might include knowing who and where personnel are located. For the logistician this information would include the status of classes of supply. For the Judge Advocate, situational awareness encompasses a number of aspects.

As a Military Justice practitioner, a Judge Advocate must understand the task organization of the unit and the relationship between their General Court Martial Convening Authority and affiliated units.⁵³ The claims practitioner, must understand where their unit is (and has been operating), the nature of the operations, and the equipment employed in those operations. An Operational Law attorney requires even greater visibility on operations, particularly current operations. When a question arises regarding the validity of a dynamic target, an Operational Law attorney does not have the luxury to go study the map, then the Operational Law Handbook, then back to the map, etc.

All attorneys in an operational environment should take several base measures to ensure they maintain maximum situational awareness. First, all should be familiar with the Base Operations Order (OPORD) under which the unit is operating. Operations Orders are, of course, modified on a regular basis by Fragmentary Orders (FRAGOs).⁵⁴ Judge Advocates and paralegals should read all FRAGOs which

apply to their unit. Operational Law attorneys should further have a strong working relationship with the G/S/J3, G/S/J2, and the Fires section.

An Operational Law Judge Advocate cannot have sufficient situational awareness without having an understanding of current operations. That is, an understanding beyond OPORDs and FRAGOs that includes operations that are currently occurring and operations that will occur within the next 24 hours. This is not a Judge Advocate-specific issue. Virtually all units are eager to increase their knowledge/information management processes.⁵⁵

Collectively, knowledge/information management seeks to provide information to staff and commanders necessary to maintain understanding and make effective decisions. One tool in facilitating knowledge/information management is the COIC which “is the integrating cell in the command post with primary responsibility for execution.”⁵⁶ Within the COIC, the Common Operating Picture (COP) is the primary mechanism for disseminating knowledge/information. The COP frequently takes the form of a single display, presenting multiple staff products.⁵⁷ The unit SOP should define responsibility and frequency required for updating and maintaining the COP. The centrality of the COIC to unit operations is the reason why MCTP OPLAW strongly advocates having a Judge Advocate seat in the COIC.

Another fundamental tool in maintaining staff-wide situational awareness is the creation and maintenance of running estimates. 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.”⁵⁸ The most successful staffs maintain running estimates within all sub-staff sections. This facilitates both commander and staff visualization of “the operational and mission variables, assessments by subordinate commanders and other organizations, and relevant details gained from running estimates.”⁵⁹

⁵¹ News Release, U.S. Department of Defense, Statement by Pentagon Press Secretary Rear Admiral John Kirby on Landmines (Sept. 23, 2014).

⁵² FM 1-04, *supra* note 12, paras. II-6, II-7.

⁵³ The Army utilizes myriad command relationships, including organic, assigned, attached, operational control (OPCON), tactical control (TACON), and administrative control (ADCON). The nature of the command relationship has significant implications for various aspects of the practice of law. *See generally* ADRP 5-0, *supra* note 41, paras. 2-75, 2-76, 2-77, 2-78, 2-79, 2-80, 2-81, 2-82, 2-83, 2-84.

⁵⁴ *Id.* paras. 1-4, 1-5 (“commanders describe modifications to their visualization in updated planning guidance and directives resulting in fragmentary orders that adjust the original order.”).

⁵⁵ “Knowledge management facilitates the transfer of knowledge between staffs, commanders, and forces.” ADRP 6-0 *supra* note 17, para. 3-5.

Information management, in turn, “is the science of using procedures and information systems to collect, process, store, display, disseminate, and protect data, information, and knowledge products.” *Id.* para. 3-19.

⁵⁶ ADRP 5-0, *supra* note 41, para. 4-3.

⁵⁷ ADRP 6-0, 2-14 (“staffs develop a *common operational picture* (known as a COP), a single display of relevant information within a commander’s area of interest tailored to the user’s requirements and based on common data and information shared by more than one command.”) and ADRP 2-0, *Intelligence* (31 August 2012) 3-3.

⁵⁸ ADRP 5-0, *supra* note 41, 1-15.

⁵⁹ *Id.* para. 1-15.

That said, the practice of law doesn't lend itself to running estimates as envisioned by Army doctrine. Legal sections will frequently be pressured to maintain and provide copies of their running estimates. It is important for Judge Advocates to understand what is meant by "running estimate" in order to explain to an Executive Officer or Chief of Staff the inapplicability (largely) of the concept to legal operations. Where running estimates do fit the practice of law, it tends to be in areas of Military Justice (e.g., numbers of cases) and Administrative Law (e.g., numbers of investigations), where the information is not typically shared beyond the commander.

D. Judge Advocate Role in the Conduct of Operations

As important as understanding the military authority for a unit's given operations, it is equally important to understand the international and domestic laws under which operations

are occurring. This includes application of international law such as the Hague Regulations,⁶⁰ Geneva Conventions of 1949,⁶¹ the United Nations Convention against Torture,⁶² the Chemical Weapons Convention,⁶³ and so forth.⁶⁴ This would also include the application of any bilateral agreements such as a Status of Forces Agreement, Visiting Forces Agreement, or other similar agreements. Such bilateral agreements have the potential to affect virtually the entire of practice of law in a deployed environment, including basing issues, claims, military justice, and combat operations.

Field Manual 1-04 provides a comprehensive discussion of Judge Advocate roles at both Division and Brigade as well as a discussion of Judge Advocate duties by Warfighting Function.⁶⁵ Utilizing guidance found in FM 1-04 and our observations at MCTP, I have provided a summary of suggested Judge Advocate responsibilities by warfighting function:

Warfighting Function	Responsibilities
Movement and Maneuver	<ul style="list-style-type: none"> Assisting maneuver force in efforts to minimize collateral damage.⁶⁶ Ensure operations are conducted in compliance with applicable law and policy.⁶⁷ Assisting with the management of Internally Displaced Persons (IDPs), including the provision of Humanitarian Assistance and Medical Aid.⁶⁸ Understand the basis of military operations and possibly attendant restrictions.⁶⁹
Fires	<ul style="list-style-type: none"> Review targets to ensure targets are consistent with the Law of Armed Conflict and ROE.⁷⁰ Understand the CDE process to ensure unit is complying with regulatory requirements.⁷¹ Ensure the delineation of no-fire, restricted fire, and protected places.⁷²

⁶⁰ Hague Convention (III) Relative to the Opening of Hostilities, Oct. 18, 1907, 36 Stat. 2259, 205 Consol. T.S. 263; Hague Convention (IV) Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277, 205 Consol. T.S. 277; Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in the Case of War on Land, The Hague, Oct. 18, 1907, 36 Stat. 2310, 75 U.N.T.S. 31.

⁶¹ Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 UST 3114, 75 U.N.T.S. 31; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85; Geneva Convention (III) Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287.

⁶² Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85.

⁶³ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, May 1993, 32 I.L.M. 800.

⁶⁴ See, e.g., *Treaties in Force*, U.S. DEPARTMENT OF STATE <http://www.state.gov/s/l/treaty/tif/index.htm> (last visited July 7, 2016) (listing all treaties in effect with regards to the United States).

⁶⁵ FM 1-04, *supra* note 12, 2-3-2-6.

⁶⁶ Additional Protocol I, art. 51 (prohibits "indiscriminate attacks" such as those that cause "incidental loss . . . excessive . . . [to] the military advantage anticipated."); Army Tactics, Techniques, and Procedures 3-37.31, *Civilian Casualty Mitigation* (18 July 2012); see also e.g., Michael

N. Schmitt, *Extraterritorial Lethal Targeting: Deconstructing the Logic of International Law*, 52 Colum. J. Transnat'l L. 77, 108 (2013) ("Once it is determined that an individual may lawfully be targeted, the impact of the attack on civilians and civilian property must be assessed and minimized. International humanitarian law requires attackers to take precautions designed to limit collateral damage. This obligation includes: doing everything feasible to verify the target; choosing available weapons or tactics that will minimize collateral damage without sacrificing military advantage; and selecting targets so as to minimize collateral damage.")

⁶⁷ U.S. DEP'T OF DEF. DIR. 2311.01E, DOD LAW OF WAR PROGRAM; CHAIRMAN, JOINT CHIEFS OF STAFF, INSTR. 5810.01C, IMPLEMENTATION OF DOD LAW OF WAR PROGRAM; U.S. DEP'T OF ARMY, FIELD MANUAL 27-10, THE LAW OF LAND WARFARE (July 1956) [hereinafter FM 27-10].

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⁶⁹ This includes understanding international obligations under the Geneva Conventions, bilateral agreements that may exist (e.g., the NATO SOFA), and U.S. domestic restrictions (e.g., The Authorization for the Use of Military Force Against Terrorists, Pub. L. No. 107-40 (2002)).

⁷⁰ See generally Geneva Conventions and Hague Regulations; see also FM 27-10, *supra* note 67 and CHAIRMAN, JOINT CHIEFS OF STAFF, INSTR. 3121.01B, STANDING RULES OF ENGAGEMENT (SROE)/STANDING RULES FOR THE USE OF FORCE (SRUF) FOR U.S. FORCES (13 June 2005).

⁷¹ CHAIRMAN, JOINT CHIEFS OF STAFF INSTR. 3160.01, NO-STRIKE AND THE COLLATERAL DAMAGE ESTIMATION METHODOLOGY (13 Feb. 2009) [hereinafter CJCSI 3160.01].

⁷² CJCSI 3160.01, *supra* note 71.; JOINT CHIEFS OF STAFF, JOINT PUB. 3-60, JOINT TARGETING (31 Jan. 2013) [hereinafter Joint Pub. 3-60]; U.S.

	<ul style="list-style-type: none"> • Understand and be prepared to apply the decision authorities for various munitions.⁷³ • Understand and be able to apply restrictions on fires (mines, cluster munitions, etc.).⁷⁴
Protection	<ul style="list-style-type: none"> • Assist the command in drafting and applying the ROE regarding US and allied forces.⁷⁵ • Understand the restrictions on the use of Riot Control Agents.⁷⁶ • Providing guidance regarding the detention of civilians.⁷⁷ • Review detention plans and operations.⁷⁸

Warfighting Function	Responsibilities
Mission Command	<ul style="list-style-type: none"> • Understand units' roles and missions.⁷⁹ • Administer Military Justice.⁸⁰ • Administer claims.⁸¹ • Ensure Office of the Staff Judge Advocate is trained and prepared to execute the mission.⁸² • Man boards, centers, cells, and working groups.⁸³ • Draft and review command policies.
Sustainment	<ul style="list-style-type: none"> • Apply contracting and fiscal law including the acquisition of goods, services, construction, contingency contracting, procurement fraud oversight and Acquisition and Cross Servicing Agreements.⁸⁴ • Understand legal concerns regarding contractors and personnel accompanying the force.⁸⁵ • Provide Legal Assistance. • Serve as the unit ethics advisor.
Intelligence	<ul style="list-style-type: none"> • Review interrogation plans.⁸⁶ • Review of collection on US Persons. • Use of special collection measures.

DEP'T OF ARMY FIELD MANUAL 3-60, THE TARGETING PROCESS (26 Nov. 2010) [hereinafter FM 3-60].

⁷³ JOINT CHIEFS OF STAFF, JOINT PUB. 3-09, JOINT FIRE SUPPORT at xv (12 Dec. 2014) ("The authority and responsibility for the expenditure of any weapon (lethal or nonlethal) rests with the supported commander. The supported commander communicates engagement criteria to the force through ROE and special instructions specific to each operational area. The supported commander may delegate target engagement authority to the lowest level of command of the supported forces.")

⁷⁴ JOINT CHIEFS OF STAFF, JOINT PUB. 3-09, JOINT FIRE SUPPORT at I-2(12 Dec. 2014) (commanders "may issue guidance on the use or restricted use of unique weapons or certain munitions types (e.g., cluster munitions or mines), and may prioritize the allocation or use of joint operations area (JOA)-wide systems like the Tomahawk missile or the Army Tactical Missile System (ATACMS) for specific purposes.").

⁷⁵ U.S. DEP'T OF DEFENSE DIR., 2311.01E, DOD LAW OF WAR PROGRAM; FM 27-10.

⁷⁶ Exec. Order No. 11,850, 3 C.F.R. (1971-1975) Comp., p. 980.

⁷⁷ See generally Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949; U.S. DEP'T OF ARMY, FIELD MANUAL 3-39.40, INTERNMENT AND RESETTLEMENT OPERATIONS (12 FEB. 2010); U.S. DEP'T OF ARMY, REG. 190-8, ENEMY PRISONERS OF WAR, RETAINED PERSONNEL, CIVILIAN INTERNEES AND OTHER DETAINEES (1 Oct. 1997) [hereinafter AR. 190-8].

⁷⁸ AR 190-8.

⁷⁹ There are several options for gaining a better understanding a given unit. See e.g., U.S. DEP'T OF ARMY, FIELD MANUAL 7-15, THE ARMY UNIVERSAL TASK LIST (29 June 2012) (providing "a comprehensive, but not all inclusive listing of Army tasks, missions, and operations"); and U.S. Dep't of the Army, Doctrine Pub. 1-02, TERMS AND MILITARY SYMBOLS (2 Feb. 2015) (providing an explanation of military terms and graphics used during operations).

⁸⁰ FM 27-10.

⁸¹ U.S. DEP'T OF ARMY 27-20, FIELD MANUAL, CLAIMS (8 Feb. 2008).

⁸² FM 1-04, *supra* note 12,.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ U.S. DEP'T OF DEFENSE, INSTR. 3020.41, CONTRACTOR PERSONNEL AUTHORIZED TO ACCOMPANY THE US ARMED FORCES (20 Dec. 2011).

⁸⁶ Detainee Treatment Act of 2005, Pub. L. 109-163, 119 Stat. 3136 (2006); U.S. DEP'T OF ARMY, FIELD MANUAL 2-22.3.

Staff Tasks:

- Conduct the operations process (plan, prepare, execute, and assess)
- Conduct knowledge management and information management
- Synchronize information-related capabilities
- Conduct cyber Electromagnetic activities

The operational law judge advocate supports planning by:

- Preparing legal estimates,
- Designing the operational legal support architecture,
- Writing legal annexes,
- Assisting in the development and training of rules of engagement,
- Reviewing plans and orders.

The operational law judge advocate supports the conduct of operations by:

- Maintaining situational awareness;
- Advising and assisting with lethal and nonlethal targeting;
- Advising and assisting with ROE implementation, and detainee operations

This chart further illustrates how the Judge Advocate's role nests with the staff role in the operations process

E. Fires

Legal support to fires is of such importance that it deserves individualized attention. Operational Law attorneys are encouraged to become familiar with the Collateral Damage Methodology (CDM) and the entire fires process.⁸⁷ Field Manual 3-60, *The Targeting Process*, provides a succinct summary of the role of a Brigade Judge Advocate on a fires staff. Responsibilities for the Brigade Judge Advocate include:

- Analyzing the operations relative to the rules of engagement, United States laws, existing host nation law, and international law.
- Analyzing the nominated or potential target under the law of war.
- Analyzing the plans for detention operations can include evaluation for

potential future criminal prosecution of a target, site exploitation, and evidence preservation.

- Identifying the need for potential legal support to operations.
- Provide interpretations of the rules of engagement.⁸⁸

Notably, these responsibilities extend beyond the typical administration of the Rules of Engagement to include both broad planning and execution responsibilities.

In an article entitled "The Brigade Legal Section in Decisive Action: Issues, Trends, TTPs, and Training," MAJ Kevin Landtroop discusses at some length the observations regarding fires he had made as an Observer, Coach, Trainer at NTC. A dynamic environment creates challenges that "require the BCT to incorporate real-time proportionality

⁸⁷ CJCSI 3160.01, *supra* note 71. ; Joint Pub. 3-60, *supra* note 72. ; FM 3-60, *supra* note 72 .

⁸⁸ UFM-360 *supra* note 72 at 4-10.

analysis into dynamic targeting.”⁸⁹ In such situations, he writes “[t]he staff must not only understand the ROE and assess proportionality, but they must also incorporate the brigade commander’s intent with respect to targeting in populated areas.”⁹⁰

In the article MAJ Landtroop identifies several trends observed at NTC which echo observations made at MCTP. In a presentation accompanying his article, MAJ Landtroop noted that positive identification (PID) “has subsumed the concept of military objective after 12 years of COIN. Terrain denial fires, SEAD [Suppression of Enemy Air Defense], and other unobserved fires serve a valid military purpose even without PID of a specific enemy force.”⁹¹

Observations of more than a dozen artillery brigades during MCTP rotations confirm MAJ Landtroop’s observations. Commanders, staff, and Judge Advocates are fixated on the concept of PID—the idea that a target must be physically observed before it can be serviced. The common understanding of the concept of PID is inapplicable to many operations outside of COIN. Terrain denial and SEAD fires are prime examples. Judge Advocates should understand what level of identification is applicable to which situations.

Another observation shared by NTC and MCTP involves the execution of dynamic targets. In part, Judge Advocates lack the requisite technical competence. MAJ Landtroop notes,

The overarching trend is inconsistency in application of proportionality analysis, ROE, and the commander’s intent...Failure to identify critical, readily available information—such as whether an identified building is on a no-strike list—recurs frequently. Misapplication of ROE constraints at the border is also a frequent problem, as is confusing fire support coordination measures (FSCMs) with ROE restrictions.⁹²

The execution of dynamic targets often further exposes communications breakdown between the legal section and other staff components, most notably the Current Operations section of the S-3 and the fires section. As discussed above and noted in FM 1-04, “[r]apport is critical for mission success—for both the JAGC and the Army.”⁹³ With regards to fires in particular, it is imperative for Judge Advocates to

have a solid working relationship with the unit fires officer, and a working understanding of the CDM.⁹⁴

A full examination of the CDM is far beyond the scope of this article. A quick summary of the methodology is, however, useful. The CDM utilizes a Collateral Damage Estimation construct to “mitigate unintended or incidental damage or injury to civilian or noncombatant persons or property or the environment.”⁹⁵ In short the CDM utilizes formulas and technical information regarding weapons systems to estimate the resulting damage caused by a given strike. The system is utilized by the fires community to provide some objective fidelity to what would otherwise be a purely subjective Law of Armed Conflict analysis. The CDM merely informs a commander and serves to provide a means to restrict release authority for certain targets.

Applying the CDM to a given target will generate a CDE level on a scale of Level 1 through 5.⁹⁶ The CDM analysis is based on a “progressively refined analysis of available intelligence, weapon types and effects, the physical environment, target characteristics and delivery scenarios with specific risk thresholds established for each of the five CDE levels.”⁹⁷ The resulting CDE level reflects a balance between the risk to mission and the risk of collateral damage, where increasing from one level to the next increases both risk to mission and the risk of collateral damage.⁹⁸

F. Technical Proficiency

Many Judge Advocates have difficulty rapidly adapting to an operational environment. This isn’t indicative of their intelligence or work ethic, but rather the fact that most Judge Advocates don’t practice in an operational environment on a daily basis. Indeed, common issues in a deployed environment (e.g., detention operations, targeting, contingency contracting, foreign claims, etc.) are not regularly seen at home station.

This is in contrast with other staff sections whose deployed functions largely track their home station functions (e.g., personalists track personnel, intelligence officers conduct intelligence assessments, and planners plan, etc.) Further complicating Judge Advocate integration in a deployed environment is the fact that in a home station environment, there is relatively little interaction between the OSJA and other staff sections. This in contrast with other sections (e.g., operations and intelligence) who regularly

⁸⁹ Kevin Landtroop, The Brigade Legal Section in Decisive Action: Issues, Trends, TTPs and Training, copy on file with the author.

⁹⁰ *Id.*

⁹¹ Landtroop. *supra* note 89.

⁹² *Id.*

⁹³ FM 1-04, *supra* note 12.

⁹⁴ U.S. DEP’T OF ARMY, DOCTRINE PUB. 3-09, FIRES (8 Feb.2013).

⁹⁵ CJCSI 3160.01, *supra* note 71 at B.

⁹⁶ *Id.*, at A-5.

⁹⁷ *Id.*

⁹⁸ *Id.*

interact with one another at home station. All these factors combine to create an environment where there exists a need for Judge Advocates to rapidly acclimate and develop underutilized proficiencies.

As with any other discipline, the key to preparing for a deployed environment—whether simulated or real—is preparation. As noted above, developing technical proficiency first requires a deep understanding of the legal and military framework in which operations are occurring. This includes international and bilateral agreements, military regulations and policies, operations orders, and fragmentary orders. Judge Advocates are also encouraged to become familiar with—in decreasing order of importance: FM 1-04, *The Operational Law Handbook*, FM 27-10, ADRP 6-0, ADRP 3-0, and ADRP 5-0.

In order to understand what a unit is doing and how it is being done, it is important to understand unit organizations; unit missions, capabilities, task, and purpose; enemy capabilities, task, and purpose; and the staff process in which a Brigade Judge Advocate must execute operations.⁹⁹

G. Office Management

1. Office Operations

Units, missions, personnel, and leadership styles vary so widely that it is impossible to provide detailed guidance regarding the operation of a legal section. This section should be viewed more as a primer on issues to consider while developing the legal support architecture. As noted above, the size and composition of a given staff section is determined long before deployment. The sooner SJAs are involved in the planning process, the greater the chance OSJA equities will be represented.

The senior legal advisor in a command should give some thought to the relationship between their organization and lower unit Judge Advocates. Field Manual 1-04 advises that “[t]he SJA should provide brigade judge advocates with technical guidance, direction, and insight on legal issues.” Senior legal advisors should look to establish expectations at the outset of operations. This can be accomplished through a number of methods, including the publication of an OSJA Standard Operating Procedure or the establishment of a published OSJA battle rhythm.¹⁰⁰

Another office management issue which frequently arises during an exercise is the question of manning. How the office is actually manned is largely at the discretion of the senior legal advisor—operating perhaps under the commander’s guidance that the OSJA will maintain 24 hour operations, or

a similar mandate. Optimally, senior legal advisors man their office in a manner that reflects their unit and current operations. For example, a senior legal advisor to an aviation unit may decide to work the night shift because that is when the unit conducts the majority of their missions. Or, a senior legal advisor may recognize an upcoming significant operation and shift schedules to provide more robust coverage.

Regarding the issue of manning, questions frequently arose from training audiences regarding the utilization of night shift personnel. In the author’s personal experience, legal sections that most effectively employ their night shifts utilized these personnel to complete actions started during day shift, read through the SIGACTS to ensure the legal section is tracking all legal actions, review the daily FRAGOs, and similar situation awareness building activities. The night shift can also use any down time to increase familiarization with CPOF and other battle systems.

2. Maintaining Consistency and Quality

One of the greatest internal concerns for a Staff Judge Advocate is ensuring their office is providing uniform advice. This is a particularly vexing problem in the practice of operational law. During Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF), how many Judge Advocates issued opinions on check point operations? There is no way of knowing, but it is safe to assume there were many. Where the opinions duplicative? Consistent? Again, it’s impossible to know.

It is not, however, unreasonable to think inconsistent opinions were provided on some issues.

Maintaining consistency across a large, dynamic enterprise is not a new concern. In a memorandum to the entire JAG Corps in 1994, then-BG Huffman discussed the significance of the CTCs and noted the importance of “consistent and uniform training.”¹⁰¹ To that end, BG Huffman tasked all JAG Corps organizations to provide assistance and information to BCTP in developing a “common package of OPLAW issues/scenarios.”¹⁰²

Closely related to consistency and duplication is the issue of providing quality legal advice and training. By the very nature of the profession of law, Judge Advocates are trained to provide independent legal advice. In many of the other core legal disciplines, there are numerous checks and balances to ensure Judge Advocates are providing sound legal advice. Before a Judge Advocate can prefer charges, for example, the charge sheet would be reviewed by the Senior Trial Counsel, Chief of Justice, Deputy Staff Judge Advocate, and even

⁹⁹ See Landtroop. *supra* note 89 .

¹⁰⁰ U.S. DEP’T OF ARMY, DOCTRINE PUB. 5-0, 1-14 (defining a battle rhythm as a “deliberate daily cycle of command, staff, and unit activities intended to synchronize current and future operations.”)

¹⁰¹ Memorandum from Brigadier General Walter B. Huffman to the Judge Advocate General’s Corps subject: JAGC Participation in the Battle Command Training Program (29 Sept. 1994).

¹⁰² *Id.*

sometimes the Staff Judge Advocate. Further, once charges are preferred, the Defense Counsel, Article 32 Officer, Convening Authority, Military Judge, and the appellate authority will all have the opportunity to review and/or provide advice on decisions made by the Trial Counsel.

Such a system of checks and balances does not exist in to the same degree within the practice of OPLAW. The creation of the BJA position has led to dozens of highly motivated, Judge Advocates practicing OPLAW with a high degree of independence. Further, in the present information environment, a Judge Advocate in combat operations may issue a legal opinion that has theater-wide implications, but that lacks theater-level vetting or review. A dramatic example of this can be seen in the memorandum on interrogation procedures drafted by LTC (Ret.) Diane E. Beaver.¹⁰³ The memorandum was rapidly circulated and relied upon by commands and units across the globe. As LTC (Ret.) Beaver later remarked in congressional testimony:

I did not expect that my opinion, as a Lieutenant Colonel in the Army JAG Corps, would become the final word on interrogation policies and practices within the Department of Defense. For me, such a result was simply not foreseeable. Perhaps I was somewhat naïve, but I did not expect to be the only lawyer issuing a written opinion on this monumentally important issue.¹⁰⁴

Beyond the possibility that a given memorandum might simply be misguided, out of context, or incorrect, it may also contradict other legal opinions on the same subject or issue.

V. Conclusion

This paper reflects observations made while assigned to MCTP and during a period of time where our Army transitions from counterinsurgency operations to Unified Land Operations. This transition has not been without friction. As with any institutional change, the shift to Unified Land Operations will take time and concerted efforts of the institutions leaders. Applying lessons learned from hundreds of leaders in dozens of units, hopefully this article can provide, some insight which increase the proficiency with which we practice law in Unified Land Operations.

¹⁰³ Memorandum from Lieutenant Colonel Diane E. Beaver, Staff Judge Advocate to Commander, Joint Task Force 170, subject:Legal Review of Aggressive Interrogation Techniques (11 Oct. 2002), <http://upload.wikimedia.org/wikipedia/commons/6/6f/Beaver101102mem.pdf>

¹⁰⁴ Hearing on the Origins of Aggressive Interrogation Techniques Before the S. Committee on Armed Services, 110 Cong. 1-(2008) (statement of Lieutenant Colonel (Retired) Diane E. Beaver).